

Intro:

This is 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 lies- 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- 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're 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 Chris Madeksho. Chris just got a wonderful verdict, now, even during this age of COVID, and he's agreed to come on and talk about it, and talk about his practice and how he got that great verdict. So, Chris, welcome to the show.

Chris Madeksho:

It's great to be here, Michael. Thanks for having me.

Michael Cowen:

I love having you. I'm so excited to talk to someone. I'm just getting some judges telling me that we might try some cases this year. Aside from just the show, I'm still wanting to learn from how you all did and, hopefully, I can do the same. Let's just start with the headline and then I'll cut to the background. What kind of verdict did you get and where'd you get it?

Chris Madeksho:

We got a verdict to the tune of \$13,966,000 in King County, Washington, which is Seattle. It was in a case where my plaintiff had mesothelioma, has mesothelioma, still living. Obviously terminal, but because it was a terminal cancer case, the judicial committee got together and asked judges which cases should be the first up, and our judge, Judge Ruhl, spoke for us and he gave us the opportunity to be one of the first cases, and I didn't really feel like we had a choice. We can go more into the back story, but that was the case. He chose us because it was a terminal cancer, serious case.

Michael Cowen:

Glad you got the opportunity and I'm glad that your client got the opportunity to get some sort of justice. I certainly wouldn't trade slowly dying from mesothelioma for \$13.966 million, but at least he got something, some opportunity to be heard and maybe the money could bring him some comfort and joy in life while he's still here. I know a lot of times, the manufacturers probably spread those things out till the client dies, hoping it'll be worth less money. It's evil.

Chris Madeksho:

That's another story because that happened in this case.

Michael Cowen:

Yup. Before we get into the details, I want to get just a little bit about you. Tell us a little bit about you and your practice.

Chris Madeksho:

So, I do toxic tort. I got in this all thanks to my dad. My dad was an asbestos insulator in the golden triangle area, the gulf coast area of Texas, and after he decided he didn't want to do asbestos insulating work for the rest of his life, he went to the University of Texas at Austin, got a degree. Got a law degree at U. Of H., and he's one of the early guys doing asbestos work. He got me started and he passed away in 2016, but he had left a lot of goodwill and to this day, I benefit from the goodwills that my dad left me, as well as all the experience I gained under him.

Chris Madeksho:

I'm an attorney. I had to move out of Texas after tort reform. My sister; however, is my law partner, Angela Madeksho. She stayed behind in Houston to manage our still existing Texas practice, which it's had to change because of tort reform, but it's still there, and I manage our California office.

Michael Cowen:

Well, California, I don't know how it is with the fires, is generally a fairly pleasant place to live.

Chris Madeksho:

Yeah, the fires have made the air quality index go in the wrong direction.

Michael Cowen:

Mm-hmm (affirmative).

Chris Madeksho:

I love the people. I love everything about it. Miss Texas, but I love it here.

Michael Cowen:

It's amazing. I worked for another lawyer from when I became a plaintiff's lawyer and moved back home to Brownsville, Texas in '97 until he left in February '99, and I had to go off on my own, and we were local council for Baron and Budd on, I think, 10,000 asbestos cases that were Alabama cases, but somehow, they can file them in Texas because there's a Union Carbide factory at one point in Brownsville, Texas. I remember thinking back then that there's no point in going to asbestos because this is 1999. These cases are going to be done in five years. I need to specialize in something else and there's not. It's amazing.

Chris Madeksho:

They've been saying that since 1984 when Johns Manville went into bankruptcy. There's not much left, but because there has been such widespread failure to disclose asbestos content of certain products, especially those containing talc, we still see asbestos-related disease in large numbers to people who had no idea they were exposed.

Michael Cowen:

It's disgusting, on one hand, that people would expose people with such a well-known toxic substance decades after we've known how bad it is, but it's important we keep looking up those cases. I guess your dad would teach you because asbestos world is kind of its own world, from what I've learned as far as it's hard to break into, learning who to sue, what the theories are, the medicine. It's such a well developed tort in some ways, but then, it's constantly evolving so it's not something you just take one asbestos case and get into it, but from the trial skills point, because just knowing the science is not enough to get a 13, almost \$14 million jury verdict. You need to know how to try a case.

Michael Cowen:

What have you done to develop yourself as a trial lawyer?

Chris Madeksho:

Developing myself as a trial lawyer involved developing myself, personally. When I had my first trial, my wife and I, we got together and decided I was going to take about a five or six year break from trying cases.

Michael Cowen:

Wow.

Chris Madeksho:

And just build a family. She knew and I knew from seeing my dad and a lot of his friends, that the law is a jealous mistress and a lot of families had been broken up because people dedicated themselves to practicing law and not the practice of family life. So, experiment and just build a family first, and after we had a strong, stable, loving family, and a strong, stable, loving hold on our personal life, then acts and do our trial work. For me, since getting back into the trial work a couple years ago, it's worked wonders.

Michael Cowen:

Wow. That's funny because everyone else, "I'm going to keep working and I'm going to not ... One day, when I somehow hit the right case, then I can enjoy my life." Your way seems to make a lot more sense.

Chris Madeksho:

Yeah, because I want to continue to do this. This is what I want to do forever. As long as I'm able to stand up on my feet, I want to do this.

Michael Cowen:

Anything you've done to study or anything you've worked with to learn skills for trying cases?

Chris Madeksho:

So, after my dad died, I went to the trial lawyer's college and I did the three and a half week, my wife will tell you it was a month long.

Michael Cowen:

Yeah, it was when I went there.

Chris Madeksho:

Yeah.

Michael Cowen:

It was 30 days.

Chris Madeksho:

So, you know. Then I went there and went back for a graduate program and met Eric Penn, and Eric Penn, talking to him about how he obtained that incredible verdict in Texas.

Michael Cowen:

It's inspiring, isn't it?

Chris Madeksho:

It inspired me to go to learn with Sari de la Motte.

