

Intro:

This is Michael Cowen. Welcome to Trial Lawyer Nation- You've got to have the right case, because if you take it up and it's the 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 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. 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 good friend of mine. In fact, one of my classmates from the Trial Lawyers College back in 1998, a great trial lawyer from Longview, Texas, John Sloan. John, how are you doing today?

John Sloan:

I'm doing great, Michael. Thank you for having me on. I've enjoyed listening to your podcast since you started it. I jumped at the chance to be a guest on it. So I'm ready to try to teach some things and hopefully help some lawyers out there.

Michael Cowen:

Well, thank you. I'm still honored and frankly somewhat surprised that people listen to me. I started this thing a couple years ago. I didn't know that anyone but my mom would listen to it. But it's been something fun. Luckily, it's been something that I think we've been able to provide useful content. So tell us all a little bit about your practice. I think a lot of people know who you are through the Trial Lawyers College because you've served as the President of the Trial Lawyers College. But you're also known, maybe not as widely a nationally but definitely in Texas and New Mexico as a very successful trial lawyer in your own right. So tell me a little bit about your practice and what you do.

John Sloan:

Well, this month was my 40th year since I was sworn in as a lawyer in 1980. I started out in a small town, my hometown of Henderson, Texas. I didn't even take the time to drive to Austin to get sworn in. My boss at the time administered the oath in front of my mom and dad. I was very lucky in a lot of ways, starting out in that I was pretty much left unsupervised. In fact, I was told by my boss, who was a great guy, and I loved him to death, "Don't come ask me any questions, figure it out yourself." He meant it. He did.

Michael Cowen:

Wow.

John Sloan:

Yeah. He didn't mind having a little discussion at the start of the day about politics or the weather or something like that. But he didn't want to talk to me about losses because he was involved in real estate

development and building hotels. So about five weeks after he administered that oath to me, I announced ready in a murder trial in my hometown there and tried that case by myself from start to finish. So in the first three years of my practice, I tried murder cases, aggravated assault cases, a DWI case, a handful of car wreck cases, a boundary line dispute between a 93 and a 91-year-old men that were neighbors, divorce cases. I mean, I handled and tried them all.

Michael Cowen:

So you tried a bunch of cases, how did you learn how to try cases? I mean, you went to law school, but you only learn so much there and what is it you did to kind of figure out, "Okay, what's going to work for me?"

John Sloan:

Well, there was a lot of emulation, a lot of copying of successful lawyers there in my hometown. We were across the street to a firm called Welburn Houston. One of the lawyers in that firm, a guy named Glen Perry is one of my partners now. He and I have reminisced a lot about being at the office late at night. We'd stand on the opposite street corner and talk to each other before we finally went home. As you know, I mean, trying to get started practicing law is not a 8:00 to 5:00 or a 9:00 to 5:00 job.

John Sloan:

There's a lawyer from Dallas named John Wilson, John "Bad" Wilson was his name, he was a big worker's comp lawyer. Back in those days, we had lots of worker's comp cases. He always said that in order to become a good trial lawyer, you had to be a weekend warrior. So there might be some good trial lawyers now that don't work weekends, but that's not how they started out. My son used to say, "Dad, I really don't want to be a lawyer because you got to work too hard." So I would go across the street, and I'd go to the district clerk's office. I'd get files out and I'd take them in the backroom and I'd read depositions. I'd read pleadings. I'd beg, borrow and steal what those guys across the street at the Welburn Houston Firm were doing.

John Sloan:

I had really good training. The Trial Advocacy Program at Baylor was a really good program. We had a great professor named Matt Dawson. I guess the rest will be trial and error. Bless the hearts of some of my clients that I had at the time because I probably was not the greatest to come down the pike. But we did okay, we did really well.

Michael Cowen:

Yeah, I've looked back at my earlier trials where even some of my trials in the last 10 years where on one hand, you go back and you kick yourself about like, "I wish I knew then what I know now." But if you really look at it, just the willingness to put the work in gave the client a better trial than probably a lot of other lawyer. First of all, a lot of other lawyers wouldn't have given the trial, would have found some way to plea it out or settle it. Then just having a lawyer that believes in you and is willing to put the work in, I think is really 80, 85% of it. I think that a lot of the other stuff we do is just the marginal stuff that can make a difference in the right case. But at the very, very heart of it, it's just doing the work and believing what you say.

John Sloan:

Yeah. Michael, you're exactly right. These clients, and I feel this way even more strongly today, deserve to have a champion that believes in them, that knows that client, and who is willing to give the all that's necessary in order to give that person a good trial. These guys that think that they can pick up the file on Monday morning and go over and try a case and do a great job are sadly mistaken. They're shortchanging their clients. There's just no substitute for putting in all the work that's necessary to know the case backwards and forwards. One of our mentors, and I mean your mentor and mine is Gerry Spence who says that you got to put in 10 hours outside the courtroom for every one hour that you spend in the courtroom.

Michael Cowen:

At least.

John Sloan:

Yeah, I think that it's more like 20, 25. I think there's just no substitute for being better prepared.

