

Intro:

This is Michael Cowen, and welcome to Trial Lawyer Nation. You've got to have the right case because if you take it up and it's a wrong case, then you can make some really bad law that's going to affect a lot of plaintiffs- There's always an answer. The joy is in finding one- One of the reasons that I love being a lawyer is this exact process- The way we live our life has nothing to do with the presentation sequence at trial- As trial lawyers, we pick up and move on and keep going- You're losing or gaining one out of every 10 jurors, which can really make a huge difference in the ultimate result of the case- Whatever you think about you create- Learn all you can and never stop, and then have the guts to try case, after case, after case- Welcome to the award-winning podcast, Trial Lawyer Nation, your source to win maker verdicts, get more cases, and manage your law firm. Now, here's your host, noteworthy author, sought after speaker, and renowned trial lawyer, Michael Cowen.

Michael Cowen:

Today on Trial Lawyer Nation, I have our marketing genius, Delisi Friday, who's not just my marketing genius, she is also our trial prep, make sure we can have visuals, make sure everything works genius in the office. How are you doing today to Delisi?

Delisi Friday:

Well, I'm doing great because I think you called me genius like three times.

Michael Cowen:

Well, you are. Y'all might notice that people are used to getting this thing first thing in the morning when this podcast gets out, that we are late today for the first time ever. We're into our third season. I'm a little embarrassed, but there's a pretty good reason. I was supposed to be starting the biggest trial of my career today and I had been doing nothing but trial prep until about actually 11:00 PM on Saturday night when the case resolved, probably should have been disciplined enough to do a podcast yesterday, but it didn't happen.

Michael Cowen:

There was maybe a little alcohol involved yesterday afternoon and we had to blow off some of the steam we put up getting ready for trial. But Delisi and I did a lot, it was going to be a Zoom trial, which is a little scary, but also really exciting because there's all sorts of possibilities with that. So, we thought we'd share a little bit about what we learned getting ready for this trial. Delisi, can you talk to us a little bit about some of the stuff we did and that you and your team did to help get us ready for trial?

Delisi Friday:

I think first we started with talking about the space that we were going to use, because for you, it was important to, yes, you had your space where you could sit down, but you're a very physical person, so you needed a space that we had dedicated for this trial where you could stand up. We started by figuring out where was that going to be and then how do we make that space up. We did everything from moving furniture to make it open for you. We bought backdrops, so it looked like a professional backdrop.

Delisi Friday:

We thought about, do you have degrees in the background when you're sitting down at your desk, or do we have another backdrop? Lighting, sound, video, and then who is going to be where, because during all of this, we still had to social distance. Then we had to think about who was everyone's ... What was their job? Who was going to be in charge of saying, they're in charge of making sure this camera's on this person? If you were going to pull up an exhibit or a visual of some kind, who's in charge of that. Then where everyone was going to be.

Delisi Friday:

There was a lot of stuff. I would say that the logistics was a big part of that, but so was the technical aspect. I'm sure we'll talk about it today because we went back and forth on some of the technical and you also practiced a lot, which helped because what we started off thinking was going to happen, did it end up happening later? I would say a lot of that was thinking about the space, where was it? What was going to be showing? How were we going to show it? And what were the different pieces of equipment that we were going to need, and whose job was what?

Michael Cowen:

Yeah. Of course, every case has its own budget. Had we been doing a, let's say smaller car wreck case, we would not have been able to maybe do some of the things we did, but I think we still could have done a lot of what we did. I think the first thing we talked about is just the ability to stand up. One of the things about a Zoom trial is, it's nothing but a talking head, and you expect this ... I like quick trials, but this one, just because of the number of witnesses and exhibits, and at one time, there were going to be two plaintiffs. Other plaintiffs settled out before we did, but it was looking like a two week trial when we were planning it because we had, I think, 38 to 40 witnesses we were going to call, then other people were going to call some witnesses too.

Michael Cowen:

Whether you do a small one or a big one, I think that for voir dire, for opening statement, especially, you don't want to be sitting down. You want to be able to stand up, you want to be able to use your hands, you want to be able to use body positioning and body movements, but it's a challenge, not just We not only had to figure out, okay, how do we film it? Where can we film it? But really, what you're doing in a Zoom trial, and it was exciting and scary at the same time, because we were really doing a live TV show that was going to go on for six to eight hours a day, no retakes.

Michael Cowen:

It's like you're live, you're good. Just like a live TV show, you have to think about where are you in the screen? Not only, what are you doing? What's the audience going to do? We're used to basically putting on live theater, a live stage production in a courtroom. You have a lot more space to work in, in a courtroom. I can say, when I'm talking about what the defendant did wrong, I can stand here. When I'm talking about what happened in the crash and the crash scene, I want to be here, and then I can have another place for when I'm talking about my client before. Just different spaces that you anchor to different parts, and then kind of create your reality in the courtroom.

Michael Cowen:

Well, what we found on the Zoom screen is we had a much smaller area to work with. When we tried having a camera follow me around, it just didn't work very well. Now, when we got the professional camera people, and we'll get to that later, that may have worked a little better, but at least with us

doing it ourselves, we didn't have the equipment. Even with a tripod, it was shaky and just not as smooth, and it was disorienting to the people who watched it. I think one big thing when we do our Zoom trials is to get your space, think about your lighting anywhere from ... We do other things because of our marketing department and stuff, so we had some professional lighting. We rented some more on a big case to ...