Michael Cowen:

That's funny. That's how I met Sari de la Motte.

Chris Madeksho:

Is it, too?

Michael Cowen:

Yeah, Eric Penn told me he worked with her to get ready for his opening, and I was getting ready to try a case, and I wanted to get ready for an opening, and I've been working with Sari for a little over a year now. Small world.

Chris Madeksho:

Well, Sari de la Motte's techniques, and I even give credit to all these different helps, but Sari de la Motte's techniques played directly into the techniques and the language that was used in this case. Jesse Wilson, also. His method of developing the story you tell the jury was very effective because we had minimal damages presentation, but obviously, the verdict. I mean, \$13.6 million of it is non-economics.

Michael Cowen:

Oh, wow.

Chris Madeksho:

So, only \$366,000 is economics. The damages story was, obviously, effective enough with this very conservative engineer and accountant, and teacher heavy jury.

Michael Cowen:

Wow.

Chris Madeksho:

One of those three, but I've also been reading a lot. Nick Rowley is inspiring. I read his books. Keith Mitnik, obviously. I read Rex Parris. Any time Rex Parris talks about books to read, I go to Amazon and I buy those books.

Michael Cowen:

Yup.

Chris Madeksho:

That's pretty much the background of the trial techniques that I used.

Michael Cowen:

But it's a lot of work, it sounds like it, to get the tools to try a case.

Chris Madeksho:

It's every day work. Every day you work. Every day, I'm up at five, 5:30 in the morning. Work on myself, make sure that I'm comfortable. My body is in a situation where it's comfortable, so I don't have, as Sari de la Motte would say, body language contradicting my spoken language, which would bleed over my words. To have a comfortable body situation is important and I think it was helpful to us in this case.

Michael Cowen:

Absolutely. So, tell me a little bit about the case then, itself.

Chris Madeksho:

It was a hard fought case. The man was a 68 year old living mesothelioma victim at the time of trial. 67 at the time of diagnosis.

Michael Cowen:

And for those that might not know, mesothelioma is a lung cancer, incurable, that is pretty much only caused by asbestos.

Chris Madeksho:

So, this is the lung. If there's saran wrap, you imagine saran wrap around his lung. That saran wrap is a thick layer called the mesothelium and if the asbestos is breathed in through the nose and makes it all the way through the lungs and out to the mesothelium, and the cancer develops there, which the asbestos fiber is preferential to go clear to the pleura, you have what's called mesothelioma. Very rare, almost always fatal disease. Super painful.

Michael Cowen:

An awful way to die, too. It's like being slowly having water put into your lungs and drowning or something over time.

Chris Madeksho:

You're drowning, yup, in your own fluids. You're just trying to stay alive. Cruel.

Michael Cowen:

That's awful.

Chris Madeksho:

But his exposure was when he was a kid and that plays into the story that I got from, well, that developed and we told in this case. He started working at nine, worked with Kaiser Gypsum doing compound products until he was about 19. His dad died of a heart attack and then he went on and did something else. Yeah, there were some difficult facts in the case that made us have to drop the loss of consortium claim. The only damages that got in front of the jury were the actual personal damages to our plaintiff, himself. Nothing about family life or the love story. We couldn't talk about that. That's our plaintiff.

Michael Cowen:

So, what did you then do to ... I mean, because over \$13 million in personal damages or non-economic damages is incredible. What did you do to ... I mean, even for all the suffering you go through and you're going to go through with mesothelioma, that's still a really incredible result. What did you do to develop and learn that story?

Chris Madeksho:

As you know, having gone to the Trial Lawyers College, you have to understand your plaintiff very well if you want to present that. I did some psychodramatic work, making sure that I was comfortable in my client's skin, that I felt the love for my client. You know Paco Duarte, Bill Gilbert, those guys?

Michael Cowen:

I don't know them. I'm a 1998 college grad and I stopped serving on faculty by my own choice in 2004.

Chris Madeksho:

Yeah, they were after you.

Michael Cowen:

Yeah, I'm a dinosaur in that world.

Chris Madeksho:

They led a group that helped me deal with issues that I had in this particular case, with this particular plaintiff, and after that psychodramatic encounter, you know what that is. After that work, I was good to go. It was all about just getting the language right, and that's when I went to Sari de la Motte and using her techniques, and then going to Jesse Wilson, learning his storytelling techniques, and put on the case.

Michael Cowen:

I want to make sure I understand. So, even after you learned the client's story, you had to do something to overcome your own internal bullshit, I don't know what the right word is, you had your own internal issues you had to get past to be able to tell the client's story.

Chris Madeksho:

Yes.

Michael Cowen:

To the extent you feel comfortable, can you explain that a little bit more?

Chris Madeksho:

Yeah, there was a criminal history in this case, which was the reason we had to drop our loss of consortium claim.

Michael Cowen:

Okay.

Chris Madeksho:

We could not present on any ... The judge had made a ruling that criminal history wouldn't come in if we did not present damages evidence to the effect our man was an ideal family man, etc., and I had to deal with my own feelings about the history.

Michael Cowen:

Yeah.

Chris Madeksho:

Because we were doing this work. We're doing a mock voir dire and Bill Gilbert sniffed it out. He's like, "You have an issue with your client." I was like, "You know, yeah, I do." He's like, "Okay, stop." When you're workshopping a case and a psychodramatic need arises, you immediately stop and do that work. That's when I did that psychodramatic work. Does that answer your question?

Michael Cowen:

It does and it actually really hit home with me because I'm getting ready to try some brain injury cases and one of the problems in dealing with clients who have suffered a brain injury is they're not rational. They're hard to deal with. They don't make good decisions and in the course of representing somebody and dealing with somebody with a brain injury, when they have a real brain injury for a couple years, you get frustrated with them.

Chris Madeksho:

Yeah.