Michael Cowen:

Well, there's so much more information available now than even when I started. I mean, when I started practicing law, cellphones existed, but I couldn't afford one even on a lawyer salary because the per minute charge, and it was just a phone, it was not something that you could look anything up on. There was an internet when I started, but it wasn't much there.

Michael Cowen:

You did dial up and maybe went to AOL, but there wasn't a whole lot of useful information on the internet, everything was done on paper. Now the amount of information we can find that's potentially useful on a case has just exponentially increased, which is good because we find all kinds of great stuff. I mean, just corporate employee's LinkedIn profiles sometimes when the difference between their job description and what they claim to do in a lawsuit and then once you put that out there, they open up a little more.

Michael Cowen:

But then it means it's even more work, more preparation. I think we're in the golden age of trial advocacy education. There are so many really good people teaching things that are not necessarily consistent with each other. So there's so much more information to process and to find what works for you and what works for the case that it's wonderful. But it's also can be overwhelming.

John Sloan:

It definitely can. I mean, there's so many arrows that we can acquire and put in our quiver to prepare for trial and go and try a case. It is. It's truly amazing. Like I say, I learned from looking at files over at the district clerk's office. There weren't that many seminars that we could sign up for and go to and sit at the feet of the masters and learn how they became who and what they are. There's really no excuse now for not having the top tools to use in trial because they're so readily available, like you say.

Michael Cowen:

Yeah. The culture of sharing has really changed too since I started because fairly early on in my career, I went to work for an experienced trial lawyer. For various reasons, he quit. I had to start my own law firm

way before I was ready. I remember I talked to another really, really, really good trial lawyer that had an office in the Rio Grande Valley of Texas, Brownsville, where I lived, and asked him for a job. He flat out told me, "Michael, if I hire you, you're going to learn all my secrets and go compete with me. So I'm not going to hire you." There was this sense that there's a set of secrets that people had to keep to themselves for a competitive advantage. Now I see the exact opposite. I see this abundance mentality, people sharing, trying to all make each other better.

John Sloan:

Well, yeah. I mean, the attitude now is that rising water lifts all boats. So let's help each other out and go kick the butts of some big corporations and insurance companies.

Michael Cowen:

Ironically, I personally thought, I don't know about you, but for business, when I am freely sharing with other people, they're far more likely to bring me business opportunities when they have that right case where they want help or need help. They're far more likely to go to the person that freely shared with them. The person said, "No, this is mine, I'm not going to share with you." You give to others, you tend to get back. I'm not saying that's the reason we should share. We should be willing to share whether or not we're going to get something in return. But I have found that over time, that the money takes care of itself just fine.

John Sloan:

The amazing thing, and you know this as well as I do, when you teach when you speak at seminars, when I teach at Trial Lawyers College events, I get more out of it than my students do. I mean, just the opportunity to concentrate on one subject there, prepared to try to communicate that others does so much to educate me. I mean, it's like that my first boss telling me, "Figure it out on your own." I did figure it out on my own, and I learned it. I looked at it once and I used it, and I didn't have to go back to look again to remember the next time.

Michael Cowen:

Now, you talked about how many trials you have the first few years of your career. I hear from lawyer after lawyer and nowadays, it's just impossible for a young lawyer to get trial experience anymore. What do you think about that?

John Sloan:

Well, it's harder. I'd say it's harder than it used to be 40 years ago to go to trial. But if you truly want to try cases, there are plenty of opportunities out there. I think I've heard you say before that you would go to other lawyers that had car wreck cases early in your career and say, "Hey, let me try your cases." That's kind of a similar thing to what happened to me when I decided that I wanted to specialize in personal injury cases.

John Sloan:

There's a lawyer that lived in a town about 60 miles from me, who was kind of in the zenith of his career. He really cared more about trying criminal cases than he did civil cases. But he was well known and a lot of people came to hire him. I went to him and said, "Look, I'll split the fees with you let me handle all your civil cases." Oh my gosh. He inundated me with civil cases. There was a time in the county where

he lived where I probably had tried more cases than any other lawyer in the county just because he was feeding them all to me, and I was willing to go try him. That really helped give me a boost to my career.

Michael Cowen:

Yeah. I think part of it is that you have to ask yourself, "Do I want to try cases and do what it takes to learn to try cases versus getting there and try and get with ..." Which are going to be cases where you have a real chance of getting a bloody nose in the second place red ribbon. Is it that I want to try mega cases where I'm going to look good and get a multi million dollar verdict around the criminal side, get that not guilty? Am I not willing to take the risk? Am I not willing to pay the dues and do the hard cases? Frankly, even at my firm, I mean, if we have an awesome, awesome case, I'm going to try it. There's trial opportunities in my firm, but they're probably not for the someone that's only tried one or two cases. I'm not going to send you in there on a multimillion dollar case.

Michael Cowen:

I mean, sometimes this sounds awful, but it's like, "Well, this dog needs to be put to sleep. You're going to go take the hit on it." Malorie Peacock, my partner, now I flat out told her, I mean, I said, "Look, go do your best. But this is just an old dog that needs to be put to sleep." She came back with a win that I don't think I would have gotten. I was just so pleasantly surprised. Slip and fall, slip and fall case against a really, really good lawyer.

