

Intro:

This Michael Cowen, and welcome to Trial Lawyer Nation - You need to show people the worst possible harm that that negligence could have caused, because that's what the case is about - What I'm asking you to do is to focus on what you can control, because that's where the power - The Dalai Lama has a saying that, in the face of anger, justice evaporates - If you can't focus group it, you have to be very, very critical of your process - If the facts aren't good, you can't create a miracle - We can agree to disagree and be zealous advocates for our clients - Quit worrying about looking perfect. You are not going to. That'll come in time. But you can still be an effective litigator - Welcome to the award-winning podcast Trial Lawyer Nation, your source to win bigger verdicts, get more cases, and manage your law firm. And now, here's your host, noteworthy author, sought after speaker, and renowned trial lawyer, Michael Cowen.

Michael Cowen:

Today on Trial Lawyer Nation we have attorney Matthew Pearson. Matthew is a lawyer from San Antonio, and he recently did the first ever Zoom jury trial, and he's free to come to share some of his experiences. How are you doing, Matthew?

Matthew Pearson:

I'm doing good. Nice to see you, Michael.

Michael Cowen:

Nice to see you too. Tell me a little bit about yourself and your practice before we go into this experience you had.

Matthew Pearson:

Okay. Well, I've been licensed just about 27 years. I've got a law firm in San Antonio. We specialize in first-party insurance cases and construction defect all from the property owners' side. So, it's contingency basis. Because we specialize our practice, while we're based in San Antonio, our practice is throughout the state, and we're actually doing work now in Colorado, New Mexico, Arizona, and Oklahoma.

Michael Cowen:

What kind of cases do you really see that typically come up in that practice area?

Matthew Pearson:

A lot like the case that was presented we did for the Zoom trial, commercial property owners that may have built a building and it's having design or construction defects, or, in that particular case for the Zoom, it was a commercial building that was hit by a pretty big hailstorm in Collin County, and the insurance company didn't want to pay for all the damage. So, the lawsuit deals with the underpayment of the claim.

Michael Cowen:

That's good. It's nice to have people that in different areas. A lot of us do the things with wheels and injuries and stuff. It's always good to know what the other things out there are.

Matthew Pearson:

Yeah. A different type of practice, but the same in the sense that I still handle these cases on contingency. So, I'm dealing with the same issue that a lot of the brothers and sisters on the plaintiff part deal with.

Michael Cowen:

So, how did you end up getting involved in a Zoom jury trial?

Matthew Pearson:

Well, this case is pending up in Collin County, and as part of Collin County's ADR process they've been doing summary jury trials for a number of years. As part of their ADR process, you get assigned a mediator, and in our particular case we were assigned a retired judge, Judge Keith Dean.

Matthew Pearson:

The process is that you show up in Collin County when they're calling in jurors for a regular jury service, and you pick juries, and you then present your case to that jury in a summary fashion. Generally you have about an hour and a half per side. You present it to two juries, six-person juries, and then they give you a verdict. Then the best part is you have the opportunity to interview them to find out what was impactful, what wasn't, what worked, what wasn't, who was credible, who was not. Then the idea is you go right into mediation the next day, and you hopefully use the feedback from those summary jury trials to help resolve your case.

Matthew Pearson:

So, what happened in this particular case, we were set to do a summary jury trial in Collin County in July, but with the pandemic and the shutdown of the court house, they were looking for someone to try one of these by Zoom. And they figured it'd be a perfect way to try a jury trial by Zoom, because the summary jury trials are non-binding. So, we were selected about three weeks ago in order to do it on May 18th, and that's how it all came about.

Michael Cowen:

So, did you have a choice, or was it just then you're doing it?

Matthew Pearson:

I would say we were volun-told. We might have been able to object to it, but, when the idea came up and our case was selected, I actually thought it would be a good thing to do. So, I was a little scared about it but also excited to do it, knowing that it was a non-binding procedure.

Michael Cowen:

Now, that had to make it a little easier as far as the stress level. If it all went wrong, at least you still had your right to a real trial there.

