

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, 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 maker verdicts, get more cases and manage your law firm. And now, here's your host, note where the author, sought after speaker and renowned trial lawyer, Michael Cowen.

Michael Cowen:

On today's Trial Lawyer Nation I'm joined by our director of marketing and business development, Delisi Friday. How are you doing today Delisi?

Delisi Friday:

Good. How are you doing today?

Michael Cowen:

I'm doing okay. As we're going to talk about today, I just got out of trial yesterday. I tried the hell out of a case and I got a mediocre verdict and I'm not happy about it.

Delisi Friday:

Well, I have to say that I think it's very admirable to do a podcast when you still feel a little raw about it and it's not exactly what you were hoping for. So I feel like today's going to be a really honest conversation.

Michael Cowen:

I'm doing my best. I will tell you that when I gave you the idea that we would do a podcast, when I got out of trial, I thought I was going to win big and we were going to talk about how great it went. And it is frightening to sit here and talk about how things didn't go as well as I expected. You have the fear, "Will anyone ever want to send me a case again? People just think I'm a big fraud. If I went out there and..." The fact is when you try hard cases, you don't always get what you want and you know that going in, but it still sucks when it happens to you.

Delisi Friday:

It does. And I will say that I think the only way you grow is to step out of your comfort zone. So I appreciate you doing this and I hope all of our listeners do too, because it's not easy.

Michael Cowen:

Thank you. I appreciate it.

Delisi Friday:

Well, thank you for doing it. So for everyone listening, I knew a little bit about the case and I wasn't in trial. So I really am going into this, as they say often in this podcast, with a beginner's mind. So let's start off where were you and tell us a little bit about the case.

Michael Cowen:

Okay. I was in federal court in Laredo, Texas. It's a border community. It is a huge trucking community. Every third vehicle on the road, especially on the interstate is a tractor trailer. That's the business, almost everyone in the community, if they don't work in trucking or logistics, they have someone in their family that works in trucking or logistics. So it's an interesting place to try a truck.

Michael Cowen:

We had a case, it was a rear end collision, a truck tractor, so we didn't have the trailer behind it rear-ending a passenger vehicle. The biggest challenge in the case was that our expert says it was a 5.6 mile an hour change in speed because the 18 wheeler hit us at five miles an hour. Their expert says it was a 5.2 mile an hour change in speed, but both of them said it was a five mile an hour impact.

Michael Cowen:

And our client got the regular soft tissue treatment. And when she did get better, she had a hernia disc and she got a cervical fusion surgery. And so, one of the biggest fights in the case is, did she have to have a fusion because of this crash, or was a five mile an hour crash too slow to cause this and the surgery was for preexisting conditions?

Michael Cowen:

And the jury unfortunately accepted the defense's position because they gave us the medical bills that were not related to the surgery, which was \$30,000. The other 110,000 were related to the surgery and they did not give those to us. And then they gave us another 80,000 for the pain suffering and impairment. So like I said, they had only mediation they'd offered us 7,000, pretrial they offered us 25.

Michael Cowen:

And so I could have been fake come in and say, "Hey, I tried a case. They only offered us 25,000. We got 80, we more than tripled the pretrial offer, we kicked their ass." But that would really be disingenuous. That would be, I guess, what the classic marketing people would say to do, always spin it and try to make it positive.

Delisi Friday:

I will not take offense to that, Michael.

Michael Cowen:

I'm not saying you, I said the classic marketing people.

Delisi Friday:

I think you're being really honest and that's who we are. We are, as Nick Raleigh says, brutally honest.

Michael Cowen:

And the brutal honesty is I don't judge my success and failure by how an insurance adjuster evaluates the case, just because I beat their... And who knows, I'm sure I could have gotten them to offer more had I come down to what they considered a more reasonable number too.

Michael Cowen:

So I don't want to pretend like that's all they had ever offered me, but had I just nose-dived and collapsed, I mean, had I known what the result would be, I probably would have, I may have been able to get something, but it would've been difficult.

Michael Cowen:

I mean, would've had to cut the heck out of the medical bills, cut the fees down to put a little bit. And I talked to my client about it. I said, "Look, I could probably negotiate a settlement that would put 10, \$15,000 in your pocket if I cut the bills and beg the doctors to cut their bills." We can go for it. And she says, "Well, let's go for it." And so we made a conscious decision. We tried the heck out of the case and unfortunately it didn't go our way.

Delisi Friday:

You are using the phrase, "It didn't go our way," which is interesting to me because on one hand, as an outsider, I don't see this as a true loss. Because a true loss in my mind is a big fat zero, right? But I can also understand the feelings and the emotions that you probably have right now because it's not exactly what you wanted.

