

Intro:

This is Michael Cowen and welcome to Trial Lawyer Nation. You are the leader in the courtroom and you want the jury to be looking to you for the answers. When you figure out your theory, never deviate. You want the facts to be consistent, complete, and incredible. The defense has no problem running out the clock, delay is the friend of the defense. It's tough to grow a firm by trying to hold on and micromanage. You've got to front-load a simple structure for jurors to be able to hold onto. What types of creative things can we do as lawyers even though we don't have a trial setting? Whatever you've got to do to make it real, you've got to do to make it real. But the person who needs convincing is you. Welcome to the award-winning podcast, 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, I have attorney Chris Finney out of St. Louis. His firm is Finney Injury Law. Chris recently got a really good verdict on a non-catastrophic case, a case with a broken arm. And I saw where he had posted on a group that we are both in about all the things he did to get the verdict. And honestly, in my experience is a lot harder to get a good verdict without a catastrophic injury than it is to get a big verdict when you have a death or paralysis or something. I wanted to learn from you and I'm hoping other people do too. So welcome to the show.

Chris Finney:

Well, thanks for having me. I listen to you all the time, so I'm very excited to talk to you about some stuff and hear what you have to say, to be honest with you.

Michael Cowen:

Sure. Well, tell me a little bit about yourself.

Chris Finney:

So I am from St. Louis. I went to school here in St. Louis pretty much all my life. I'm one of seven children. My dad was actually a plaintiff's lawyer, is a plaintiff's lawyer. And I ended up going to law school because candidly, it was the thing to do back in 2008, and everybody who went paid for it. So did that, got out. And in law school I wanted to try cases, I guess, just seemed like the thing to do.

Chris Finney:

Started at the prosecutor's office, went there a couple of years and got offered a job at an insurance defense firm. It was double my pay and had all this stuff, thought was really cool. I lasted like, honestly, three months there. I think my last month I billed 17 hours and I quit. Told my dad, I joined up with my dad, did that for a few years, and then went out on my own. And now on my own here in St. Louis and try a lot of cases in teams. We co-counsel a lot because we have a small office. I've got a wife and five kids of my own and so that's where I'm at.

Michael Cowen:

What is it about the insurance defense practice that made you decide so quickly you didn't like it?

Chris Finney:

Well, I was brought up in a plaintiff's house and my uncle is actually, his name's Don Rarissy, and he has practicing, I don't know, 50 years. He's an incredible plaintiff's lawyer he here in St. Louis. So I had a little bit of a bent going in. But I remember I was sitting, talking to my boss, who was a nice guy, but he is a lifetime insurance defense guy and he said, we had this client, it was a construction case, he built this retaining wall and he was one of 15 defendants and he was saying, "Oh, we're really going to help our guy out. We're going to get him out of this mess, blah, blah, blah."

Chris Finney:

All I could think of in the back of my head was, "We can get him out of this mess in five seconds. Just call the plaintiff's lawyer, ask him what he wants and we'll give it to him. And is not a penny out of our guy's pocket. He's on his own, he's free, he never has to hear from us again for the rest of his life." And I actually said that to him and I didn't get the best response. So then I quit a few weeks after that really and just moved on. It was not a good fit. And then when you're not in a good fit, you get resentful and things get angry and it's not a good fit.

Michael Cowen:

Well, I'm proud of you for having realized that and gotten out instead of trying to, "Well, I have to stick it out I have to worry about what other people think and not look like a quitter." Because then you waste time.

Chris Finney:

Yes.

Michael Cowen:

So since going out on the plaintiff's side, what are the things you've done to develop yourself as a trial lawyer?

Chris Finney:

Well, actually, it's a good question. When I was thinking about that actually over the last few days, because I have an associate now and I want to make sure he has all the opportunities that I had, and I started to realize, man, I spent a lot of money on personal development or development as a trial lawyer. Whether had been going to regionals for TLC or Trial by Human stuff or ethos with Rick Friedman or Sari de la Motte. I think putting all those things together, doing trial guide seminars, those things have really been stuff that I've worked on to develop myself, my comfort level with who I am and how I try cases, not how other people try cases.

Chris Finney:

And then, of course, Michael, I've done a lot of therapy and I still do it. I think it's a very valuable tool, a self exploration tool that helps identify... I guess I should say when you're in the courtroom and in trial, your personal insecurities or faults are magnified, there's an audience there. And if you don't have the awareness or, and I don't want to say control, but just the understanding of who you are and what it is, it gets to be ugly and goes south real fast, and that case is over. So that was really my initiation to therapy, is I don't like how I'm reacting in these situations and I want to know why because I want to prevent it. And then all this work was Sari and Trial by Human and Rick Friedman. Those things are the most important for my personal development as a trial lawyer.

Michael Cowen:

I personally found I'm a believer that, well, I think everyone in the world could use some therapy. But I think trial lawyers, not only in just what we do for a living, trying cases and putting your fate in the hands of random strangers is something that you need to get your head on straight. Or it will kill you because a lot of the times we have a lot to do with winning and losing cases, but not everything. And a lot of times you can try the best case of the world but either one, the facts weren't there or two, you didn't have the right jury, and it's really easy to let that get you down. And then there's all the secondary trauma, especially on the bigger cases. You're talking into widows, people that lost their kids, people who lost their parents, or people that have horrific injuries and it really does affect you. And if you don't take care of yourself, it's so easy to fall and succumb to demons, drug use, alcohol use, for me eating too much, whatever it is.

Chris Finney:

Yes. That was one of the main things that I would go to these seminars as a younger lawyer and I'd see everybody was divorced or something like that. I'd be like, "I love my wife, I don't want to get divorced." And it was almost like a badge that people were wearing. They weren't bragging about it, but it was a common theme through a lot. And that's how I get more into the Trial by Human because I was like, "All right, you don't have to sacrifice your entire life to do just this stuff or be good at it. You have to have some balance."