Matthew Pearson:

Exactly.

Michael Cowen:

You said you have an hour and a half per side. Do you actually present evidence, or you just summarize what the evidence is? Is there a testimony? I've never done one of these, so I'm kind of curious how it works.

Matthew Pearson:

There aren't any rules. It's an interesting process. When we were talking about just the summary jury trial with Judge Dean beforehand, and this was before we were even ordered to do it by Zoom, he said each side has an hour and a half, and you can put on your case any way you want to. You can call live witnesses. You can do it as kind of an extended closing argument. Whatever you want. Each side gets an hour and a half, and the other side can't object. So, you can do just about anything you want. Then as the plaintiff, I decided I wanted to do an hour and 20 minutes and save 10 minutes for a rebuttal. But I put on my case for the hour and 20 minutes. The defense puts on theirs for an hour and a half. I get my 10 minutes, and then you have a verdict form for the jury to answer. It's not the same as a typical verdict form that you would give in a trial, but it's similar just in an abbreviated format, hoping that they will deliberate and get you an answer quicker.

Matthew Pearson:

When we were ordered to do this by Zoom, I started thinking, okay, how do I want to present this? I just decided from my perspective I want to try it like I would for a regular jury trial. So, I did about a 10 minute opening with a PowerPoint. I then called my client to testify, and then I called my key expert to testify for about 30 to 40 minutes. Then by the time that was all done, I had saved about 10 minutes for rebuttal which I used as a rebuttal/closing argument. That's how I put on my case. The defense lawyer on the other side, she did it more like an extended closing where she had a PowerPoint put together, and she spoke for her hour and a half, but she would weave in some deposition testimony, some exhibits or some discovery that had been exchanged between the parties. So, that's how the case was presented to the jury.

Michael Cowen:

Have you done other summary jury trials before?

Matthew Pearson:

Nope. This was my first time.

Michael Cowen:

We'll, you've done one more than I have. Looking back, do you think there was an advantage over one approach, which yours of actually putting on witnesses, versus the defense approach which is doing I guess what they call a big opening or a closing/opening together, where you're arguing, you're presenting evidence, but you're not doing the question and answer thing?

Matthew Pearson:

Well, I thought about that a lot. I think, if I was asked to do this again or had the opportunity to do it again, I would do it the same way I did it. I might modify things a little bit. But the whole idea of doing a summary jury trial is to get the evidence in front of the jury and get some real world feedback about the strengths and weaknesses of your case. So, you hope that you get the feedback and the verdict that helps get your case settled and maximizes the recovery for your client, but if the case doesn't resolve you have some feedback kind of like you do for a mock jury that you could help hone your case, your

witnesses, your presentation of evidence, so that when you do go to trial hopefully you have an even tighter and better and stronger case.

Michael Cowen:

Yeah, as much as I like to control everything and I think that I would present well, I would think that, from a credibility standpoint, having someone other than lawyers speaking would be more persuasive, just because we walk into a courtroom with so little trust and credibility at the start, as opposed to a client who may have a little bit more just ... I mean, just hearing from witnesses would probably help, although I don't know. I've never done it. But that would be my thought.

Matthew Pearson:

Well, the good part about it too is, once you get the result back from the jury, you have an opportunity to ask them questions. The things that I wanted to know, and I asked is, what did you think about my client? I put on my expert. Could you follow my expert's testimony? Was he credible to you? So, those are the type of things that you want to know when go to trial. So, that's where I think, if you just do a closing argument and you present the evidence, and it may not actually be admissible evidence but you present the case in you think the ultimate best way it is, I don't think you're getting good feedback about what a jury might decide if and when you go to trial.

Michael Cowen:

It's probably something you probably ought to be doing more, maybe not with the other side there in the summary jury trial, although that's an interesting idea, but in our focus groups. We do so many focus groups where we work on our themes, we work on the facts, we work on the lawyer presentations, and frankly we don't go put our clients through this, and so we don't get the feedback on the witnesses. But the vast majority of the trial, the witness is talking and not us. I think that there's some real value in doing what you did.

