

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 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 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 podcase, Trial Lawyer Nation, your source to win bigger verdicts, get more cases, and manage your law firm, and now here's your host, noteworthy author, sought after speaker, and renowned trial lawyer, Michael Cowen.

Michael Cowen:

Today on Trial Lawyer Nation we have attorney Hans Poppe out of Kentucky. Hans, how are you doing today?

Hans Poppe:

I'm doing good, Michael. How are you?

Michael Cowen:

I've been great. Hans is a great lawyer. I met him through the trucking groups, but he's also had incredible success in the areas of medical negligence. I know you do other kinds of cases too, and I'll ask you about that in a bit, but first just tell me a little bit about yourself.

Hans Poppe:

Sure. I practice in Louisville, Kentucky. We have a small law firm, four lawyers. We focus entirely on plaintiffs' work. We don't represent insurance defenses, companies or anything like that, and we focus on catastrophic injuries and death cases, and we also do business to business litigation torts. Been open since 2004. 2004 is when I went out on my own and I've been practicing, I guess this is 21 years. Yep, 21 years, so we do medical malpractice, insurance, bad faith, semi truck wreck litigation, the standard personal injury wares, but we do focus on catastrophic injury and death cases.

Michael Cowen:

That's the best thing to focus on. How did you get to the point where you could focus on catastrophic injury and death cases? I mean, hanging up your own shingle, people aren't necessarily going to hire you on those.

Hans Poppe:

Well, you're right, especially since I started my law firm when I was only four years out of law school. I had practiced for a well-known personal injury lawyer here in Kentucky right out of law school so I've never done insurance defense work other than when I was a law clerk, and I went out on my own in 2004 and just gradually built my practice up over the years by remaining focused on case selection and making sure people in the community, in the state and outside of the state knew exactly what we were interested in and what kind of cases fit our profile, and so we started small and just had some success, and started getting large verdicts, and people recognized that we were good at what we were doing,

and our practice is almost, not quite but almost 100% referral based. We do get cases from former clients, current clients, but the vast majority of our cases come from other lawyers.

Michael Cowen:

Yeah, mine too, so you say you let people know what is it you do. How have you let people know?

Hans Poppe:

Well, we do, like most people do, we do CLEs that focus on the areas in which we practice, and we maintain relations with a referral network of lawyers. We have a newsletter that we send out, a monthly newsletter, and it highlights the cases that we're handling. It highlights when we get a nice jury verdict, and it let's you know -- it's got, listed over in the corner, our areas of practice, so it's just generally well known in the community and in the state what kind of cases that we're handling, and we reach out to the lawyers and remind them that we're here and this is the kind of cases that we handle, and if you have an opportunity to work together we'd love to work with you.

Michael Cowen:

Do you put on your own CLEs or is this speaking more other organizations?

Hans Poppe:

Other organizations so far. I have toyed with the idea of doing that, but you know, I don't know where I would get the bandwidth to organize a CLE, but I really would like to try.

Michael Cowen:

I encourage you to do it. There is nothing better at building your brand and also giving you the freedom to talk about what you think is most useful to your audience rather than what someone on a committee picked for you. You know we do it. It's been a lot of fun. It's turned into a great success. I'd be happy, reach out to me any time and get you on the phone with Delisi, our marketing director, talk about what we've done and all the mistakes we've made as well as what's worked, but I really do encourage you to do it.

Hans Poppe:

Well, I will take you up on that. I always love to steal somebody else's playbook.

Michael Cowen:

Most of mine is stolen from someone else too, so there's not a whole lot of original things in this world. We all help each other.

Hans Poppe:

Well, what do they say? Imitation is the sincerest form of flattery.

Michael Cowen:

Absolutely. Now, you've done really well, and what's your trial record lately on med mal cases? You told me before we started and it's just something that's hard to even believe. I know it's true, but it's just ...

Hans Poppe:

We have won three of our last four med mal trials, and the fourth one is one we probably should not have won, so we lost the one that we should have lost, and in those three med mal trials, we've gotten punitive damages in all three of them, so we have been very focused on trying medical malpractice cases a little bit differently than typical.

Michael Cowen:

Tell me about that, because I think med mal historically has a 10 to 20% at most win rate for plaintiffs. I mean, it's one of the areas where the defense does best.

Hans Poppe:

You're right. Medical malpractice cases are particularly challenging. Here in Kentucky, there is about an 80 to 90% defense win rate when they're the healthcare provider at trial, and you know, what I tell my clients is that's particularly chilling because medical malpractice cases are extremely expensive, and so what you've got is the lawyers who handle med mal cases. That is a very narrow small group of lawyers here in Kentucky that actually take these cases to verdict because you've got to be able to put a hundred grand on the line and know that there's an 80% chance that you're going to lose it, and so the pool of lawyers that actually take these cases to verdict is small, and so they're the best lawyers, so we're not talking about the bottom end of lawyers.

Hans Poppe:

We're talking about the top end of plaintiffs' lawyers that are taking these cases to verdict and they're losing 80% of the time. So you've really got to be hyper focused on case selection, and picking the right case because as other people have mentioned on your podcast, and I will verify, you make money on the cases you don't take more than you make money on the cases that you do take. So we have really screened our cases very closely, and probably the most important element, so case selection is number one. That's the most important thing is case selection, and then one of the things that I tell my associates is every case is actually three cases.