Michael Cowen:

Absolutely.

Chris Finney:

And feel Sari, and all that stuff that we've developed those types of things.

Michael Cowen:

I found that the Sari mindset work and the therapy work go together. If that makes any sense because they're different. Sari de la Motte's not a therapist, she does help you with mindset, but she's not going to go delve deep into your personal, at least not with me. Because she's not trying to do therapy, she's trying to make you a better trialer. Whereas the therapist will help with issues but not necessarily things that are going to be directly applicable to courtroom mindset. So I find that doing both and there's just no better investment than investigating in yourself. So I guess you have then decided rather than just picking one person or one group to be a disciple of, you're doing this, I think what Rich Newsome calls mixed method advocacy.

Chris Finney:

And I do Trial School stuff too. But I don't think you can... My experience early on was I tried to do this one system exactly how they said it and wear everything that they wore and do what they did and I got just not good results and it was incredibly frustrating. I would try a case and come back and get all this. The people that weren't in the arena would tell me what they thought, which was nice. But it was like after the fourth or fifth time, I was like, "Guys, maybe I'm not good at this."

Chris Finney:

But then I started to hear about Nick Rowley and what they were doing and you take bits and pieces. Then what I really liked what he was saying was the freedom to try the stuff on. If you don't like it, don't do it. Then you do some Mitnick and you try some of that on and you go with what you wear, what fits you and utilize it and then you have that authenticity. I think for me, luckily it's produced some decent results, I hope they continue. But it's a solid, I think you don't have to pick one.

Michael Cowen:

Absolutely, I agree. I think you do need to study something well enough to master the technique. I think there's a danger of just reading every book and say I'm going to spend 20 minutes on this and 30 minutes on that. I think you need to go to some seminars, do some practice, get some coaching so you can learn the different methods. But then you've got to find out what aspects of each one of them to create. It's almost like we just have to create our own. We don't have to each write a book and try to create a following, but we need to find, for us to be authentic and powerful in the courtroom, what is it that we need?

Chris Finney:

Yes, you've got to put your stamp on it.

Michael Cowen:

So how many cases have you tried since you've become a plaintiff's lawyer?

Chris Finney:

Since I became a plaintiff's lawyer, I'm probably right at under 20. I had some as a prosecutor and had a couple, actually only a couple that I was allowed to second chair as an insurance defense lawyer. But since then I've been practicing now 11 years, so the majority have been as a plaintiff's lawyer.

Michael Cowen:

And that's good to hear. You hear this myth that you can't get a trial anymore and that it's too hard to get trial experience.

Chris Finney:

It's an easy excuse, I think, for most people. It's an easy excuse because if you go to docket call, well, we go to now WebEx or Zoom docket calls, but if you want a trial setting, you can get them. In Missouri here, there are very creative ways to get quick trial settings. I've been able to get trial settings from the data injury to verdict would be six months. And it's just you have to think outside the box. And part of, I think, the resistance to getting to trial is there's that, well, everybody's always done it this way, everybody's done it this way. Well, okay, who cares? Whatever, try a different way and if it doesn't work, you can always go back to the old way.

Michael Cowen:

I think the biggest obstacle of trying cases that no one wants to admit this is the fear of losing.

Chris Finney:

I guess when you lose, you deal with the fear like me if you lost. But it's the fear of losing and it's also, I think goes with that as the shame. It's who wants to get up there and say they asked for 5 million bucks

and got skunked or they had a rear-ender and they got a \$0 verdict like I have, with an independent eyewitness who backed your story? It happens, it happens.

Michael Cowen:

It's funny because you watch, let's say professional athletes, no one expects a professional athlete to never lose a game. Tom Brady has lost plenty of football games, but a lot of people would argue he's the greatest quarterback of all time, whether he is... He's definitely awesome.

Chris Finney:

He just got shut out last week, zero points.

Michael Cowen:

He's not going to quit and not go back next week because he didn't score this week.

Chris Finney:

Exactly.

Michael Cowen:

I think we have to adjust our mindsets that we go in there, we do everything we can, and it's great when we win and we can do a lot of things to increase our odds of winning and increase our odds of getting a bigger verdict. But there's no guarantees and no one remembers your losses.

Chris Finney:

No, they don't, they really don't. I was talking a friend of mine because he wanted to be asked about the trial and he's a good close friend of mine in the local state bar or whatever. I told him, I was like, "Well the last three had gone really poorly, really poorly, low verdicts or defense verdicts." And he was like, "I had no idea that you had had three that did not go well at all." I was yeah, that's just part of the deal. But nobody remembers they don't dwell on them, it's like anything.

Michael Cowen:

Yeah, they just remember your wins. It's crazy. So for those of you listening that are worried, as long as it makes economic sense for your client to try the case, as long as the risk... There's some offers that are so big that it's in the client's best interest, but if it's not, and as long as all state insurance is in business, there's plenty of offers that do not provide any real economic benefit to the client.

Chris Finney:

There's no way everybody's being fair. They're not being fair to everybody, it's just not it, it doesn't happen.

Michael Cowen:

So what are some of the things you've learned that you've been able to incorporate in trials that you personally find helpful?

Chris Finney:

So what I really think lately that we've been able to implement is more of some of that speed trial stuff with Joe Reed is really trying to simplify. I think this last trial was a day and a half and we got it done real quick. We had, I don't know, six or seven witnesses, we had a few more that we didn't even call, just wasn't necessary, I just sent them on their way. And that's like as we try more cases in our office, we're getting a better feel of the jurors got it. If they don't have it now they're not going to get it, why are we wasting our time? I'm not going to pound them with another witness to tell the same story. So I think the shorter the better. And even shorter opening statements, shorter examinations.