Michael Cowen:

One thing I'm realizing is that I have to work through that on my end because if I am frustrated with my client at the time of trial, no matter how much I have in my head that this is from the injury, if I don't work out my issues with that, it's going to come through in my body language. It's going to come through in my tone. It's going to be a dis-congruent story. I'm realizing that either when a client's story hits home, personally, for some reason or if we get frustrated with them, we really need to do the work to really get past that or we can't fully tell their stories.

Chris Madeksho:

Right. You can't tell it the way you need to.

Michael Cowen:

Yeah. Okay, so it's COVID. How did you ... You said you had a judge that went and fought for you about being able to get to trial, what did the defense do? Did they want to try the case?

Chris Madeksho:

So, no, they did not. As you observed on the offset, they did not want to try the case. Obviously, it's advantageous for them for the client to die and then you don't have the same story or the same damages present. We waived jury to get a bench trial before he died and they opposed our waiver of jury.

Michael Cowen:

Oh, wow.

Chris Madeksho:

Yeah, unheard of in a mesothelioma case. So, they wanted a jury trial. Then the judge said, "Okay. Well, I'm going to still push this case," and he gave us some rulings, saying you better do this, this, and this if you want to get this case ready to try. My co-council, Weinstein Caggiano, up in Seattle, they worked with me and it was just a blessing to have them on my side. We complied with the judge's order and by the time the trial date came, we were ready to go.

Michael Cowen:

What did the judge do, then, to assure the jurors' safety, y'all's safety, everything else when you're trying this case?

Chris Madeksho:

The first couple of things that he did ... The jury summons went out via email. The responses were fielded via email. All the hardship questions concerning COVID and everything else were handled before the panelists were examined, before voir dire, and in handling all the COVID-related hardship issues, we pretty much took care of all of that. I think that you've probably been on the same plane of attorney email chains I have, we knew the jurors were not afraid of COVID. Our most dangerous jurors and the jurors who were there, even though they don't want to be, our second most dangerous jurors.

Chris Madeksho:

When we got the responses to the questionnaires back and we knew who the COVID hardships were, the judge, in order to safeguard the safety of the panelists, the judge said, "Well, y'all have any issues on letting this go?" And I was looking at the list, and that was immediately half the panel. At that moment, I said, "No. Let them go." The defense council, they also agreed, "No. No objections." Immediately, the judge taken care of the safety of the panelists, allowed us to also take care of our biggest concerns. So, then, I was already at a head start.

Michael Cowen:

Were you worried because the jury summons were by email that you weren't going to have ... It's not like you have to conservative jury pool, and I know you're in Seattle any way, but there are people out there that don't have email that might be jurors, or don't have ready access to computers, that it was going to change the demographics of your potential jury pool.

Chris Madeksho:

Yeah, and it did, because the response wasn't great. The response to emails wasn't great. You didn't get everybody that you would, typically, see in a King County jury. Instead you got people who have means and you had people who were always on a computer and engaged with technology, and anybody who's done any jury research knows those are people who are probably a little more conservative.

Michael Cowen:

Yeah.

Chris Madeksho:

Yeah, that did play, but when you have a client who's going to die if you don't try this case now, you just kind of do the best you can.

Michael Cowen:

Yup, and that's what I've realized, you know. As we're sitting here without a clear end date that we may just have to try cases the best we can, with the best panel we can get. How did you all do the jury selection? Was it in person? By Zoom? How was that done? Both?

Chris Madeksho:

In that- to how we did it, and the techniques we used. There were a total of six panels. Four Zoom panels of eight, one Zoom panel of seven, and two live, who were live because they had issues concerning Zoom and security.

Michael Cowen:

Okay.

Chris Madeksho:

Personal issues, which I understand. I mean, that's reasonable these days. We had two show up live and you could tell the difference. Having done six panels over the course of two days, you could really tell the difference that it made.

Michael Cowen:

How was that?

Chris Madeksho:

When you're looking, like you and I talking right now, it's wonderful. We're simpatico. We're on the same side and we're trying to help, but when you don't know anything about that person, other than what's on a piece of paper, you don't have that same connection.

Michael Cowen:

Right.

Chris Madeksho:

Not being able to be present and observe that person and have that person observe you, it's difficult because we trial lawyers work so much on our non-verbal gesturing and physical presence that, for us, it's an incredible advantage if we've done the work, over a defense council who's never gone to Trial Lawyer's College. Who's never gone to Sari de la Motte. Who's never worked with Jesse Wilson, you know?

Michael Cowen:

Yeah.

Chris Madeksho:

I felt that I connected much more strongly with the live panelists.

Michael Cowen:

In the jury you got, how many of them came off the Zoom panels and how many came off the live?

Chris Madeksho:

14 came off Zoom and one came off live.

Michael Cowen:

Okay, so even though you had a better connection, there wasn't a lot of people. How many people actually got to vote out of that 15?

Chris Madeksho:

Out of the 15, only 12 voted.

Michael Cowen:

Okay, different states do it in different ways, that's why I was asking. So, when you were doing the in-person jury, and one of the reasons I'm asking so many detailed questions is I promised a judge at a hearing yesterday that I interviewed another lawyer out of Pennsylvania, Brendan Lupetin, who recently tried a case there and I'm interviewing you today, and I promised my judge I was going to give him transcripts to show how to try a case safely if he'll let me get to trial in October. What safety measures did you all take to protect everybody when you're doing the in person voir dire?

Chris Madeksho:

Talking about safety measures, I need to email you a picture of the space that they used. They put chairs next to each other, separated by wooden spacer that had notches. They were six foot in length. They would fit on top of the particular chairs that they used at the Meydenbauer Convention Center in Bellevue. They spaced the chairs, everybody in the courtroom was masked. Never saw me without a mask on my face. Not one second. Throughout voir dire, all the way to closing arguments.

Chris Madeksho:

We were spaced. We were masked. During break, we attended to our lunch and counseling needs on a different floor. Those were the main safeguards given to the jury.

Michael Cowen:

In the actual jury selection, then, it sounds like you didn't do it in the courtroom. You did it at a convention center, so you'd have more space?