Hans Poppe:

There's the case you sign up on day one. There's the case that you prepare for trial, and then there's the case that you actually try to incorporate, and none of those three cases are the same. So you've got to be able to look at this case and think about it in terms of where it's going to be by the time that the jury gets the case, and you've got to be willing to move and adjust throughout the case. So the case selection is key, and then the second thing that I think is super important in these medical negligence cases is you've got to find something else.

Hans Poppe:

The case, if you go into a courtroom and you try a case against a physician based just on medicine, the likelihood is you're going to lose. That's the 80% of cases that get lost because there's so much, and I've got to give credit to the defense lawyers. The defense lawyers that do medical negligence cases are really, really good. They're not the bottom of the barrel either. They're really good lawyers, and you don't even need to be a good defense lawyer to win a med mal case, but here in Kentucky we've got some really good med mal defense lawyers, and they really work these cases hard, and there's so many areas of opportunity for them to say you know, this is just medical decision making. You know, even if

the best care is given you can still have bad outcomes. This is just a bad outcome, so there's so many different defenses that you and I don't have in our truck wreck cases.

Hans Poppe:

I mean, we've got rules and we've got regulations, and we've got standards, industry standards, and we've got custom and practice, but when you're talking about medicine, you know, there generally isn't a textbook where you can go and say if you do this nothing bad happens. You know, so they've got so many different areas that they can go to, so what I am always looking for, in every med mal case is what is this case really about? Why did this really happen? And if you can get past some of the medicine and find the other angle, and focus in on the other angle, they're not ... The other side is not used to that. If you're trying a case, for example in the most recent suicide death case, suicide death cases are basically impossible because you've got a person who dies by suicide. How does a jury not apportion most of the fault to the person who suicided?

Hans Poppe:

Well, in our case, the jury apportioned 2% fault to the guy who suicided, and the reason why is because we built up a case that starts way before our guy suicides, and that case was built up on the business practice of the pain management clinic and why that business practice, this model that they had created, ultimately resulted in the unavoidable outcome of someone not receiving the care that they should have gotten, and then a bad outcome occurs. So in that case we focused on how is this practice built?

Hans Poppe:

And in that situation, this practice was built with ... It had grown to 15 offices, 14 physicians, 45 mid-level providers, and a contract that they make the patient sign that says you get to see a doctor on your first visit, and then every visit after that you're going to see a mid-level provider, and we found the prescription that they had given our guy where they improperly cut his medication in half. The prescription was given to the patient by a mid-level provider, and it had been written four days before his office visit.

Michael Cowen:

What do you mean by mid-level provider?

Hans Poppe:

Oh, a mid-level provider would be a nurse practitioner or a physician's assistant, so someone that does not have an M.D. after their name.

Michael Cowen:

So they wrote the prescription four days before they even saw the client?

Hans Poppe:

That is correct, and it was for half of his normal dosage, and so what we were focusing on is not a medical decision that was being made. What we focused on was the business decisions that were being made, and the jury did not like how they practiced medicine, because it in fact was not a pill mill. It was a pill drill. They just went through the drill. They just went through the motions. Get the patient in, give

him a prescription, get the next patient in, so we showed how the way this practice was built, there are 15 doctors and the doctors aren't seeing the patients.

Hans Poppe:

The nurses are seeing the patients, but the doctors bill a doctor's rate even when the nurse sees the patient, so each doctor has four nurses or five nurses under him. They see a patient every 15 minutes, and so the doctor bills four doctor visits every 15 minutes, even though he never sees the patient. And so, it's that kind of looking past the medical issues which they wanted to focus on, which was this was a reasonable medical decision to make. He was on too high a dose of meds. We reduced the dose of meds. Perfectly reasonable. We focused on no, this decision was made before you ever saw the patient, and the mid-level provider that saw the patient had no experience in managing pain medication, and so there was no medical decision because of the business decisions that were made. That resulted in a \$7 million award in a suicide case.

Michael Cowen:

Wow.

Hans Poppe:

Three million for the loss of consortium for the daughter, three million in punitive ... Well, three million, one hundred thousand in punitive damages, and then \$875,000 for conscious pain and suffering of the decedent, so I don't think the defense ever saw it coming. It was a zero offer case.

Michael Cowen:

So what did you do to discover the ... First of all, to come up with the idea of looking at the business practices, and then to discover what they were?

Hans Poppe:

Well, the interesting thing about the case was all of those facts, with the exception of the prescription, because they produced the prescription, so we knew the date of the office visit, and we could see the date that the prescription was written on was four days before the office visit. What was really interesting about the case though was we never asked a single question about it in deposition. We never asked a single question about the business practices in deposition. We knew from their website how many physicians they had, how many office locations they had, how many nurse practitioners they had. We did ask some general questions about okay, you know, the patient didn't get seen by a physician. The patient was seen by a mid-level provider, so you know, what's that about?