Delisi Friday:

So you went into this and the offer was 7,000, you got more. So I just want to point out, there is a part of this that in my mind is still a win because you didn't get a big fat zero, but I know you feel differently. So can you explain to me how and why you feel like it's a loss?

Michael Cowen:

There was two reasons. One of my definitions if I win a trial is, was my client materially better off for having gone to trial? With the verdict we had given all the money spent to try the case and the fact there's medical owing, I'm really at a choice really between leaving her owing medical bills or cutting my fees and maybe some of my expenses to try to cut a deal with the doctors to at least not put her in debt.

Michael Cowen:

And so I don't feel like she's materially better off for having gone to trial. I'm not putting a big fat check in her pocket. I'm going to try to find some way to get her something because I just feel like that's the right thing to do. So that's one thing.

Michael Cowen:

The other thing is, what do I believe the case is worth? I believe in my heart that she got a herniated disk in that crash or at least whatever pre-existing conditions she has that weren't bothering her, that weren't causing any pain became painful and needed surgery because of the crash. And I was not able to convince the jury to allow damages for that. I was not able to convince it was more likely not that was the truth. And I think that is the truth.

Michael Cowen:

And so since I feel like the truth didn't get reflected in the verdict, I feel like... I mean, Sari de la Motte would say the jury failed, not me. I didn't fail, my job was to fight and I did my job. And I'm not kicking myself in the butt. I'm not feeling bad about it. I know when you try cases and you try cases that are on the edge, like low property damage cases, big gaps in medical cases, in this case we had some days which you want the doctor with a one pain rating or a zero pain rating. And then the pain came back. You get these issues that make it harder, you're not going to win them all. And you're not always going to get a home run every time you go up to bat.

Michael Cowen:

You're just like the Cincinnati Bengals. They were a great football team. They went into the Super Bowl, but they didn't win. That doesn't mean they're a bad football team because they didn't win the Super Bowl. So I don't feel like I'm a bad lawyer. I mean, I'm looking back. I think I tried the case well. It felt good. I felt relaxed. I felt confident, but it didn't go my way. And so of course, if I had to try it over again, I'd do something different because why would I do the same?

Michael Cowen:

But at the same time I'm not beating myself up. I feel like I left everything out on the field and gave it everything I had. But I know, just from doing focus groups, you can focus group the same case with the same presentation and different people are going to see it differently. I think part of the humility we need to have as trial lawyers is you have to have the confidence going there and trying it every case, but to know that winning and losing is not entirely within your control. And no matter how hard you work, there's no magic consultant or other lawyer that can teach you this magic trick that's always going to win every single time. I wish there was, I've been looking for it for 27 years and I haven't found it.

Michael Cowen:

And I do know that I've got in there and I've won these cases. I've gotten three to \$500,000 on a case with a four or five mile an hour collision. So I know it can happen. I think that was one of the things that hurts more, is because I know I've done it before and I didn't get done this time. It's just frustrating. It's not like I'm going to go quit. It's not like a client is not mad at me. They're happy with the trial. They thank me afterwards. I don't think I look bad.

Michael Cowen:

But then again, to pretend like it doesn't hurt would be a lie too. And I think when we lie to ourselves about how we feel, then we can't process it and then it festers -- it enters -- it's what Sari de la Motte, and I think she got it from someone else calls it the saboteur. You have a little voice inside your head that's telling you, "Oh, you can't really do this. You're a fraud. You're going to lose again." And if you don't allow yourself to feel the disappointment and pretend like it's not there, then that voice gets even louder.

Delisi Friday:

Absolutely. I think if you hide it and pretend like it's not there, it makes it a million times worse. You've said before, whenever something like this happens, you have a nice bottle of wine and you get up and you do it again. And you said to me this morning, I said, "How are you feeling? I'm very happy that

you're here." You said, "Just because you lose a game doesn't mean you don't go to practice the next day."

Michael Cowen:

Exactly.

Delisi Friday:

So thank you for coming to practice again today Michael Cowen.

Michael Cowen:

You're welcome. Look, and I didn't even have the wine last night.

Delisi Friday:

You didn't?

Michael Cowen:

I did. I got home and I ate crap macaroni and cheese my youngest son didn't eat. My wife had made cha lupus and I was trying to be healthier. And then I went back and forth. I thought about ordering Ruth Chris from Uber eats but I thought "eh, a steak by the time it gets my house on Uber eats isn't going to be that good," and I've been trying to eat healthy anyway, although I had Mac and cheese and navel orange and some pecans. I had a weird dinner, but it's just what was laying around the house. The Mac and cheese was already fixed my youngest.