Chris Madeksho:

Correct.

Michael Cowen:

When you were actually trying the case, then, where were the jurors seated?

Chris Madeksho:

If you imagine a conference hall. It has a 20 foot high roof that is probably 60 by 80 feet. One half was dedicated to the court staff on the side. The judge on a dais in the back. Two large screens, one behind the judge and one behind the court staff. The seater, the galley, or the well was open and that was accessible to a stand, and it had a computer with an Elmo on it that you could project onto the screen, and then on either side of the well was the defendant and the plaintiff. That was the set-up. Then, on the other half, where the jury was, every juror was six feet from one another in every direction.

Michael Cowen:

Yeah, you said you had a picture you can send us so we can put it on the show notes?

Chris Madeksho:

Yeah, I have a picture of the spacer. Inside, I don't know that I have. I don't know-

Michael Cowen:

That's okay. Yes, anything ... I don't know about everyone, but a judge, yesterday, said I was in the minority because there's some of us that are dying to try a case again, but we don't literally want to die to do it or result in any juror dying to do it. So, we want to figure out how can we ... The more we can learn about how to safely do this, and it sounds like y'all safely did it.

Chris Madeksho:

Michael, I made myself available to some friends in the Midwest. If it's helpful for me to Q and A with anyone, just let me know.

Michael Cowen:

Okay.

Chris Madeksho:

We need to get the wheels of justice turning again.

Michael Cowen:

We absolutely do. All of our, what I call our regular cases, are still settling, but all our big monster cases, until you have that real trial and until you get in the courthouse, they don't get serious.

Chris Madeksho:

If I can help, just tell me when and where.

Michael Cowen:

Chris, I really appreciate that.

Commercial 1:

Each year, the law firm of Cowen Rodriguez Peacock pays millions of dollars in co-counsel fees to attorneys nationwide on trucking and company vehicle cases. If you have a case involving death or catastrophic injuries, and would like to partner with our firm, please contact us. We have experience in finding potential defendants that other firms miss and we've added millions of dollars to cases by finding these sources of recovery. If you have a catastrophic injury or death case where the policy limits appear to be insufficient, give us a call. If we can find another defendant, we can partner on the case, and if we can't, we won't ask for any of the fees. You can reach Delisi Friday by calling 210-941-1301 or send an email to podcast@triallawyernation.com. She will coordinate a time for Michael Cowen to speak with you in person or by phone to discuss the case in detail, and now, back to the show.

Michael Cowen:

Let's talk about, so you picked your jury, were you stuck at the lectern when you're speaking to the jury, like when you're doing an opening, or were you able to walk around some?

Chris Madeksho:

Lectern was the word I was searching for. No, we are. Trial Lawyer TLC says, "No lectern," so I did not use the lectern. When I examined a witness ... Now, opening an argument is very different, but when I was examining a witness, I was seated at a chair, I had my computer up, and I was looking at the Zoom screen and all the witnesses appeared, one appeared live and every other one appeared via Zoom.

Michael Cowen:

Okay.

Chris Madeksho:

I was sharing the screen to examine the witness with the documents, and that would be cast up on these large screens that I mentioned that were behind the judge and behind the court staff. All of that was seated. All my witness presentation was seated.

Michael Cowen:

I was going to ask if you could approach the witness, but I guess they're by Zoom, you couldn't any way.

Chris Madeksho:

No, you could not, but the jury, as you can probably imagine, likes to see some activity.

Michael Cowen:

Yeah.

Chris Madeksho:

What I did was when I wanted to introduce an exhibit, I would stand up and very ceremoniously hand a copy to the court staff, a copy of the exhibit. I'd walk across and I would stand in front of the defense counsel and I would hand a copy to the defense counsel. When they said objection or no objection, I would then ask permission to approach and I'd give it to the judge, and I'd come sit back down. Maybe unnecessary, but absolutely recommended if you want to keep the jury awake.

Michael Cowen:

Yeah, I think you need something just to change it up and not just be watching the screen all day. Did you have your back to the jury when you're questioning witnesses, or you front, or how were they situated?

Chris Madeksho:

They were to my right and the judge was to my left.

Michael Cowen:

Oh, great, and was it an actual courtroom or did they rent a hall or something?

Chris Madeksho:

The County of King has rented the Meydenbauer Center for some monthly sum and the Meydenbauer Center, now, is no longer inactive, but they have income and they provide their IT staff and their coffee cart staff, and their security staff, and make them available to accommodate all the court needs.

Michael Cowen:

Okay. So, it's like a big conference center instead, like where we'd have a CLE, similar to that type of room.

Chris Madeksho:

Yeah, it's like the equivalent of a continual CLE.

Michael Cowen:

Yeah, great. Yeah, I was wondering because some of the courtrooms that we practice in have been really small. I guess we'd have to encourage the judges to find some other spaces to do them in. Let's talk about your opening then. You said you worked with Sari on language?

Chris Madeksho:

Yeah.

Michael Cowen:

Tell me about that.

Chris Madeksho:

Yeah, in some of the voir dire, I was able to do the Sari de la Motte technique. In some of it, I was not. I had to save the panel because we were about to bust it, so I had to straight TLC tribe-building.

Michael Cowen:

Yeah.

Chris Madeksho:

At the offset, the very first couple of panels, I used Sari de la Motte's technique of getting the language from them that I would then be employing in the case, by asking them a question that I had crafted with some hostage to hero verse in a voir dire circle, and the question was, so you have it up, okay, question is, "What should a company do to make sure it sells a safe product to the public?" That's a very specific, very distinct question that I asked. They gave me the answers back. I'd take those answers and I'd put it in my opening. Then, I'd take those to create the ringing the bell.

Michael Cowen:

Yeah.

Chris Madeksho:

Then I'd take those answers and I'd put it in my closing to give it back to the people that I thought were going to be the thought leaders on the jury and it worked.

Michael Cowen:

So, you actually went and incorporated some of what the jurors', how they answered that question into your closing?