Matthew Pearson:

Now, I agree. I wanted to know what did the jury think about my client as a business owner. Did he seem sympathetic and credible? For the key expert, I wanted to know what they thought about, A, his opinions and, B, his credibility. So, that part was more than anything valuable feedback I got from the process.

Michael Cowen:

Did y'all actually do jury selection?

Matthew Pearson:

We did. It was not a typical jury selection. Had this not been by Zoom, the way that Collin County does their summary jury trials is your mediator selects the jury, and all he or she tries to do is get out the fringe jurors on both sides, the ultimate tort reformers on one side and, in my case, the insurance haters on the other side. And that's the way we were told it was going to happen.

Matthew Pearson:

But the Friday before the Zoom trial, we found out that, A, we were the guinea pig, and B, that there was some publicity about this. So, they really wanted to see how it would work out. The judge said, "I'm

going to give each side 15 minutes to do a voir dire." So, we found that out about 4:30 on Friday in preparation for the Monday Zoom. It was somewhat similar to a jury selection but in a much more limited format. Each side only had 15 minutes. Then, when we were done, we didn't exercise any peremptory strikes. Instead, we just had a conversation with our mediator and said, "Hey, who do we agree ..." Or "Is there anyone on this group of 12 that is extreme either one side or the other and we would agree to dismiss them?" If not, we would separate them into two groups of six, and then we would start the actual process.

Michael Cowen:

In a normal jury selection, there's different schools of how to conduct voir dire. There's the people trying to exclude people for cause. There's people trying to do a more inclusionary and form a group. Where do you fall on that spectrum, the way you do your jury selection?

Matthew Pearson:

The way I would typically do it is I'm looking for the worst people. So, I always say, if I walk out of jury selection at the end of the day thinking, "Nobody likes me, nobody likes my client, and I need to call my mom to find out that someone truly does love me," then I've done my job. I want to hear all the negative stuff.

Michael Cowen:

So, did this change the way that you ... Not just the 15 minutes, but the fact that you were doing it over Zoom. Did it change the way you did jury selection?

Matthew Pearson:

It did in a sense. What's interesting, there was a little bit of a confusion when we talked about we were going to get 15 minutes. We originally had a panel of 28 people, and we were supposed to pick two juries of six people out of that. When we started it on Zoom, the judge says, "Well, do we want to ask all 28 people at the same time?" And you can imagine, even on a big screen, looking at 28 people at one time is impossible. So, we decided to split it up 14 and 14.

Matthew Pearson:

What I understood, and even the defense lawyer understood, is that we would pick a jury out of the first 14 and then a second jury out of the second 14. So, going into it, thinking that, I decided I'm going to experiment again, and I thought, with the first group, I'm going to ask more general questions followed by specifics. And in the second group, I was intending to just go down the line one by one and really pinpoint, ask direct questions, going down the line.

Matthew Pearson:

But once we got down with the first group of 12, the judge says, "Well, I think we can get the two juries out of the 12," and so that was it. I had a strategy, but I really didn't get to implement it because of the way the process worked out.

Michael Cowen:

How do you get people to raise their hand or identify if you're asking kind of general questions in a group when you're doing a Zoom voir dire?

Matthew Pearson:

You do it just like you would in the courtroom. You can imagine the way the screen was set up. That first group was actually 12. So, you could see the way that they had set up. Most of them were working off of a laptop or an iPad, so you had a pretty good visual of them. A couple people were working off their phone.

Matthew Pearson:

But I would literally say, "Okay, I'm speaking to you as a group." I think I said, "It's kind of like the Brady Bunch on steroids," and it kind of was. But you had the whole group that you talked to, and I'd literally ask them, "Hey, will you raise your hand if this applies to you?" People would raise their hand. Then I would follow up with specific questions. Again, it was 15 minutes, so you didn't get into too much detail.

