

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 it- 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 bigger 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, we have a treat for you. We have one of the most successful trial lawyers, who has some of the biggest verdicts that is currently alive today, Benedict Morelli. You probably have heard of him. He represented Tracy Morgan when he got hit by a Walmart truck. He sued Bill O'Reilly with Fox News, has tons of eight figure and even a nine figure jury verdict on a single plaintiff case. And he's nice enough to talk to us today. Mr. Morelli, how're you doing today?

Benedict Morelli:

Morning, Michael, how are you?

Michael Cowen:

I'm doing great. So let me just start. We were actually talking a little bit before the show, and you were talking about how you're always learning. But I guess from the beginning, what was your path to learning how to try a case?

Benedict Morelli:

Well, I was very fortunate because I was working in a law firm for four and a half years before I was admitted to the bar. And I was conferencing cases and handling the court calendar, doing a lot of different things: answering the phone, and filing away the files because at that time, we weren't electronic. And anyway, I had an opportunity to be in court, and to sit in on many, many jury trials. And I knew a lot of the lawyers because I was only early '20s. And I would ask the lawyers who were trying cases whether I could sit in on the jury selections, because those were in separate private rooms. And they would always feel very proud that I was asking that. So they would say yes. And I would sit in and watch jury selection.

Benedict Morelli:

And then I would watch all different parts of trials of lawyers I knew were very successful in terms of winning, and giving good arguments. And I would sit there during jury selection and during trials and rule in and rule out what I thought could be helpful to me. So when I became a lawyer, I had already seen some of the jury selections and so many trials that I had adopted, mentally and emotionally, what would work for me. Because as you know, you can't take every single thing you hear will learn, even if you think it's good, and be able to adapt it to you. Because we're also different and also unique, that the most important thing in front of a jury, and I'm sure most people say this, is authenticity. And so if you

are trying to be someone you are not, even if it would work for someone else, if it doesn't work for you, it's not a good idea to do that.

Michael Cowen:

And so what are some things you do today to keep getting better?

Benedict Morelli:

We keep researching cases. We keep hearing about different trials. One of the things I don't do is focus as much on the amount that the jury awarded. I do, but I need to look behind it to find out what was the case? Was it a difficult case? Was it an individual case? Because I'm an individual case lawyer, who also does mass tort cases. I'm not a mass tort lawyer who does an occasional individual case. And so, I like to know, what was the case? How did somebody get whatever the verdict is 10 million, 20, 50, 100, whatever it is, and how do I assess that victory? That's very important to me to find out something about the case and look behind it rather than just the numbers.

Benedict Morelli:

Now, we know the newspapers and online and people who want to talk on television about it, they only look at the number. Look at this. This case, this lawyer only got 40 million, but this lawyer got five million. Yeah, but that \$65 million dollar victory- And they're both victories, especially in this day and age, might not have been as impressive as the victory in the 40-something million dollar. And that's, I think, important for us to remember.

Michael Cowen:

So, what does it you do to find out what worked and didn't work in other people's cases?

Benedict Morelli:

Well, we tried to, and it's interesting that you asked that because, right now, I'm getting ready to argue and appeal in probably next month, in the appellate court in Manhattan. And I only argue appeals of cases I've tried, where I've gotten a verdict where the defendants are now appealing, because I got too much money, in order to reverse the case. And so, I've gotten the briefs of many other cases that have been mentioned and cited in the briefs of the appellants and actually review them, the points that I think are necessary for me to know about. I'm very fortunate that I have a number of young lawyers in my office, many of whom are mid to late 30s. And they want to keep learning.

Benedict Morelli:

And so what I do is I set up trial teams in the office where I don't allow any case to be litigated without at least three lawyers working on the case. And it's not the same lawyers all the time, obviously, they rotate. So they're very inquisitive, and they want to find out why this, why that. And right now, we're doing different trucking cases actually in about four or five different states. So obviously, we have to learn what the law is of the state, we have to find the case law. And we find out that there is some states with some very difficult laws for plaintiffs. And others that are much more friendly. And fortunately, or unfortunately, two of our cases are in one of those each. So we have a friendly and an unfriendly.

Michael Cowen:

Yeah, I know. My partner, Malorie Peacock, and I are jumping in on a Pennsylvania case. And doing the research, it's just so refreshing compared to Texas.

Benedict Morelli:

I know, it's very, very, very, very different than Pennsylvania. And by the way, that is another thing that people might want to look at when they look at large verdicts. Not only what was the case, but where was the trial, to decide what you think about it.

Michael Cowen:

Absolutely. You said something earlier, that really piqued my attention. You said you're an individual case lawyer that sometimes does mass torts, not a mass tort lawyer that sometimes does individual cases. What do you mean by that?

Benedict Morelli:

Well I was raised on handling individual cases. The first mass tort that I did was the DES, which is Diethylstilbestrol, which is what new lawyers learn about in law school. When they're learning about market share, and actually there was no such term as mass torts, when I was doing DES cases. So, I like to deal with the client directly. I like to prep the witnesses myself. And even though I'm working now with two or three or four lawyers on each case, because I don't let anyone try case alone either, and I utilize my lawyers to do that.

