

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 at the presentation sequence at trial. As trial lawyers, we pick up and move on and keep going. You're losing or gaining one out of every 10 jurors, which can really make a huge difference in the ultimate result of the case. Whatever you think about, you create. Learn all you can and never stop and then have the guts to try case after case after case. Welcome to the award-winning podcast, Trial Lawyer Nation, your source to win bigger verdicts, get more cases and manage your law firm. Now, here's your host, noteworthy author, sought after speaker and renowned trial lawyer, Michael Cowen.

Michael Cowen:

Today, on Trial Lawyer Nation we have attorney, Jody Moore. Jody specializes in nursing home and elder abuse cases. She just knocked it out of the park with a \$13.5 million verdict on a Zoom trial, which is really unheard of. I thought that people weren't doing that well with Zoom trials and when I heard that and all about all the other great things she's been doing, I really wanted to talk to her, so welcome to the show.

Jody C. Moore:

Thank you. Thank you for having me. I'm excited to be here.

Michael Cowen:

Thank you. Tell me a little bit about yourself.

Jody C. Moore:

So I'm an elder abuse attorney. I practice in Southern California. I've been doing this area of law since 2000 so 21 years now. I have a business partner and a couple of other lawyers in my firm and this particular trial, interestingly enough, was started by two other attorneys. And so they brought me in, in the last couple of months to help them try the case. So initially, Susan Kang Gordon and Jennifer Fiore, who are in the Bay Area here in California, had the case and then they brought me in because of the elder abuse specialty in my background.

Michael Cowen:

Before we get into the trial, first all, what is elder abuse?

Jody C. Moore:

So elder abuse primarily comes in the form of neglect, right? So you have nursing homes, assisted living facilities, sometimes hospitals and doctors who are supposed to provide a certain level of care and make sure resident needs are met and they don't do it. And of course, these cases involve some aspect of motive. So why didn't they do it, right? Are they not doing it because they're saving money because they're understaffed because they have poor training policies? And so you can imagine they're heavily defended that old folks are sick and frail and bad things are going to happen to them, even in the best circumstances. So our elder abuse cases are really corporate, systemic neglect cases where we're looking at what were the failures that let this elderly person down. And in California the Elder Abuse Act

also applies to any dependent adult so you don't necessarily have to be an elder, even though elder is defined as 65 or older, which doesn't sound so old the closer I get to that number.

Michael Cowen:

Not anymore, no.

Jody C. Moore:

So it can also just be kind of somebody who is physically unable to meet their own needs or cognitively unable to meet their own needs are protected in California under our Elder Abuse Act.

Michael Cowen:

How did you get into doing elder abuse cases?

Jody C. Moore:

So that's an interesting question. My first job out of law school was doing medical malpractice defense and that was just you know someone who knows someone who's hiring. So I found myself in this job and I really love the medicine. I thought the medicine was super interesting. Every case was different. It sort of fed my soul in terms of I'm always learning. So I really like learning new aspects of medicine and after that job I got a job in a nursing home defense firm, just because I have that medical background. While I was there, my grandmother got sick. When my grandmother got sick, she had a stroke and after her stroke, she ended up in a nursing home. I was about a two and half year lawyer at the time and I went to the nursing home and I sort of puffed up and I had my business card and I thought, I know exactly what do to keep her safe and I toured the facility and I posted my business card on her cork board above her bed. And I said, not my grandma, essentially and she was neglected.

Jody C. Moore:

She had a bed sore the size of a dinner plate that we didn't know about until it was really advanced. She didn't get turned and repositioned. We pushed the call button and no one would come. We weren't getting her medications on time. No one was assisting her with eating and so all these stories that I had heard as a defense attorney that I thought was ivory tower standards or expectations by families that could never be met, I was seeing firsthand. And I really thought if this could happen to her, what's happening to people who don't have advocates and don't know how or what to advocate for. So she passed away and I inherited \$500 in her will and I quit my job and opened the bank account under the name of the law offices of Jody Moore and I've been doing plaintiff elder abuse work ever since.

Jody C. Moore:

Wow.

Michael Cowen:

Yeah, so that's my story. So I'm always litigating with a little piece of grandma Ruth in my heart.

Michael Cowen:

Wow. Did not expect, that's deep. So you're a young lawyer, you've got \$500 bucks in the bank, what do you do to build a practice?

Jody C. Moore:

Yeah, well, I started making phone calls really. I called a lot of estate planning, trust and estate lawyers because I thought these are probably the folks that are going to see grandma and grandpa either declining and needing that type of service or after they've passed away and that led me to just a small network in my local area. I also reached out to other elder abuse attorneys and basically said I'll work for you as a contract attorney and that's really how I started. And then I got a couple of good verdicts trying cases with my now business partner back when I was about a four year lawyer. We weren't business partners at the time and we were kind of on our own path since we were younger lawyers, forging our way. We tried cases together so getting a couple of good verdicts, word of mouth, local bar referrals and it just built from there.

Michael Cowen:

That's, great. So what did you do then to build the skills you needed to get a good verdict.