Matthew Pearson:

In the future, I would do that same ... I would do it the same way. I think you need to split it up in no more than 12 people at a time and go through that process, asking them to raise hands, and then follow up with individual questions.

Michael Cowen:

Did you have any concerns over limiting who could be in the jury pool based on access to technology?

Matthew Pearson:

We did. I think that's why, one thing I would say, doing this for a summary jury trial by Zoom where it's non-binding, hey, it was a great experience, and I'd do it again. If you're asking me to put this case, the entire case, in front of a jury trial by Zoom and have it be binding, that's my biggest concern is that you're not going to get a representative sample of the community, because there are folks that don't have iPads, computers, and may not have the type of internet speed that you need to participate by Zoom.

Michael Cowen:

Although I guess it wouldn't ... At least for the 6 or 12 that would actually serve on the jury, that wouldn't necessarily be cost-prohibitive, because you can ... I know one thing we've done for clients was not all of our clients have good internet connectivity, and then we've found clients probably appear at a depo on their cellphone, which is not a good idea. It's just buying a tablet that has the builtin cellular internet connection and a little stamp for it and send it to them. I mean, for a couple, 2 or \$3,000 you could probably get enough of those for the jury pool if you needed them.

Matthew Pearson:

Yeah. I guess it's just how do you get people to respond. I guess in some ways, you know, how you get them to come to the courthouse, but for this particular group they didn't come to the courthouse. They were connected through their juror information cards. But they did have to I guess respond, I believe ... I wasn't part of this, but I understand from talking to the judge after the fact there were certain criteria that they had to meet in order to participate in this. And I would be concerned that there are certain people that we would typically like to see on juries or at least be part of the process that might be excluded.

Michael Cowen:

So, did you present your case differently, thinking about the fact that you were going to be on a video screen instead of in a live courtroom?

Matthew Pearson:

I didn't. That's one of the things I was really trying to figure out what I wanted to do, and I just decided I'm going to go about this like it was a regular trial. So, for my opening, I typically use a PowerPoint to walk through kind of some of the key things, talk about the burden of proof. So, I prepared a PowerPoint, and I shared my screen. I did an opening statement that way.

Matthew Pearson:

When we got to my client, there was a few key pieces of evidence that I wanted to walk him through, and so, again, I shared my screen, and I used a software called TrialDirector. I utilized TrialDirector from my laptop and would present that, sharing my screen for the client could see. He could see them, and I'd blow it up or I'd highlight a section. So, that worked.

Matthew Pearson:

Then what I typically do with experts is I work with them preparing a PowerPoint of some key documents from their file or photographs, and we'll put together kind of a PowerPoint presentation. And we did that. So, I presented my expert using his testimony on background, and then we played a PowerPoint and shared the screen for that. So, it's a lot like I would do in a regular trial.

Michael Cowen:

Okay, yeah. Because I was thinking in a regular jury trial I'm actually going away from as much PowerPoint, especially in my opening, because I want to create the human interaction, the human relationship, and do more writing and drawing, whereas that wouldn't really work on Zoom. I think the PowerPoint would be a lot more necessary to be able to effectively communicate information. I also think that just one advantage that I can think of in Zoom is you know what everyone's looking at. I mean, there's only one thing for them to see, and you control that, as opposed to are they looking at the defendant's facial reactions, are they ... Where are they looking the courtroom as opposed to you can make sure that the exhibit you see is the only thing to see.

Matthew Pearson:

Right. You talk about in opening wanting to be more interacting and writing. That's one thing that my expert was able to do. He actually had a digital pen. So, he drew a couple lines. Granted, it was pretty basic stuff, but he did circle some things. He did blow up some pictures. He did write some arrows on pictures. So, there is a way to continue to do that even on Zoom.

Michael Cowen:

Yeah. I just think the more ... I think just looking at a video of a talking head for hours on end, especially when you're doing the full-on jury trial, not just an hour and a half, could get really old. I think having to mix it up, having some talking head, having a screen, having things happen to the screen, different exhibits, different things, I think that could really help keep people engaged.