Benedict Morelli:

They're always present when I'm preparing a witness, or I'm taking a deposition, or I'm cross-examining someone because I want them to learn from me. But I don't always tell them, I learn from them too. But no, they know that I take very seriously learning from them. And I ask them, what their opinion is, how should we approach this witness? Do you think that one of the biggest problems that I have, like we had in the last case that I tried, is that I want to get a big verdict? Okay, because in that case, before jury selection, I had an offer of 30 million.

Michael Cowen:

Wow.

Benedict Morelli:

Before jury selection. And that's very, very unusual, very unheard of. And so, I want to make sure that we're always going forward. We're always getting better. What I want defendants to know, is that I'm a really nice guy, and I'm willing to help out lawyers if they have a problem, but I'm going to crush you when I have to. And if I tell you that I want \$50 million to settle the case, I don't want 45. Okay, and I find there're system of demanding money, puts us at a huge disadvantage as plaintiffs lawyers, because insurers, which is whom we're usually dealing with, always wanted to divide by three, or at least by two.

Benedict Morelli:

And so, when a judge ask me for a demand now, I say, "Do you really want one?" Because I'm not taking 50% of it, or a third off. So for me to demand, if I want 50 million in the case, you want me to demand 150 million? It doesn't make any sense. So, I try to be as easy as I can be early in the case. But if you make me work, every day you make me work, I become more and more difficult. Because I'm just like all

of us. We're a little lazy. We want to get the money for our client, and go to the bank. All right. There's nothing wrong with that. You just have to pay us.

Michael Cowen:

Yeah. How do you get the confidence to... There's always so much pressure when you have your number to come off the number, to compromise, to take less? How do you get the confidence to stick to it? And know you picked the number that's a real number that you can do that or better at trial?

Benedict Morelli:

I think you have to spend a lot of time with introspection, and also speaking to the people in your office or your wife or your kids, and real- what do you think of this? What do you think of this? This is like Ben Morelli's personal moot court. And really asking what they think and then I filter it a little, and I decide. But for me, it's a little bit different. Because when I said in the Tracy Morgan case when we were negotiating settlement, and I was speaking directly to Walmart in that case, not to the insurers, as you probably know, because Walmart sued the insurers for a year and a half after that to get their money back. Because I said to them, "I'm going to deal with you directly, or I'm not going to negotiate."

Benedict Morelli:

So, when you do that, and I coined the phrase at that time, when I have a royal flush, I don't play it as a pair of two's. And so, the answer really is, first of all, look at your case, okay. Then look at what your venue is. Then look at who your prospective jurors are. And look at your witnesses and decide not only what witnesses you're going to call, but in what order. I am a big proponent of witnesses going in a very specific order. I like the plaintiff to be somewhat sandwiched in the middle. Okay. Unless the plaintiff is my best witness, which on occasion is true. And I remember when I was trying a lot of medical malpractice cases early in my career, I used to say the best plaintiff I have is the one who's dead or under general anesthesia at the time when it happened. Okay, so that they can't make a mistake.

Benedict Morelli:

So the hardest thing to do is to prepare a plaintiff. That's the hardest thing to do. And I don't want to be only an enterprise lawyer handling mass tort cases. I'm not just a businessman, I'm actually a lawyer. I'm a trial lawyer. I've been trained. I've trained myself. I was training for five years before I was admitted. So I take pride in that. And I take pride in taking individual cases, and making them much more. I mean, I had a case a few years ago, a traumatic brain injury case, where they offered \$175,000. And it was a split trial. So first, I tried the liability. I tried the liability, if you could believe this for three months.

Michael Cowen:

Wow.

Benedict Morelli:

Okay. After I received the unanimous verdict, we then pick the new jury. And we tried the damages for two and a half months. Okay? And I asked the jury for 55 million, and the jury gave me 62 million.

Michael Cowen:

Wow.

Benedict Morelli:

Now, I was only offered 175,000. So, it didn't take a lot of guts on my part in that case. In the last case where I turned down 30 million before we selected a jury, I have to admit, I had to think about it. I had to think about it long and hard. Now, a lot of lawyers and a lot of judges say to me, no one has more, you know what, than me. Okay, but you have to temper that with the risk reward. Am I jeopardizing, let's say, five million to get six? Probably not, if I'm really taking a risk. But am I jeopardizing five to get eight? Probably, yes. So, it's just a matter of which case it is. In this last case, the defendant was so crazed about trying a case against me that they went to the judge, and told the judge that we shouldn't be able to pick a jury, that Ben Morelli should not be allowed to speak directly to the jurors, we want Your Honor to pick the jury.

Benedict Morelli:

And he looked at them and said, "I don't think you're going to be happy with that. Now, go pick a jury." And we picked the jury, then they made a motion before opening statements to limit what I could tell the jury and opening, and the judge says I won't do that. Then I was cross-examining their first expert witness which was a brain injury doctor. And they stopped in the middle and made a motion that I was intimidating the witness with my mannerisms and my questions. And the judge says, "I don't see it exactly like that." I have the transcript of the trial, so I know what he said.