Jody C. Moore:

That's also a great question because in the beginning I think there was a little bit of a sense of I've always been a capable attorney, right? I did mock trials actually in high school that sparked my interest to become a lawyer. I did a lot of the evidence and moot court type experiences in law school so I felt like I was a good tactician early on. But I sort of also was naive and didn't know what I didn't know. So there was sort of this fearlessness that we just went and tried cases and we were having fun and the cases I think were righteous and so we got good results. I do think there was a time where once you start getting some good results to start saying, okay, well, how do I keep it going? And I really went on the circuit and I read all the books and I looked for all the strategies and all the tactics.

Jody C. Moore:

And some of that actually I think maybe detracted some of my natural instincts. Does that make sense?

Michael Cowen:

Yeah.

Jody C. Moore:

Like when you get in your head and okay, well now I'm supposed to do it this certain way instead of the way, maybe my instinct told me to do it. So I'd say in the last three or four years, even I've grounded back to my instinct, if that makes sense. And a lot of that was through some work with Rick Friedman and I'm really involved with Hostage to Hero with Sari de la Motte and it brought me back to my roots if you will, which is sort of trusting the heart of the case, trusting my own skills and instincts, and then putting the best foot forward. So there's a lot of ups and downs and between, but that's sort the beginning and the end.

Michael Cowen:

Yeah, I found that you to try all the things that other people preach because you don't know what's going to work for you or not until you try it. But at the end, you can never win a case trying to be Rick Friedman, Jerry Spence, or Keith Mitnick, you have to be Jody Moore.

Jody C. Moore:

Exactly.

Michael Cowen:

My thing is that I had to discover who Michael Cowen was and I had to learn to like Michael Cowen, which took a lot of work. But it is more freeing to because I have these tactics, I can use them. I've interviewed so many people that have had success doing things in a diametrically different way. One person will say never do this and what the other person say is I always do this and they both win big. I think that having the technical expertise to get your evidence in, to talk to a jury, to handle getting objections in is important, but after that it's your story and trusting your story and telling your story in a way that's authentic which I've realized practicing. My partner Mallory, for example, she tells her story very differently than I will, I mean stylistically. She's not me, but I've watched her become very effective in telling it her way and if she tried to do it my way, it wouldn't work. And I had to realize that in coaching her and practicing with her, but watching her develop, it's been beautiful to see someone coming into their own and being able to be so effective doing it their way.

Jody C. Moore:

Yeah, I agree with that and I think that I probably felt the most like me in this trial than I felt in any trial. That's kind of an interesting self observation because it was on Zoom. But just sort of the rhythm of this trial and like I said, coming back to my instincts and understanding where we were coming from to try to put on this case, I just came from a different place, and so it felt more natural to be there.

Michael Cowen:

What do you mean from different place?

Jody C. Moore:

I came from a place of these things a righteous. This case needs to be tried even though it's under less than ideal circumstances with the pandemic and video and all of that. I had excellent co-counsel that has really done an amazing job working at the case. It was in some respects, it was like this opus for me because I had been doing all of these litigations for so long that they were all single cases. So this is the bed sore case, this is the fall case, this is the infection case and they had a common thread of course, in terms of the corporate liability. In this case, every issue I had ever litigated for 20 years was wrapped up in one case. And so it felt like a calling to me to be involved and to help put bumpers on the outside edges of what the case needed to look like because again, it was worked up in a really exceptional way by the time I got involved. And it was just a matter of making sure it stayed in this sort of space container where we didn't run afoul the Elderly Act or create unnecessary appellate issues. And we made sure that we channeled the evidence in a way that hopefully with an amazing verdict we would hold onto it.

Michael Cowen:

So tell me about the case.

Jody C. Moore:

Yeah, so the case involved a field nursing facility in Alameda county by the name of Parkview and Susan and Jen had 10 individual plaintiffs that were all in the facility from 2017 through present and they all were neglected in different ways. In other words, they had individual harm. So we had wound

management cases that led to amputation and death, malnutrition and dehydration leading to profound weight loss and death. We had infection cases. So not only like wound infections, but there was several outbreaks of scabies. We had fall cases, one gentleman fell 42 times. Another gentleman fell 17 times with hip fractures and brain injuries, so that's what I mean when I say there were sort of every elder abuse case I had ever litigated was sort of baked into this case. And then we have on the other side of the equation we had the corporate governance issue. So in California and nationally, a lot of nursing home chains are set up with an individual company that owns the license that operates that single facility.

Jody C. Moore:

And then they have some sort of parent or management company that's really the one who's controlling everything and it's set up in a way that the parent or the managers are trying to avoid liability. In California, we have a specific law that says only people that share custody of the residents are responsible under Elder Law and so it is a hotly contested issue going on right now about what that means. What came up in our trial is that we put on a case that basically whoever has control over the operations has the care custody of the residents. And so that's where the systemic corporate control issues became really important about who's controlling the money, who's controlling the people, staffing, hiring, training and supervising and then who's controlling the policies and procedures. And that really became the trifecta, if you will that we funneled all the evidence and under to show corporate control at the management level.

Michael Cowen:

And how were they able to get all these kind of disparate cases into one case?