Michael Cowen:

Right here, I'm using just the Ultimate Vlogging Kit, I bought at Best Buy a little while ago because I left my ring light at the office. But even that, a hundred, 200 bucks, it makes all the difference from them being able to see your face to looking dark and sinister.

Delisi Friday:

Well, you mentioned see your face, so I want to bring it up. You had a chance to speak to someone who had been in a Zoom jury trial and talked about how important it was for the jurors to see your face. What advice was that and what advice would you share?

Michael Cowen:

Yeah, the big thing is that they originally had two lawyers sitting at a conference room table and a wide angle camera where you can see both lawyers at the same time. But because you could see both at the same time sitting six feet apart and socially distanced, then you cannot really see either one of their faces. Even if you sat a little closer, well, one, you're sending to the jury that if you're not wearing your mask and you're standing within six feet, that you don't really care about safety, which is the opposite of what we're trying to say in our lawsuit. You're already given an incongruous message that if you're preaching safety, but you're not practicing it, you're a hypocrite and you're not worthy of being believed.

Michael Cowen:

I don't care what your personal feelings are on this stuff. I'm just telling you, if you're trying a case, you don't want to do anything that's going to cause cognitive dissonance in the jurors, or make a juror think you're a hypocrite. Even if you've both been vaccinated or you both just got over it, maybe you couldn't get it or maybe just everyone in the room is COVID positive, you don't have to worry about spreading anymore. Whatever it is, it doesn't matter. I mean, you have to create that image. I think that's a big mistake.

Michael Cowen:

I think it's better to have two cameras, one in each person, even if you're in the same room. But good lighting, they have to be able to see your face. The judge even pointed at one of our hearings, one of our lawyers, he was at home, and he's like, Mr. So-and-So, I'm sure you're a very nice man, but you look really sinister because of the dark lighting. You need the judge to ... You need to get some lighting, better lighting.

Delisi Friday:

Yeah. Well, and I think another part of that is also your eye contact. Well, the eye contact and then what people see, because one of the things I didn't realize is when ... You like to point at things, so you can guide someone where to look, and one of the things we realized is when you do that in Zoom, you're a

mirror image, and you don't know what someone's going to see. That was one thing that we learned right away, but the other thing was you had to learn how to look at a camera to connect to someone, but you couldn't look at their face. So, how hard was that, and how did you practice?

Michael Cowen:

That was really hard. Those are two different things. One, especially working with, Sari de la Motte, I learned in the stage, in the courtroom, if I want the jury to look here, I need to look there. I need to look where I want the jury to look. If I'm working with an exhibit, if I'm making eye contact with the juror and saying, look over here to my right, again, it's cognitively confusing. I'm making eye contact with you, but I'm telling you not to look at me, so I need to go look where I want them to look. I need to lead it.

Michael Cowen:

Well, you're exactly right. On the Zoom one, I don't know where my window is going to be when we go to screen and I'm going to be sticking in a window somewhere, I don't know where that window is going to be on the jury screen, so I can't necessarily point. Then there's a whole mirror image thing where I'm pointing may be the opposite of where I intend to point. So, it's very confusing. What I had to learn, let's say, we're going to share a picture, I had to learn, and for example, there's a stop ahead sign before you get to the intersection, and I had to shut up, let the stop ahead sign go up with me, just a little picture, leave it there in silence for a couple seconds, fade out, wait until I get the okay signal or the thumbs up signal that I can start talking again.

Michael Cowen:

It took a lot of practice because I'm used to directing everything myself while I'm speaking, and now we have to really practice and rehearse, which made me ... I think it made my presentation a lot better than it's ever been because I usually do some practice, but never this much because we had to do the technical stuff, and so we just really had to be. We pretty much had a script and sometimes my word would change a little bit from here and there, but basically, I was going to say this, we would display this. I would say that, we would display that. Then where I was going to stand, what gestures I was going to make.

Michael Cowen:

All that had to be practiced. The other thing is that gestures, for those who ... Are we showing this on video too?

Delisi Friday:

Yes.

Michael Cowen:

Okay. Like here, I'm reaching up, you can't see my hands, or I'm going out like this, you can't see my hands. Can I do a gesture that's not going to be like a little gesture that makes me look weak, but big enough, but still not go totally out of the screen. You can go a little bit out because they see what you're doing. The other thing I learned is right here, my hands look gigantic because there are a lot closer to the camera than I am.

Delisi Friday:

I jokingly said, it's like you're a flight attendant and you have to know exactly where you're going to put your hands, where, and when, and purposefully. I half heartedly joked about that phrase, but it was so true because once you started to get in your groove and you knew where you were going to put your hands and when you were going to do it, it was impactful, and it was like, what you were doing was on purpose and it made a big difference, because when you didn't, it didn't feel as competent, but once you got into it, it felt very competent.

Michael Cowen:

To me, it was almost a new level of mastery. I've worked a long time. I've been doing it for years. We've worked with Josh Karton and with Sari de la Motte about using my hands and just kind of it naturally happening, which is good. But this time, we had to purposefully plan and rehearse my hand gestures. I think it was even better, because at one point, I had, this person here was one person. I'm just leading here. I was standing and moving when I was giving this ... The operations manager complains to this person, your drivers aren't doing the safety training, and nothing happens.