Delisi Friday:

Maybe you can still have your nice bottle of wine this weekend, if you want it, if you choose to.

Michael Cowen:

I'm going to have a drink with Sonya Rodriguez, my partner, after, and whoever else wants to. That's actually not true, it's not whoever else wants to join us, but someone that I'm really close to who wants to join us.

Delisi Friday:

I feel like it's a special moment when you share that with someone.

Michael Cowen:

It is. You have to be able to find people that you can be real with. And to me, I guess the worst thing would be someone... I mean, once I remember I had a case and didn't do so well. And the referring lawyer said, "Did you do this? Did you do that? Did you polarize it?" That was the worst thing. It's like, don't second guess me, I did everything I could.

Michael Cowen:

But the second worst thing to me are the people trying to say, "Oh, well, you really won. You really did a great job." I'm like, "No, I didn't. That's bullshit." Because again, I set a very high standard for myself. We often meet that standard and I'm not going to feel bad for having high standards for myself and my firm.

I mean, my view of victory, like I said, is on that case, would've been 300, 400, 500,000. 80,000, 100,000 I would not have considered a victory, but other lawyers may have. I mean, that's fine for them, but for me, it's not.

Delisi Friday:

We've had a lot of people who've asked us to talk about low PD cases because it's a common case that people have on their dockets. So in your mind, when you were trying this case, what did you see were the challenges and what were the things that you did in trial to try and overcome those?

Michael Cowen:

Low property damage is always a challenge. Excuse my language if I call it the oh shit test. So if you look at a photo of the vehicle and you say, "Oh, shit what happened to the people? Oh, shit, are they okay?" Then it's a much easier case to try. When you look at the proper damage and you don't think like, "Oh, that's not much," when that's your visceral reaction, then it's much harder to win the case.

Michael Cowen:

And in this particular case, the judge did most of the jury selection. He was lucky enough he gave us each 15 minutes, which is not a whole lot of time. But in federal court, sometimes you get zero. So I viewed it, I talk about mindset a little bit later, but instead of getting mad about only having 15 minutes, I was grateful that I had 15 minutes, because that's 15 minutes that you don't normally have.

Michael Cowen:

And so the one time in trial that the saboteur was really talking to me is the judge is asking people questions and one of the questions he asked, "Has anyone been in a wreck?" And about 75% of the panel had been in a crash, some of them some pretty bad crashes. I mean, T-bone vehicles totaled and not one of them had been hurt.

Delisi Friday:

Wow. Really?

Michael Cowen:

Yeah. I'm like, "Oh my gosh." Everyone here has been in a crash, that's a huge life experience. I'm in a federal court where they're not going to be taking people off for cause. I mean, I'd have to get them to say they would not follow the judge's instructions. They would not be fair. And people can come say, "Well, that's not right. That's not the law."

Michael Cowen:

Well, I know my judge and I know how the judge was going to interpret cost strikes. And I knew that I wasn't likely going to get many. And so the only thing I could do is turn to the group, trust the group and hope the group would save me.

Michael Cowen:

And so when I got up, one of the first things I said, "Well, I think a lot of people here that talked about this, but who here knows about there're really bad crashes. The vehicles are all smashed up and nobody got hurt?" And hands shoot up. "Tell me about that. Tell me about that."

Michael Cowen:

"Well, how about the other way? Does anyone ever heard of a crash where the cars don't look that bad, but people get hurt?" And I saw some ads go up. I'm like, "Yes." This is where I've usually won those cases, is usually there's been somebody who's known someone that got surgery in something similar to what our client got. And juror number one, who I was scared of, because she had been in a wreck with an 18 wheeler and had been worse and she didn't get hurt, she worked for a doctor. She worked for the same clinic as the defense expert.

Delisi Friday:

Oh, man.

Michael Cowen:

And she said, "Yes, we schedule patients all the time. The cars don't look bad, but some of them even end up getting surgery because they do get hurt." It's like, "Yes." It's real. And then I had a number of other hands go up saying that they knew that it happened. And so can we all agree you can't just look at the car? Although it didn't.

Michael Cowen:

So I don't know, maybe it wasn't the property damage. Maybe it was other stuff in the medical record. You know, I'm trying to breach to the point where I'm in there, I'm in the moment, I'm not thinking, I'm detached from the result. Am I giving my maximum effort or not? That is my goal. If I was truly there, then I would be able to go talk to the jurors afterwards and ask, "What were the factors? What was it? How did I do?" Meaning that's how I did, because it's not about me, but why didn't you believe that this person needed surgery because of this crash? I'm not there yet.