Jody C. Moore:

That magic happened before I got involved, but it was initially filed as a single claim. And so there was actually a motion to sever and the court understood that the systemic issues, who actually had control, who was controlling the financing, who was setting the staffing budget, who was creating the policies, that those evidentiary issues and determinations by the jury would be the same regardless of the individual harm. And so that, I think coupled with the fact that we were in COVID, courts were closed for the better part of 2020 and we had five living plaintiffs.

Jody C. Moore:

So in California, you can move for preference and get a preferential trial setting with your living clients if there's a reasonable threat that they might not live past six months to see the outcome of the case. So the court took all the factors into consideration and he said, if these cases on behalf of these living clients were tried separately, you would use all of the resources of Alameda county the minute the courthouse opens indefinitely, and that's just not going to happen. So he kept the cases joined together and that issue was taken up on a writ and the writ was summarily denied and so the cases were tried together.

Michael Cowen:

Is it M.I.C.R.A. in California?

Jody C. Moore:

Yeah.

Michael Cowen:

Texas went and copied your caps in 2003 and maybe made them a little worse here. To spend the money and effort it takes to get the discovery you need and put on the experts to prove all that corporate control and liability and to get the finances and everything else would probably be hard to do with this one cap case.

Jody C. Moore:

Right. It can be prohibitively expensive, factoring, if you will, trying to get to the punitive phase in these cases because if you have an elder abuse case and the person has passed away, the way our statute works is it follows a M.I.C.R.A. cap. So the pre-pain and suffering of the elderly victim who passed away is capped at \$250,000. There's an argument if you have negligence based on wrongful death, it's also capped at \$250,000 so half a million dollars if you will cap, but there's also the argument that if the wrongful death is caused by intentional misconduct, which our elder abuse statute requires malice, suppression or fraud or recklessness, then it's not capped.

Jody C. Moore:

And so there's a lot of nuances that goes into well, how much is this case really worth? But if you hit the nail on the head and get malice, suppression of fraud, which is what we need to get our elder remedies against the corporation, you're going to have the door open for punitive damages as well. Your case is sort of over here worth maybe \$250,000, if it's not that egregious, but if you do the corporate chain work-up and you have really egregious misconduct, then you have this potential for obviously greater compensatory damages, but punitive damages as well. So just be careful of which cases you pick and which ones you do the full corporate chain work-up on.

Michael Cowen:

Yeah, absolutely. So tell me what's the trial story? What was the case about?

Jody C. Moore:

So the case was tried 100% over Zoom. I think I mentioned that. It was four days a week, 9:00 to 1:40 and that was a couple reasons: one, was to keep the jury from having Zoom fatigue and to keep them engaged and the other was just limited resources. So their ability to manage a trial of this length and complexity, they had a lot of extra people managing the technology, watching the Zoom screen, making sure people didn't drop off unintentionally, managing some of the electronic exhibits took some extra effort. So managing the court resources had to go that way. And then in addition, the court was sensitive to how we're trying 10 cases together. So he would say he trifurcated the case, but I think we're on phase four or five right now.

Jody C. Moore:

The first phase was care and custody issue that we talked about and so all that corporate control evidence came first and that lasted from about three weeks so middle of June until just after 4th of July. And so the only thing they had to decide at that phase was who had care and custody and did it include this management company? We won that 12-0. And I think that was really critical actually to how the rest of the trial played out because the defense was if the management company just has the contract

to provide these consulting services so every witness came forward and said we're just a consultant, we're completely different enterprise, we're just a consultant. Therefore, we don't have to serve custody, but that really falls apart when just the consultant is actually controlling the money, the policies and procedures and hiring and firing the staff, which is what ended up being true. They had to admit that. We had it in discovery.

Jody C. Moore:

So by the time we got to the punitive damage phase, they were saying the companies are so inextricably intertwined that we don't have financial statements for these various entities that are responsible for punitive damages. So there was betrayal if you will, we were able to point out the hypocrisy of that position since phase one. Even through [crosstalk 00:20:15] about who's really delivered. Well, we deliver care at the facility level, but we have to call our regional consultant before we can modify a policy. That [crosstalk 00:20:26] and then by the end, we're basically the same. So that story arc being revealed throughout the trial, I think was really helpful in securing the punitive damages on the finding of fraud to get to the punitive damages because the jury essentially rejected the proposition that they were just a consult.

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 the 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. And now back to the show.

Michael Cowen:

So what did they do wrong that caused all this harm to the nursing home residents?

Jody C. Moore:

Well primary theory of course, is under staffing. So we had evidence in the three years between 2017 and 2019 that they were below the state mandated minimum 328 days, but pretty much a third of the time. And that's really unheard of. By the time the state minimums are in place, facilities often ride that margin, but they don't typically fall below that consistently. So that was a big win for us to be able to show that to the jury. The second part of staffing is even if you meet the state mandated minimum, you have to have sufficient staff to meet resident needs so it's a subjective standard. And so we put on considerable evidence through an administrative expert, a nurse expert and a physician expert that if you don't have enough gas, you're inevitably going to not provide the care that people need so in that sense, we had to go through the nursing process.