Michael Cowen:

Sometimes you can win cases that the more experienced lawyer can't because you don't know you can't win it. But I think it's that, are you willing to take the risk? The other thing is, I don't know about you, but I've lost a few cases.

John Sloan:

I have lost probably more than my share.

Michael Cowen:

Yeah, I've lost more cases than most people know tried. Yeah, which comes to it, if you want to win more cases than most people tried, it means you're probably going to go lose some cases too is you have to learn to deal with that. So how do you deal with that? I mean, it's never fun to lose a case. How do you keep your mojo, so to speak after a loss?

John Sloan:

It's tough. I mean, I can think back to cases that ... I don't remember many that I went into it thinking I'm fixing to go kick somebody's butt here, and end up with a goose egg. But as you know, once you pick that jury and once you get in the middle of trial, I mean, I start thinking that, "Oh wow, I've got this." I start believing my-

Michael Cowen:

Absolutely.

John Sloan:

Believing my own stuff. So any case that I try, if I get to the end of it and I lose, it's a heartbreak. It's just the kind of thing, you got to get up and dust yourself off and get ready for the next one. Some people debate whether or not insurance companies look at a particular lawyer and say, "Oh, that guy that tries cases or that lady does not try cases." That affects their valuation, and I fully believe that it does.

Michael Cowen:

I do too.

John Sloan:

Yeah, I mean, some of those get good cases that I would have loved to have tried 20 years ago and had the opportunity to try, I don't get to try now because they offer money that my client just can't turn down.

Michael Cowen:

I find even when someone beats you in a trial, if you gave them a hard fight and they knew like, "Hey, this person didn't just go falling down. They took the math. I was nervous, I was scared, I don't want to go through that again," They respect you more, and they're more likely to pay you money. It's always better to win. But if you're just looking at adding value to your cases, you don't have to win your trials, just the the willingness to try them and to have put the work in in advance so that you try them well.

John Sloan:

Absolutely. You show up and they know that you put the work in. They know this is ready. They know that case could have gone either way. They're going to think about it the next time before they take you to the map.

Michael Cowen:

So some of the things I'd like to talk about that you and I had a little talk before this about what we're going to talk about. So you've talked a lot about and you put a lot of work into role reversal and how role reversal techniques can be used for trial.

John Sloan:

Yeah. Well, I think that role reversal, which you and I understand is just really putting yourself in the place of your client, spending the time to really get to know your client. I do this and I know you do this on a serious case that's going to be tried. I try to spend as much time at my client's home as I can because I think you really get to know them a whole lot better than you can in the sterile environments of your office.

John Sloan:

But even from the initial interview, before I went to the Trial Lawyers College, it was like I would interview a client and I'm really looking at them as a cause of action as opposed to a living, breathing person. I'm asking them questions only designed to elicit the facts of their case, and not really talking to them about what their hopes and dreams and family and background, and all those things that really mean something to that person.

John Sloan:

One of the remarkable things that I found in my practice after I was a student at the Trial Lawyers College is that my relationship with my clients is so much deeper, so much more enjoyable. We all run across people in our daily lives or in our practice that maybe I know early on, I'd say, "Well, I don't know. I'm just not really fond of this person." But when you get to know that person and you get to understand who they really are and the facts, the experiences of that person below just the surface of what causes of action they represent, find something that you like or love about just about anyone.

John Sloan:

The way that you do that is we call it a listening exercise at the Trial Lawyers College. It is kind of listening for the story underneath the words that are being spoken, trying to recognize the emotions that go into what the person is saying. It's amazing how that person feels valued. It may be the first time in their life that anyone ever really heard them or they felt like someone really cared about what they had to say. That solidifies that bond between the client and the lawyer, and really helps you be their advocate and present their story.

Michael Cowen:

Yeah. I really had that come home to me in my last trial. I mean, I've said that before, and I thought it was some people. But whether we ever collect a dime of my last verdict, just the transformation I saw in her over the week of trial, in the weeks leading up to trial of I think for the first time in her life, being valued as a human being and being listened to, and not being interrupted and not being dismissed, I think is going to have, I hope, a transformational change in her life regardless of the financial outcome of the case.

John Sloan:

Absolutely, yeah. To me, looking back over my career, I mean, that's really what this is about. I mean, I became a lawyer, as cliché as it sounds, to help people. I think most of us that love what we do say the same thing. Regardless of the financial success, those relationships are hugely important. I mean, people send me cases even today that I represented 30 some years ago. Like a couple of weeks ago, I had a lady come see me who's now a nurse. When I met her, she was a four-year-old who had lost her daddy in an oilfield accident.

Michael Cowen:

How awful.

John Sloan:

Just the fact that she would love me, and I haven't seen her since she was four. Now she's 25. Just you talk about fulfilling.

Michael Cowen:

Yeah.