Benedict Morelli:

"I don't see it exactly like that. I think you're right that Mr. Morelli is intimidating the witness or she's being intimidated by his questions. But that's his job." Okay. And then before closing arguments, they made more motions that I shouldn't be able to ask for an amount of money, that I should be limited in saying this and saying that, and on appeal, they said that I mentioned the defendant's name too many times, because it's Live Nation Worldwide. So I was trying to fire up the jury about how big they are. But it's the name of the defendant. Okay. And that's in their papers. Okay, so.

Michael Cowen:

So Live Nation Worldwide, that was, what a \$102 million jury verdict you got on a single injury case back in 2019?

Benedict Morelli:

Yes, December of 2019.

Michael Cowen:

What type of injury did you have?

Benedict Morelli:

We have a young man who was 30 years old at the time of the accident, had four brain surgeries.

Michael Cowen:

Wow.

Benedict Morelli:

And he's now 36, and he's limited in things that he can do, obviously. And right now, needs a fifth surgery to repair his skull. But the interesting thing about it is when I was concerned about trying this case, I brought my team in to my office, when we could actually do that. And we all spoke without masks. And I asked them, "What do you think about this plaintiff?" Because I'm very concerned about being able to get a big verdict, because he walks and talks. And he's not in a wheelchair. He's not using a cane. He's not drooling on himself. And he looks better than he is, let's say, which is, I think fair comment. And so I tried the case that way, and I told the jury, "Look, I understand..." And when I did my closing argument, he was sitting in the courtroom. And I pointed to him, and I said, "Look at how good he looks today. But let's talk about how good he's not."

Benedict Morelli:

So, I remember, years ago, I tried a case of a double amputee. And this is, I don't know, maybe 20 years ago. I tried a case of a double amputee. And it was a very tough liability case, I was very concerned about it. And when I was doing my closing argument with reference to damages, he was sitting in his wheelchair in the front, right near the jury box. And I said to the jurors, I said, "There he is." I said, "And you see him in that wheelchair? That's the way it's going to be when this case is over. You see that he's missing his two legs. Obviously, that's the way he's going to be when the case is over." None of that is for you. That's for real. I said, "But you see the tie he's wearing? That's actually my tie. That tie's for you." Just telling the truth. Telling the truth.

Benedict Morelli:

That I think is the thing that I've learned over and over again, and I've been very, very fortunate that people ask me all the time, "Why do jurors respond to you when you ask them for 40 million in a case?" Which I did, and they gave it to me. And in one case, I asked for 20 million, and they gave me 41 million. "And why did they respond to you like that? How do you know how to talk to them?" And my real answer without being flip about it at all is that I am them. I'm exactly them. I grew up like most of them. My father was a bricklayer. When I talk to them, I talk to them the way I speak normally, within reason, of course. But I don't talk down to them. I don't talk like a lawyer, whatever that is. And if I do say terms and medical terms, or legal terms, or anything like that, in the very next sentence, I say it in English. And I explain it to them. And I've always done that.

Benedict Morelli:

And many, many judges have said to me over the years that I win the case in jury selection. And I take that as a compliment, obviously, because it means that I know how to speak to prospective jurors, and I never take them for granted, to be honest. I took a couple of verdicts in 2019, and one of the verdicts I took was in a wrongful death case of an 85 year old, who died after a couple of months in the hospital. And I had to speak to the jury about the fact that they were giving money to a family and not to the person. And they have a lot of trouble with that, Michael. They have a lot of trouble with that. And you really have to talk about it. And I explained, and then they said to me, "But he's 85 years old. What do you mean you're going to ask for millions of dollars or a lot of money?"

Benedict Morelli:

And I said to them, "How many in the array remember when you know somebody casually, or the person is an actor, or someone famous, and you hear that they died? What's the first thing that you ask? How old was he, or she? And if you hear 45, you say, 'too young.' But if you hear 85, you say, 'Okay.'" Yeah, it's true. And so, I was thinking about that as they were questioning me about why would they

ever award millions of dollars for an 85 year old who's not going to get the money. And so I came up with this on the fly, because I had to, because I didn't anticipate they were going to ask me that. I'm not that good. So, I then said to them, "But now, let's think about it being your father, your grandfather, your grandmother or your mother. And that person dies at 85. And then you pound in your chest and you say, 'Too early,' and that's the difference." And they said, "We could do it."

Michael Cowen:

Wow.

Benedict Morelli:

And so I had young jurors and that's not usually the case in my cases. The foreperson was like 32, and another person was from Nebraska, had just moved to New York, and was 35. And I asked them to award \$12 million. And they came back in 28 minutes with \$12 million.

Michael Cowen:

Wow.

Benedict Morelli:

And it was liability and damages, both. So you just got to tell them the truth. Tell them what you think. And I also make it my business to not pander to them. I don't suck up to them. I'm very nice, obviously, I'm not going to be disrespectful. That's ridiculous. I might as well just take the gun and shoot myself in the foot. But what I do is, and it comes up often, where a juror, because they're very outspoken these days, will say to me, "Well, you have to be nice to us because you're trying to get us to do what you want." And I say, "Actually, I'm not here for you to love me. But I am here for you to respect me. Just like I'm going to respect you. I'm not going to tell you anything that I don't think is truthful. And I want you to always be true to yourself." And that's the way I do it.