Jody C. Moore:

So the nursing process is you identify what their disease or diagnosis is, your care plan for the treatment and monitoring that's required. You'll actually implement the care plan, you can't just write it down and not do it so you have to have implementation and you have to evaluate if it's working. So for each of those care issues that we talked about earlier, for wounds, for example, the care plan needs to include turning and repositioning and offloading the pressure and following the physician's order for a consult

from a wound specialist and in this case, the wound consult didn't get followed and that need didn't get floated and the pressure wasn't relieved even though were ordered.

Jody C. Moore:

So that's just an example, but we can go through each one of those care issues and say the nursing care process was down and we're back to root cause analysis. Why did it break down? Because there weren't enough people there and we had testimony from the director of nursing saying, I don't really know how to do staffing grid based upon the acuity or the needs of the residents. We had C.N.A.s say I can't meet all the needs of my patients because I have too many patients assigned me. And we had family members saying we pushed the call light, no one would come. So we had tracked staffing from all angles and each we way that went at it, we had pretty compelling testimony that they didn't have enough staff.

Michael Cowen:

And I think just from a persuasion standpoint, it makes so much more sense to say the company chose not to have enough people there as opposed to the people that were there just didn't care about the residents.

Jody C. Moore:

Right, and I've been doing this for 20 years and it's never about the frontline staff. It's always about the money. It's always about we're back to motive, right? It's always about how much money are they setting aside in their corporate coffers or to executive compensation or funneling to sister companies. The big issue right now in nursing home litigation is how compartmentalized are all these other entities that are taking a piece of the pie, which is also sort of part of this picture of making sure just the licensee with the license on the walls has no money so if they get hit with litigation, it would be difficult to collect a huge punitive value from them because they don't have a net worth that's worth anything. So we really had to deconstruct all of that and show where the money's going and peel back the curtain a little bit for the jury so they understand that.

Michael Cowen:

That is a lot of work. To pay that much attention to a case and all the follow-up I can imagine the games you're going to be getting in the discovery process. I mean, how big of a docket can you carry and do that kind of work?

Jody C. Moore:

Well, you're going to get a different answer, depending on who you ask. I want to shout-out again to Jen and Susan because they did the yeoman's work before I got involved in terms of the discovery. And remember I mentioned the case had preference so when the preference was granted, it was January 2021 and essentially you have to take the case to trial in 120 days. So you have four months to do that work.

Michael Cowen:

Wow.

Jody C. Moore:

It's crazy. So, Susan's a solo, Jen has one partner. They each had attorneys that would help them as needed, but I didn't get involved until May so by the time I got involved, they were running depositions and discovery 24 hours a day. It was impressive to see and it was one of the reasons I joined the case because I knew that they had done everything in their power to set it up for success and they had gathered a tremendous amount of exceptional information by just working around the clock. There's just no substitute for it.

Michael Cowen:

Wow, but this doesn't sound like the kind of case you could do in huge volume.

Jody C. Moore:

No, I mean, I think most elder abuse attorneys are running that degree of a case are handling 10, maybe, maybe not even that. Our firm has more than that, but we also have five lawyers and not every case goes to trial like that. I was personally working on this case four months, pretty much non-stop. So my firm was... I'll give a shout-out to them too. They were bouncing along just fine without me because they all rallied to the cause to make sure that our cases were managed in my absence, but it was not for the faint of heart, not for either of them or for me. It was a lot of work. That is true.

Michael Cowen:

That's been one of the things I've always wondered about Californians. How do you keep the lights on when you're in trial for four months?

Jody C. Moore:

Well, like I said, I have a business partner. I have three associates and they kept working on all of the cases. I work up my cases. I love doing trial work, but I'm more of the big picture thinker so I like to do the architecting of the case, the voir dire and opening. I work with the experts. I still love the medicine. I read all my own charts so I'm kind of in there sleuthing around and making sure that we know where all the bodies are buried, but I don't need to be answering phone calls anymore so someone else is definitely doing that and we did have the benefit of a trial with four days a week, 9:00 to 1:30. So there was a day to regroup and sort of handle other business, which is kind of what my firm did. They set appointments for me on the day that I was not in trial.

Michael Cowen:

Yeah, just the mind shift though of being in trial for four days and then getting out of trial mode and being able to work on something else has to be tough.

Jody C. Moore:

It was tough and also I have a personal life. I'm married, I have two kids. I'm a partner in my firm so I have management responsibilities so there are a lot of loose ends. I think you know Michael that I've worked a lot with Hostage to Hero and so I've worked a lot with Harry on Mindset Work and I feel really deeply grateful that my firm rallied and they said, "You need to go do this. We see that you want to go do this so we've got you." And my family did the same thing and my friends. They all said, "We see this is your passion. We know that this is the right step for you to go and don't worry." Even my 12 year old leave me these little notes about you're my hero, "You've got this mom and don't worry." I don't know that it would've gone with such ease if I hadn't done a lot of mindset work and designed with my peers

and my family that this is what things are going to look like for a little while and so I just feel really deeply grateful for that as well.

Michael Cowen:

And just because not everyone here has not had the luxury or the [crosstalk 00:29:46]

Jody C. Moore:

The privilege, the honor [crosstalk 00:29:48]

Michael Cowen:

Privilege, honor, of working with, sorry. I kind of think the same way. It's been life changing for me personally. What do you mean by mindset work?