Michael Cowen:

Then he goes up to his boss, hey, they're not doing the safety training, make them do the safety training, and nothing happens. That doesn't work, he goes to the other managers. He goes all the way up to the vice president levels, and hey. You practice where you're pointing, where you're looking, and you create the spaces on the screen that you're looking at so that it really looks like there's one person talking to three other people complaining about the lack of safety of this company. It took work. But it was fun work. It wasn't like all the other motions we had to respond to and stuff like that. I think part of it, because it was so new, it was just energetic and fun to do when all the tech was working.

Michael Cowen:

That's, I guess, answer the first half of your question. The second half was on eye contact. That was the biggest problem was really for ... Because for opening, I just practiced talking to the camera. That's easy. You just look at the camera, you talk at it, but for jury selection, we will have a screen with up to 49 people, most of whom would be jurors on the screen at once. We have a 70 inch TV that we just hook up to the computer that we've been using for trial for a few years. It was great because you could actually see, the squares were big enough. Standing behind the camera, I could see the squares, see the names, but when I talked to some, let's say someone's in the upper right corner one, well, when I'm looking at the upper right corner, I am making no eye contact at all.

Michael Cowen:

I'm talking to them, but it looks like I'm looking off to the side while I'm talking to them. Then when I look at the camera, so they see that I have eye contact, I have to look at their reactions out of the corner of my eye, and it's really hard to do. We practiced it, it was still weird. I'm not going to lie. It was weird. Now we came up with a solution, and again, the bigger the case, the bigger the budget can be. The initial solution was just to get another monitor and put it right below the camera and be logged in twice. Once I would be logged in as me, and that's where I'd have the gallery view where I'd see someone else. Then we'd just be logged in as CRP attorneys or Cowen firm or something like that, and that one we would have on where it would spotlight the speaker.

Michael Cowen:

At least I could have that right below the camera and be looking into the camera and still see that person. Then later on in the story we'll talk about we ended up through some frustration hiring professionals to come in and they had a teleprompter that actually they could use a teleprompter screen where I would see the person and actually the camera would actually be behind the image of the person and I could actually talk directly to the person. That was awesome. If you have the budget, if you're doing a seven figure or up case, I would definitely say for opening statement, for jury selection, hire a professional camera crew with professional lighting.

Michael Cowen:

Because as good of a job as you all did, it really was when you have someone that has the real equipment that cost way more than we'd ever spent and has the experience of producing live TV shows. It really does make a difference.

Delisi Friday:

Well, and I'm sure it made a difference in your confidence too.

Michael Cowen:

Yeah. Like I said, your team did a great job, but we had done one practice and we wanted to improve a few things. This was so embarrassing. We did a practice with people in the office and everything worked fine for voir dire. I got this bright idea that I was going to do another practice session, and I put a call out both through a trucking lawyer group, the Academy of Truck Accident Attorneys that I'm in on their listserv, and then through Sari de la Motte's Hostage to Hero group on Facebook. I put a call out, hey, does anyone want to volunteer to be a practice juror to help me with my voir dire? I had all these people want to do it.

Michael Cowen:

Frankly, it is scarier to do a practice in front of a bunch of other lawyers that I don't know that well from around the country than it is with a real charity, because I wasn't only having to think about connecting with the people, but I was having to think, okay, now they study the same techniques I have so they're going to be judging me on, am I getting it right? Is my body language right? What am I doing? Am I following the right techniques? Our tech guy, our visual guy, Raul, had tried to use the new updated, upgraded stuff that we got and it didn't work.

Michael Cowen:

One of the cameras wouldn't broadcast. My microphone ran out of battery. Another microphone didn't work. I mean, it was like 10 minutes of just technical glitches, and oh my gosh, it was not fun, and of course, in front of everybody else, all the other people, and everyone was really nice about it. I mean, I think it turned out okay, but it was good that it happened the Thursday before voir dire and not on the morning of, but I think, one of the lessons is practice with the equipment you're going to use. If you're going to make any changes, you need to go practice, practice, practice, make sure it's going to work perfectly on the day up because you don't want to be thinking about, is the technical work or not? You want to be thinking of that connection with the jury.

Delisi Friday:

Yeah. I agree with that. I think what happened was, as we started getting better and better getting ready for this, we thought, well, how can we continue to up it? How can we be better? I think that was one lesson I learned in this was there had to be a stopping point where we didn't do anything else new because we needed plenty of time to rehearse with it. Yes, it went well before because we were using the same equipment. From my perspective, when we got the new camera, it was because we needed to do it so we could do a witness and you and both have good quality. What we weren't ready for was for the new camera to have a setting we hadn't practiced with. That's where that technical glitch came in.

Delisi Friday:

With the audio, we spent time looking to find the best microphones that made you feel like you had a Ted Talk going on and you looked great, and the sound quality was good. We charged the battery the whole time before you went live, but even though the box said it was going to last a certain amount of time, it didn't. I think we learn, you have to make sure you don't change these things too close to trial, and you can't always expect the equipment to work, even if you just thought it. We spent a lot of money on that mic. We still have the box. I'm going to return it. There's no reason for us to spend money on something if it says it works a certain amount time and it doesn't.