Matthew Pearson:

Yeah. I agree.

Michael Cowen:

How was your experience with jury engagement, the level of engagement you think that they had, and then how would that compare to the level of engagement you think you have in a courtroom, where frankly people drift off and daydream all the time?

Matthew Pearson:

That was the hardest thing to gauge during the process. Now, granted, this was only a summary jury trial, so they'd listen to about a total of three hours. And we did a lunch break in between my presentation and the opposing counsel's presentation. But because when I was presenting my case and specifically talking to or eliciting testimony from my client or the expert, I was focusing more on them and on the screen. There's only so much that you can do on one screen. You can't share your screen, look at your expert or witness, and then also monitor the jury out of the corner of your eye. There's just not that much bandwidth on a laptop or one's screen. So, that was hard to do during the course of the trial itself.

Matthew Pearson:

We certainly asked them afterwards about their engagement, and it seemed like it was pretty good, but that's one of the things I saw afterwards. How would I have done this differently? One of the things I would have kind of ... I would have had multiple screens. And I would have tried to figure out how you could have the static picture of the jurors, all 12 of them, on one screen so you could kind of, out of the peripheral of your eye, see what they're doing, are they engaged, kind of like you would do in the courtroom. But having it all on one screen, it's just too much, too much.

Michael Cowen:

Yeah, but you can't really make eye contact with people on Zoom. Did you do anything to think about making it look like you had eye contact?

Matthew Pearson:

When you were talking to the jurors during juror selection, I did the best that I could, looking right into the camera and talking directly to them to try and mimic direct contact. It seemed like, the way they were looking back, there is some level of contact. It's not the same as in person, but it was better than I expected.

Michael Cowen:

Okay. How about any kind of gestures or nonverbals or anything that you were able to incorporate with the Zoom to avoid just being the talking head, or did you feel too constrained?

Matthew Pearson:

I did a little bit of that, but, again, that's one of those things after the fact I think that I could definitely do better. Maybe have a wider camera angle so you can see more of your body, maybe even stand up and get out of your chair and move around a little bit. My expert I thought did a real good job. I really was focusing on looking at him as well as his computer screen, and he was really animated in a good way. I think that helped his testimony.

Michael Cowen:

Yeah. I've been working with Sari de la Motte, and she's watched some of my stuff on video, and she's told me that I need to be more animated and make an effort to use, which I'm actually failing on in this podcast, by the way, but luckily it's audio, but I need to really be working on it more, because just it's so easy just to kind of fade out when there's nothing but a talking head in front of you. I know that I do so many Zoom meetings every day, and I was a huge Zoom evangelist when this was all starting. I'm thankful for it, because it's kept my practice going. But I'm getting Zoom fatigue. I mean, I'm just in so many of these meetings. I actually talked to Sonia Rodriguez and Malorie Peacock, my partners, and just say, "Can we just talk on the phone?"

Matthew Pearson:

Yeah. I know what you mean. Zoom is great, and it's helped, but when you do two or three Zoom meetings a day you get tired of it.

Michael Cowen:

Yep.

Commercial:

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Michael Cowen:

Now I guess one of the goals at least I have in trials is to try to form the jurors into a group, and in a regular trial they have all the ... People are having lunch together, the breaks. They form relationships. That just doesn't happen in a Zoom trial.

Matthew Pearson:

No. The jurors were all participating from some place in their home. There was one guy that even started outside on his back porch. The judge did suggest that he move inside, because he was picking up some background noise from birds and cars that'd pass by. But, yeah, you can't ... And again, this was such a limited format, but it would be really hard to form any relationship amongst the jurors on, say, a week-long trial, because they're all participating from the confines of their home. When they take lunch, they're doing it by themselves, and when the day is over they just turn off their computer.

Michael Cowen:

What difference do you think that might make?