Chris Finney:

I know that sometimes around here a lot of our treating doctors are by video deposition for trial and they're edited. We work really hard to get those down to 10, 11 minutes because whoever sat there and listened to a doctor on video drawn on for 20, 30, 40, 50, an hour, something's not working out right. It's either too complicated or the jurors are very bored. So brevity and being concise about really pairing down what's important has helped us a lot. And it helped keep our focus because like any trial lawyer, we all get really into the cases, really into the cases. And you think, "I need to point out this fact, I got to find a way to get this in." Well, nobody cares about that fact probably. It's like, is it something the instruction they need to know? Are you just trying to get some aggravating circumstances that don't really have to do with your damages? And part of that is us discerning that line, cutting away that stuff, and then going with what really the case is about and then keeping the focus on that while still learning the case.

Michael Cowen:

I think a part of that is just learning to trust yours. Because I think we put in too much, we put in, well, they might not buy this theory so I got to put these other three theories in. And I got this one witness saying it but I got five more saying the same thing because they might not believe or they might be sleeping through it. And then we make the case boring and confusing and we look like we're insecure about it because our actions and our words aren't matching up.

Chris Finney:

Like Rick Friedman says, he's like, "Well, why talk about one issue when 17 will do?" It's what you learn in law school but the case is mostly about one issue or two issues. That's really what it comes down to.

Michael Cowen:

I've really come to the conclusion that a plaintiffs can only simple cases. And that any case is a simple case, it just takes a lot of work to get there.

Chris Finney:

Yes, and that's what... I completely agree with that. But finding, like you said before, having the trust that I have this, this is the issue, I believe this is the right one we got to focus on, let's go with that. Let's not worry about any of this other stuff, let it go and then move forward. The trust to do that takes a lot, I guess, in your personal exploration, in developing who you are. But also trust in your teammates, hey, we're on the right path, let's keep rolling.

Michael Cowen:

It took me actually working with Surye to realize it, my biggest obstacle to the bigger verdicts was not trusting the jurors. And when you don't trust people, they're not going to do the right thing for you.

Chris Finney:

Well, was it you were afraid to ask them for the money or was it that you're just like, they're not going to get it, I got to really hammer it home?

Michael Cowen:

I asked them for the money. I don't know, when you don't trust somebody and you're worried they're going to reject you, it's like, this is a bad example. But when you're looking for someone to date, you're a little bit insecure but once you have a girlfriend, other women were more attracted to you. Because you're not worried about it. I don't know, that's probably not the best example for trial. But when you trust that someone's going to do the right thing and you treat them that way, they're more likely to do it. Whereas if you're, let me show you, I'm going to prove this to you, I don't know, you're sounding desperate and you're not as trustworthy.

Chris Finney:

When you're trying to ram it down their throat, it's not going to do very well.

Michael Cowen:

So you've done Trial Lawyers College regional, have you been to the ranch or whatever they're doing now?

Chris Finney:

I don't know what's going on with it now, but I haven't been there. It had been a goal of mine, but had a lot of kids, they're younger, and I know that's not an excuse when you talk to everybody who's been, I think you've been, and they're like, "Well, you just got to go, you just got to go." Well, I'll be honest with you, I want to go when I want to go, I don't want to force myself to go. So I'd like to do that, I really would. But I also want to make sure I'm not constantly worried about the stress that everybody's under at back home.

Michael Cowen:

I agree with you. I went before I was even married, so it was easy.

Chris Finney:

It's a different story, yeah.

Michael Cowen:

It was very easy. And I am no longer involved not because... There's two groups, I like people in both of them, but I am not going to give up that much of my time away from my kids while I still have kids that want to talk to me.

Chris Finney:

I agree with you. I love my kids, it's something I really want to be around them, I enjoy their being around them, I enjoy being around my wife. I like going home at the end of the day, I look forward to going home at the end of the day. And I think that's one of the things I guess I figured out with Sari and through other therapy is drawing those healthy boundaries and also being patient with myself is, "Hey, you don't have to get it all done in three years. Just because so and so got a \$25 million verdict when they were 38, you don't have to have one when you're 38, just relax." And that takes some really pumping of the breaks. But it helps when you have supportive people around you, you have an understanding spouse, things like that.

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 delisi@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 how are you able to practice at a high level and then have time to see your wife and five kids?

Chris Finney:

Like any good trial practice, I think, will tell you it starts from the foundation, which is the staff. So it really starts with the trust in them and then hiring the right people. I have had fits and starts in the wrong hiring. And then you try to fix that immediately, at least I do. But when you have somebody good or people that are good, I try to make sure that they feel valued, that they have some ownership, and go from there. Because I'd like to think I'm more of a hands off guy, because you say there's... We don't have a ton of files, but say I'm looking at 15 or 20 of them and trying to keep on track of those ones in litigation that are going for trial. Somebody else has got to be handling all the other stuff. And somebody else has got to be handling the bills. You got to trust that they're doing it.

Chris Finney:

And we also have a network of vendors, we're all small business owners and you have to trust them to do it. And if you have those relationships in place and parameters for those relationships, you design that alliance you could say, there's expectations that are met about who's supposed to be doing what. Then also the power of cliché, but saying no. If a case is difficult, whether it's the client or some information, we don't hesitate to cut them loose, no matter how big it is or how easy of a fee it could be. We just let go of two today because we're not going to deal with abuse from clients, our people are too valuable. And if you want to call up and abuse somebody, you're not calling here, call somewhere else and find a different lawyer.