Delisi Friday:

That was a big that was a big opportunity for us to realize, if you're going to do this, use all that equipment before. Now I'm just thinking, how do we implement that in our office? I think we should be using all the equipment we're going to use in trial right now. We should get comfortable with it and we should know it and feel confident it's going to work when it needs to whenever we do this again.

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 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 the case in detail, and now back to the show.

Michael Cowen:

I think the other thing is... Raul, the guy we had doing it. He's been to one trial with me in real life, but he's never ... I don't think he quite envisioned what a virtual Zoom voir dire would be. Now that he's seen it, because of the day that I was practicing with all these other people was also a day that I had a bunch of court filings due, and motion responses. I put an hour aside from this and I had to get back to other deadlines. It was a stressful day. Next time I'm going to say, you need to rehearse the tech and have it perfect before I get there and not be messing with it with me there and using me as the guinea pig for messing with it.

Michael Cowen:

It's just one of those live and learn. We learn. But I do think that we need to be doing more if we're going to keep doing Zoom trials. I'm hoping that I'm going to get to try case. I wanted to try this one,

believe it or not. It's just, at some point, the numbers get to the point where you're not doing your client a service, because even if you hit a home run, you have a risk of getting millions of dollars less than what the offer is. It's like, well, and the client wants to take it. It's in the client's best interest and you've got to do the right thing. But I'm just hoping we have at least one case a month set from now till the pandemic's over, whenever that is.

Michael Cowen:

I'm hoping at least one of those times I get to go one of the zoom trials because I'm dying to do one. I really think we can do as well, if not better in a Zoom trial than in an in-person trial. I think the people that are doing it, especially now that it's novel, they want to be there. Everyone I've talked to that's done one, the jurors are engaged, they're watching and listening. They like the fact that they don't have to go downtown to where the courthouse is, find parking, deal with all the uncomfortable chairs and just being there at the courthouse all that time.

Michael Cowen:

I think they're going to enjoy it. I think that a story is a story is a story. If we have a good story, we can tell it through this medium as well as we can tell it from the courthouse medium. Frankly, as plaintiff lawyers, there is another advantage in that we control what the jurors see. Because a lot of times, at the courthouse, they're not listening to the testimony. They heard your clients say, I can't go more than 30 minutes before my back starts hurting and then I have to get up. Your client is trying to stay there and be stoic and they don't want to be getting up and being disrespectful to the client.

Michael Cowen:

Well, there's a jury timing them and they keep going over, look, is he squirming? Is he getting up? Is he doing this? How long has it been? They're not paying attention at all. Or how is your client walking, or what is your client's facial expression to certain testimony? Well, a Zoom trial, you can turn your client's camera off, or not have your client there. They're a little easier, or at least you know what they're seeing. They only see the face. They don't see them walking around. They don't see ... It just changes everything because we control what the focus is. It's really, I think, an advantage. I'm wanting to do one. I'm excited about it.

Delisi Friday:

I'm sure we will. You mentioned storytelling and storytelling, and I will say as someone who watched your opening many times, and I saw how it changed throughout the process, I thought it was so interesting when you would do it through Zoom, because you want to rehearse, like people are going to see it. One of the pieces of feedback we always get was the less you used and the more you focused on your facial expressions, your hand gestures, your body, the more people connected with you. At the very beginning, we were talking about what visuals were going to happen, because we didn't want people to lose interest, but I found it so interesting that more people were engaged with you when you didn't. What was that process like for you?

Michael Cowen:

Yeah. It's funny because my original script probably had what? 20 visuals, at least in it, because I wanted to break it up. I also thought was to use two cameras so we can be switching the camera angle on me so we could get rid of the boringness, and then people thought that, that was distracting, the camera angle changes, and they found that when there were too many visuals that it broke the eye contact and stuff.

Yeah, it's funny because I didn't think I could do that eye contact thing honestly. I didn't believe I could make that connection, and it turned out I could which was really so cool.

Michael Cowen:

To me, that's game changing, that if people are watching, you can look at the camera and they can feel you over Zoom, and through your facial expressions, through your gestures, through your vocal tone, you can create an emotional connection, even over this camera. But not that you just sit there and be boring. You have to put work into it. You also have to really believe your story.

Delisi Friday:

Yeah. Your story did change a lot. How important was it for you to have fellow trial lawyers to bounce ideas off of to get to that point where you were ready for opening?

Michael Cowen:

It was invaluable. I have so many people. I don't want to name all the names because I'm going to forget some, I don't want to hurt anyone's feelings, but I had friends from across the country. I recorded one of the first versions of my opening statement. I put it on Dropbox and I shared it with select people, and they took 30, 45 minutes to give me feedback. Some written, some on the phone. Sari de la Motte, who's going through chemo, I want to cry saying this, I mean, she actually recorded a video of going over my opening statement and giving me coaching on it.

Michael Cowen:

One of the 45 minute times she was feeling well enough to do it. I love her. Well, God bless her for doing that. I mean, just the love I felt the part of a community. No one has said, oh, by the way, I want 5% of your case because I'm doing this for you. You're not gonna get it, I think. Just having that support and that feedback really helped. Now, different people had different ideas. I didn't do everything everyone, but it made a huge difference.