Hans Poppe:

And they just -- around the edges, they told us this is, you know, but we really didn't focus in on fighting with them in depositions about this is good or this is bad, or this is not appropriate. We saved it all for trial, so it kind of came out of nowhere for them to try to ... You know, when we just start asking them questions in the direct examination of the office. For example, we never deposed the CEO of the practice group. We listed him as a witness on our witness list, but we never took his deposition, and so he didn't have any idea what we were going to ask him until we put him on the stand.

Hans Poppe:

And so I come back to we didn't ... Now granted, we had doctors, a psychiatrist and a pain management doctor come in and testify on the medical issues, but Michael, when we talked to the jury after the verdict, they were out for 3 1/2 hours. They literally spent like 10 or 15 minutes on liability. They focused on damages, which is exactly what we wanted them to do. I mean, that's exactly where we want them to be, but it's because we didn't focus on the medicine. I mean, we focused on business decisions led to bad medical outcome, and the fact that there was a medical decision made or not made was almost irrelevant. It was we don't like their business practice, and it was inevitable that bad stuff happened.

Hans Poppe:

Similarly, the med mal case that we tried before that one and won was a \$21.3 million verdict involving an unnecessary pacemaker. Once again we focused on the business practices of the hospital, and how it got entangled up with cardiologists and how they were incentivizing cardiologists to do heart procedures with zero monitoring for medical necessity, and so that case became more of then just did this guy have an electrocardiogram strip that showed that he needed a pacemaker, or was it business practices lead to incentivizing physicians to do things that they should not do? Because I had an expert once who told me on the stand, told the jury, he said you know what the problem with incentives are? They work.

Michael Cowen:

Yeah. I think that's brilliant, because if it's a doctor doing their best, people give the doctor the benefit of the doubt in the medical decision making, but when you go into the dirty reality of this is a money making, for profit enterprise, it's ... Not only money making, for profit enterprises but the system disincentivizes good care. I mean, the doctors get paid for every patient they see. They don't get paid for how good of a job, how thorough an exam, so a doctor that spends very little time with each patient, or even sends the patient to go see someone like a PA or nurse practitioner, will make more money than a doctor that sits there and does a thorough exam, listens to their patients, and I think that people hate that about medicine, and I think that's brilliant to make the case about the ugly side of the business of medicine.

Hans Poppe:

It is, and it really changes the dynamic of a case when you can focus the jury's attention on something other than the white coat and the stethoscope, when you can show this is a business, and they have chosen, they've made choices about how they're going to run their business. For example, one of the other things that came up in the suicide case was we got the bills, didn't ask any questions about it in discovery, got the bills. Every single office visit was billed as a 99214. A 99214 is the second highest level of an office visit that you can bill for. It takes about 30 minutes to do a 99214.

Hans Poppe:

Well, we've already got the testimony that the scheduler schedules a patient every 15 minutes. But they're billing a 99214, which is a 30 minute code, and they're billing it not under the nurse practitioner's billing rate. They're billing it under the doctor's billing rate, so they're maximizing their revenue at every opportunity. Get the most patients in that you can, bill them at the highest rate that you can, and don't even given them the same ... And bill them for a doctor when a doctor doesn't even get to seem them. So it's those types of things that lead the jury to say, "Ah, I see why this happened."

Michael Cowen:

Yeah.

CRP commercial:

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 at 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. And now back to the show.

Hans Poppe:

The third case where we got punitive damages in was a similar thing and with a twist, which was it was a physician's assistant who did a cursory exam on a patient. The patient's daughter was in the exam room and said he never did a physical exam, although he charted that he did one, and we got what's called the audit trail, which for your listeners who don't do medical negligence cases, the audit trail is an electronic document that hospitals and physicians' offices are required to maintain that tracks each and every time an individual logs into a patient's chart, and it tells you what if any changes, modifications or edits are made to the patient's record. On that case, we got the audit trail, and the audit trail revealed that after the patient died, several days later, the physician's assistant got into the patient's chart and modified the history and physical in it, and the assessment.

Announcer:

Wow.

Hans Poppe:

And he did not know, when we asked him in deposition, he didn't know that we knew and that we had the audit trail because we hadn't asked any questions about it. So all we did was ask him whether he is supposed to make his notes contemporaneously with the patient's visit, and the answer was yes, and we got him to say, and there would have been no reason for you to modify the history and physical and assessment once you had done it because there aren't going to be any changes, and he said yes.

Hans Poppe:

So then at trial we confronted him with the audit trail and he had no explanation for why he was in the patient's chart several days later making changes to the patient's chart. We got into evidence to the fact that he received productivity bonuses based on the number of patients that he saw. We got into the record that he was running behind on the day that he saw my client, and was already 15 to 30 minutes behind on his schedule, and that, we argued, is why he didn't do a proper physical examination of the patient.

Hans Poppe:

So once again it came back to we're not trying a case about what happened in the exam room right then and there. We're trying the case about what business decisions are made and how those impact patient care to lead to, not all the time, but sometimes, it leads to a bad outcome because you haven't

structured your business around patient care. You structured the business around productivity, and in this case, we also had the added and you did something shady with the records that you can't explain.