Jody C. Moore:

So over in from hostagetohero.com, you can find Sari de la Motte and she's the attorney whisper, she does a lot of consulting on voir dire, opening and other trial skills, but she really kind of came to realize that you can have all the skills in the world, but if your head's not on right for a variety of reasons, we all have different reasons, that you're not going to be giving peak performance, if you will. And so there's a lot of work going on over there about how you show up in your life, in your practice, in your relationships and ultimately in front of the jury with your witnesses, with your co-counsel, with the judge. And so I've been practicing a lot of self-awareness and self-reflection to make sure that the me that shows up in all these different places is the best version of me. And its really helped with getting my own way, is the best way I could put it.

Jody C. Moore:

The nagging voice in your head of maybe I just need to read that brief one more time or maybe there's someone else I could call who would tell me the perfect way to do this cross-examination or what if I don't say this exactly right in the opening. There's a lot of those things that happen as we stand up to do this performance because it feels like there's so much on the line to win or lose this case and it's all of me, at least that's the way I felt. And a lot of the work that I've done with Sari is what's really on the line is how I show up and the rest of it's out of my control. So I'm in a much better place where I can show up and just put my best foot forward. My absolute best advocacy forward and really be at peace with it and really being open to what the universe, the jury, the judge, whatever delivers in response.

Michael Cowen:

Yeah, I freaked out some co-counsel like, why aren't you worried? It's not my problem if the jury gets it wrong. That's their job. My job's to try the case and it takes a while to work with me and figure out that it's not that I don't care, I'm working my butt off, but that's not my job. And if I try to spend energy worrying about something over which I have no control, that's wasted energy. It keeps you from being the best view. It's funny. I went to go work with Sari the first time because I had worked on a case with Rodney Jew, I guess he calls himself a litigation strategist in Napa.

Michael Cowen:

And we had all these poster boards that we were going to use for my opening and I had heard that she could maybe help me learn to use them more effectively and I wasn't quite sure how to do them

without being awkward and within three hours she'd convinced me that I shouldn't use any because if I have to tell the jury I have a simple case and then I use 200 boards to explain the case, then my message is not consistent with my words. So I thought, well let me go work with her to become better at non-verbal and I ended up doing a couple years of her, like V.I.P. Intensive coaching and probably 10% of it was on actual trial skills directly, but the other 90%, which was really on mindset and goals and achieving things made me so much better in trial than any of the little technical things that I've worked on with different people over the years.

Jody C. Moore:

Yeah, that's been my experience as well and so I'm really grateful to have found it. I found it at the right time for me because I think if we didn't have the pandemic, which was kind of when I reconnected with Sari, I would have stayed on the hamster wheel saying I'm too busy, I've got all these other priorities, how am I to carve out this time to use it for reflection and the pandemic sort of forced that on me and I'm really grateful for it because it changed my outlook and my approach to things and that's been all for the better.

Michael Cowen:

Absolutely, so let's go back to the trial then. One thing in elder abuse cases is telling the damage story because it's not going to be about the money as far as the medical bills and stuff, you have to actually get into the human damages I guess not all your clients are there or can necessarily communicate well. So what did you do to tell the damage story.

Jody C. Moore:

Yeah, that's always a challenge and a lot of trial books that are out even Sari's book when she starts talking about before and after damages and the story when they help and the story when they don't help, right. It's really difficult to tell on a wrongful death case when your client was 92, right. And so you really have to hone in on what does the relationship mean? We're just sort back to the space of what does it mean to belong to somebody else? I follow Jesse Wilson as well of Tell The Winning Story. He did a poetry challenge and so from time to time, I've been writing these poems since March and I've never written a poem before. Instinctively I'll just start writing and then this poem comes out.

Jody C. Moore:

And so for our wrongful death damages, I listened to a testimony and I went home that night and I wrote a poem called Love Is and it encapsulated the experiences that the jury had just heard about their relationship between the daughter and the fathers. They had two fathers that died and I've never done that before, but I delivered the poem as part of the closing and-

Michael Cowen:

Wow.

Jody C. Moore:

Yeah, I'm a firm believer that the time we have remaining is precious and when that limited time is taken away, it's actually more valuable than when you think you have all the time in the world. And I've lost my own mother. I lost my mom about five years ago and I was deeply affected by that loss. We had a really loving and beautiful relationship and so there's just a part of me that I tapped into that relates to

what it's like when you're untethered from that physical human bond of a parent or it could be a spouse or a child.

Jody C. Moore:

And that's it to me. If you can convey the loss with love, then the jury does the rest of the work. There's no trick. There was no... Well, for every day that's gone, I want you to give \$12 a minute. It doesn't come out for us that way. It didn't come out for me that way. So we had decided what we thought the cases were worth and that's what we asked for, but we just told human stories.

Jody C. Moore:

We talked about walking across the street to the park bench, we talked about coming into the facility and watching the football game every, I don't even know, Sunday night football. We talked about taking dad home for carne asada nights and salsa dancing for family birthdays. It was just picking those moments in time and again I give kudos to Susan Kang Gordon because she had that really deep relationship with the clients to draw those stories out. And for me it was really quite beautiful to watch because normally I'm the one who developed the story. So I already know what they're going to say, but she worked with the clients to develop those stories. So I heard them for the time in the court room with everybody else so then had to do closing the next day. So turning it into a poem and then delivering the closing the next day was a really immersive experience.