Michael Cowen:

The other thing was my feel. As I practiced, I just realized things that looked good on paper, didn't feel right when I did in person. Artemis Malekpour was also ... She's David Ball's partner. She also was nice enough. Now, we were paying her, but she was nice enough to give me some really good feedback and she's also brilliant. That's one thing I've learned is just we're there to help each other. There's professionals that will help you, but there's colleagues that will help you in getting that feedback, and then using it. Also, you listen and you have discernment like, yes, this fits for me. No, that ... some people had some ideas that were really cool, but they weren't me.

Michael Cowen:

The other thing that really made me happy is the, and it kind of surprised me because I was almost apologetic when I asked Artemis to look at my opening because I did not strictly follow the David Ball opening structure. I was a little worried. I love Artemis, but I was a little worried about a lecture, and I had very specific reasons for not ... Our case involved a stop ahead sign and highway intersection ahead sign and things like that, that the driver didn't see any of, and he passed and wasn't looking. I thought if I just showed the signs, the signs are the rules. I didn't have to say when there's a stop sign, we must

stop, and if we don't stop with a stop sign and we cause a crash, we are responsible for the harm that we cause.

Michael Cowen:

It just seems silly to say that. Then there was a very contested issue of whether the driver was messing with a cellphone or not. I believed on the forensic evidence he was, but the driver, I mean, he denied it. We didn't have any in-cab video or anything, and it's interpreting the data on there, which I thought showed that he was messing with it, and three seconds before the crash, he was pressing a button on it, but there are experts who said otherwise. Rather than me putting it out there saying this guy's on the phone, or me saying a driver must not be distracted by a cell phone while driving, and while I'm putting it out there, I wanted to tell the story in such a way where the juror's going to say, "Of course he's on the freaking phone!"

Michael Cowen:

David Ball calls it alignment. When you tell the story that makes them say the defendant violated the rules, then because they came up with themselves, they grasp onto it and they'll fight for it and they'll hold onto it and they'll see the whole case through that prism. That's what I was really trying to do. I just felt for this case, the traditional state the rule, tell the story of how the defendant broke the rules, throwing a statistic, all that kind of stuff, it didn't work for this case. Artemis actually liked the format so I was very pleasantly surprised. Yeah, no, but it was great to have so many people.

Michael Cowen:

If anyone here was one of those people, I mean, I owe you guys. I said guy, men and women, I owe y'all, and next time when we can see each other in person, the first rounds on me, dinner's on me.

Delisi Friday:

I will tell you, it was really awesome to see it from the very beginning to what you had till just before trial was supposed to begin. When you came back and you did something different, I would be like, how did I not think of that? Just the smallest thing, you didn't change the words. You changed some of the ways that you maybe phrase something or the order, or you added a little something, or you changed the direction you were facing the camera. They all make a difference. It was very cool to see that, especially as someone who ... I didn't know anything about the case. So, when I heard your opening, I was really hearing it for the first time. It was very fun and magical to see the changes once you incorporated some of that.

Michael Cowen:

One of the great things actually because cause since we had to practice with the camera and the lights anyway is sometimes I do the whole opening, but when you want to tweak, you pick the part you want to tweak and you just work on that part. Hey, I want to do on how we set the scene. Let me work on a scene setting and we do that a couple of times till we felt really good about it. Okay. Well, let me tell a story of what happened. We realized the first time I set the scene going towards the camera, and then I told the story going perpendicular to the camera, and that's like, what the ... Who was it? I think it was Ken Levinson. I think it was Ken Levinson or Steve Bernstein, one of the two is like, "You set the scene one way and then you turn it. I don't trust you anymore. What the hell is going on here?"

Michael Cowen:

I was like, oh wow, what ... I tried it both ways and then we looked at it, and then same for ... We were trying some expressions and positioning of ... Let's do this three minute part of the opening, because I was trying to get the whole opening, believe it or not, on a whole opening on a major catastrophic case in under 20 minutes because I think it's important in the Zoom, especially, but even a courtroom, I mean, to be brief. But we could just take like a three to five minute practice it, watch it, practice it, and just get it to where it's perfect and then you put it all together. It was fun.

Michael Cowen:

I've always preached like practice, practice, practice, and I've tried, but because we had to do the technical part, it really forced me to be disciplined and actually do it, and so I was so much more prepared, so much more relaxed than I've ever been.

Delisi Friday:

I think it also helped you take some risks too, because when we started get into it, we started to do different things, like I'll give an example, we practiced doing it left to right, and then you took the advice and you said, "Okay, let's do it forward and backward facing the camera." At the very end, we even did it towards ... You kept getting closer and closer and closer to the camera and we would Mark it, and then you got really close. As you were telling the story, just your position to the camera and walking closer and closer to the camera, made it so much more dramatic, and I loved it.

Michael Cowen:

Then when the cameras, when the other driver's running the stop sign, my whole body is going to ... You couldn't even see my face anymore because you feel like something's running the stop sign about to hit you.

Delisi Friday:

Yes. It felt, I don't want to say theatrical, but in a way it did. We were able to use the fact that we were doing this through Zoom to our advantage to tell the story, but to make it stand out. I think that part of the practice was very helpful to the case and making it stand out. I was settled because I really wanted to see what defense counsel was going to do and then how that was different from ours, because we worked so hard getting it ready.