Chris Madeksho:

I reached for it because the juror we thought was the likely the for person and who was the for person on this jury, gave me something that fell outside the quote, unquote, ringing of the bell, and I found a way to incorporate that language into my closing. When I did it, you could see his head shot back like this.

Michael Cowen:

Can you give us more detail and tell us what it was, if you remember?

Chris Madeksho:

We had strict product liability and negligence.

Michael Cowen:

Right.

Chris Madeksho:

So, those were are two cause of action. Strict product liability, you don't need it, but in negligence, what would a reasonable company do under the circumstances? Here's what I did. I used a bit of the NLP and

a little bit of the- and I said, "Well, what does a reasonable company do?" And I just kind of sat there and I looked at everybody on the jury. "What does it do?" I asked it again, and then I looked at him and I said, "Well, we know what a reasonable company would do because we've seen them do it. They would recall. They would warn." When I said, "recall," that's all he needed to hear.

Michael Cowen:

Yeah.

Chris Madeksho:

That's how I did it.

Michael Cowen:

Awesome. You mentioned the term, "ringing the bell," and I worked with Sari, so I have some idea what that means. I don't know if everyone listening does. Can you tell us what it means when you're using the technique of "ringing the bell?"

Chris Madeksho:

That's your liability mantra. Ringing the bell is the three facts in your case that prove that your defendant is liable and responsible, and in this particular case, they didn't warn, they didn't test, and they didn't provide safe instructions. That's my "ringing the bell." That's an example of three things that showed that my company, or that my defendant was liable and they were responsible. They needed to be held accountable.

Michael Cowen:

You need to make sure you repeat that over and over again throughout the trial?

Chris Madeksho:

I didn't have the opportunity because of the way that we presented a lot of the witnesses, but with one of their expert witnesses, they didn't call a corporate rep is the reason I say that. They ended up not calling their corporate rep, but I ended up using it on one of actual witnesses, I used it in opening, obviously, and I used it to close.

Michael Cowen:

That still works. Obviously, it worked. I mean, you got a bigger break than I've ever gotten. I'm not going to tell you how to try a case. Tell me about talking to a jury with a mask on. That's one of the things my partner and I are doing a work day on our trial tomorrow, that we have set in November, and then I'm going to work some with Sari on it, but one of the things I'm really, I guess, having trepidations about this. How do I talk to a jury with a mask on? What was that like?

Chris Madeksho:

We go back to the whole Sari de la Motte's ... I found a like motif in all of these different psychologists, cycle analysts, jury consultants, trial theorists, all of them, there's an underlying common current, and, basically, it's you got to be at ease and you have to be at ease with yourself, internally, such to where you can be loving and kind to this jury, because it all comes out to the eyes.

Michael Cowen:

I was going to say because they don't get to see the rest of your face.

Chris Madeksho:

No, that's right. If we are in a room and we see everything, nice and bright, we don't really have to pay attention a whole lot, but if I turned these lights off and all I've got is this shimmer of light reflecting from another room, I'm going to pay real close attention to those that I can see. We're attracted to looking at other people's faces and if all of a sudden, your face is all covered except for the eyes, then you are exactly the same position, your jury is in exactly the same position as you would be if you were in a room with very little light. You're looking at the things that you need to look at in order to be able to safely navigate, and if they want to know who to believe, they're going to be looking at your eyes.

Michael Cowen:

Are you doing anything to try to gesture more or you're just going to be comfortable in whatever happens, naturally?

Chris Madeksho:

I just relaxed.

Michael Cowen:

Really?

Chris Madeksho:

Yes, you have to appear ... For me, there are a lot of people that are going to be listening to this who've tried a lot more cases than me, but for me, I find that I'm most effective when I'm calm and when I'm just open and considering all these human beings that I'm interacting with. I have to be at ease, so my body isn't very active.

Michael Cowen:

Okay, and look, you have to be you. Like Sari says, the worst thing you ever see is a lawyer trying to imitate a Gerry Spence posing, for example.

Chris Madeksho:

Yeah.

Michael Cowen:

You've got to be yourself. No, I was just curious about that because that's one of the things I've been like, "Do I have to just articulate more because they can't see my face?" Just something I've been thinking about. Tell me about how you structured your opening.

Chris Madeksho:

Structured my opening by focusing, probably about 90% of it, on the conduct of the defendant. 5% on damages and then the rest of the 5% of it was just, "This is an important time in this country." I didn't move away from the elephant in the room. What you're doing here is a big deal, as the judges said,

repeatedly, and this judge had said, repeatedly, at one point, even getting a little emotional, as I did during the only live panel. I got a little emotional. Something I try not to do in voir dire. But that was my opening and I just focused on the acts of the defendants and getting across to them that this is a story about all of us.

Michael Cowen:

What do you mean it's a story about all of us? Because that's brilliant. That's why I really want to hear a little bit more about that.

Chris Madeksho:

I think we should all try to do this in all of our cases, but this particular case, was tailor made for that type of steam because one of the liability exhibits was a map of the United States with the centers of manufacturing and distribution for this company, and looking at that map of the United States, you could see it all the way up and down the eastern, southern, and western borders of this country, and you better believe that that was one of the things I keyed in on in opening. You better believe that was one of the things I spent a lot of time on in crossing their PMK, which luckily, I videotaped it, which we're going to have to start videotaping now with our all of our witnesses in this COVID era, but I videotaped it, so we put that up on the screen with her, and then at the end, when it came to discuss the strict products liability and about the likelihood of damage, that slide is the slide that I put up again.

Chris Madeksho:

It was a story of them and how they treated people in this country. Workers, I hit on the fact that they were also selling this product to home remodelers and DIY'ers

Michael Cowen:

Oh, wow.

Chris Madeksho:

So, it was story of all of us.

Michael Cowen:

Really does the work- they really spread the tentacles of danger there. Good job. How did you tell the story of what the defendant did wrong? You're past opening, you're presenting your evidence, what do you do to tell that part of your story?