Michael Cowen:

My last trial, my partner, Sonia did most of the damage witnesses and I knew our liability story and our trial story, but I just hadn't met these people. We were busy and she was doing that part. She's a great lawyer, but I think there was actually an advantage to learning, hearing it for the first time while the jury was hearing it so that I had the same experience they did. I think there was something to that. Now I'm not recommending that you don't meet your witnesses before trial. Somebody needs to do it and normally I would still would, but having had a similar experience I think you always want to try to approach trial with the beginner's mind and not to remember the jury doesn't know what you know and so you need to pretend like you don't when you're asking questions so that you get the same experience and ask the right questions. But I think there's just something to that sharing in their experience that makes it easier to connect with them later.

Jody C. Moore:

Well, I will say, just so I'm clear, Susan put on the witnesses so she met with them, she bonded with them, she drew out the story, she made the connections and then she put them on the stand. So it was really clear how tender that relationship was that they had built to come to tell these stories. But then again, wrapping it up into a closing, that's what was new for me so it was a certainly immersive love filled moment for the whole jury, I think and I felt like I was a part of it with them, which was really different for me.

Michael Cowen:

Now, if you say no to this question, I'm going to edit it out so, no pressure, but would you mind sending us the poem and letting us post the show notes in case anyone wants to read it?

Jody C. Moore:

I would love to. Yeah, I read it a few times, but it's probably in the H.Q.H., so yeah, I'll send it to you.

Michael Cowen:

I've been way behind on my H.Q.H. video style so I kind of scrolled through there, but I'm, I'm 90% done with the book and I have promised myself until I am a 100% done with the first draft of the book, I am really trying to limit new things and because I'm, like a cat where if you shine the little laser pointer around, I will chase after everything else, but what I'm supposed to be doing. So I have to just eliminate distractions. So I am a little behind on that.

Jody C. Moore:

Yeah, no, I understand. There's so much information out there. Trying to catch it all is difficult so I get it, but yes, I'd be happy to send it to you.

Michael Cowen:

Thank you. Now let's talk about the punitive phase and so what did you have to do? So you get to the punitive damages phase, so when do you get the financial information that you're going to have to present?

Jody C. Moore:

Yeah, so we got our liability verdict September 15th and 16th. We went to our punitive phase on October 4th and we got the bulk of the punitive documents the week prior. And when I say the bulk, I mean what they chose to give us, we got the Monday prior and then that whole week we were in depositions and essentially ex parte communication with the court. So that by Friday of that week, we got a data done, but opening was Monday morning for the punitive damage phase and our expert, our forensic economist was deposed on Saturday. So there was a limited amount of time to analyze the bulk of the information. But we did take depositions that whole week. We put depositions of their P and K regarding financial commission and we did depositions of the C.E.O. and president of the management company that we were talking about earlier.

Jody C. Moore:

And again, I've got to shout-out to Jen Fiore, she's one of my co-counsel. She really took the lead on all of that. So the 1987 notice and the subpoenas and P and K information. But like I said, the way the nursing home operated, their financials rolled up to top level companies. And of course we couldn't put on any of that evidence in the liability phase. So by the time we got to the punitive phase, we had verdicts against lower level companies and finances and higher level companies. And there was a huge battle about how much information can come in about the higher level companies and is that going to prejudice the verdict and how do we just show the financial condition of the lower level companies? It was very complex. Ultimately, the court really only wanted us to talk about the lower level companies, but he said, we could talk about any money that left the companies, right because otherwise you'll just the siphon money off and say, we don't have anything.

Jody C. Moore:

So we were able to talk about payments to related parties and then we were able to talk about what sort of concentrated funds where all nursing home money came into this sort of concentration account. And even though we weren't able to say all the money in this concentration account can be used to pay

for punitive damages, right because of how resources are coming in from other entities, we were at least able to show this is a growing concern of how tens of millions of dollars coming into a bank account from various sources over time and if they're really operating at a loss year, after year, after year, after year, they wouldn't still be in business. So they would be able to sustain a punitive damage verdict of Y now. So we just kind of showed the money is not a not for profit and the company isn't going to continue operating like this if they can't withstand paying monies out, including in settlements and judgments. And we were able to talk about the fact they used this fund to pay settlements and judgments. So it was a little dicey there for a while until we could get all the financial information, but that's ultimately what we were able to show.

Michael Cowen:

I think it was 8.9 million in punitives that the jury allowed. What was your logic in just trusting them to come up with a number instead of asking for one yourself.

Jody C. Moore:

Well, so that's interesting because remember we talked about we have these 10 cases clustered together so what we had to be really careful about is that we had to produce evidence of the individual damage of each plaintiff as if the cases were being tried separately, right. And so we had an amazing jury smart, attentive. They were chatting questions and emailing questions every day, showing up on time. I was so impressed with this jury and especially through all the phases and it lasted longer than they were cleared for. And so was just thrilled with their dedication. In the liability phase, we asked for two million dollars for plaintiff, right? We said, da, da, da you can go up if you think the harm was more egregious. You can go down if you think the harm was less egregious, but that's sort of a baseline for us. And then they did their own calculations and then every plaintiff, all 10 of them, had a different amount, exactly what formula they used, we will never know, right. That's part of their private deliberations, but I'm happy that they found a different amount for every plaintiff. That means they went through and they did a different analysis and they really talked about how the individual person was harmed.