Michael Cowen:

Yeah. We also did a little some, what I call psychological warfare on social media, because we knew the defense would see it, or it would get back to them. So, we posted pictures of our studio. We had this big 10 foot long 3D model of the scene and we posted pictures of that and us working with it. We posted, and that was the great thing about the camera stuff was we figured out a way to use ... When I paid to have that thing done a year and a half ago, we thought it was gonna be a live trial. We never thought that ... Never heard of COVID at that time, but we figured out how to make it work. We were going to get rid of all the problems with trying to use an animation that we had two little two cars and you could move them and show how they hit and how they ...

Michael Cowen:

There would be no objection to that. It really was impactful. But we also were posting some pictures and stuff, and I think it really added to the terror effect on the other side, because their reaction the

weekend before trial compared to how they'd been other two years and three months of the case was night and day.

Delisi Friday:

Wow. That makes my heart happy because I was a part of that.

Michael Cowen:

You were a huge part of that. No, I could not have done this without you. That's the other thing. As we move to the virtual trials, I mean ... You don't need ... I'm blessed. I have a team of pros at my office. Although we're learning on this stuff, but you need someone to help you. You cannot do this all on your own. It's not possible. You need someone to help with the lighting, to help with the setup, and so it's just part of it. Like I said, if you practice enough, I think you could do this on a smaller case. We're just talking about put a blanket or something, hang it up behind this behind you so that have a decent background.

Commercial 2:

Thank you to 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 20th, 2021 on your calendar now, and save the date. To stay up-to-date with details as they become available, visit bigrigbootcamp.com and sign up for our mailing list. Now, back to the show.

Delisi Friday:

I think that actually is something I want to share before we end is a lot of the stuff that we got, it was just on Amazon, or Best Buy, and it wasn't stuff that broke the bank. The backdrop that we got, the material itself was like under \$30. If you actually want to put a backdrop up, you can buy that for under a hundred dollars, and it makes the difference because you have those ring lights. The last thing you want is for it to reflect off your degrees in the background, which we noticed when we were practicing with you. Sometimes, you don't even have to do that. I recommend paying attention to where the lighting in your office is when you're on Zoom, because you noticed, in the second half of the day, your office has the sun facing in.

Delisi Friday:

Even if we close the blinds, the sun was coming in. I spent \$0 and brought in a box of something I bought online. I feel like I should share the photo.

Michael Cowen:

Yeah.

Delisi Friday:

I will share the photo to show what this looks like. But for \$0, I just brought in a box of something big I had bought, and I just stuck it behind your computer to block your windows so none of the sun would come in and shine into your eyes. Just little things like that are so important because you don't want to be in the middle of cross-examining someone and then you just have dots on your face.

Michael Cowen:

Yeah. All the dots from where the little strings go through the blinds. I just had this line of dots cross on my face like I'm some Scottish warrior getting ready for battle or something. It was distracting. Yeah, and the ring light reflecting off my degree behind me was distracting. I think practice, and like I said, a lot of them weren't expensive. If you don't mind, Delisi, can we just maybe post some links to some of the stuff we used in the show notes?

Delisi Friday:

I actually think the best thing would be for me to post direct links to all the pieces that we got. Raul and I had talked about creating a video for our Trial Lawyer Nation fans, and showing you what pieces do you need to buy if you decide you were going to do a Zoom trial, or for whatever reason, and you want to use two cameras. Because on Zoom, you hit share video, and most people just use one camera, but there is a piece of equipment that you can buy. It's an adapter. If you plug that in and we show you how to do it, you can actually switch from one camera to another.

Delisi Friday:

That's helpful to any of the trial lawyers who are listening to this right now. We're going to create a video and post the links on the equipment you can buy so you guys can do it too.

Michael Cowen:

Another thing is in one of these document cameras are really useful so that ... A lot of times it's good and better to put up an electronic exhibit, but sometimes you want to draw on it. Sometimes you want to ... I had one of the defense doctors and I took his deposition and our client had massive initial injuries. I didn't even ask him what his opinions were that were harmful to me. I just went through and I got just an outline that I got from depositphotos.com. You can get one from Shutterstock. There's all kinds of just the place where you can get stock images, but are in good resolution. I just got like a body outline. I said, "Would you agree he had a severe traumatic brain injury." Yeah.

Michael Cowen:

Would that be about here? I'd circle the head and I'd write severe traumatic brain injury. He had a tooth knocked out, right? I circled that, put tooth knocked out. Now, the tooth ended up in the lungs, so I put a dot in the lung, and tooth in the lung, wrote that out. We're creating this through the defense expert. It would have done two things. One, before any of our doctors testify, the defense is talking about how hurt my guy is, because I was going to play their medical expert before I played ours.

Michael Cowen:

The second thing is, when he ... Because I did not ask him, because his opinion was going to be, he got really, really hurt, but now he's a lot better. Well, I didn't ask him in the deposition about how he got better, and the defense didn't ask him any questions in his deposition, because they were going to bring him live at trial. So, he was going to testify when I put them on about how hurt this guy is, and then a week later, the same guy is going to come back and say, he's not really that hurt anymore. The dissonance that creates, it really looks like he said one thing the first time and then came back and told him the story.