Michael Cowen:

Yeah. I think that patients, I mean you have to know you're going to try the case. I mean, so many lawyers, we want to get the case settled, and so we just kind of show them everything we got in the depo, and if you don't think the case is good, you think there's a likelihood the case will go to trial, having the patience to hold back and keep your mouth shut about it, I think really helps, because these doctors are smart. You and I both had a man that really, a big mentor to some, coming up, Tom Rose, who since passed away. He was a great, great lawyer. I remember him telling me always put the doctor on the stand first because they're smart, and if you let them listen to all the testimony, they're going to come up with an explanation for everything that happened by the time they go on.

Hans Poppe:

That \$21 million verdict, I tried that case with Tom. Now that was the third, we have filed 500 cases, and that was the third one to go to trial. We lost the first two, and that's another lesson from trial is you've got to have the stick-to-it-iveness, and the wherewithal to weather the losses. When you get into a mass tort like that and you've got all of these cases, and you lose the first two, you know some lawyers pack it up and say no more. We won that one, on the third one, and that case did not resolve. It went up on appeal, and the court of appeals reversed it and said that there was some evidence that should not have come in.

Hans Poppe:

The Supreme Court took discretionary review. While that was going on we tried a fourth one, and that one went all the way up until the night before verdict, and then there was a global settlement that was reached that resolved all of the cases but the one on appeal. But you know, I remember when I first started filing those cases. There was an army of defense lawyers on the other side, and one of the defense lawyers who represented the hospital, when asked what he thought about my lawsuits, was quoted in the newspaper as saying, "Mr. Poppe lives in a fairy tale world if he thinks that this stuff actually happened," and one of the other lawyers told me, after some depositions, he asked me, he said, "Hans, how old is your daughter?" And I said, "She's five." And he says, "You're not going to see any money in these cases until she graduates high school."

Hans Poppe:

That turned out not to be the case, but that's the kind of mentality that defense lawyers have in these medical negligence cases is that they're always going to win, and if you're not ready to go all the way as many times as it takes, you're going to have a short-lived career in this business, or you're going to have some hurt feelings, or both.

Michael Cowen:

Yeah, but the willingness to risk loss is so important, and the ability to recover from loss is so important in our profession, and can you imagine like if football teams, you know, I got to watch a historic football game. Unfortunately, I had to watch it on TV, because I thought I would still be in trial and I gave my tickets away, but the Texas A&M Aggies beat number one Alabama after having lost two games to some middle of the pack teams before that. No one thought that could happen. Can you imagine if they just said you know, we don't have a chance. We're not going to play today.

Hans Poppe:

That's right.

Michael Cowen:

You know, you don't have that incredible victory, and I think the same thing for trials. You know, you have to be willing to try some cases that you have a chance of losing to get those big victories.

Hans Poppe:

Absolutely. I tell my associates that trial lawyers, you better have a short memory, because you're going to lose some cases, so you've got to have a short memory for those losses. I have a tradition. After every verdict, every verdict, the next day I'm in the office at my desk working on either that case or the next case. Win or lose, the next day, even if it's a Saturday, the verdict comes in on Friday night, on Saturday I go work out and then I go to the office because you've got to get right back up on the horse, especially after losses, and figure out what's next.

Michael Cowen:

Yeah. I give myself a day to feel it. I open up a nice bottle of red wine for myself. I can at least still afford a bottle of red wine, you know, a nice bottle, and I kind of drink and say goodbye, have my wake for the case, and then the next day I work on the next one. You just have to ... And I know it sucks. I mean, the client, it's painful for those clients to lose those cases, but they'll survive. They are more resilient than we give them credit, and we have to survive, because it doesn't do any good. You've done what you can. If a jury gets it wrong that doesn't make me a bad lawyer.

Hans Poppe:

Oh, absolutely. I've lost cases I should have won and I've won cases that I should have lost, and it goes both ways. It's just you've got to take the good with the bad, and you've got to be resilient, and you've got to learn from your losses too. I say you've got to have a short memory, but that doesn't mean that you just forget about what happened. You've got to take what you learned from that case and apply it to the next case for the next client, and sometimes even for that same client because you may get to try the case again. We get to appeal too, so you know, sometimes the cases come back after that and you say what could I have done differently? What could I do?

Hans Poppe:

We do a lot of focus group stuff, so there's not usually a lot of surprises at trial. Sometimes the evidence doesn't come in exactly the way that you thought it was going to come in, so what I would say is you've just got to have the ability to take those losses and take something positive away from it, and get right back up on the horse and get ready to do it again. You know, because trying cases, I'm sure you're probably the same way, there is no place that I would rather be in the practice of law than in the courtroom. Now first day of trial, I always get a little anxious and I'm like will I remember how to do this?

Hans Poppe:

Which is funny, you know, I laugh because I've tried close to 30 jury trials, and I still get that same feeling every time, but as soon as I get up to one ear and I start talking to that jury, nothing else matters. I mean, it's the one place where I can be extremely focused is in the courtroom because I'm only focused

on one thing, which is trying this case. I'm not worried about what's going on back at the office. I'm not worried about what's going on back home. It's the one place where you can be completely immersed and it's just so much fun to try cases.