Chris Finney:

Or if you are not going to hold up your end of the bargain, we put work in and you've got to keep us up to speed as to what's going on. If you don't tell us, then we don't have time for you. Because it's a disservice to all the other clients that are doing it. So part of it has been developing healthy boundaries, main part of it has been having a really good office set up and then you can have the freedom, I think, to

go wherever. And let's be honest, technology allows us to do a ton of stuff from a ton of places. We can do work... I'm an early guy, so I can do work at 5:00 in the morning if I want, so I can be home by 3:30. There's no stopping any of that type of stuff.

Michael Cowen:

You said that you try to make your good employees feel valued, what do you do to do that?

Chris Finney:

I try to reassure them or assure them that there's no decision or no move that they will make that is catastrophic. Nothing that they can do is going to sink us. I'd rather them do something than do nothing because I think maybe you've talked about this before, I know I've heard other people talk about it. If they're running in here every five minutes to ask you a question about, well this records company or this summary wasn't right or I think we need to order these records, you'll get nothing done, and they don't any value. That's something I can do myself if I'm going to put out all those fires. So part of it is a comfort with mistakes and just a preparation that, hey, if a mistake happens, we can fix it, it's not going to sink it. And letting them know that nothing that we are doing together is going to sink us, it's just not going to happen. If something is going to sink us and they're handling and now I'm not aware of it, it's my fault. A lot of it is taking ownership of those issues.

Michael Cowen:

Great. I'm always looking for ways to be better at that. Especially in this current employment environment we're trying to proactively make our people feel good so that we don't lose them.

Chris Finney:

That is what I'm worried about. But also giving them freedom. But you can give them I think... What do I know? I don't have that many employees. But you can give them freedom but I think as long as everybody understands that for our practice it's a trial practice. So if you want to go out town in July for a week or whatever it is, that's fine. But if we have a trial that week, none of us are going out town. And we're all on the same boat, I expect you to be with us. If want to go out of town in August, great, go out of town in August. But when we need you, we're all here.

Michael Cowen:

And you had a recent verdict, I think you had a \$750,000 verdict on a broken arm case. I think your pretrial offer was what 70,000?

Chris Finney:

Yes, yeah.

Michael Cowen:

Tell me a little bit about that case, the facts of them.

Chris Finney:

It's a case that I assume everybody listening has in their cabinet of cases. Was a head on collision where driver was either texting or doing something, we don't really know. He crossed the center line, hit our client, she's holding the wheel, and her right arm fractures radius and all. She has surgery to reduce the

fracture and that was in October of 2018. By December of 2018, she's released from treatment. She skips her last surgeon's appointment in January, she had strep throat, never rescheduled it. And we made our way through the process. I'll be very open and honest, I thought we were going to settle the case for \$100,000, that was the policy. I repeatedly asked for \$100,000 probably four times. First offer was \$50,000, then they never got above \$70,000.

Chris Finney:

And in September, I sent them a letter I said, "Listen, we're about to spend on an animation, we're about to spend on the doctor. You're at \$70,000, we're at \$100,000. I think if you put the policy up, which is that we can probably get it done. Otherwise, I'm going to spend this money and it's going to make a cost prohibitive to even settle at \$100,000 after I spend it." And they never answered, just didn't even respond until they called me the day before the doctor depo and asked, "Well, what can we do to get this done?" I said, "I already spent the money. I don't know." And they said, "Well, we're never paying above \$100,000. Well then I guess, I don't know, I can't... Only one way to make you pay over \$100,000. So if you don't want to do it on your own, I guess we'll find out. And I could be wrong but we'll try it."

Chris Finney:

So a great really, I think the Keystone to it was we had a great client. I know everybody says that about their verdicts, but if there are common themes about verdicts that don't have catastrophic harms, at least catastrophic physical harms, it's the clients. And that took me a while to learn. Oh, just you could do anything any case if the defendant's conduct was that bad. Well I think I've heard jurors take money from people they don't like and give it to people they do, that's kind of what happens. So they don't like your person or they don't like you, it's not going to work out. So our lady, she did everything we asked her to do in terms of preparing for trial.

Chris Finney:

And we're a type of office that spends... Nobody's going to be hassling you around here if you're at the client's house for days on end. That to me is beneficial. And if it's a case, we've set we're going to try, don't worry about the paperwork, we'll take care of that another time, spend the time with the client. And the more time we spent with her and her before and after witnesses are really her family, well, I started to think we could do pretty well and that they were missing the boat. Even though she performed very well in her depo too. It's not like they weren't aware of who she was. I thought, "All right. Well, I think we can get a good verdict, let's see what happens." I tried it with my associate, who's more than an associate, and fortunately, it out worked out well in this instance.

Michael Cowen:

How much were your economic specialists?

Chris Finney:

They're \$14,000. We waved them, we waved everything.

Michael Cowen:

And what was behind your decision to wave the economic losses?

Chris Finney:

Well, there's the psychological parts anchoring and all that stuff. But I got to be honest with you, Michael, my experience in Missouri, we have a bill and paid statute. So you got the bill [crosstalk 00:28:09], you got that in Texas. So then why create a fight in front of the jury that wastes their time about something nobody even cares, that my client didn't even really pay. That was the subrogation amount. So we've never, I've never, in any of the cases I've tried, had past special damages in the case. Even if they've been hundreds of thousands of dollars, I just don't. Because if that's the case, I'm asking for \$5 million or \$7 million or \$10 million or whatever, and what's 300 grand? We don't have to do it in Missouri. We only have one line for damages, you don't have to parse out economic or non-economic. So it's any damage is what our instruction says.

Chris Finney:

So we leave it out and it does confound the defense because all they do is harp on there's no medical bills in this case, that becomes their theme. And it's like, well, no shit. I told them that, those are the first words out of my mouth, that's no surprise. So we wave those and just focus on you tell them from the outset, this is going to be a case about non-economic damages, pain and suffering. These are cases that under the law can be brought.