Michael Cowen:

That document camera was really handy with that. It's also handy when you have physical items, like, you want to have two ... You're going to have a picture of the scene and two toy cars if you don't want to do a big 3D model put on one of the document camera, or even what I've done before is like we had a tractor trailer wide right turn case. You can print out like a Google map, picture of the scene, get some little, try to make paper even like squares and rectangles for the tractor and trailer.

Michael Cowen:

Then you were here, then you were here and you just create your own animation with, how South Park started, with cardboard over the background. It's cheap, but it gives you a visual, because if we're going to use him trials, we have to entertain the jury. For the opening, we found not so much. We wanted the eye-to-eye connection, but for the question and answer, I think we need to, we need to be breaking in visuals constantly so that we're changing it up and we're entertaining them.

Commercial 3:

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Delisi Friday:

Whenever we do this again, what are the biggest things you're going to be thinking about before our next Zoom trial?

Michael Cowen:

Well, then one is we tried, but in Bexar County, which is in San Antonio, Texas, you don't get assigned a trial judge until shortly before trials. You don't know who your judge is going to be. Because of that, we had, between our side and other side 14 Daubert motions with responses due the Friday before. We had summary judgment motions that had to be finished briefing and argue that were going to be argued that first Monday. We had all the motions eliminated. Had to get filed. The exhibits had to be marked up electronically and exchanged. Basically, all the briefing had to be done that week before.

Michael Cowen:

It was really stressful to be doing all that legal work and juggling the witnesses because we thought trials were starting on Monday, but then the judge decided to have two days of pretrial and start on a Wednesday, which meant all of our ... We had 11 experts we were going to call between screening doctors and experts. Well, we had to go juggle all their schedules, and they had other things. We're dealing with that and we're trying to prep our lay witnesses, we're trying to prep our expert witnesses, we're doing the schedules, practicing with the technology and trying to meet all these deadlines.

Michael Cowen:

We did it. If I had to do it again, I would have started with the technology a lot earlier, and I would have tried to find some way to get a pretrial conference and get those issues decided to three weeks before trial. Plus, some of my opening, even, I was going to have to call an audible after the motions eliminate were heard enough of the summary judgements are heard, like, is this theory I want to talk about, is this

is going to make it to trial or not? I was pretty confident it would, but I had to have in the back of my mind, okay, no, if the judge grants this motion, I'm going to have to change it this way. If they grant that motion, I've got to change it that way, and like, what would be my other story? I want to have a plan. I don't want to be freaked out if something happens.

Delisi Friday:

I think one of the things I'll be thinking about is what technology do we need, what technology do we have, and what is our role in that to help tell the story? I think we've learned how important simplicity was in all of this. I think next time I want to think about, what do we do so we're not overwhelmed in the logistics of all of this? And we can still focus on telling the story, but doing it well.

Michael Cowen:

Yeah, I think the more we do it, the easier it'll be. I mean, this was all new. We're using new equipment for the first time, our first time to go really. We had the virtual bootcamp, but that was different. That's a CLE. Also, because we weren't having to deal with other people's Zooms and stuff, it was a webinar, we could control ... I actually could point at where I was going to go, because I knew where I was going to be. I knew where my screen was going to be. It was more predictable. Frankly, on the virtual bootcamp, you just hired a professional crew from the get go. We didn't try to do it ourselves.

Michael Cowen:

Whereas here, we tried doing ourselves. We're still going to do a lot ourselves, but for the experts when we were going to use the 10 foot model so that we could really be able to show the whole thing and have us standing up, and have both of us in there at the same time and then follow the cars, and we would have use the professional camera people for that, and then for opening, closing and jury selection. But if it was a smaller case, I'm sure we can do ourselves. I mean, I'm confident, but I think the more we practice with it ... But I would just tell the lawyers, please just practice and then watch the film.

Michael Cowen:

It's like college athletes, professional athletes, they're always having to watch the film to see what they did good, what they did poorly. Let me rephrase, what they did well. My mother would kill me. That's bad grammar, saying what they did good. What they did well, what they did not so well and improve. Watch the film and see how it looked on film and just work with it. But no one's going to be perfect. The other thing is just, what really took my stress away, it was a mindset thing. It's something I had been working with Sari a lot on. As much as we trial lawyers like to have big egos and we want to show that we're the biggest bad-ass around, and look, you have to have a little bit of that in you to do this work.

Michael Cowen:

Frankly, just to get up there. Like this case, you put hundreds of thousands of your own money into a case, take a gamble and get up there and put it all on the line. I mean, you've got to have an ego. But who cares? Because the jury don't give a crap about ... The jury is not gonna give a big verdict because they think Michael Cowen's cool, Michael Cowen did a good job, or he blew the other lawyer away, or he's a bad, or it looked cool. No, they don't give a crap about me. If anything, I have negative credibility and maybe I look too slick.

Michael Cowen:

It's not about me. The trial is not about me. The trial's about the jury and their journey from coming in as regular people, and they're going to do something. Now, what that something is to do justice, is it going to be something to get rid of a lawsuit that's not a just lawsuit, or they're going to see a company did something wrong and hurt somebody and they're going to try and make it right. It's about the jury's journey and it's about my client and what my client's going through, and then can we help the client or not?