Jody C. Moore:

So when we got to the punitive damage phase, we just asked them to do a multiplier. So we said, look, somewhere between, I don't even remember to be honest, I should know the answer what I asked for. But five to 10%, I think five to 10 X, the compensatory would be a reasonable, punitive damage range. Again, you can go up, you can go down, but five to 10 X is in the ballpark and they did their own thing with that again. And so each individual person has its own mathematical calculation for the punitive damages that applied to that person and it added up to 8.9 million dollars.

Michael Cowen:

Yeah, I think it goes you trust your own heart they will do the right thing.

Jody C. Moore:

Yeah, it's a fine line between. I'm a firm believer in giving the jurors the tools, right to go about it. How do you get a 20 million verdict? Well, you have to ask for it, right? And so on the one hand, I want to give them some guidance. I want to give them a goalpost of what I think is reasonable and fair given the circumstances and I try to be reasonable and fair. I don't try to totally over blow the mark, assuming they're going to give me 10% of what I ask for. I legitimately believe the number that I'm asking for and then I turn to them and trust them and empower them to do the right thing and I believe it. I am

trusting you now. The case is in your hands. Go do your job. So I want to educate them on how to do their job. I want to give them that baseline or that goalpost that I think is reasonable that I truly believe in. And then I want to send them off with trust and empower them to do their job.

Michael Cowen:

But you gave them some guidance. You didn't just say, do whatever you think is fair. You said, well, five to 10 times would be reasonable, but it's up to you. And I respect you. You can go up or down depending that's [crosstalk 00:47:38]

Jody C. Moore:

Exactly.

Michael Cowen:

So it's not like you just went in there and just... The poor people in Pennsylvania that aren't allowed to suggest numbers at all that have to find some way to hint at it or hopefully [crosstalk 00:47:49]

Jody C. Moore:

Right, we definitely asked for it. Like I said, I want to give them some frame of reference because they don't know. They don't know if a hundred thousand dollars is a lot of money or ten million dollars is expected in a death case, at least that's my assumption. There's no preconceived notion that jurors know how to appraise the value of the death in a nursing home case. So you've got to give them something and then turn around and say, "I trust you. This is what I think and you might have a different opinion and I trust you to do your job." And send them off.

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Michael Cowen:

So this was a Zoom trial. Now that you've done a four and half month long Zoom trial, what is your general impression of the Zoom trial experience?

Jody C. Moore:

Well, it's a little bit of a loaded question, right? I think for this case, Zoom trial was the right fit, but I don't think Zoom was the right fit for all cases. And what I mean by that is I think this case had complexities and sort of duration built into it. We knew it was going to be a long trial and if we had been in person and jurors had to pay for parking and go through the metal detector and sit there from 9:00 to 4:30 and eat crappy cafeteria food and not be able to check on their kids' homework at the end of the day or whatever, I think we would've had crankier jurors or I think we would've had just jurors who would not have lasted the duration of the trial. So for something that's longer like this and complex where you really want people who want to be there and want to do the right thing. The 9:00 to 1:30,

four days a week works for us because they could come and give their attention. They could also live their lives so for me that's the blessing.

Jody C. Moore:

That was definitely the pro of doing it the on Zoom. There were pros to the parties and the attorneys. We didn't have to wake up and go through the metal detector and lug our boxes and eat crappy cafeteria food either. So I do think to some extent it serves our ability to show up fresh every day and put on great evidence. It was clearly harder to connect with the jurors. It's hard to make eye contact. We had great technology. Susan set up basically a war room in her office so we had great cameras, great microphones. We had a podium set up and a desk set up so we could switch back and forth so the questioning attorney would stand at a podium. We had the white board behind us. We got pretty adept very quickly at running the exhibits through the picture-in-picture so you could still see the attorney and you could see the exhibits. So the technology ended up working rather smoothly, I thought and that was probably my biggest concern going into it was that the technology would be terrible. And frankly, my biggest fear was that the jurors just wouldn't be able to pay attention. We have this super complex case and it's going to last a long time and the jurors are going to check out. So I'm so pleasantly surprised that they were as invested and attentive as they were.

Michael Cowen:

Did you do anything to mix up the view that they had rather than just having a talking head the whole time or...

Jody C. Moore:

Well, like I said, we have the sitting and then we have the standing and sometimes we did the examination sitting just because there were voluminous materials, right. So it might have been easier with some of the experts that were on longer to be sitting so that we had to access to our materials because you can't exactly walk around even in the war room. I do think that it helped, that we had the podium versus sitting. The defense didn't leave their chair. So they were essentially sitting together in a conference room and never stood up. So we were definitely more dynamic in that sense than they were. We did use our exhibits pretty robustly. I'm a butcher paper gal so I like to write on the butcher paper and we were able to keep that in frame so that the jurors could see really key points being written down on the butcher paper.