Michael Cowen:

I have so much fun. Last week was actually the first time, after 20, I don't know how many years, 25 plus years of doing this that I did not feel that nervousness going in there, but I worked a lot on my mindset. I worked a lot on this is so fun, I have the opportunity to do this, I can't wait to do this, and that joy, people saw it in my step and my body language. That joy permeated the case, and it really, it helped connect with the jury, and usually I'd be nervous. If you talk to someone that's ever coached me, like Sari de la Motte or Josh Cardinal, I kind of act weird, weird body movements and you can tell I'm nervous until about five minutes into it, and then I'm communicating, and I finally got rid of that.

Michael Cowen:

But it's more from just thinking of how fun this is going to be. The outcome's not by job. That's their job. They're good people. I'm going to trust them to do their job. They're taking time out of their lives to do it, and so I'm not going to worry about that. I'm going to worry about what's in front of me. I'm going to worry about talking to these people. So I'm just going to worry about getting those people, talking to them, listening to them, and I'm not going to worry about whether they're good jurors or bad jurors. I've got other people taking notes to worry about that.

Michael Cowen:

I'm not going to worry about what's going to happen in a week or two when the case is over. I'm all about this right now. In opening statement, I'm going to worry about telling the story and giving these people the information they need to do their job. I'm not worried about whether I'm winning and losing. I'm not worried about what the other guy's going to say. I'm not worried about how I look. I'm just going to worry about that, and I'm not really worried. I'm just going to enjoy it, and it's made such a difference.

Hans Poppe:

Oh, I can see where it would, absolutely, and especially once you get comfortable in your own presence, and you're being real, and that's the one thing that I have noticed over the years is that lawyers who are trying to follow someone else's script or style, it's always obvious that they're not comfortable doing that, and you can just tell whether that's really them or whether they're trying to sound lawyerly or sound official, and I'm like if lawyers would just figure out who they are, which isn't always easy, figuring out who you are as a lawyer, but once you figure out who you are, having the courage to let the jury see who you really are as a lawyer, and as a person. Because I think that juries are constantly trying to figure out can I trust this man or woman? Who here can I believe?

Michael Cowen:

Yeah.

Hans Poppe:

And if you're not being authentic, they don't know if they can trust you, because if you're not being your real self, how do they know that you're putting on the real evidence? You know, I'm a David Ball fan, like

probably most of your listeners are, and I know David Ball has said for years and years and years, wear drab clothing. Don't wear your Rolex to trial, which I could agree with that, but I've thought about that, and I've thought about it a lot, and I can understand, I certainly can understand and appreciate David's thought process, which is you don't want the jury to be distracted by you, and I get that.

Hans Poppe:

But I simply am not comfortable wearing suits and sport coats and jackets that I wouldn't normally wear, and I won't feel comfortable in front of the jury doing that, so I wear my nice suit to trial because it makes me feel comfortable, and I'm one of those guys that say look good, feel good. Feel good, play good. Play good, win, and I want to give myself the best opportunity to win the case, and that means I need to feel comfortable, because if I came in like David suggests, wearing a jacket that doesn't fit and tacky pants, that isn't me, n I'm not going to communicate well with the jury.

Michael Cowen:

And it's going to be incongruous with the case you put on, so if you spent \$100,000 it's going to come out.

Hans Poppe:

Bingo.

Michael Cowen:

You've got all these beautiful graphics and exhibits, and you're wearing a suit and jacket that doesn't fit you right, they know that's bullshit.

Hans Poppe:

That juror was actually right. You're 100% right, and the way that I look at it, and I've told jurors afterwards, I have a full-time PhD trial consultant that works for me.

Michael Cowen:

Wow.

Hans Poppe:

And so we've talked to the jurors afterwards, and let me tell you, and this really hit home for me. This really hit home for me after my first seven figure verdict. We interviewed the jurors and one of the jurors said, and she was an older lady, she was probably in her late 70s, and my PhD consultant asked her, "What was the first thing that you all talked about when you got back there into deliberations?" And she said, "The first thing we talked about is someone brought up the fact that Mr. Poppe's shoes were shined every day."

Hans Poppe:

That's what they saw. That was the first thing that they talked about was the fact that my shoes were shined every day, and so who knows what all they're paying attention to, but they were paying attention to that, and that made some of the jurors think if he is putting as much attention into his appearance coming to court for trial, then he must be doing that for us because who else would you be doing it for?

Michael Cowen:

I'm getting a little bit better at appearance. I'm not always the best at that, but I think the biggest thing is what makes you comfortable. I usually wear slacks or a jacket, but not an actual suit during trial, but it's more because that's what makes me feel comfortable.

Hans Poppe:

That's what matters. What matters is, because for me, it would be a distraction to me if I wasn't comfortable in the courtroom, and somebody else, what makes them comfortable may be completely different, maybe 100% different, and you've got to do what makes you comfortable in the courtroom. We asked the jury after this trial if anything that I did offended them, or if they were distracted by my suit jacket or my suit, and they all said, "No, we actually thought Mr. Poppe looked very, very nice," and one of the jurors said, "And that let us know, the fact that he dresses nicely let us know that he was taking this case seriously. We should take the case seriously," and they said, "It let us know what kind of lawyer he was."