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:

Now, I can tell, I'm imagining from the size of your verdict, I know like the Jones Beach, the Live Nation Worldwide case. I think you have the largest pain and suffering verdict in New York history, or at least the largest one that would ever be kept 40-something million. And you've done it in cases where you've tried damages only, they haven't heard the liability, so you somehow have to be learning what's going on with your client that is legitimately worth that much compensation. What do you do to internalize and learn what your clients been through?

Benedict Morelli:

Well, I don't only speak to the client, when I can, which I did in this case. I speak to the family. In this case, he was very close to his brother. I spent, and my associate David, who you met earlier, and the rest of the team, spoke to the entire family on numerous occasions, in person in the office. And we would speak as a group. And then I would assign each lawyer a family member to prepare for the testimony. While I spoke to the plaintiff. And I listened to what all the family members said, and I said, "What stands out in your mind that makes Mark so different today from the way he was before this happened to him?"

Benedict Morelli:

And each one of them had a different story about the fact that he'll just cross the street without looking, almost like he's not with it. And I thought that coming from his mom, who actually is a registered nurse, was important testimony. The fact that his brother was trying to have Mark be able to be more independent, would drive with him a certain distance to see if he could be safe, and allow his brother that independence. And instead of hiding that from the jury to say, "He can't drive anymore. That's how bad he is." I told the story. I told the story. And then I told why the case was worth as much as it was, because actually, the jury awarded \$85 million in conscious pain and suffering.

Michael Cowen:

Wow.

Benedict Morelli:

The 41 million is what the trial court reduced it to.

Michael Cowen:

It seems like you're just telling the whole truth and trust them, that they're smart enough to figure out what's real and what's not. How do you mentally learn to trust people like that?

Benedict Morelli:

Well, it's really funny. I've had a lot of experience with working with... On two or three occasions, I was fortunate enough to work with other lawyers, sometimes even from Texas, and I've second seated two or three different lawyers in my career, even though I'm not a second seat kind of guy. Because I believe in having lawyers win their case, and if I could be of help, I'll do that. And so, they often not only use these mock juries to try their case, which I've never done in my life, but they will also use jury consultants, which I've never done in my life. And during one of the trials, there was three jury consultants. And at the end of the case, I was right as to who they should have knocked off, and they were wrong, all three of them.

Benedict Morelli:

And so, if I am fortunate enough to have that instinct, I have to live and die by it. If, God forbid, I use the jury consultant, and that jury consultant said something in opposite to what I was thinking or my instincts were and I went with that and it was wrong, I would be very upset about that. If I'm personally wrong, I could take responsibility for it. Luckily, when I bet on the jury, I'm right. Because even though we know there are a lot of very difficult jurors, and difficult because they've been brainwashed by many big companies and insurers over the years, with terms like tort reform, and the like. We have a lot of

work to do when we're dealing with a jurors. I don't care what State you're in. You could be in New York, New Jersey, Connecticut, Illinois, Ohio, you got your work cut out for you. And when you figure out your theory of the case, never deviate.

Benedict Morelli:

The theme in jury selection is the theme in opening statement, is the theme indirect, is the theme in cross examination, is the theme in closing argument, within reason. Doesn't mean you don't add and subtract, but the theme, the overriding theme must remain the same. A jury can follow that. Okay, you can't... And what a lot of younger lawyers do, not all but many younger lawyers do, including me when I was a young lawyer, is we try to cover everything like a blanket, that's a mistake. It's a rookie error. You can't do that. You got to let it go. You can't cover everything. And then I have another expression that I use, don't drink the Kool-Aid. Because defendants lawyers are always offering, we plaintiff lawyers, some of their Kool-Aid to drink. They want us to follow their theme, their defense. And oftentimes, lawyers do that, they get caught up in it. They get caught up in it, and they can't stop.

Benedict Morelli:

So they're trying to discredit something when it hasn't even been credited yet. Maybe when they tell the jury their stupid theory, the jury is going to go like that, and you got to be watching. Okay. And one of the things that I would say that I think I do differently from other lawyers is in jury selection for sure. I don't have a bag. I don't have a pad. I don't have a pen. I don't take a note. I don't read from any notes. I talk to them. And I try my best to remember as much as I can of what they say. And if I forget something that they say, well, then it wasn't that important for me to talk about. But I don't sit and take notes. And I never allow myself to have a pen, so that I don't have to worry about resisting the urge to do that. Now, look, Michael, that works for me. Okay. I'm not saying that that should be what everyone does. And when I train the lawyers in my office or I give a lecture, I don't tell people to do that.