Michael Cowen:

You just have to trust that the jurors are there because they want to do the right thing. When you trust that, then they'll work with you through a technical glitch. They will. It's just like, if you're stumbling on a word or something, it's not the end of the world. They'll listen, they'll wait, because they care and they want to do the right thing. I really believe there aren't that many people that go out there saying, "I really hate lawsuits and so I'm going to get on a just to torpedo this case." I think at one time there may have been a few more of them when the citizens against lawsuit abuse was really going on, but I don't think that that happens very often.

Michael Cowen:

I think it's more, they just don't buy your case, but I think most of them are there saying, I want to do the right thing. I want to do justice. I want to be part of something ... I mean, I'm taking time out of my life. In Texas, they're getting paid eight bucks a day. I want to do something meaningful with this. I think if we trust them that they want to do that, it takes the stress away because it's not on us. We can't do anything meaningful. All we can do is tell them the story, give them the tools that they need to do their job and then just have faith.

Michael Cowen:

Between just about having faith and then it being about my client and not about me, it took all the stress away from getting ready, and then it also took a lot of stress off of the settlement decision. It really did because we had a number and we weren't going to settle if they didn't pay that number. Frankly, they made more than that number, but that's another story for another time. But the fact is we had our number and I thought it was a fair number, and I had no problem both going to trial if they wouldn't pay that number because I thought it was fair and I want to make sure my client was taken care of, and that's the number we needed to really take care of him for life and his family.

Michael Cowen:

But at the same time, I had no problem taking a settlement that got him that number, because then we ... He didn't hire us, he didn't so say his family, actually it was not even him, it was his family. Because he was really out of it when the referring lawyer got hired. They didn't go hire the lawyers because we want Michael Cowen to win a big verdict and get famous and really get more good cases and have a big ego and have everyone think he's great. That's not why my client hired me. My client hired me because someone hurt him, they didn't want to pay him, and he needed money to live on and support his family, get medical care. When you- that's the goal, that's why we're here.

Michael Cowen:

Then when we get something that's fair, that's not worth the risk of bleeding for. I didn't feel as bad about taking it, like, oh, I'm a wimp, but I lost my opportunity. Yeah, it sucks. It sucks I lost the opportunity to try a case I could have hit a home run on it because I think I really could have, but at the

same time, one, there was a risk, then there'd be an appeal. This is really, really taking care of this family. It's the right thing to do. I don't feel bad about it now because I'm keeping that mindset that this isn't me, the whole crowd is not about me. I'm just one character in a play or one character in the TV show.

Delisi Friday:

I think it was still another great opportunity for you to practice and hone your trial skills because we had to rehearse more because this was going to be easy Zoom, and it was magical to see that go to the next level each time we did it, and I enjoyed watching that.

Michael Cowen:

Thanks. I guess the last thing is the clients needs some practice on Zoom, the witnesses need some practice on Zoom, and they need lighting. You need to think about where they're going to be. We were trying to encourage people to come to the office. We have a big enough office. We could put people in separate rooms, so we would have social distancing. Some defense lawyers and even judges would object to you being in the same room as the client, because you could give them signals or write notes. We wouldn't do that, but it could happen. But we had other offices, but I mean, because we wanted to make sure that they had good lighting and stuff.

Michael Cowen:

Some of our clients lived in Laredo, Texas, which is like a three hour drive. We weren't sure that they were going to be able to do it. I have a friend I went to law school with, we had arrangements to use his conference room, and we were going to set up a laptop with a good webcam. He had good internet. We were going to set up, at least our ring light and make sure there's lighting there so that they had a place, because if not, they might be sitting in a house that's not very dark and they're holding their phone, or walking around somewhere, holding their phone testifying, and it would take a lot of way. I think that's the other thing is that we need the practice for ourselves, but our witnesses need it too.

Delisi Friday:

Absolutely, absolutely.

Michael Cowen:

Well, I mean, if anybody has a big case ... I don't like begging for cases on here or pushing too hard for cases on here, because I want this to be about you and not about just me beginning business, as much as I love it when I get to work on good cases. But seriously, if you have a case and the judge wants to do a Zoom trial and you're scared to do it, and it's a good case, call us, we'll talk. Whether we do it with you, you want us to do with you or you just want to do it on your own and get some advice, don't be scared to do a Zoom trial. I'm telling you the options are either going to be Zoom trial or wait another year or two.

Michael Cowen:

That's the reality because when trials start going again, our personal injury cases aren't coming first. We've got criminal cases, we have child protective services cases, we have certain kind of family law cases with young children involved. We have a lot of things that are going to take precedence over our cases, unfortunately, and there's going to be a big line. Even when you get to personal injury case, there

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may be 10 older ones in front of you. So, don't be afraid of the Zoom trial. This is our best path to justice right now, and I am convinced that it's going to be every bit as good as any other kind of trial.

Delisi Friday:

I will share all of the links to everything we bought and I'll make sure that we share a video on how to do some of the technical stuff to help everyone else along the way, too.

Michael Cowen:

All right. Well, thank you so much for joining us today on Trial Lawyer Nation. On our next episode, we're going to be talking about a real trial, so come on back.

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 our podcast, please like share and subscribe to our podcast on any of our social media outlets. If you'd like access to exclusive plaintiff lawyer-only content in 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.

Commercial 4:

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@triallywernation.com. She will coordinate a time for Michael Cowen to speak with you in person or by phone to discuss the case in detail.

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