Hans Poppe:

And I'm going to paraphrase this, but they said, "Because he dressed nice, we knew he was a successful lawyer, and successful lawyers don't take bad cases." That was kind of their mentality, where I could see where somebody might think if you come in and you look shabby and you look shoddy, they may think maybe he's not a good lawyer, maybe he doesn't have a good case.

Michael Cowen:

I think you're right, and I definitely don't dress shabby or shoddy. I wear a nice jacket, and it's funny. I wore a jacket to the ... We had resolved the case over the weekend, and we had to have the jurors come in, and I have a nice jacket but it's kind of like a pinkish, purplish with the plaid. It's not something that I would normally wear to trial, but I love it, and it's me. As I'm getting older I'm starting to just come into myself, dress a little flashier. They had no problem with it.

Hans Poppe:

Yeah.

Michael Cowen:

They didn't realize that we weren't having trial that day. They didn't see, it was all in my own head that I couldn't wear that jacket. I'm going to next time.

Hans Poppe:

You should.

Michael Cowen:

Because why can't I be me? Now the one that has the skulls all over it, I probably won't wear to trial.

Hans Poppe:

I do have one that I do take to trial where the skulls are in the inside.

Michael Cowen:

Oh, okay. No, this is on the outside. I wear it for speaking sometimes, depending on the audience, but no, I think the most important thing, and it's hard. The trial skills aren't that hard to pick up. I mean, be nice, learn a story, tell it, listen. The learning to love yourself so that other people can learn to love you and accept you, including jurors, so you get out of your own way, to me that has taken a lot more work.

Hans Poppe:

It does take a lot more work, and just being confident in yourself. I told one of my associates the other day, she said, "I feel like I've got imposter syndrome sometimes," and I said, "Imposters don't get imposter syndrome." You know what I mean? The real people doing real stuff are the only people who get imposter syndromes, and they're not imposters. That's the thing we got to remind ourselves, is that if you are a trial lawyer, then be a trial lawyer and go try cases, and get yourself to the point where you are comfortable being in the courtroom. I mean, that's one of the things that I make a conscious effort to do is occupy the entire courtroom.

Michael Cowen:

Yep.

Hans Poppe:

I make it a point to use up the entirety of the space in the courtroom, and I will have my anchor points in the courtroom, where the jury knows when I go there, something's about to happen. When Hans goes to the middle of the courtroom to the timeline, something's about to happen, but I've seen a lot of lawyers that it just seems like they're just going through the motions. It's just rote and ritual, and they're not thinking about the space and where do I need to be to have the greatest impact? And what types of things do I need to do so that the jury knows that they can trust me?

Hans Poppe:

I'll give you an example, Michael. In this most recent trial, I called almost all of the defense's witnesses in my case in chief. In fact, I think that the only people that were left for them to call were their two expert witnesses. I think I called everybody, and I had deposed everybody, and I started out every single examination with the defense witnesses the same way, "Hi, Mr. Witness. We met before. My name's Hans Poppe." They say yes, and I said, "Do you recall coming to my office to give your deposition?" And they say yes, and I say, "And I asked you questions and you answered them." Yes. "And I was nice to you." Yes. "I was polite to you." Yes. "I offered you beverages." Yes. "I didn't raise my voice with you." No. "I allowed you to give your full answer to my questions without interruption."

Hans Poppe:

They said yes, and they would always smile, and it got a point where when I would do that with the witnesses, the jury would kind of chuckle because they knew what the questions were, and the witness was kind of a little bit awkward, like yeah, you were nice to me, so the jury kind of got a kick out of that, and why was I doing that, Michael? The reason why I was doing that it because I wanted the jury to know that I'm the same guy outside of the courtroom as they are seeing right now in the courtroom. I'm being authentic. I'm having this opposing witness confirm to the jury that outside the presence of the jury, outside the presence of the judge, when it was just me, the witness, the lawyer, and the court reporter, I was kind, I was polite, and I was professional, that what you're seeing here isn't just an act.

Hans Poppe:

This is the way I am, and this is the way I am with these adversarial witnesses. Well, here's what happened Michael. We go through all of the defense witnesses that I call in my case in chief. We get to the defendant's main expert, who is a pain management physician from New York City, and he is very nice on direct examination with the physician's lawyer. Well, when I get up to ask him a question, I say, "Hello, Doctor. We met in my office." He doesn't respond, and I said, "Do you recall me taking your deposition by Zoom?" He doesn't respond, and I said, "Did you understand my question?" And he goes, "Oh, was there a question?" I'm like, "Yeah, I asked if you remember me taking your deposition," and he goes, "I don't know what's relevant about that. Are you going to ask me some questions about this case?"

Hans Poppe:

And so he went off script. The jury didn't like it. He attacked me, and it only escalated after that. I mean, he fought with me. At one point I said to him, I had to get the judge to admonish him twice to answer the questions because he would not answer questions. He would go off on these rambling tirades even though I was trying to cross examine him with his deposition. He wouldn't even read the question so that I could read the answer, and at one point I even said to him, "Doctor, this may be how they do trials in New York City, but this is not how we do them in Kentucky. You have to answer the questions that I ask," and I said, "Your Honor, would you please instruct the witness to answer the question?" And she said, "Yes, you're to answer Mr. Poppe's questions."