Michael Cowen:

So she hadn't gone to the doctor in almost three years. What were the harms and losses that you presented?

Chris Finney:

So our client she's married but she's in her 40s and doesn't have children. And she was one of five, the oldest of five who had a rough upbringing. Around the time she was 12 or 13 she really did find out who her dad was, wasn't who she thought her dad was. Her mom worked nights, a bartending type lifestyle. So by the time she was 11, 12, 13, she's taking care of babies, she's putting kids to bed, she's getting them ready for school. So she had, I don't want to call it a motherly instinct, but a strong family instinct that had developed, and it had carried over with her siblings. This is the type of on with their siblings that one of the sisters said can only be formed through trauma. And they have children and the nieces and nephews were the biggest part of her life. So we made the case about the nieces and nephews and the loss of those life experiences, and then brought in the sisters and the aunt to talk about it.

Michael Cowen:

Was she still suffering pain or any limitation at the time of trial?

Chris Finney:

She was, she suffers daily issues where she takes Advil. She's a pharmacy tech, so she's always using her hands and she can't do that type of stuff anymore. Now, there weren't any records of that, but it was testimony that she was going to offer and she did.

Michael Cowen:

And you said you had before and after witnesses, why do you do that instead of just having your client talk?

Chris Finney:

Because our belief is, I guess I should say my opinion is jurors don't want to give money to the lowest need person, talk about all their problems. I think they want to give money to people who they think are going to do good with it, who are going to move forward in their life in a positive way. So our client to us is always going to be positive, she's always going to speak well, she's always going to be strong, she's always going to do what a good person would always do. And then you can bring in, and she's not going to minimize her losses, but then you bring in the sisters and everything to say, Okay, she told us this." They heard this, let's talk about this, what's really going on here? And then have them tell the truth. I think a lot of people do that type of technique.

Michael Cowen:

So let's talk about some of the things you did. And one of the reasons I want to talk to you is I was really impressed by your list of things you did to prepare for this trial. So let's talk about, what are some of the things you did to get ready, to learn the story, and figure out how to tell the story of this trial?

Chris Finney:

Well, number one, we spent a lot of time with her. We did a ton of that and we had her do a lot of writing for us and my associates spent a lot of time with her. So the weeks leading up, we spent a ton of time with her. But we also focused on ourselves because I think if we couldn't identify with her losses, we weren't going to be able to effectively portray them. And that meant since she was a family person, Alex led better in my office. He has four kids, I have five we're both family people. We wanted to focus on our families, be more aware of who that is, what's important about it. And health because all our cases really are about a loss of some health. So we really were big on staying healthy and making sure we were getting the sleep we needed, all those types of things to make sure we showed up in the right mindset.

Michael Cowen:

That is so important. And it's so easy to go work till midnight, 2:00, 3:00 in the morning during trial. And at least as I've gotten older, doesn't work for me very well.

Chris Finney:

Well, I used to do that too but it's... So what happens to me is the ideas don't really improve just the quantity of ideas go. So now I'm writing a million things in my trial notebook that now it's just word vomit all over the page. And it's like, I'll even flip back a few pages and be like, "Hell, that was a really good idea from... I don't even know when I wrote that, but that was good and I forgot about it." I think it's good to have all those ideas down because you're not sure how the evidence is going to come out and you can pick and choose. But I do believe shutting it down at a certain time and I'd rather get up earlier than stay up later and doing it that way is probably where the good stuff came from.

Michael Cowen:

I agree with you 100% percent, I work real hard now in trial and getting as much sleep as I can, taking a full day off the week before. Just you need to be present and ready and all that big busy work you need to do weeks or months in advance and not while you're there. Now, what did you do, I guess, different than the way a lot of people do jury selection, as far as your approach and how you did it?

Chris Finney:

So this was after some work with Sorian, I'd listened to some things from Mark William that she had interview with, it was the and you can maybe sit on my board back there where I took the notes. But the idea was, let's get people who want to be there. And this was a busy week for us in St. Louis County civil trials when we tried this, I was stunned how many jury trials were going on. But you weren't getting a big panel, you were getting... We wanted 48 or something like that, we got 32. There was a murder trial going on where they got 100 jurors. We didn't even get a panel on Monday, we got them Tuesday.

Chris Finney:

So I was concerned about people being dragged down there, all that. So I was like, "All right, let's find people who want to be here. If you don't want to be here, you tell me, I'll do whatever I can to get you off the jury. But you got to talk because if you don't talk, you don't walk. And if you don't start speaking with me and let me know why you don't want to be here, I can't tell him you don't want to be here. Because there's three people that are involved in this decision, I'm just one of them. So if you want to leave and you don't want to be on a case like this, you have to help me out. Is that fair?" So then you set it up that way.

Michael Cowen:

And how many of the jurors that you had on the panel wanted to be there?

Chris Finney:

Well, I didn't get to talk to all of them. But the juror I talked to afterwards, and then I got a letter from another juror a couple days after the trial. I really wanted to... I said, my first question, "Did you want to be here?" He's like, "Absolutely. I thought it was important. When I heard the key case, I heard what was going on, I think we all back there wanted to be here. We wanted to do what we were supposed to do." And I just I thought, and I was like, I gave a big pat on the back and said, "God bless you, God bless you." But that type of mindset, knowing that they want to be here rather than I dragged them here helped with the connection throughout the trial.

Michael Cowen:

Was it hard to go from the mindset or were you ever with the mindset as, I got to go do jury selection as deselection, I got to find the people that I want off? What was it like to go from the mental attitude as I got to find all the bad people to I want to find the people that want to be here.