Jody C. Moore:

But that's about it. They were still staring at a tiny little box. If you looked through the transcript and look at how many times it says, "Oh, am I on mute." or whatever sound check and not getting back into... We had a lot of breakout rooms so instead of a sidebar, you go into the breakout room in Zoom and so closing everybody out of the room electronically and then shuttling everybody back into the room. It took a little extra of time. I'm grateful that the pandemic forced everybody into a virtual environment so the jurors I think, had built up a lot of their tolerance and patience around what that looked like. If we were part of a pilot program and there was never a pandemic and we just invited a whole bunch of people to do something on Zoom, then I think it would've been a nightmare. People would've just hated it. But I think because people have already adapted for their own work and they understood the technology and they knew how to be patient through some of those bumps in the road, that we really got the benefit of it by the time our trial came around.

Michael Cowen:

I've only done Zoom arbitration. I've gotten ready for pre Zoom trials and they all either resolved or the judge decided, I don't want to say chickened out because the judge might be listening, but the judge decided not to have a Zoom trial over the defendant's objection. But having prepared for them, having done an arbitration resume and having tried a live case again, after that, I think there is something we lose. Just being in the courtroom together, being able to interact with things, the eye contact, the facial expression back and forth.

Michael Cowen:

But I did like because of the pandemic we were able to have the option of calling witnesses by Zoom and just not having to figure out how to get my client's sister in from North Carolina or even somebody that really didn't want to come in, didn't want to take time off from work, but would take an hour break, go in their office and get in front of the computer and testify or even in a lot of cases, the economists isn't that dynamic and you're bringing numbers to present value. I did not have to fly someone in or have them take hours and hours to pay them, but just have them show up by Zoom was nice.

Jody C. Moore:

Yeah, no, I agree. I mean it made scheduling really easy. There was no four people waiting in the hallway, right? If you had an expert on standby, they were literally on standby. I'll text you on the break and they would just pop into the Zoom room. So there were definitely efficiencies associated with that. But I did miss the dynamic of being in the court room. We had a really great judge. He was very gracious. He was very good. His courtroom staff was very attentive to the jury so in that way it was as positive an experience I think a Zoom trial could be. Really, it was. I will say I would've been miserable trying the case alone, right. The fact that I was in the same room with my co-counsel, we still set off of each other and I think that's vital. If I was solo sitting here with my briefcase and my camera, I think it would be absolutely miserable because you need that energy that you give one another or whatever dynamic you would get if you were in a real court room with other people. You still need that so I was really grateful that we were together and that we could encourage and support each other.

Michael Cowen:

So what advice would you give to somebody that was considering the possibility of going to trial by zoom?

Jody C. Moore:

I guess I would give them advice to make sure you don't do it alone because like I just said, I think that would be miserable. Make sure you master your technology and again, don't do that alone. You always have one person examining, one person on technology, because you just can't do it all. Invest in the good camera, the good microphone. We have the junction box that let us go back and forth between the different parts of the technology. That was super helpful. You need to have a decent exhibit management program so we used something called Ignite through Veritext, which I'm not endorsing. That you use an outside company, but the Dropbox type feature of the cloud server was pretty nice because the jurors could just access the document through the link once they were deliberating and counsel could access the document. You just throw them in the folder and opposing counsel could access the documents immediately.

Jody C. Moore:

So obviously your technology has to work, but how do you hold the attention of the audience? I guess that's part of it, right. I will say I've done a lot of work on Zoom in the last 18 months. I've done a lot of webinars and speaking. I've done training with Sari. I've done presentations with Hostage to Hero, worked on non-verbal communication so I do think being used to being in this little box helps. So if you're not practicing being in this little box, then trying to communicate by the range of your voice or how you're breathing or how you're using your hands, effective use of pauses, when are you going to point and use the boards it's going to be much harder, as well. So really developing all of those skills to be an effective communicator inside this little box is important, as well.

Michael Cowen:

Hats off to you for having the courage to do it and congratulations for being one of the few people to have successfully done it. I've talked to a number of people that have tried cases by Zoom and got verdicts with a little of M.I.C.R.A. cap would be and they just felt like they didn't connect as much. There have been a couple other people that have done all right. But I think that speaks a lot to your preparation and your story and your skill to be able to go into a new medium and still get an incredible result.

Jody C. Moore:

Thank you. I appreciate it. It was an experience for sure. One I won't forget.

Michael Cowen:

So, Judy, thank you so much, it's been great talking to you and thank you for joining us. If anyone wants to reach out to you, maybe they want some ideas on trials, maybe they have an elder abuse case and they could use some help, how can someone find you?

Jody C. Moore:

Sure, probably email is best so Jody J-O-D-Y @johnson-moore.com and you can also look up our website, which is johnson-moore.com and you can find me in the fromhostageohero.com Facebook page and if you join H.Q.H., I'm pretty active in that group.

Michael Cowen:

And I do encourage people to join that. I don't get any kickbacks or everything. I just love, Sari and I she's done a lot for me and you get to work with people like Jody too. So Jodi, thank you so much for joining us. I look forward to seeing you soon. Hopefully we'll meet in person someday. This Zoom stuff is great, but I miss the human connections and thank you very much.

Outro:

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