Hans Poppe:

And so that small little thing that I was doing with all of the witnesses endeared, I think, endeared me to the jury, and when the defense witness would not cooperate and just say, "Yeah, I remember you taking my deposition, and yes, you were polite to me," it completely changed the dynamic of that witness, because he was good on direct examination. He was very good on direct examination, but I think all of his credibility went away because he wanted to fight with me when the jury knows I'm not a fighter.

TLN App commercial:

Enjoying the episode? Do you wish you had Trial Lawyer Nation on the go? Well, wish no more. The Trial Lawyer Nation app is available now, exclusively on iOS devices. Access our entire podcast library, create a favorites list, search for old and new episodes and much more. It truly is Trial Lawyer Nation at your fingertips. Download this free app now, and enjoy the top legal podcast for plaintiff attorneys wherever you go.

Michael Cowen:

And he totally exposed himself for what he was because if he was there to tell the truth he would listen to all the questions and answer them the same way, and when he's fighting you for trying to help them, then he's clearly an advocate and not an expert, and people don't like being lied to, and I think that's always helpful.

Hans Poppe:

That's right, and that leads me to the third thing that I think is important about trying cases and getting verdicts, and that is you need some help from the other side.

Michael Cowen:

Yeah.

Hans Poppe:

In every big verdict I've been a part of, I've gotten help from the other side. It hasn't been I did everything right and they did everything right. It's been I did almost everything right, and the other side gave me some opportunities that we were able to capitalize on, and that one was of them, when their main liability expert blows up on the stand and has to be admonished by the judge twice. That's the kind of thing that can alter a verdict one way or the other.

Michael Cowen:

So you said like on your cardiac cases, there was like an improper, or at least an incentive. I think you proved it was improper incentive paid by the hospital to the doctors. What kind of incentive are you talking about?

Hans Poppe:

Sure, and that's another lesson that we learned. The first trial took three weeks. By the time we got to the fifth trial, we had it down to seven days, seven to 10 days, so we really learned in that first trial that we had overwhelmed the jury. We brought in an expert from Washington D.C. on the billing law and the kickback laws, and how all of that works, and it was just so complicated that we really made a mistake in overcomplicating the case, and so eventually we got the case really simple. But what they were doing is the hospital wanted to grow the cardiac practice because it was their most profitable area.

Hans Poppe:

They lose money on OB-GYN. They lose money on the emergency room, but cardiac is where they make all of their money, and what they did was there was two groups of cardiologists in this small community, and we learned, and it was actually a whistleblower case, where they ended up paying, going by memory here, I think that the whistleblower case won around 20 million, 17 to \$20 million that they had to pay back to the government. Ultimately, two doctors from that community went to federal prison.

Hans Poppe:

We found another batch of patients in Ashland, Kentucky, about three hours away, a doctor there went to prison as well, so in total, out of these two groups of cardiac cases, three cardiologists went to federal prison. So what the first hospital did was there were two cardiology groups, and what the hospital says was, "Look, we will change the way your cardiology practice works so that we will pay you what's called a work relative value unit."

Hans Poppe:

Nothing wrong with that. Lots of physicians get paid on WRVUs, but what they did was they said, "And we will stair step them, so your first 500 RVUs are worth X. Your next 500 RVUs are worth X plus Y. Your next 500 RVUs are worth X plus Y plus Z," with no caps on the number of RVUs that any physician could perform, and with no supervision to ensure that the services that were being provided were medically necessary. Well, like my expert said, the problem with incentives is they work, and so what we saw was the rate of cardiac procedures in this little community in eastern Kentucky went like this, and then when

our lawsuit is filed and when the federal government starts investigating, same patient population, mind you, same number of physicians ...

Michael Cowen:

It dropped.

Hans Poppe:

It went like this, so we had a very clear story to tell. It's just we messed it up in the beginning, but by trial number three, we got very clear on the story, so that was the problem is that they had built a system, and they did other things too, which is where it got kind of complicated. One of the physicians had a billing practice, so they bought his billing practice and made the physician's wife the owner of the billing practice. He sold it to her for a dollar, and they gave her a contract where she would do all of the billing collection. Well, in the first trial we were alleging hey, that's an improper kickback. You know, this transferring the billing practice for a dollar, you're really just trying to incentivize the husband by an end around to do this stuff.

Michael Cowen:

Right.

Hans Poppe:

And all of that was true, but it was just complicated. What the jury did understand, and they ultimately called it a Monopoly board is a demonstrative exhibit that we made that showed the relationships between the hospital and this medical group, and this medical group, and how the money was flowing all around, and how they made all of these cardiologists medical directors, and were paying them \$100,000 a year or \$50,000 a year to be medical directors when they aren't really doing anything.

Hans Poppe:

So we just started showing all of these improper financial relationships through this board that was intentionally complex because once the jury got the case, they basically said if you've got to go through all of that to get the money from here to here, there's something fishy going on. So we didn't have to bring in the Washington D.C. expert on all of the federal regulations. We just walked them through you did this and the money flows here, and then you bought this group so the money flows through here, and then you incentivize them this way, and so on and so forth, and then the jury got it, so we didn't need the high priced expert. We just needed to talk common sense, and then they got it.