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 commercial vehicle cases. If you have an injury case involving death or catastrophic injuries and would like to partner with our firm, please contact us. You can reach

Delisi Friday by calling 210-941-1301 or send an email to Delisi@CowenLaw.com. That's D-E-L-I-S-I @CowenLaw.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 see where we can add value in a partnership. Now, back to the show.

Michael Cowen:

Let me ask you this. I mean, I know psychodrama is a way to incorporate row over us all and put it into action. But do you need to do a full on psychodrama to reverse roles with somebody?

John Sloan:

No, absolutely not. I mean, it's a skill that has to be learned, obviously. But I mean, you can do it in just in conversations with someone or with your wife or with your friends or with your partners in your law firm. It's just trying really hard to see things from the point of view of the other person. No, you don't have to do a psychodrama in order to do it. I think you can do it in everyday conversations.

Michael Cowen:

Yeah, I think it's also in dealing with our ... When we're talking about our staff people dealing with our clients, because the fact is when we used to travel a lot before we got stuck at home. We're doing all kinds of things. Often it's a paralegal or someone else that's taken the daily calls. You've represented brain injured individuals before. They can be very difficult to deal with on a daily basis because they're brain injured.

Michael Cowen:

I mean, they don't remember things. They get irrationally angry, they don't process things well. But any client that's facing some severe loss is going to have a long term change in their life, whether it's because they're not going to be able to work again or they're going to need medical care for the rest of their lives and don't know how to pay for it. Just reversing roles and realizing the stress and fear and anxiety that they're going through and then going through a system that is absolutely foreign, it's almost a foreign language, a foreign way of thinking that makes no sense. When you go into your interactions with that frame of mind, it's a lot easier to approach them with love and comfort instead of being reactive and pushing back and being offended when they get worked up or upset or use an ugly tone.

John Sloan:

Absolutely. It's really something that I have to confess, I don't do enough training on in my firm. I need to concentrate on doing that more. But not too long ago, I spoke to a group of legal assistants. That's what we did as a part of my talk is we did the listening exercise. I can't tell you, I mean, you know what it was like doing it the very first time and how really valued you feel when someone's really listening to you and they can talk about not only what you said, but also some of the emotions that you you felt in experiences that you've had in your life. That group talked about how transformational it was, have sent me emails since then talking about how it's helped them in dealings with their clients. I think that's something that we don't use enough in our offices.

Michael Cowen:

You've also talked about before when we're talking before this, listening with a third ear when you're doing this kind of listening. What do you mean by listening with a third ear?

John Sloan:

Listening with your heart. I mean, listening not just with the two ears that you have, but listening for that story that is beneath the words that are being spoken. That third ear is the emotional content of what you're hearing from the client. When you concentrate hard and when you really focus on what that person's saying, and empathize with what they're saying and what they're going through, that's when you activate that third ear.

John Sloan:

Maybe to some of the listeners, it sounds hokey. But I promise you, if you'll just take the time, in a quiet place, and listen closely and listen for the words, maybe the words that are not being spoken. But those words that if they had the ability and some of our clients don't have the ability, but if they had the ability to say those words, those were the emotions that would be coming out from what they said.

Michael Cowen:

Yeah. I think it's one thing that listening exercise. I don't know, some of our listeners have gone through it, some haven't. But one thing to me that's so important when we're talking about reversing roles is that in listening exercise, one person sits behind the other. The person in front says something, and then the person behind tries to say it back so that the person behind, all you're doing is you're listening, you're trying to put back what they're saying, not a commentary, but a really important part of it as you check in it. But is that right? Does that fit?

Michael Cowen:

At least with our own clients, I do a lot of role reversal in my head. But then I also make sure that it's not just my fantasy. I need to go check in and make sure that that's really what the other person's going through, just like in a marriage. My wife might think because of my behavior one day or my mood, that I'm mad at her or that maybe there's something she did or that I'm feeling guilty about something that I may have done that I don't want her to know about.

Michael Cowen:

I may be upset or preoccupied over a case or someone that cut me off in traffic over at my parents, I mean over a million things that have nothing to do with her. But if we don't check in, not just reverse roles, but then check in to see are we accurate, I think that there's a danger. I think that's one great thing that exercise teaches is tuning in to see are you getting it right or not when you're trying to reverse roles or trying to listen with that third ear?

John Sloan:

That's a really good point. I'd also point out that, I mean, you can be sitting across the table from the person. Sometimes if you will sit the same way the client's sitting with the things that they say perhaps repeat back to them the last two or three words of what they said, like yourself talking about, say to that person. So what I'm hearing you say is this has happened or you've experienced this emotion or your family's been affected in these various ways. That validates what you're saying or what they are saying. It also makes them feel free to share with you those things.

Michael Cowen:

Absolutely. We talk about doing this with our clients. How about reversing roles and using the listening with defendants? So people that are on the other side of the case?

John Sloan:

Yeah, absolutely. I think that it's effective. I tried to do this before I go into deposition, to think about and ponder on and reverse roles with the defendant to try and think about those things that if they felt free to tell you that, they would. Think about the things that in a private meeting with their lawyer, maybe they've shared with the lawyer, but they would never say to you.