Chris Finney:

The easiest way to describe it, it's just softer. You don't immediately go defensive. It's like if somebody says something bad you don't think, "Oh, everyone's now going to think that." When I was a prosecutor, they taught us about poisoning the jury pool. I know that I've never seen that actually happen. In fact, I think the opposite would be true, is that if somebody's an outlier saying something stupid, a rational person will step up and be like, "No, that's not exactly right." So it took away that maybe hard defensiveness that I would have that I would really get nervous if three or four guys in a row said something bad. Now, oh man, this is going south, as opposed to okay, relax, it's not that big of a deal. If they don't want to be here, I don't want them here. And if the panel blows, great, come back another time we know the case, we're ready. So it definitely softened that, but it also allowed, I think, a more respectful tone with those people who did not want to be there.

Michael Cowen:

I read that you were working on trying to create what's called a designed alliance, and that's a Sari de la Motte term, maybe you Shehad Wells, I learned it from, Sari, first of all, what do you mean by designed alliance?

Chris Finney:

So I've done Path to Mastery with Sari and a lot of her stuff. And it's a term that she's coined, designed alliance, but it's really about managing and meeting expectations. If we're going to enter in a relationship, I want to tell you what I expect and I want to know what you expect and let's make it happen. I think I've heard a very good you life coach, his name is Jason Salk. And he used to coach be like the life coach for the Cardinals, their team therapist and they won all these world series and stuff like that. And he said, "Almost every relationship fails because of missed expectations, missed expectations." So I've been to some of his stuff and then Sari said that and it's like, okay, everybody's got to be on the same page.

Chris Finney:

So when you design the alliance, it's like, "Hey, this is my role, this is your role, this is what I'm going to be looking for, this is what you're supposed to do, this is what I'm going to do, this is what they're going to do." He's this person and we're all going to do our job, we hope that you do your job. Can I trust you to do yours? I'll do mine. And you work from there so that the expectations of the jurors are met. It puts you also, I think, in more of that teacher mode, which is a powerful place to be.

Michael Cowen:

Absolutely. A lot of times in jury selection people just focus on the questions that they're trying to use to get people off for cause. You asked some other kinds of question, I think you call them experiential questions.

Chris Finney:

Yeah, experiential questions.

Michael Cowen:

What are those?

Chris Finney:

So you could call them issue based questions and one thing I've noticed the work cases we try, if I got six or seven experiential questions, that may not be the case we should be trying. I try to keep it to one or two and in this case, and it was built off what Sari or whoever calls a fears list. Is what am I worried about my case? One them we talked about earlier was end a treatment over three years. This is crazy, it's over three years, no treatment. And the medical records at her last appointments said zero out of zero pain, excellent recovery, no restrictions, all that stuff. So I wanted to ask who has experience with seeing a surgeon or having a surgery in your arm and plates and screws, what is that like? Tell me more about that.

Chris Finney:

And it was just more to get to know them, but if I had already set up the alliance in the beginning and everything is going well, they would feel more comfortable sharing their experience about it. Then I'm getting to know a little bit more about them, their feelings about something that's important in the case. The medical records were a big one as well. Because in every jury, you're going to have a nurse or some medical records person. And we did she was juror number six before she was struck. I asked who has experience with medical records and what's written in them. And she raised her hand. And, "Okay, well tell me about your experience." "Well, we write a lot of notes and charts and stuff like that."

Chris Finney:

And I said, "Well, have you ever noticed any inaccuracies or they're always usually accurate?" "Oh, they're always accurate, very accurate." I was like, "Okay, all right." And that tells me about her, that number one, she has experience with an issue in the case, she's raised her hand to speak, she's likely a leader who the people around her are already in the box are going to defer to her, and she has probably some general knowledge about records and stuff that probably don't apply to our case, but are going to influence her opinions of it. So it's identifying information, stuff like that.

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Michael Cowen:

I read you talking about something called the box, as far as what information the jury should and should not consider. I really would like to learn about that, that's something I'd like to try.

Chris Finney:

I would tell everybody if you listen to Mark Wham's Facebook interview with Sari, and that's Sari de la Motte, because that's where I got it. I'm sure it's not unique to him, I'm sure it's been around. But I was like, all right. I had a feeling they were going to concede liability at trial or before trial. So they did the Monday before. But they never updated their pleading, so there was a whole other issue that well, judge, I don't think they really did anything. So in jury selection, I thought, folks, your only job in this case is going to be deciding the damages, the dollar amount the equal trade dollar value, whatever you like to say. The number that is the fair, reasonable 100% of damages. And that's inside this box, your job is inside the box.

Chris Finney:

Who pays it, what pays it, how it's paid, if it's paid, when it's paid, all that stuff is for the judge. All right. Are you going to trust the judge to do his job? No one's going to say no because he's sitting there in a black robe. We called him on. It's like they'll raise their hand and say, yeah. And I say, "Okay, we need to trust you to do your job. So who's going to have trouble staying in the box? Who's going to want to know some of these other things to reach a decision, especially when it comes to millions of dollars?" Then now the hands start going up and I need to know this information. Was there insurance involved? Well, if I answer it one way, it's unfair to one side, I answer it another it's unfair to that side. That's regardless if they are or not, it has nothing to do with what your job is.

Chris Finney:

And I tried that on a few times, role playing in my head, stuff like that. It felt good, it looked good when Mark was talking about it, and it good when we were doing it in voir dire, so I re-referenced it in closing, stay inside the box. And sure enough the juror I got to speak to afterwards, he told me they decided on a number and then they said, "Well, what about, what's she going to do with all this money? And where's she going to go? She could go to Disneyland 750 times or whatever." He said he stopped him and said, "No, no, no, no, no. That is not our role. Guys, we have to stay inside the box."