Matthew Pearson:

I hadn't really thought about that. It is an interesting thing to watch during the course of the trial, how some friendships develop and some people that will spend time together. I don't know. I really don't know what to say about that, if we had to start doing this by Zoom, because I don't know how you could form any sort of relationship or build a consensus among jurors, because technically it would be improper if they got connected by phone after the end of the day. So, I don't know.

Michael Cowen:

Yeah. I just wonder what difference that may or may not make. How much of all this formation of group dynamics is just consultants selling us their spiel on how much of it is really important for decision-making? It's just interesting, because we never know. I mean, we study this stuff. We parrot it back. How much of it really makes a difference? I've noticed that focus groups who get an hour and a half presentation seem to have fairly similar outcomes, not necessarily the same number but thought processes and the same issues and the same things being important, as jurors that hear a two-week trial. So, I sometimes wonder how much of what we do is kind of irrelevant.

Matthew Pearson:

That's a good question. Afterwards, we didn't talk to the jury. The way it worked, when they deliberated, the judge set them up in two virtual Zoom rooms, and they deliberated the case. The exhibits were then sent to them by link. I just have a feeling, based on how quickly they returned the ... Both of the juries came back within 30 minutes. I just have a hard time believing that they reviewed any of these substantive exhibits, but they clearly did have a group discussion, and both of them reached ... They were told they could reach a 5 to 1 verdict, but it was unanimous for both of them.

Michael Cowen:

Are you allowed to tell us what the results were?

Matthew Pearson:

We can't tell you what the results were, because it is part of the ADR process. We can tell you that both of them did reach verdicts.

Michael Cowen:

Do you get any feedback from the what the jurors thought was interesting as far as the ... Let's start with the process.

Matthew Pearson:

Yeah. We did get some good feedback. It was interesting. From my perspective, the questions I was asking, I wanted to know about the substantive issues, credibility of the witnesses. Could you understand the testimony? Could you follow it? What did you think about this particular evidence? But the judges were also involved in questioning the jurors, and so their questions were more focused on the process itself and the technology. So, it was good to get the feedback in response to both the judge's questions as well as the lawyers questions. I felt that we really did get good feedback from everyone. Everyone seemed very interested in sharing their experience and their opinions, and that was valuable.

Michael Cowen:

Is your case still ongoing, or was it able to get resolved at some point after this?

Matthew Pearson:

It's still ongoing right now.

Michael Cowen:

Okay. To the extent that you feel comfortable sharing it, or it's something where your opponent may listen to this before your binding trial, anything that useful you learned about your case and your witnesses from this process?

Matthew Pearson:

I think the biggest thing that I got out of it is the fact that jurors felt that they could assess the credibility of witnesses by Zoom and were impacted by their testimony. My expert is based out of Minneapolis. So, I'm starting to think now after Zoom when we get back to normal is there still a possibility to call some of these witnesses by Zoom just to save on expenses? Had it been the actual summary jury trial in Collin County, I would have had him travel from Minnesota to testify live. But hearing the feedback of the jury where they felt they could follow his testimony, they could assess his credibility, maybe some of these witnesses can appear by Zoom in the future and we could save some money on that.

Michael Cowen:

That would be nice, because trials are so expensive. Then the scheduling, especially when the previous day doesn't go as expected so you need the witness there a day later or a day earlier, the logistics of trial, and you end up paying an expert to sit around for two or three days because you weren't sure exactly what day you'd need that person.

Matthew Pearson:

Right. I have an expert that I use in some cases that spends half of his time in Europe. And if it happens to be a case gets called to trial while he's in Europe, I've got to pay for him to fly back. Just the cost alone, I mean, that can be anywhere from 7 to \$10,000. And if I can save that and present him by Zoom, it's a big cost savings for me and ultimately for the client.

Michael Cowen:

Was your case purely an economic damages case, or was there any kind of noneconomic component?

Matthew Pearson:

No. It's all economic.

Michael Cowen:

Do you think the jurors' ability to assess I guess harm would be any different over Zoom if it was a case where we're looking at mental anguish, pain, impairment, that kind of thing?