John Sloan:

So a lot of depositions, I'll start not with what's your name or where do you live or ... I'll start with something like, "Mr. Jones, have you accepted your fault for causing this wreck," or, "Mr. Jones, you acknowledge, don't you, that you were at fault and you caused this wreck," Or, "Mr. Jones, have you accepted your responsibility for what's happened to my client as a result of this wreck?" It's amazing how that question or questions like that, and a there's thousand different variations of it catches that person off guard.

John Sloan:

They're not 30 minutes into the deposition after you ask all the facts and figures about their life. I for one, don't take four hour depositions. Sometimes I take really, really short depositions when I get answers to questions like that that got to the heart of what we're talking about.

Michael Cowen:

Yeah, absolutely. I think the other thing that is really good is it helps us approach in our words, in our body language, in our tone, approach the defendant without anger, let their words, let their conduct get the jury upset because if we come in, upset or angry or mean, the jury is not with us, they have to get there on their own. I learned this early in my career the hard way, we can really turn off a jury.

Michael Cowen:

A lot of times we are really mad at the defendant because of what they did, and especially all the crap their lawyers are doing. But if we go back and just try to reverse roles and see it from that defendant's point of view, which isn't excusing what they did at all because I've got a 15-year-old son who I love more than life itself. But I have to have father-son conversations, which is not always, "You're doing great son." Sometimes it's like, "Hey. You need to get off your butt. I mean, this isn't right, you need to do this differently or there's going to be a consequence."

Michael Cowen:

I think sometimes we have to look at ourselves as you know society's loving parents, fathers and mothers, with these companies in these defendants. It's not that we hate them or want them to unduly suffer, but when they do wrong, if they don't have to make up for it and compensate the people they hurt, then it's actually a moral failing on them. It's going to hurt them because they're not going to improve or they're not going to get better. But then that lets the jury get mad at them when they don't react appropriately, when you're coming at them from the right place, and then they react constantly to you, because you hit a nerve. Well then, who's the jury going to think the bad guy then?

John Sloan:

Yeah. Another thing, Michael, that I think is really important is in these commercial trucking cases, to push the responsibility for what happened as high up the totem pole as you possibly can. In some of my cases, it seems like that the operator of the commercial motor vehicle is almost as much a victim as my client is.

John Sloan:

They got thrust unwittingly into a situation where this was just an accident waiting to happen. They weren't properly trained, and they weren't properly vetted. They weren't properly warned, and they didn't have the proper safety training. They weren't reminded of other things, the dangers that they face, they weren't reminded of all the things that are in the commercial motor vehicle rule book. That's when a jury really gets torqued up is when you got a situation like that.

John Sloan:

They've got a driver, who they can probably identify with, but you got somebody up the totem pole that's a safety manager that's not doing their job or you got a company that is so anxious to get their trucks out on the road and carry their goods from Point A to Point B, that they forget all about the safety of the other people on the highway.

Michael Cowen:

Yeah, or they put out a manual that says these are all things you need to do to be safe, but then in the way they pay their drivers by the mile and the way they dispatch them and push them, if you don't break all those rules, you can't make a living.

John Sloan:

Exactly.

Michael Cowen:

To be the best case and hypocrisy as they know the right way to do it, but then for money or just not ... A lot of it is just not caring enough about the value of other human beings, both the other people on the roadway and your own drivers. I mean, to have someone tonight, you're going to sleep from midnight to 8:00 AM. Tomorrow, you're going to sleep from 10:00 AM to 5:00 PM or just to put people through that, and then put people in situations where they have to cheat and lie to make money because the company's looking at the way and putting in situations where you're getting paid by the mile.

Michael Cowen:

If you follow the rules, and all the time you got stuck in traffic and all the time you wait around are being counted against your hours, even though you're there working for us, we're not going to pay you for all that time.

John Sloan:

Yeah.

Michael Cowen:

That's so unfair to these drivers. But if we go just try to beat up on the truck drivers, I mean, we're big, powerful lawyers beating up on working people trying to make a living. It's not very motivating.

John Sloan:

No. That's where, like you say, you can raise the ire of the jury towards you as opposed to where it ought to be focused, on these people that are up above calling the shots and putting these poor truck drivers in the situation where if they want to make a living and feed their family, they're going to have to violate the rules.

Michael Cowen:

Yeah, just switching truckers to hourly pay would would save so many lives every year, I think.

John Sloan:

Absolutely. No doubt about it.

Michael Cowen:

Something else that we've talked about, and I heard this very early in my career from a magistrate judge named John Black. He was one of my mentors, he since passed, but you just brought a warmth to my heart because you said the same thing today when we were talking before the interview about there's a difference in trying 50 cases and trying the same case 50 times. What does that mean?

John Sloan:

Well, and I have to make a personal confession to make the point. But I went to the Trial Lawyers College after I had practiced law 18 years, and I tried a lot of cases. I don't know, I probably was pushing 100 cases or more by that time. But I worked hard, I worked hard on my cases. But I didn't give the cases the individual attention that they deserved. We used whiteout still in those days. I'd take a Voir dire from a case that I'd done before and wipe out the names and write in the new name and take that over. That would be my outline for Voir dire rather than really pondering on that particular case and just think I could cookie cutter my cases and go do well.