Benedict Morelli:

What I do say is, this is what I do, and what is the reason that I do it. Because it is not a voir dire, as you call it in Texas, or voir dire as we call it in New York. It's not just asking questions, it's watching, paying attention to the jurors when they answer. What's the body language? You can't always read it, but if you keep watching, you may pick it up. You may pick it up. And so sometimes, it's just very obvious because I could be questioning a jury in the first six let's say or the first 12 according to how you're selecting because I know in Texas, it's different. I'm watching some of those jurors in the back when they're making faces when I'm asking a certain question. So if they come up to the front, and I'll say, "I saw you make a face back there. Was that face about? I think it was because you didn't like my question. Am I right about that?" That's the way I like to handle it.

Michael Cowen:

I stopped taking notes in jury selection. I'll have other people that are in the courtroom taking notes, but I don't.

Benedict Morelli:

And that's okay, because then you are paying attention.

Michael Cowen:

Yeah, I find that it distracts the attention. The other thing is if someone says something negative for the case, and I stopped to write it down to judge, my body language, my vibe is changing with that juror. Now that jury is someone I'm even just subconsciously rejecting, we're not going to have the same communication, and it's going to spread to other people. So I actually just talk and listen and follow where the conversation goes. And I even tell my team, you got to pay careful attention, because I might not remember anything. I'm just going to be there talking to people.

Benedict Morelli:

You know Michael what this means? You're no longer a young lawyer.

Michael Cowen:

That's funny. Yeah. Something about that turning 50.

Benedict Morelli:

You learn, and also, I think what you say is exactly 100% right. But also, when you stop to write it down, the jury can pick it up.

Michael Cowen:

But for me, the biggest change in the whole trial, and it's something it's... I don't know, if I'm right or wrong, it's a gut feeling I have for you was just learning to trust the jury. And I was worried about looking for who's going to screw me, there's people out to get me, then that's a bad vibe, the whole trial. When I'm just like, I trust these people, they're not dumb, they're here to do the right thing, then I don't have to worry about every little argument the defense makes, because they're smart enough to figure that out. And I can stick to my case, and it's just so empowering. And it works better. When you treat people with respect and trust them, they're going to treat you better than if you're all suspicious and don't trust them.

Benedict Morelli:

Well, that's the same thing as just being honest with them, because you're not only honest in what you're saying, but you're honest, in your body language, you're honest in your whole demeanor. And look, jurors are sitting there, and they're watching you. You, as the plaintiff's lawyer, and I tell lawyers this all the time. You are the producer, the director, the choreographer, the script writer, think about it. It doesn't happen unless you say it happens. The case doesn't get tried unless you say it gets tried. Look at this great power that you have, why would you be afraid? Okay, you open to the jury, you speak first. You speak last, in most situations. And that's also state by state. But you have all of this great empowerment.

Benedict Morelli:

Why should I walk around being uneasy or afraid? Now, people have said to me, "You turned down 30 million. Wasn't there a risk?" There's a risk in everything. Did I think it was a great risk? No, I didn't. I read the jury, and I said, "Can this jury give me 10 million or 15 million, which is a lot less than that offered?" Yes, I'm willing to take that risk. Because a lot of times what I've done over the years, obviously, I don't do it out loud, I do it to my people. At a certain point, I'll know, I have a very strong sense of the jury after jury selection or after opening, let's say, hopefully, after jury selection. And I'll say

to them, "That's my jury." And once I say that, I never say unless I really feel very strongly about it. It doesn't mean I'm going to take them for granted, I'm never going to do that.

Benedict Morelli:

But you can say things to your jury that you can't say if it's not your jury, and you have to be cognizant of what venue you're in. It's not a good idea to say... And I remember the first case I tried in Illinois, in the federal court. And out of the jurors, there were eight jurors, and it has to be unanimous because it's the federal court and I had never been in Illinois in my life. This is about 11 years ago, and I had six of the eight jurors were farmers. And I opened to jury after jury selection, because the judge picks the jury. So I looked at them and I said, "I'm Ben Morelli from New York, but you know that already." Just when I opened my mouth. "And by the way, I've never been on a farm. But I'm going to tell you what I think about this case.

Benedict Morelli:

And hopefully, you'll understand I'm doing the best I can." And so never lie to them, never try to be who you're not. Years ago, when I was very young boy, there were a number of lawyers in New York, who used to believe that if they went in front of a with a beat-up old suit, and they look like they needed the money that the jurors were going to give them the money because they look beat up with old rip seats and stuff. And I always thought that was ridiculous. So, I always dressed up better and it's worked. But it's what works for you, and what makes you confident. But just, I don't know anything about the last case that you just settled, which was, I heard a very big case. But did you feel that you had very strong liability in that case?

Michael Cowen:

Absolutely.

Benedict Morelli:

Okay. So, you had, let's say, if not a royal flush, a straight flush.

Michael Cowen:

I had a royal flush, it was a very good case.

Benedict Morelli:

You had a royal flush?

Michael Cowen:

Yeah.

Benedict Morelli:

Don't play it like you got your ace high. That gives you confidence too.

Michael Cowen:

It was the most relaxed I've ever been going into new trial. It was crazy.

Benedict Morelli:

But I heard that you were going to try the case virtually.

Michael Cowen:

I was.

Benedict Morelli:

I love your guts.