Michael Cowen:

That is that's awesome.

Chris Finney:

It really helped because part of his trust in the system, we want the jurors to trust the system, you want us to trust them and their role in the system. And when that hit home and he was able to relate that, I thought, okay, the idea of the box is so simple, but it's so concise because everyone can envision a box and you can draw it. And it's got clear barriers around it and you just put the dollar in there and everything else is outside it. There's no trouble distinguishing what they're supposed to do and what everybody else is supposed to do. So it's a clear visual for the jurors, it's easy to go back to, and if you have a quick trial, they're not going to forget that concept, at least in my experience.

Michael Cowen:

Definitely am going to use that, I love that one. And that Mark, Waam interview, if people want to find that, that's in one of the, Sari, the Hostage to Hero group on Facebook.

Chris Finney:

Correct, on Facebook. Yeah, you got to go on Facebook and get in there and watch it there. Sari has posts there every so often with people really trying cases that it's benefit initial.

Michael Cowen:

You also wrote you worked on your breathing in trial, tell me about that.

Chris Finney:

This is odd to say out loud on a podcast, but I mouth tape my mouth at night, I tape it shut. So I just breathe through my nose. Sounds odd, but trust me, there's tons of studies, tons of books out there to support it. So I've been doing really hard on nasal breathing. I think it's very important not only to control your anxiety or whatever it is, control your sleep, your health, sinus issues, whatever everybody has, it's really helped me. So throughout the trial, I made it a point that when an anxious point came up, for almost all of us it's when your client's testifying. There's nothing more anxiety inducing than them up there speaking. I just focused on, okay, this is an anxious feeling, breathe it in, breathe it out, slow, controlled, this feeling will pass, this feeling will pass. It is just a feeling it will pass. And trust that the work that you've done is there.

Chris Finney:

And sure enough, she knocked it out of the park. But it also kept me in my seat. That's I think the big key is we didn't object one time in the trial. So it kept me in my seat, which also shows the jurors my

confidence in the case. Hey, it's all right, she can handle herself, she's tough. I told you she's tough, look, she's tough. So that conscious effort on the breathing, which I've continued, I think has made a demonstrable difference in approaches to trial and how we handle anxiety inducing situations.

Michael Cowen:

I think that's brilliant.

Chris Finney:

Your spouse might look at you weird when you put some tape across your mouth, but it definitely helps.

Michael Cowen:

So what COVID protocols did you have for your trial?

Chris Finney:

So we were prepared to try the case all in masks. At this point we've tried two cases in COVID and there were struggles to get to. And I didn't care, whatever, we'll try to mask. If you were speaking, you did not have to wear a mask. Every everyone else was masked. And what I did find out from the bailiff is the most jurors they would allow in the courtroom was 36. So where they normally put in our courtrooms six or seven to a bench, they were putting three. So they were pacing them out so it was taking up all the room. So those were really the only protocols we had, there was nothing else beyond on that.

Michael Cowen:

And did you use any notes or anything when you were talking to the jurors?

Chris Finney:

No, no notes. No notes throughout the entire trial. I had them, you ride them out, but they stayed out of sight out of view. Trusted my co-counsel, my associate Alex, on the jury selection to get down what we needed to get down. And then also just rolled through. So we had no notes.

Michael Cowen:

You also wrote something about eye contact, tell me about that.

Chris Finney:

So that was the juror who came out I spoke to and actually the juror who I got a letter from both commented about how they heard us. The juror I spoke to said when they all sat down and they said they felt a connection because I had made eye contact with everybody. They had the masks on so the really only thing you can look at is their eyes. But I was telling somebody the other day, I didn't really notice their masks because you can see so much, you pick up so much how their eyes are moving or if the masks raise a little bit. You can tell what's going on, you don't have to see their mouth.

Chris Finney:

And right, when he came out he said, the first thing he chased us down, he said, "You get a passing grade." I was like, "Oh. Hey, I hope so, we got a good number it feels good." And he said, "All of us mentioned how you made eye contact with every single one of us and we felt included." That is a good

thing because you can have awkward eye contact, you can stare at people for too long. But it's like, you think about a quarterback. He's got that internal clock where he is got to get rid of the ball before he gets sacked. Whether it was pressure or not, he just knows it, I think the same is with eye contact, you have that couple of beats of, did you get me? Do I read you? Do I see you? Do I feel you? All right, boom, let's move to somebody else. I felt that that was working in the trial and it seemed to stick and they noticed it.

Michael Cowen:

What did you do to work on the eye contact as far as the... You have to, first of all, learn how to make it and then you have to learn, like you said, not to be creepy and just stare at somebody.

Chris Finney:

That's the therapy. You got to be comfortable in your own skin. People that are uncomfortable in their skin don't like silence. And then they fill the silence with words because it's uncomfortable. They don't like to look at you and you don't like to look at them or whatever it is. Part of it was, hey, I know who we are, I know what we represent. Losing is an option in this case, I want you all to know we're comfortable with it. And I'm prepared to work with you, to look you, to see you as to what this case is about.

Chris Finney:

And it wasn't a creepy eye, obviously I don't think it was a creepy eye contact, but it was a genuine eye contact. Also, Mike, I'll say a lot of cases that I've tried we've gotten good results and stuff like that, but I've also gotten zeros, gotten \$500 verdicts. So there is an element of getting comfortable being uncomfortable. I think there's no practice you can get other than being in front of a live jury. You can do the focus groups and all that stuff, it's great practice. But it's like the super bowl, only happens once a year. So you got to be ready for it and try it.

Michael Cowen:

Just for me winning is glorious and no one's going to eat you up if you lose. Got to be if you just do mediocre. You have to just keep at it and sooner or later you're going to hit it.