Matthew Pearson:

I think nothing substitutes for being live, but I do think that you can get that message across and that emotion across by Zoom. You just have to work at it. I think you've got to be able to pull it out of your client, just like you do sometimes in the courtroom. Then I think you probably will have to set up a camera angle for wherever they are so you can see more of their body and some of the animation or the anguish that they see or the reliving the incident. It has to be able to come across on video.

Michael Cowen:

I was thinking about this a lot, and my first thought was, no, people aren't going to get this by Zoom if it was a personal injury case, but then I've really been thinking people are a lot more moved by 30-minute television shows or even new segments within a television show than frankly they are by most trials, which go on for my longer, but just because of the trial process I'm wondering, if we worked with people that know how to present stories visually and through this film medium or television medium, if we could come up with a better way to do the visual storytelling and get these emotional points across.

Matthew Pearson:

Again, I think it's doable, but you just have to work at it. It may come down to making sure your client is comfortable and, again, having the right camera angle, and making sure that they have good video and sound quality.

Michael Cowen:

It's like we're moving from ... It's like we're going to need a different set of consultants, because we're moving from putting on a live play to putting on a live television show. It's the difference between doing standup and stage and doing Saturday Night Live. Both have a live audience, but it's a different live audience when it's a video one versus a in-person one. So, here's a question for you. Would you consider doing the Zoom trial if it was binding?

Matthew Pearson:

That's a tougher question. I'm not sure I'm ready to commit to that. This was an experiment that we did for a day. And during the course of the day, we didn't have any technical difficulties. There wasn't any interruptions in the jurors' homes. They had all been told, "Make sure you're in a quiet place," and so they'd either had their family go away, or they were in a separate part of their house. So, there weren't any kids that ran in. There weren't any phones that rang. There weren't any dogs that were barking. And that was great for a day. My concern would be can you mimic that or can you replicate that for an entire week or two weeks.

Matthew Pearson:

I think the other thing that is difficult too is can the jury realistically go through the evidence in the case and then make a decision based on the evidence. We introduced some exhibits. It was very streamlined. I think I had four exhibits of 10 pages. Had this case gone to trial, I probably would have had 30 exhibits and a couple thousand pages. I don't know how you could realistically go through that if it was a full-blown trial. Now, granted, there are some juries that get the evidence back there, and they don't go through it either. But my concern is that they would hardly look at anything just because of the complicated nature of it.

Michael Cowen:

Or maybe having to, to the extent possible, pre-mark, pre-admit evidence and sent them a notebook each or something. I'm just trying to think of solutions to these issues. But even then, it's hard, because in a jury room they have one set of exhibits, and they can show things to each other and point out. I guess you could do that from a shared screen, but finding things and having the ease with the technology to be able to know how to find it in the PDF, know how to share the screen, know how to highlight something so that people see it, you can't expect a jury to get that necessarily.

Matthew Pearson:

They floated the idea of sending the exhibits to the jury beforehand. I was against that, and ultimately we agreed not to do that, because you don't want the jury fumbling through exhibits virtually while you're trying to put on evidence, just like you don't want, for the most part, them looking at exhibits in the jury box when you have someone testifying.

Michael Cowen:

So, if you had to do another one of these, would you do anything differently?

Matthew Pearson:

I think I would present the case the same way. I would still do it like it was a trial. Again, I would probably ... The technology, I would do differently. Having to do everything myself from my own computer was really difficult. So, I ran the PowerPoints. I ran TrialDirector. And that was difficult. I think what I would do ... My setup would be different. I would have multiple screens. I would try and figure out how to have the jury all on one screen. I would have my paralegal zoom in and have her control the documents just like I would in trial and say, "Hey, pull up exhibit two. Let's highlight the second paragraph." I did all of that myself during this summary jury trial, and it was exhausting.

Matthew Pearson:

So, the technical aspects of it, I would change. But how I presented the case with the opening, putting on witnesses, and a modified closing, I think I would do that the same, because I think you're more likely to get valuable feedback from a jury when you present a case in how you would to a full-blown trial as opposed to just giving them a show by a extended closing argument.