Michael Cowen:

Well, my client needs the money. And when we start having non-virtual trials again, there's going to be a huge backlog of criminal and Child Protective Services cases. And I've got a man who was the family breadwinner, who can't work anymore because of a brain injury. And can this family afford to wait another two years to get a quote unquote "more perfect" trial? And frankly, because we had worked it so hard, I mean we brought in professional TV people to help us do the camera work for opening and certain-

Benedict Morelli:

I heard.

Michael Cowen:

And I didn't think the other side was going to work as hard at it. I thought we'd have an advantage.

Benedict Morelli:

They weren't, for sure. But look, the interesting thing is, and one of the things that I do certainly in the last, let's say, decade, is I have the ability to use the case for the client to borrow money. And if the case is like we say, a royal flush, I can do that and be able to negotiate the interest rate to where it's not totally prohibited. And so, I do that, if in fact I think that there's going to be an extended waiting time for a trial even before the pandemic. Pandemic's a totally different story, you know. No one knows what's going to be when we're back in business, so to speak. So you probably made the right decision. Well, certainly they paid you so you made the right decision. But that's what I tend to do before the pandemic.

Michael Cowen:

And Texas actually is one of the few states that we can actually lend clients our own money. It's a double-edged sword. One, you can keep your clients from starving. In this case, I've been... When I first got hired, they had a family of four. His wife had a sister who was actually going through chemotherapy at the time that had a spare bedroom. So all four were living in the spare bedroom.

Benedict Morelli:

Oh my God.

Michael Cowen:

The two kids on a small bed and the two parents sleeping on mattresses on the floor. And so, I actually was renting them a house, paying their utility bills, making up for the salary out of my pocket, which we can do in Texas, which... But still he needed finality and I've done well, but there comes a limit to how much I can put in at some point.

Benedict Morelli:

Sure. Absolutely. Yeah, I didn't realize that because in New York, obviously, we're prohibited.

Michael Cowen:

Yeah, most states, you are. And it's good and bad. The problem is sometimes to get or keep a case, you have to lend money for the living expenses.

Benedict Morelli:

At least, we have the courage that we get say, "We can't do that."

Michael Cowen:

Exactly.

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.

Michael Cowen:

Something else that I found really interesting there's such a trend and I admit I'm following the trend of becoming a specialist. I try to do trucking and commercial vehicle cases. And unless it's a possible seven figure fee, I'm not learning another law right now. I used to do everything and I've really specialized. I know a lot of other people to do that. You've gotten huge verdicts on so many different types of cases. I mean, not just trucking, but civil rights, medical malpractice, even like sexual harassment, employment law. How do you do it?

Benedict Morelli:

It's interesting, because I also tried a polio vaccine case that 11 to 12 years ago, which don't exist anymore. And the case was around for 30 years, because they put so many appeals. And the lawyer who had the case, said, "If anyone could win this case, it's you." So when they give me flattery, it's very hard for me to say no to case. My wife knows that. So what I do is, for me, personally, if it's a civil case, not a criminal case, don't try those. If it's a civil case, I feel that I can learn it. And when I was a very young lawyer, only admitted maybe five years, maybe from five to 10 years, I was a specialist in high cases. And so, I was trying this medical malpractice case, the first one that I ever tried.

Benedict Morelli:

And I hired or retained an ophthalmologist who did the surgery, and showed me how to do the surgery before I tried the case. But I take it as a challenge because for me, and it's always been true. I try my

very, very best to be different from what the insurers think we are. They think all we do is run after the money. And so, I run after getting the largest verdict and result and settlement for my client. And to, of course, feed my ego, that I'm good enough to get these results. And so, I try to keep challenging myself, can I get a big verdict in this case? We went to Illinois in the federal court in the sexual harassment case. And I'm sitting in this room with, I don't know, 75 prospective jurors. And the judge is picking the jury, and he's asking them, "How many think this?" And they're raising their hand and whatever.

Benedict Morelli:

And then he brought all of the jurors out after he did his voir dire. And he said, "Okay lawyers, now I'm going to give you an opportunity to tell me how many questions you want me to ask and which questions. And I'm not saying I'm going to ask any of them, but tell me what you think. Mr. Morelli, what do you think? Do you have a question or questions that you want me to ask? And I said, "Yes." And he said, "How many?" And I said, "One." And he said, "What?" I said, "One." He said, "Okay, what's the question?" I said, "But wait a second. I ask that you ask that question to each person individually and get their voice answer, not raising their hands." "What's your question?" I said, "What comes to mind when you hear the term sexual harassment?" He said, "I'll do it." And 50% of the prospective jurors were excused.

Michael Cowen:

Wow.

Benedict Morelli:

Okay. And that's when I wound up with these eight jurors and two alternates. And they awarded \$95 million.

Michael Cowen:

I was wondering about what was it that made that case a \$95 million case? What facts were there?

Benedict Morelli:

The plaintiff was a young woman, young blonde woman, about 23 years old. And the only treatment she had, was two visits to a psychologist. Okay. So that the award for compensatory damages for those two visits was \$15 million. Okay, the punitive damages was 80 million. Right? Now, I can't say that this was not a very terrible sexual harassment case, because it was. Because after they were calling her names, and she was working with all-men in this store, with, I don't know, maybe eight or 10 men. And every once in a while, they would grab her, like her backside and things like that. Ultimately, the manager took her in the back one day, threw her down and tried to have sex with her. And then he masturbated on her.