Chris Madeksho:

You need a villain and you need it to be concretized, and that villain usually needs to be a human being. We had a memo that was the earliest memo we could find inputting actual knowledge and a page of that memo had a bunch of names on it. I blew it up, highlighted the names, and I put just that section with the names on it up there, and then the very next slide was the picture of the United States. So, they were my villain.

Michael Cowen:

Yeah, that's interesting. Actually, David Ball and I have had some really good discussions on this. I've been doing a lot of plot work into what makes a villain and what I've been looking at is theater,

screenplay, movie, TV. What is it when they're teaching the people how to write these things, what are the characteristics of the villain, and it's typically dishonesty, greed, intelligence, power, but all the screenplays say it's an individual, but yet, I've been told all the time to make it about the company. Make it about the company, don't make it about the low level people.

Michael Cowen:

Doesn't need to be an individual high up person of the company or can it just be some kind of amorphous corporation, and David Ball, who I respect incredibly, said, "Well, a corporation can be a villain," and I'm not so sure. I think that the way people think, you can't imagine a corporation doing something or not doing something, but if you can think of the executive who made that act or omission, it makes a huge difference.

Michael Cowen:

Now, you want to go as high up to find someone who's smart, someone who's powerful, someone who's doing it. This is ideal. You don't find in every case for some bad reason. Then someone's deceptive. The defendant's trying to cover up or trying to hide their conduct. You get all that together, you get your perfect villain.

Chris Madeksho:

Yeah, I agree with you. David Ball may be right, but he's not right for me because I can't integrate that. My mind just doesn't agree with that idea. It agrees with your idea that a villain has to be human. That's the only one I can effectively communicate for that reason.

Michael Cowen:

I keep a tab on a book chapter on the book I'm writing and that's part of ... Casting the Villain is one of the chapters, and I keep putting it in. I haven't submitted it yet because I keep having that fifth element of being an individual. I keep putting it back in and taking it back out, and I've been doing that for about a year now. I've been working on other things during that year, but I just can't. It's just so hard to do. On one hand, I don't want to disagree with David, but then, it's so hard to find that individual. It's a good thing you had that memo on your case.

Chris Madeksho:

Yeah, we had a memo and we had a picture of it.

Michael Cowen:

Oh, so you had people. That's even better.

Chris Madeksho:

We had a picture of him. I decided not to use it in favor of the current corporate representative. He was the representative, the guy who designed the joint compound with asbestos in it.

Michael Cowen:

Okay.

Chris Madeksho:

I used their current corporate representative because I was able to interact with her.

Michael Cowen:

Yeah.

Chris Madeksho:

And I thought that the jury would find her more tangibly relatable and more willing to cast her out.

Michael Cowen:

Yeah, that's when I- With asbestos, the true villains were back in the 50s and 60s, sometimes, right?

Chris Madeksho:

Yeah.

Michael Cowen:

It is nice to have someone that you can actually question, not the one who's long dead. That's another problem with a villain. The villain's long dead, what does a jury need to do? You need to have some ongoing reason for them to do something.

Chris Madeksho:

Yeah, okay. I was about to say that very same thing.

Michael Cowen:

What was your reason, then? If this is a product that's not made anymore, I mean, it's still out there, people are still getting sick, but that's already been done. In your head, what's the reason that the jury should give a crap?

Chris Madeksho:

There's kind of a sub-story to this.

Michael Cowen:

Okay.

Chris Madeksho:

It came through when I was doing the tri-building portion of the voir dire and opening argument. During this time, there needs to be law. There needs to be the justice system and we need people who are going to follow the law, and the law says this, so what do we have? It came through more in voir dire in closing than in my opening, but that was certainly the way that we approached having a conservative jury consisting of accountants, engineers, and teachers.

Michael Cowen:

No, that's something that definitely resonates with a conservative juror, too. We've got a presidential candidate that just tweets law and order in all caps and there are people that are celebrating that. I'm not going to get political in this podcast, but the fact is that we have laws and people need to follow

them. If you have a more conservative jury, you can make that your theme, I think that's a good one to have.

Chris Madeksho:

Yeah, and the way that we did it in voir dire is those people that were more conservative, I said, "Here we have a corporation and you have a person, and you heard the judge say in the pre-instruction to you that you need to treat them equally. Are you going to be able to do that? I mean, no sympathy to the plaintiff, sure, but also no sympathy to the corporation. Are you able to do that?" I got a commitment out of every one of the jurors in the last three panels.

Michael Cowen:

Awesome.

Chris Madeksho:

We were able to do that and we started losing a lot in the last three. I had to keep more, so I kind of changed.

Michael Cowen:

Yeah. It's interesting how you get in there. The consultants will tell you about the ideal juror and I remember I got to watch Lisa Blue pick a couple juries on asbestos cases, and they'd have to bring in this massive panel because you could strike so many people. I've been in there, sometimes. I can go strike a bunch more people, but then the judge is going to tell me to come back in six months. Now, most of cases, my clients, not likely, isn't dying, but there's still a chance of death, another injury, my client does something stupid and gets arrested. All kinds of horrible things can happen if you wait six more months, and sometimes, you got to get just the best panel you can get that day.

Chris Madeksho:

And we happened to get the best panel we could get because our guy wasn't going to look. I hate to say this on camera. He's not going to be around long. If we had busted that panel, we probably would not have gotten another trial date in 2020.

Michael Cowen:

Yeah.

Chris Madeksho:

Then what? So, we just had to keep them all and we had to adjust our game plan. We couldn't focus on that ideal jury that we had in mind before we started. That's exactly right.

Michael Cowen:

And I think it's doing what's best for the client. I think there's a value to him, whether he gets to collect it, whether he gets to enjoy it, there is a value to be heard and validated before he does.

Chris Madeksho:

I can tell you that for this particular man, he needed to be heard and validated more than anything else, simply because of the issue we face, the life that he had led, his redemption story, the last 30 years of trying to be the best human being that he could possibly be. He needed that as much or more than anything else, as a person.