John Sloan:

I was reasonably successful. But I didn't enjoy it as much as I do now. Obviously, the size of the cases that I trial now are different than they were 22 years ago. But I just find that my practice is so much more satisfying because I spend the time, take the time to know the clients, to know the cases inside and out to know the science, if it's a case that involves science. I don't think that I could still be doing this at age 65 if all I was doing is going over and saying the same words over and over and trying to make those plots in two different cases.

Michael Cowen:

I guess one of the big advantages we have over a lot of defense lawyers, I see you can get their prior transcripts, and they'll use the same analogies, the same stories and everything else over and over. I was somewhat guilty of this. I mean, I would still do things like go to the client's house, make sure we have friends and family. But I've put it off trying a lot of car wreck cases and was doing well, not every case, but every third, second or third trial, I'd get a verdict no one else could get in the county on a

chiropractor on a car wreck only case and kind of got a system. But about eight, 10 years into it, my verdict started going down.

Michael Cowen:

What I realized is a couple things. One, I was getting the rut and just checking the boxes and going through and trying the same case over and over. But the other thing is just in 10 years, the societal attitudes, jury pool had changed. The arguments, themes that worked 10 years before didn't work as well.

Michael Cowen:

I feel bad for the clients that got the mediocre results in that halfway part of my career. But for me personally, it's gave me the kick in the bud I needed to start diving in deep again and really trying to improve and get better, find ways and then eventually got the guts to start saying no to cases, which gave me the time to really work up the ones I had. You ever have any problem problem saying no to a good case just because ...

John Sloan:

Oh gosh. I can still remember back to where I was scrambling for cases. When I decided I would go out on my own. I went from my hometown of Henderson to where I live now in Longview, which to me was the big city at the time. It was probably 70,000 people. I was just looking for any kind of case. I mean, I even did a title opinion for an oil and gas company during that time because I had to figure out some way to bring in some money.

Michael Cowen:

Yep.

John Sloan:

But yeah, it's still hard for me to say no. I mean, because I still look at it and say, "Well, there's somebody in the firm that can handle this and do a good job for the client." That's part of the reason why it's hard for me to say no. I see these folks, and I see the need. I think about what might happen if they go to the wrong lawyer. I worry about whether or not they're going to get the justice that they deserve. I used to pride myself in taking hard cases. I used to feel like I could handle a case that maybe some other lawyer could not successfully do. But like you have discovered, there comes a point where there's only so much of you to go around and there's only so much longer that you're going to be around. I'm not interested in doing things that I'm not interested in doing.

Michael Cowen:

Yeah, at this point in my career, there's three things on the real tough cases. One is learning there's only so much to me to go around. That is only so much of it at this point, I work a lot. But there's only I don't want to work every weekend anymore. I want to be a dad, I want to be a husband, I want to do some things for myself. Every hour I spend on the marginal cases, an hour I'm not spending on one of my really good cases with someone that is really deserving and really needs me. The other thing I found both from the clients and from referring lawyers, the expectations in their heart of hearts are not tempered by the difficulty of their case.

Michael Cowen:

The clients don't have a way of measuring what is a good value for this case for these tough liability facts. So often you you put in all that hard work, you turn, you've pulled a rabbit out of a hat, and you don't have a status. You don't have satisfied people because you're being judged against the results that you got or someone else got on the case, it was a great case. Then the third thing is just having the humility to know that there are other good lawyers out there that are at a point in their career where they would do a better job than I would on this case because it would be their bigger case.

Michael Cowen:

It would be the one that would be putting their effort in and learning that I'll never get a client again or I'm not going to lose my referring lawyer if I don't say, "This would have been the right case for me five years ago, but it's not the right case for me today. Here's a couple people that I think would do a great job."

Michael Cowen:

That's been so hard for me. But now that I'm doing it, I've not lost any my referring lawyers. They seem quite happy that if anything, they're more likely to bring me the big case because they see me more as a big case lawyer than as someone that will take anything, and then maybe they got to save the big cases for a big case lawyer. But it has been the hardest thing in the world for me both in overcoming the fear and then overcoming the guilt of I'm not helping this person that asked me for help. It's just been a lot of discipline and a lot of working on myself to be able to say no.

John Sloan:

Well, that's that's great insight, Michael. I appreciate you sharing that.

Michael Cowen:

I screw up a lot, John, and so ... I try to learn from it.

John Sloan:

Well, the other thing is that with referring lawyers, the tendency that I have, and I'm sure many, many people listening have is to say yes to every case that a good referring lawyer since. But that's just that's just wrongheaded. I I don't think you do the referring lawyer any favors. I don't think you improve your relationship with that lawyer by doing that. So that's another area that I've had to work on, my ability to say, "Gosh, I'm going to have to pass on this one. Thank you so much for thinking of me, but just can't do it."

Michael Cowen:

Yep.