Michael Cowen:

Yeah. One thing I've been thinking about is all of us are uncomfortable doing a binding, actual trial-trial by Zoom. In fact, I keep saying I'd like to go try someone else's case by Zoom for them, but not one mine, just so I can have the experience without having to risk one of my babies. But at some point ... We don't know how long this is going to go on. We don't know. My prayer is that, by the fall, things will start getting back to normal. We'll start having trials again. But we might not. We have no idea.

Michael Cowen:

So, my thing that I've been struggling with is how long of a delay would it take for me to start pushing to do a Zoom trial. I mean, my thought is, could I go the rest of the year without a trial? Probably. But I don't know about you, but my big, big cases don't resolve unless we're about to try them. They don't come to the table until they have that fear that this is really going to happen. Til then, it's all game-playing and low ball offers. Have you thought about how long you would be willing to wait for real trials to come back before you'd consider doing the binding trial by Zoom?

Matthew Pearson:

That's a good question. I don't think I have an answer yet. I think the Supreme Court just issued an order either last night or this morning where now there are no live trials at least until August 1st, I think.

Michael Cowen:

Yeah, in Texas that's correct.

Matthew Pearson:

So, I don't know. I think I'd probably have to wait and see how things transpire through 2020. If this does go into 2021, I think I would probably have to seriously consider it, but I think we can go several more months before you're forced into having to make that decision.

Michael Cowen:

Yeah, that's where I'm leaning towards too. Now, I'm a member of a Facebook group that Sari de la Motte has called From Hostage to Hero, and you agreed to let her critique and go through your voir dire on this Zoom trial in front of other lawyers from around the country that you don't know. One, kudos to you for having the guts to do that, because, to put yourself out there like that, I mean, it was very valuable for everybody that got to see it, but that's got to be nerve-wracking to have someone else coach you publicly on something you did. But what was that experience like for you?

Matthew Pearson:

It was good. I have worked with a jury consultant for probably 10 years on almost every big case that I've had. So, I feel like I have learned a lot and been coached a lot. A different style that Sari had, but the feedback that she gave me during that webinar was really good. I was taking notes, and I got back afterwards, and I added some things in my computer. So, if this case or another case goes to trial, she gave me some good tips that I would probably implement.

Michael Cowen:

Yeah. She's brilliant. Do you have any consultants you've found to be the most useful or that you've learned the most from as far as trying cases?

Matthew Pearson:

You're talking about legal-

Michael Cowen:

Any kind of, any kind of consultant.

Matthew Pearson:

To me, I started using a jury consultant I think for the first time maybe 10 years ago. I think what she has done for me has been invaluable, and I'm kind of of the opinion that, if you have any big case, if you don't work with a jury consultant, you're committing malpractice. Selecting a jury is too important. To think that you as a lawyer have all the answers I think is foolish. I think you just need to work with a good jury consultant.

Michael Cowen:

I think they're good. I think also the practice they make you do, going through the ... The discipline of having to do that makes a huge difference too.

Matthew Pearson:

Right.

Michael Cowen:

If anyone wants to find you, either because they want to try to reach out to you to ask about this or maybe because they have a property damage first-party case that they want to get help with, what's the best way to find you?

Matthew Pearson:

Well, we have a website. My firm has a website. It's pearsonlegalpc.com, and it's P-E-A-R-S-O-N, legal, P-C.com, or they can send me an email, and it's mpearson@pearsonlegalpc.com.

Michael Cowen:

We'll have all that, all your contact information, in the show notes. Matthew, thank you so much for coming on the show. I really appreciate your feedback and I appreciate your guts in being the first one to go into this brave new world.

Matthew Pearson:

Well, thank you for having me on your show, Michael. I appreciate it. I've listened to a number of your podcasts, so I was excited to get the invitation earlier this week. Like I said, it was a good experience. The fact that it was non-binding made it all the more better.

Michael Cowen:

Awesome. Well, thank you.

Outro:

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