Michael Cowen:

Yeah.

Chris Madeksho:

I think that, to him, is one of the highlights of my career.

Michael Cowen:

Yeah, I realized that in the last case that I tried is that the case had been around for a long time and other lawyers had handled it. We finally got brought in to try it and she was so hard to get to open up, and it took a lot, a lot of work to get her to open up, and she finally said, "You're the first people to listen to me," and before, this case had been bumped so many times, she's like, "I didn't think anyone cared if he died. I didn't think anyone cared about me."

Michael Cowen:

Going through trial was difficult for her, but it was such a cathartic experience that I think it's going to make some major changes in her life. A positive. Whether we actually collect it or not, whether we keep it in appeal or not, the fact that people cared enough to listen and that she was heard, and that someone said, "What happened to her and her late husband was wrong." There's just an incredible value to that above and beyond the money. The money is important, too, but above and beyond that. I think that is so good that you were able to do that for him while he's still alive and, hopefully, he can live as long. I mean, it's unpredictable with cancer.

Chris Madeksho:

It is unpredictable, but what you say, trial law can be a healing art.

Michael Cowen:

It really can.

Chris Madeksho:

We can heal human beings. We can heal communities. It's an incredible, I mean, this American system is a bit of a modern miracle.

Commercial 2:

Thank you for everyone who attended Cowen's Big Rig Boot Camp in August. We had an excellent virtual turnout this year and are already thinking of how we can continue to raise that bar for next year. If you'd like to attend virtually in 2021, be sure to mark May 20, 2021 on your calendar now and save the date. To stay updated with details as they become available, visit bigrigbootcamp.com and sign up for our mailing list. And, now, back to the show.

Michael Cowen:

So, what did you do then to tell the damages story at trial?

Chris Madeksho:

To tell the damages story, we had taken the video deposition, perceiving trial testimony by video deposition of, I think, five witnesses, and by the time we got to trial, we really looked closely at the story that we could tell and that we wanted to tell. Made it down to three, cut it down to 10 minutes, and made it all about a man who had worked his entire childhood and now that he's in his final days and is enjoying his relationships with his grandchildren, is living his childhood for the first time.

Michael Cowen:

And that's taken away because now we've ... I guess, would you use the doctors then to talk about the suffering and stuff he's going to go through and he's gone through, or did you get-

Chris Madeksho:

We actually used the defense doctor for that.

Michael Cowen:

The defense doctor. That's brilliant. Tell me about that. How did you do that?

Chris Madeksho:

They brought a pulmonologist, who we discovered had a history of treating mesothelioma, and he had treated them, obviously, decades ago, but there's no denying that this is an extremely painful disease to live with and an extremely pain disease to die from. So, in as broad and bright-mind examples we could, we asked him three or four simple questions, and then we blew them up in the slides for closing.

Michael Cowen:

Right. I think it is so much more powerful when we can get good stuff. What was he there to talk about? Why were they bringing him in?

Chris Madeksho:

They were bringing him in to defend on causation.

Michael Cowen:

Okay, so they were saying that this cancer was not caused by, either asbestos or our asbestos, or what?

Chris Madeksho:

Right.

Michael Cowen:

Then you immediately said, "Well, yeah, might fight that, but let me see what I can get out of them to help me?"

Chris Madeksho:

Yes, and in fact, I can't take credit for this one because it was my co-counsel. Alex Caggiano did an incredible job with this man and this is actually a teaching point. Aside from getting damages from him, because his history allowed that, we did it, but in the era of Zoom trials, she did something that I've never seen before. She examined him, because he was on a screen and she knew his history, and he had given a bunch of depositions before.

Chris Madeksho:

In the space of about 45 minutes, she examined him about 60 or 70 medical articles. By the time she was done, he was just stunned. It was just too much information for him to comprehend because he had been examined on these articles before, but she just took the best parts out of all of it. By the time he was done, he didn't know where he was.

Michael Cowen:

That's awesome.

Chris Madeksho:

It's something that we can do with this type of trial.

Michael Cowen:

She just got the article and highlighted the best parts, and just put it up there with him.

Chris Madeksho:

Right. Alex Caggiano, she did that. It was amazing.

Michael Cowen:

What else was special about this trial? I mean, you've got such an incredible result, what else could you tell us that could be helpful to us when we're trying our cases?

Chris Madeksho:

Because we're going to be tethered to a computer screen, you have to get on your feet when you can, and that means if you're opening, if you're closing, if you are tendering an exhibit to the defense counsel, just do so with grace, ease, and love. When you're on your feet, setting the scene in an opening or a closing, really work at that, do it dozens of times. Make sure that by the time you've finished being up on your feet in front of the jury, the jury's there with you in that space, and if you do that, then I think that you will have overcome some of the larger obstacles that face us in this kind of sequestered trial environment.

Michael Cowen:

One thing that we're hearing a lot from defense lawyers and insurance adjusters is that people are suffering so much with COVID right now, over 200,000 deaths. People just aren't, jurors aren't, or they're hardened. They're not going to care about our clients. They're not going to give them much money. What is your thought on that having now tried a case in the COVID era?

Chris Madeksho:

That was used in the defense's closing argument.

Michael Cowen:

Really?

Chris Madeksho:

Really, really. He knew. Every single word that you just said, he knew because he pretty much recited that verbatim to the jury in his closing argument. He even went so far to say there's a lot of people who are going to be dying painful deaths in this COVID era. They're not getting any money. When he said that, the jury set their tablets down, nobody wrote the remainder of his argument.

Michael Cowen:

Wow.

Chris Madeksho:

And I can send you these transcripts. You'll see his words. I think that if we stay stuck on that, then we have violated a rule we learned very early on, and that is if you want them to trust you, you have to trust them, and if you think that they're going to be swayed by these cynical engrossed arguments, well, then all that means is that there's something in you that needs work.

Michael Cowen:

Yeah.