Commercial 2:

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Michael Cowen:

I love telling trials. I love hearing trial stories. I want to hear an example. You had a recent nice verdict in Tampa, Florida on a case you got to try with your nephew where you got to put some of this stuff in action. Can you tell me a little bit about that case?

John Sloan:

Sure. Yeah, I'd love to. So I have a nephew who is my sister's oldest son. He grew up in Longview actually and went to law school after he'd been out working a while at South Texas and married a Florida girl and moved over there to live. So he and I've gotten to work together some, that desire to show your kinfolks the ropes. But he had a case where he represented a gentleman who was an Indian from India. He's driving down an interstate highway in Florida. He sees up ahead of him what looks like a tire on the road. He slams on his brakes, maybe his brakes a little too hard. Certainly that was the defendant's version of the story.

John Sloan:

But he had cars on either side of him, so he couldn't go that way. He gets slammed into from behind by an 18 Wheeler. This gentleman, his name's Prim Gurbani. Mr. Gurbani is as hard a worker as anyone I've ever known. He grew up in India poor as dirt and ended up moving to Hong Kong when he was in his early 20s. Then from Hong Kong to New York, and then finally, to Tampa. In Tampa, he found his dream job. Well, he actually moved to Orlando. In Orlando, he found his dream job. That was he was worked in the shop just inside the gate at Universal Studio.

Michael Cowen:

Oh, wow.

John Sloan:

Yeah. And his job was selling fast passes to people coming to the park with their families. He just absolutely adored that interaction with people and that job, called it the best job he'd ever had in his life, his dream job. So he has the wreck. He's taken to the emergency room because he's got a nasty cut on his head where he went back and hit the back of the sunroof. In the medical records at the hospital, he's already talking about, "When can I go back to work, I want to go back to work." Sure enough, he gets out of the hospital, convalescence for a couple of weeks, and is back at work at Universal Studios selling fast passes and worked up until the time of trial. He had some pretty minor orthopedic injuries, nothing really major.

John Sloan:

But he had a traumatic brain injury, a mild traumatic brain injury, as a result of the wreck, had about \$19,000 in past medical bills. So we of course left those out of what our proof was at trial and just talked about the brain injury that he had, the changes in his personality that have occurred, the changes in what his future was going to be. I think that was really a big component of our damages in the case because we had some expert testimony that it would probably lead to early onset of dementia. He was 62 at the time of our trial, so probably those things were going to happen to him in the next decade or so. But what helped the case, and what drives damages in a lot of these cases, as you know, is just insensitivity on the other side. Mr. Gurbani, as in many of the cases that I try that involve brain injured individuals was not at trial.

John Sloan:

But I wanted him there for Voir dire. I got permission from the jury in Voir dire for him to not attend the trial, because as you know, one of the main things that brain injured clients have to hold onto is hope. Hope that they're going to get better. Hope that their future is not going to involve the need other people coming into the home or even having to go to a facility to spend their golden years. The defense lawyer was such a jerk that while Mr. Gurbani is sitting there in the courtroom in front of the jury, he made him cry. Yeah. It was obvious, looking at him that he was genuine in his tears. Of course, the defense lawyer then raised hell about it, move from mistrial, just crazy acting.

John Sloan:

A real difficulty was that he and his wife pretty much stayed to themselves. They didn't have a lot of friends. He had a guy who was a security officer at the park that he had really befriended. He ended up being our only before and after witness, but he was a great one.

Michael Cowen:

So what kind of changes did you have?

John Sloan:

Just short term memory loss, some easily frustrated. He noticed that he would have sensitivity to light. I mean, he had the ability to continue to do his job, and then no criticisms, no negative reviews, nothing like that. We had a neurosurgeon or a psychologist that testified that did a really good job for us. We had a neurologist that testified that did a really good job for us. We had some three Tesla MRIs that had some findings that were consistent with brain injury. So we were able to make it real for the jury. The security officer just did a fabulous job. Yeah. So we got we got a verdict for a little over \$3 million.

Michael Cowen:

Wow.

John Sloan:

I like Tampa, Florida. Actually our judge was educated at South Texas School of Law.

Michael Cowen:

Oh, wow.

John Sloan:

Yeah, just like my nephew. Apparently, and I don't know why this is, but apparently, there's quite a few lawyers in Tampa that went to South Texas.

Michael Cowen:

So yeah, that was a great verdict. What kind of offers did y'all have before trial?

John Sloan:

They they offered 90,000 the week before trial. Then on the Monday that we started, they offered 250. By that time, that wasn't going to make any material change in the client's life. I'll tell you another idiotic

thing that they did is they hired some people to do some surveillance video just to show. Ain't it a beautiful thing that that a lot of times in the cases where we get good verdicts, the reason for that, and I have to say this in all modesty, I don't think it was that I did such a fabulous job. I think the defense lawyer did such a terrible job that it really hurt him.

John Sloan:

So they bring these people that have done surveillance on Mr. Gurbani. One of the things that they've done is they've been in the shop where he works. They've got their little iPhone on their belt, and they're using that to film him so they can remain anonymous. I cross-examined them like it was spy versus spy.