Chris Finney:

Well, it's like you said that, I think you've said you always have a nice bottle of wine no matter what happens. And you know you're going to make it, you're going to be alive, everything's going to be okay. And for me it's not the wine but it's I want to go to a nice dinner with my wife after this, I go out and not have to worry, we're going out no matter what. Number one, we're going to be okay and number two, this is just a nice thing to do. It's actually something I look forward to. I found myself like, let's get through this trial so I can get to dinner. But it wasn't like a... But it was a carrot at the end of the stick.

Michael Cowen:

So you got to talk to one jury you said you got a letter for another one, what motivated them to give you so much?

Chris Finney:

So they were out for 15 minutes and they did not ask for any exhibits. So immediately when that came in, I thought, "Oh my Lord, we got to absolutely spanked. I must have misread this entire thing." But

they actually, the letter I got from the juror, she said she's confident neither side is happy with their number. And part of it was the juror I did talk to said that they only gave that number from the date of the incident up until the trial essentially. They didn't give any futures because future pain and suffering because there wasn't anything in the records, they couldn't really quantify it, it was too difficult for them. So I think they really did understand that this was a severe change in her life that was unnatural, she didn't have anything to do with it. It altered her relationships that she had worked to form over her entire life.

Chris Finney:

And these jurors they understood that those things had value. If we're doing our job right in the jury selection, those who don't think those non-economic assets have value, hopefully you've identified them and then you can find out what to do with them. But nowadays, and I think you've probably heard a lot of guys say this and Gaals on your podcast say jurors are more aware of their relationships. I don't know if that's personally the truth, but maybe they're more comfortable talking about them I guess. I don't know if they value them anymore than they did before, but at least they talk about them. I haven't done enough, I guess, investigation to that, but they have no issue, and that's my experience in the last five or six years, no issues with non-economic pain and suffering, change in life type of damages. And I think that they do, if the evidence is there, they think that has a ton of value.

Michael Cowen:

I think we've all just gone through this collective experience where for at least periods of time, we've been isolated from people we care about and had relationships interrupted, because Zoom's great but it's not the same as being there with somebody. I think at least to me, I'm making so much more of an effort to go see my parents, I'm having my first guys' trip with people I went to high school with 30 something years ago that we've kept in touch but we would see each other once, every few years. I'd see one friend here but now we're all going to get together I think because we've all realized how much we value these relationships and being cut off from them for a period of time put everything into perspective and it's making, at least for me, put more effort into family, friends, those kinds of things. I can see how jurors could value it more.

Chris Finney:

And all that stuff, when you've done a ton of work on this stuff, you think about it like that has a ton of value to you, that's an important trip. You're going to move things to make that happen. And I think the jurors get that as well, they understand that as well.

Michael Cowen:

We even have a trial that week and I just told Sonia my partner like, "Well, you're going to try that one without me." I have to make a value choice and this particular trial, if it was like a death case, I might have told my friends we got to reschedule.

Chris Finney:

It goes back to having a team you trust.

Michael Cowen:

And I do. I have great lawyers.

Chris Finney:

Partners you [crosstalk 00:55:20] that are great and do the work. So look at the freedom it gives you, it's fantastic.

Michael Cowen:

Absolutely. So Chris you and I have been talking off camera. And one of the things is you've got the practice that most lawyers have and that I had for a lot of my career, which is most of your cases aren't wrongful death cases or quadriplegia cases, but they're what the majority of personal injury cases are hurt backs, hurt neck, maybe a broken bone here in the there, what have you done to be able to really maximize the value of those cases? And what can our listeners do when they have those regular cases? It's not that hard to get a seven-figure recovery on a death, someone died. But on a hurt neck that maybe needed surgery or a broken bone, how do you get jurors motivated to give full value on those cases?

Chris Finney:

So I think what you have to do is I would sit down and find the cases that you have really good plaintiffs, great people that you would want to be around. Then regardless of what their injuries are, my experience is if they're good people, you can do a lot. So you take those and just dive into it and make a burn the boats mentality of we're trying this case, the decision's already been made. And now it's easy to say because you can go back and oh, well maybe we could settle it now if they're offering 50 or 100 or is.

Chris Finney:

I think if you make a strong line in the sand from the outset, you tell everybody in your office, "These five, we're going to trial. Doesn't matter because they're not going to pay us and it's not worth it. And we can do some damage here." So you find those good people, you find the people around them, and you invest the time in the shoe leather and getting to know them and get out of the office and spending the time with them and try the case. I'm convinced because in my experience has been, you can hit multi seven figure verdicts with great people and not have visible, huge, catastrophic harms.

Michael Cowen:

That is awesome, that is inspiring. I'm going to make sure all my lawyers in the office, especially those that aren't handling a bunch of catastrophic cases, listen to this because I think that's true. And we got to, like I said, identify the client's where it can happen and then put the work in. So Chris, thank you so much for joining us. I really enjoyed getting to talk to you. Hopefully our past will cross again soon.

Chris Finney:

I'm I certainly will, I'm certain it will Michael. I appreciate you having me on here. I always see your podcast and all these big names and stuff and I'll be fully honest with you, I was nervous, what can I add? What can I add? And hopefully I can add that we all have practices like mine and there's great opportunity within them.

Michael Cowen:

What you added is not just your mindset but you took a case that most lawyers would have settled for \$100,000 or give them \$90,000, \$95,000, and instead you took it to \$750,000 because you had the guts

to try it and you were willing to put in the work to do it right. And that's inspiring and I think that's very useful to me and to everyone else because I still have those cases sometimes too. Thank you and good luck to you. And I look forward to seeing your career continue to blossom.

Chris Finney:

Thank you.

Outro:

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