Chris Madeksho:

If you are able to stand up and put on your case, and believe it, then by the time they stand up, if they have the balls to say a lot of people are going to get sick and die; therefore, award no money, then what they have done is they have ostracized themselves, and they have chosen to take a leaf from the tribe.

Michael Cowen:

Well, that's body language. Putting that on top of the notes. It just absolutely nailed it. That's good to hear.

Chris Madeksho:

We've got to believe in our juries. It's hard to do.

Michael Cowen:

I agree. I think the biggest shift for me in winning cases since I've been working with Sari is my mindset of these are good people that are here to do the right thing and trust that I need to trust them. That change from being afraid that they're going to screw me over to thinking of them as good people who are going to help. Actually help my client and want to do the right thing and that I can trust them to see through bullshit because they're smart enough to do it. It's just been a night and day change, and my results are so much better since I've had that mindset, and it's much more fun and more comfortable to try a case, too.

Chris Madeksho:

It is more fun. You feel like you're cloaked in this aura of goodness when you stand up and you're with the people that you trust. That, alone, has to have some sort of body language change that fits us, I think.

Michael Cowen:

Absolutely. Okay, Chris, this is something that's so important. We're all trying to get better and you just had this result that we all aspire to be where you are right now. What advice do you have for those of us who want to get better, that want to get to that level, or getting those kinds of verdicts?

Chris Madeksho:

Right. If you're listening to this, the chances are you're somebody who's picked up the book. You're somebody who has tuned into a podcast. You're somebody who has read an article and you know a little about trial law advocacy. What you need to do next, after learning a little bit about trial advocacy, you need to need to get in the courtroom. This time in America, the COVID era, it presents opportunities, even though we're not trying cases right now, what I did before COVID to really become comfortable in a courtroom was I went and contacted an eviction defense organization called EDN, Eviction Defense Network, and a woman there named Elena Popp, was overworked. She had many more cases to try that she could try and she just brought me in and said, "Here. Try as many cases as you can," and that's what I did.

Michael Cowen:

Wow.

Chris Madeksho:

I got in the courtroom and I tried pro bono cases for low-income, non-English speaking clients, and that made all the difference in the world for me, and for anybody else who wants to really be the best trial lawyer they can be, that opportunity, I'm willing to say it's there for you. It's there for your community. You can develop not just your skills in the courtroom, but the love that you need to have for this justice system that we have and for the jurors that are going to be fighting for you when you give your closing argument and they go into another room.

Michael Cowen:

That's awesome. Yeah, there are so many opportunities. There's eviction defense. There's credit card defense when someone's being sued by a debt buyer. If you actually go to defend someone, they can't prove what the actual credit card agreement was that the client agreed to, they can't prove what charges were made, who made them. They're trying to use someone else's business records three transactions removed. You can really help some people, of course, little car wrecks, consumer disputes. There's lots of opportunities if you really want to get in there and help some people, and sharpen your skills. There's lots of opportunities to do out there.

Chris Madeksho:

Yeah, just whatever works for you. If it's credit card or if it's a small car wreck case, you helping somebody for free, you may think that it's taking time away from and money away from you, but the

benefits you get from internalizing having done something that worthy and that good for this society and this world, you'll see the benefits. You will.

Michael Cowen:

So, you said you might be able to send this transcript or something that we can put in the show notes for the people that want to read the stuff?

Chris Madeksho:

Absolutely.

Michael Cowen:

Yeah, that would be awesome. We could do that. If someone wants to get ahold of you and they have more questions or, maybe, they have a case they want to work on with you, what's the best way to find you?

Chris Madeksho:

My emails is cmadeksho@madeksholaw.com or you can just go to madeksholaw.com and shoot an email to that.

Michael Cowen:

And do you mind, since a lot of people are just listening and not looking at the show notes, you mind spelling Madeksho?

Chris Madeksho:

Yeah, it's M-A-D, like David, E-K-S, like Sam, H-O. cmadeksho@madeksholaw.com. Yeah.

Michael Cowen:

All right. I so appreciate you taking the time to come and share with us how you tried a case during these interesting times and how you got an incredible victory. I hope you have many more and I hope to be able to follow your footsteps and try some cases soon. So, thank you so much.

Chris Madeksho:

Thank you, Michael.

Outro:

Thank you for joining us on Trial Lawyer Nation. I hope you enjoyed our show. If you'd like to receive updates, insider information, and more from Trial Lawyer Nation, sign up for our mailing list at triallywernation.com. You could also visit our episodes page on the website for show notes and direct links to any resources in this or any past episode. To help more attorneys find out podcast, please like, share, and subscribe to our podcast on any of our social media outlets. If you'd like access to exclusive plan of lawyer only content and live monthly discussions with me, send a request to join the Trial Lawyer Nation Insider Circle Facebook group. Thanks again for tuning in. I look forward to having you with us next time on Trial Lawyer Nation.

This transcript was exported on Oct 26, 2020 - view latest version [here](#).

Commercial:

Each year, the law firm of Cowen, Rodriguez, Peacock pays millions of dollars in co-counsel fees to attorneys nationwide on trucking and company vehicle cases. If you have a case involving death or catastrophic injuries and would like to partner with our firm, please contact us. We have experience finding potential defendants that other firms miss and we've added millions of dollars to cases by finding these sources of recovery. If you have a catastrophic injury or death case where the policy limits appear to be insufficient, give us a call. If we can find another defendant, we can partner on the case, and if we can't, then we won't ask for any of the fees. You can reach Delisi Friday by calling 210-941-1301 or send an email to podcast@triallawyernation.com. She will coordinate a time for Michael Cowen to speak with you in person or by phone to discuss a case in detail.

Disclaimer:

This podcast has been hosted by Michael Cowen and is not intended to nor does it create the attorney claim privilege between our host, guests, or contributors, and any listener for any reason. Content from the podcast is not to be interpreted as legal advice. All thoughts and opinions expressed herein are only those from which they came.