John Sloan:

But the dumbest thing that they did was they they videoed Mr. Gurbani, bringing his wife who unfortunately was not able to come to trial because their health was so bad, walking his wife from their car back to their modest little apartment. It just was so obvious looking at the film, what a caring, loving relationship they had. He's supporting her holding her by her elbow and walking her back to the apartment. They played that. I mean, it wasn't something that I discovered and played for the jury to show how ridiculous they were. They played that thinking that would somehow help them in defeating his claim. So I have to admit, a little bit surprised. I was a little surprised at the verdict. But it's one of those cases that you look back on and you think, "I got to try this with my nephew, and everything just went right."

Michael Cowen:

Those are the sweetest trials, aren't they? When you don't expect it, and then boom.

John Sloan:

Right. I mean, absolutely. 250 was way too low. But, you know, let's say if they offered \$500,000, how could I say to Mr. Gurbani, "You need to turn that down, we'll do better." Then the greatest thing about it was in Florida, they have what's called a proposal for settlement. If you give that to the defendant, and you exceed it by more than 10%, which we did, they have to pay all the costs and attorneys fees from that point on. Yeah. So it was the really nice verdict and really one of the highlights. Not the biggest verdict ever, but certainly one of the highlights of my career.

Michael Cowen:

It is amazing how many times you talk to experienced trial lawyers and their favorite verdict isn't necessarily the biggest one.

John Sloan:

That's it. Yeah. Absolutely. I mean, a trial is a combination of so many things. There's so many things that can go right. Then there's those things that keep you up at night that there's so many things that can go wrong. When it all goes right, I can't look back. I look back on that trial and I can't think of anything that I wished that I had done differently. Well, maybe one thing. One thing was we didn't get this guy's cell phone records until right at trial. Since we hadn't shared those with the other side, we couldn't talk about how he was on his cellphone at the time of collision. But like what I was talking about earlier, I

mean, one of the things that drove damages in this case is that this truck driver's employer didn't care about safety. They had a safety procedure that they were supposed to follow.

John Sloan:

It was a part of their Policies and Procedures Manual, and they didn't follow any of it. They were supposed to take pictures at the scene and the driver didn't do that. He wasn't criticize for doing that. They were supposed to have a debriefing with the driver about what happened and why it happened. They didn't do any of those things. They were supposed to, after an incident like this, determine fault. They didn't do that. So the jury looked at that and just said, "We got to do something here we've got to speak or this could happen to someone else." And they spoke.

Michael Cowen:

It's funny, I'm doing a case right now and the safety guy at the company, so someone at work smashed his finger. Didn't break it, but smashed his finger, cut it up in a machine. They had a big safety briefing, they did a root cause analysis. They gave a lesson to be learned, how to avoid this. In our case, the company driver blew a stop sign going over 50 miles an hour and caused a horrific, horrific crash. Our client was in the hospital for 43 days.

Michael Cowen:

In the presentation they sent to the company, they just said one of our drivers was involved in a crash in an intersection. They didn't mention the the stop sign, they didn't mention anyone getting hurt. They just said, "Be careful when you're driving. One of our drivers was in a crash. Here's a couple pictures." Nothing to do to try to prevent the next one. Although six months later, they did write him up. Didn't give him any consequence, which is insane. But it just shows how much they didn't really care about safety.

John Sloan:

Right. Yeah. Did they write him up because they really felt like they should do that so that the other drivers learn a valuable lesson or did they write him up because they had pressure from somewhere else like their insurance carrier or a lawyer like you or ... I mean.

Michael Cowen:

It was actually after we filed a lawsuit notice that they write him up.

John Sloan:

There you go. So the jury looks at that and they say, "What do we have to do for this company to understand this is not the kind of behavior that we will tolerate?" I mean, in our case in Florida, we didn't have a punitive damage claim that was all actual damages. But as you know, when you have facts like that that show a careless attitude, even at the top, it tends to drive damages.

Michael Cowen:

Yeah. What I think is it's not that it motivates a jury to punish. It's just it's what a jury needs to fully compensate. A lot of jurors will not follow the law and give full damages unless they believe that the that defendant deserves to pay it. I think that's one of the big problems with the admitted liability case

is you need, psychologically for the jury of both elements, the plaintiff deserves to get paid, but also the defendant deserves to pay.

John Sloan:

Yeah, absolutely.

Michael Cowen:

Well, John, thank you so much for for joining us. If somebody wants to go out there and talk to you about a case or reach out to you how, what's the best way to get a hold of you?

John Sloan:

Just call my office in Longview, Texas. That's where I usually am. We have offices in Longview, and Houston and Santa Fe, New Mexico, but I like to hang around Longview as much as I can.

Michael Cowen:

Great. Well, thank you so much for joining us. All John's contact info are going to be in the show notes. So check it out if you need to get ahold of him. Thank you so much for joining us today, John.

John Sloan:

Thank you, Michael. Thank you for the service that you provide to plaintiffs lawyers everywhere.

Outro:

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