Benedict Morelli:

Okay. I don't really think that anyone, anyone, can hear that and say that that's not terrible. And so, did I have the goods with reference to that? Yes, I think I did. But I read it right. Now, I could have settled the case during trial for \$2 million. But I refused to do. Obviously, I spoke to my client. But I usually have a lot of sway over my client. And I got so lucky in that case, because if you think about it in the federal court, in that jurisdiction, I get two summations. So I sum up first and last. And then, I was lucky enough

to have a punitive damage trial. So I summed up again, so this is the case in my career that I summed up four times. And how much do we love that, Michael?

Michael Cowen:

Absolutely.

Benedict Morelli:

We love giving closing argument before in one case, great.

Michael Cowen:

Now, you have said a number of lawyers working under you, how do you motivate and then supervise the lawyers that work for you to make sure that you're maintaining that standard of excellency you have? You're in a legal position and have the case worked up to be able to go try these cases at a high level?

Benedict Morelli:

Well, what I do is, I make them know one thing, that although I rely on every single one of them, on the team, to do what I asked them to do, like one will do all the motions eliminate, and the other one is making sure that that particular witness is prepared. But they know that no matter what they read, the medical records, the documents, because in some cases, a document heavy and some are not. Whatever it is, they know at the end of the day, I'm going to read that too. So, I'm going to rely on them to tell me everything before I even read it sometimes, often times.

Benedict Morelli:

But they know I'm going to, and they know that I'm not going to take a rest and go into a recliner, smoke a big Cuban and say, "Okay, youngins, you got to work. I don't have to work anymore. I'm too important." I'm never too important. I'll never be too important. My father is actually deceased a long time and he told me that if I ever become too important, and then I wake up and realize that I've become unsuccessful. So, never, I always do the work myself, and I'm lecturing them all the time. During this pandemic, we've hardly missed a day, every morning at 10:00 AM. And I didn't do it today to be on with you.

Michael Cowen:

Thank you.

Benedict Morelli:

But every morning at 10:00 AM, I have a Zoom call with the lawyers. And Monday, Wednesday and Friday, after that call, I have a Zoom call with the office. And we talk about all different kinds of things. We talk about the pandemic, we talk about if we're feeling depressed, we talk about keeping our spirits up. We talk about working hard, but making sure that at the end of the day, that we relax, and we realize that it's going to be over. There's a light at the end of the tunnel. And so, I'm constantly lecturing them, whether they like it or not. And I have a lot of stories of cases that I've been on, because I've been trying cases for so long. When I first started, I tried Small Claims cases. I tried property damage cases that never exceeded \$3,000.

Michael Cowen:

Wow.

Benedict Morelli:

And those property damage cases, I tried them with juries, because we could then in the civil court, then I tried personal injury cases where the most I could recover in the civil court was \$10,000. And we used to call that ringing the bell if you got 10,000. So, after I tried five cases in a row and hit the 10,000, the people I was working for at the time said you got to try Supreme Court cases now. And so, my background is just different from many ways today, but you have to adapt, because Michael, you know how you have to learn how to be a trial lawyer. You know what makes you better. You know your learning style. And the way you already stated today about your jury selection, I know you get it. Okay. And you'll have other people doing it, but you're paying attention, you're not just relying on them.

Michael Cowen:

No.

Benedict Morelli:

And they're going to give you a script at the end. I mean, I've seen lawyers do this when they get to a certain level where they think they're important. And now, they're reading someone else's words.

Michael Cowen:

Well, the problem is, if you don't know every document, you don't know every deposition and everything, then when something comes up, I mean, a trial's a dynamic event, you don't know where to go to fix it.

Benedict Morelli:

Yeah. And not only that, look, they call it "thinking on your feet," but when you're sitting at the trial table, and your adversary is questioning, "You're thinking on your butt," so got to make sure you're always in the game.

Commercial 3:

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Benedict Morelli:

Look, I think that it's really important for people to not be afraid of any particular case. Because, Michael, as I now realize you're a 50 year old lawyer, so you're in a really great position. And the position that you're in is, I call you old enough and young enough. And you're smiling, but it's true. Because I saw someone on television the other day, who's an ex running back in the NFL. I think he's actually from Texas. And now, he is a cook, he is a chef. He's on television, and he's a very dynamic guy. They say to him, "Do you miss playing in the NFL?" And he says, "Not at all." He says, "You know any 70 year old running backs? But you know some 70 year old chefs." And so I think that you are probably

going to get to a point that you're going to want to try different kinds of cases because I'll tell you what happened with me. About 15 years ago, I decided I had won enough cases. And I had done everything and achieved everything that I wanted to achieve.