Michael Cowen:

And you ended up you said with hundreds of patients, hundreds of clients, with a smaller firm. How do you manage having so many clients?

Hans Poppe:

I have the best staff. They are extremely organized, and I don't think I mentioned this, Michael. This was not a short-lived piece of litigation. We filed the first lawsuit in 2011. We did not resolve the last case until 2019, so this was a long piece of litigation, and the first seven years of it, my office was basically devoted to this 90%. 90% of what we did was the cardiac litigation. We had a full time associate from my office on it. We had two associates from Watts Guerra on it. We had 2 1/2 to three associates from Tom

Rose's office. I had one dedicated attorney on it, and then a peripheral attorney that was also working on it.

Hans Poppe:

We had weekly meetings, morning meetings. Every Friday morning we had a call-in meeting where we would discuss and strategize, and so Michael Watts' mass torts office handled the logistics of keeping all of the mailings going out, because we would do lots of mailings updating the clients on what was happening. We had multiple town hall meetings to let them know what was happening, because we probably had seven mediations, six or seven mediations, and we would have to have a town hall before every mediation, get global authority, get documents signed, so Michael's mass torts office handled all of the robo-calls for the clients and all of the client mailings, and they were the ones that obtained and housed all of the medical records, because there was 500 clients.

Michael Cowen:

Yeah.

Hans Poppe:

Lots and lots and lots and lots of medical records because these people usually had significant medical history, and we had to get medical records from all of their providers, not just the hospital we were suing and not just the doctors we were suing, so it was voluminous. I've got a picture of the paper file, and the paper file for the Marshall case, which was the first one we tried, took up an entire file room.

Hans Poppe:

I think it was 70 binders of pleadings, and that was just one case out of 500, and like I said, we tried four of them, so it was a massive piece of litigation, and then some time around 2012, 2013, we filed another piece of litigation, same allegations, different hospital, and that one had about 300 plaintiffs in it. But the interesting thing about that one was that case took six or seven years. We didn't get to take a single deposition.

Michael Cowen:

What?

Hans Poppe:

We didn't get to take a single deposition in the case. The hospital was in a fight with their insurance company about coverage, and it was a dec action, and the hospital kept ... And in that case there were 20 doctors, 20 defendant doctors, and the way that the hospital's employment contract worked, they had to indemnify and defend each of the doctors, and so the hospital had its own lawyer, but then it had 20 defense lawyers for each one of the doctors it was paying.

Michael Cowen:

Wow.

Hans Poppe:

And the insurance company wasn't paying anything, and so the hospital's lawyers kept going to court, encouraging the court to handcuff us, because their argument was, "Judge, the more money that we

spend defending the case reduces the potential pot of money for these plaintiffs." And so, wait, wait, wait, until we did that for literally six or seven years, and we would go to court once a month, once every other month. I would be begging the court to unleash us, and they would be begging the court to keep us on a leash, and finally the court said, "This has gone on long enough. I'm going to let Mr. Poppe move forward with discovery, and doggone it. Wouldn't you know it, Michael, the case was settled the next month.

Michael Cowen:

Wow. So one last thing, so for lawyers in the audience that are brave enough to still do medical negligence case, what do you recommend they do to try to find this, you said something else, this business practice, whatever it is, that makes it more than just a bad medical decision case?

Hans Poppe:

Sure. The first thing I would say is bless your heart if you're still doing medical malpractice cases, especially if you're doing them in Texas. But the thing that I tell my associates is like I said, there are three cases. There's the case you sign up, there's the case that you prepare to try, and there's the case that you end up trying, and the most important thing about that is getting the right case signed up, and then once you've got the case signed up, you really have to look and say what else is there besides just medicine? Where else? Is this a business decision case? Is this a somebody made a mistake and changed the medical records case? Or is this some other kind of case, but whatever it is, you've got to look for a different angle, and as trial lawyers, that's what we've got to do.

Hans Poppe:

We've got to be creative about looking at our cases and not saying, "Oh, this is just a plain vanilla case." You've got to find the why. The why is the important part. If this were a criminal case it would be the motive. What's the motive here? What is the reason this bad thing happened? Because if all you're going to do is walk into court and say, "Oh, the doctor made a mistake," you're going to lose that case most of the time. There has to be, at least you would prefer that you find the answer to the question why, because that's what the jury wants to know. Why?

Michael Cowen:

Thank you so much. If someone wants to reach out to you, if they want to learn more, or maybe they have a great case in Kentucky and they'd like some help, or even outside of Kentucky if they'd like some help, how do people find you?

Hans Poppe:

I'm very easy to find. I'm probably the only Hans Poppe lawyer there is in the country, if not the world, but you can Google me. My website is Poppe, P-O-P-P-E lawfirm.com. Office number is right there. My email address is my first name, H-A-N-S at poppelawfirm.com.

Michael Cowen:

And that will all be in the show notes, and I encourage everyone to reach out to Hans if you've got something where he can help. He's a great lawyer, and on top of that he's a great human being. Thank you all for joining us today. I look forward to talking to you all again next time on Trial Lawyer Nation.

This transcript was exported on Oct 25, 2021 - view latest version [here](#).

Outro:

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

Outro commercial:

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 at 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.

Disclaimer:

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