Benedict Morelli:

And now, I'm just going to run to the office and negotiate and do all of that. And that lasted actually a few years. And then what happened was, I said, "I'm yearning to try a case." And I went back. And at that point, because I was out of it for a few years doing trials, I was still practicing. I think, in some way, I was wondering, could I still be as good as I used to be? And I was better. And I think because I was hungry again. You know what I mean? I had taken a little time off from trials, and I was yearning. And I said, "Wait a second, this is who I am. This is what I do." And so I went back, and I got 95 million and 62 million and 12 million, and I just kept going. And I said, "Hey, listen, I'm a trial lawyer. And as long as I'm healthy and able to do it, and God's good to me, I'm going to keep doing it as long as I can."

Michael Cowen:

And I hope you keep doing it for a long time.

Benedict Morelli:

Thank you, Michael. Thank you for the opportunity for me to be able to talk to you about certain things that I've done. And you should understand that when I represented Tracy Morgan, the first thing I said to Tracy when I was in his house, and if you speak to him, he'll tell you. I said, "Because you have a lot of people working for you, you have an entertainment lawyer, you have an agent, you have a business manager, and all of these people don't survive unless you work, because they get a percentage of what you do. And please understand, I don't work for you. I represent you. So you're going to listen to what I tell you to do. I'm not going to listen to what you tell me to do." And that's the difference in the dynamic of our relationship. And we're still friends today. And that's the way... Famous people are not the same to deal with.

Michael Cowen:

That's one last question because my mom will kill me if I don't ask you about this. So you've had famous plaintiffs, but you've also had famous defendants. So what was it like suing Bill O'Reilly?

Benedict Morelli:

It was nerve wracking?

Michael Cowen:

How come?

Benedict Morelli:

It was because it was about 15 years ago, I think. And I have a lot of confidence, and I'm not afraid to sue anyone. And I had sued a lot of big companies already by that time. But Fox News doesn't play the same as anybody else. And he was the major money earner. And so, they went after me, my wife, my firm, with a vengeance, where they would put things true or untrue in the newspaper about me, mostly untrue. They had people on cable networks saying, I know this guy, Morelli, would've discredited him, and he's nothing." And you might think you're a tough guy, but that's tough to deal with when you're

trying to litigate a case. And what they did to be able to silence me and make me drop the case was they sued me personally, and they sued my law firm for something that doesn't even exist, called civil extortion.

Michael Cowen:

Wow.

Benedict Morelli:

And in the complaint, when they sued me, they named my wife in the complaint, saying that the only reason why we were going after him was to affect the election of George W. Bush. Okay, and that she was a democratic operative. So, that's not easy to deal with, Michael, not for anyone. And so did it stop me? No. And I'll tell you to the credit of a number of lawyers out there, civil lawyers, I was getting calls from a number of civil rights lawyers, who called me and said that they would represent me as a defendant, because I was being sued for free.

Michael Cowen:

Wow.

Benedict Morelli:

Okay. Three different law firms called me, that's how invested and how much they believed in civil rights. And also, they knew what Bill O'Reilly was doing was wrong. So, they actually reached out to me and said they would represent me for free. I didn't go that route. I hired my own law firm. But that's the reason why it was nerve racking, I have to admit.

Michael Cowen:

I bet. Yeah. And of course, a lot more stuff has come out about not just Bill O'Reilly, but the whole culture at Fox and how they were treating women.

Benedict Morelli:

And it's so funny because I was on my way back from DC handling a case a couple of years ago. And we were on Amtrak, and I was with two of my lawyers. And we were in a four top. And one of the people sitting next to me, the fourth person was a woman, maybe in her 40s, dressed as a business person. And she was listening to us talk. So I think she figured out we were lawyers. So, all of a sudden, she turns to me without even introducing herself. And she said, "What do you think of the Me Too movement?" So I was taken aback. I said, "I think a lot about it." I said, "Because before there was a Me Too movement, there was a Me movement, because I sued Bill O'Reilly 15 years ago when I didn't have any cover." So, that was an interesting conversation.

Michael Cowen:

And you hadn't have done that, first one who knows what would have happened next. But I mean, would it ever have become uncovered if someone didn't take all those shots to find out the truth?

Benedict Morelli:

I didn't know that that's what I was doing at that time. I was representing a client. I thought she had a real case, and it was upsetting to me. So I didn't realize that I had a larger purpose, but I'll take credit for it.

Michael Cowen:

Well, thank you very much for joining us. I've gotten a lot. I'm actually really inspired to go try my next case hopefully in March, and get back in there.

Benedict Morelli:

The only advice that I'm going to give and I try not to give advice unless I'm asked, but I'm giving it anyway.

Michael Cowen:

Thank you.

Benedict Morelli:

Don't pigeonhole yourself. You can try traumatic brain injury cases, obviously, you've learned that area. You can try trucking cases, obviously, you've learned that area. But you could try any civil case, because just the way you learn that, you could learn other things. And you're too young to be in one lane. Sometimes you have to change lanes. Remember what I said, young enough and old enough.

Michael Cowen:

Yeah, I was talking to my 15 year old son about that this morning actually. I was like I'm finally starting to learn what I'm doing, but I have enough energy to keep doing it. So this is like my primetime.

Benedict Morelli:

It is. It's great. Great to meet you, Michael.

Michael Cowen:

Great to meet you, too.

Outro:

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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

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