Michael Cowen:

And so the judge asked me, "Mr. Cowen --" It feels kind of like I asked somebody on a date and they said no. Now do I want to call them and ask them, "Well, why don't you want to go out with me?" It just feels kind of pathetic [laughter].

Delisi Friday:

It's a great example. Well, so let me ask you then, I feel like we talk a lot about mindset on the podcast and it's not something you do here or there, it is consistent work to focus on your mindset and make a difference by doing it regularly. And you mentioned mindset a moment ago. So if we can talk a little bit about that, what was your mindset during the trial? And tell me, what did you do to prepare with your mindset and how do you think there's still some areas to improve?

Michael Cowen:

I have a little mantra I developed for trial, which is the judge wants to do the right thing and the judge wants to follow the law and make the right rulings. The jury is here because they want to do the right thing. I'm going to trust them to do justice in this case. And I'm going to have fun because I think having fun in trial makes it more likely that you're going to be relaxed and you're going to be more... If you don't trust the jurors.

Michael Cowen:

I mean, what are the alternatives? We can trust the jury, which means we're going to be more relaxed, more open with them, better communicators. And if it turns out that we're wrong and they were going to screw us over, they're going to do it anyway, or we cannot trust the jury and then trial's going to be miserable. We're not going to be able to sleep at night. We're going to be guarded. They're going to see it in our body language. They're going to hear it in our voice and we're going to be even less likely to win.

Michael Cowen:

And so, thinking about something bad may be happening doesn't help. And so I really, as much as I wanted to win, I was trying not to worry about that. I was trying to worry about, "How can I best communicate with these jurors? How can I best tell my story with this witness and just be in the moment in what I was doing."

Michael Cowen:

And I'll be honest, this was the least tensed I've ever been in a trial even while the jury was deliberating. I mean, so I've gotten a lot of progress, but am I so zem that I can go talk to them afterwards? And most people do talk to the jurors afterwards and I should grow up and do it. I just wasn't there, emotionally I wasn't there.

Delisi Friday:

Well, for what it's worth, I don't think you need to grow up to do it. I think it's being honest if you are just not prepared to have that conversation yet. And I think it's better to be prepared to have that conversation than to do it and it be an awful conversation, you don't really hear what they're saying. It might make things a little worse.

Michael Cowen:

And in state court we could find out who they are and we can go get someone talk to a familiar federal court we can't. And so that was our one chance. We had to give the jury courts back. We don't have their names and addresses. I guess I could have written them down in jury selection, but we don't have them.

Michael Cowen:

Actually, I probably would've broken some federal rule had I done that. So they don't want you chasing them afterwards. The judge, like I said, gave us that one limit opportunity. If any jurors wanted to talk to us, the other thing is they can drive you nuts because people don't know why they make decisions, then people make a gut decision and they come up with reasons to justify it later. And if you had changed the things that gave them that reason, they would've come up with another reason to justify with what they did in their gut. And so it's not always useful. I think it's probably helpful, but you have to take what they say with a grain of salt.

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Speaker 12:

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.

Delisi Friday:

So let me ask you, do you still trust the jurors? Has this changed that at all?

Michael Cowen:

These jurors I trust in general.

Delisi Friday:

Jurors in general.

Michael Cowen:

Honestly, I do trust that I think that these jurors went in there wanting to do the right thing and they did what they thought the right thing was. I don't agree with their decision, but I respect their decision. I respect the fact that they took time out of their lives and they did what they think was right. They listened to evidence. They saw the evidence differently than I did. But I mean, the other side gets to fight too and I can't be mad at them.

Michael Cowen:

The difference is they heard the testimony in the courtroom. I've been to my client's house. I've known her these last couple years. I believe her and they didn't. I can't say I don't trust them just because they disagreed with me. I mean, if I tell my wife, "I think this is the best movie ever made," and she watches it and she's like, "That's a really stupid movie." I mean, do I not trust her anymore? No. We just have a different opinion on things.

Delisi Friday:

So I want to change the tone a little bit. Let's talk about what went well.

Michael Cowen:

Okay. Well, one, we ran a very smooth trial. We ran a very fast trial. We put on 11 witnesses. The first day we did jury selection in the morning, then we did opening statement and put on three witnesses in the afternoon. We had a little bit of a miscommunication with the client. I had told her to be there at noon. She was waiting for a phone call before she came, because I don't like having my client in the trial, the whole courtroom. I'll talk about that later.

Michael Cowen:

But she was waiting for a phone call. We normally can't take cell phones to the federal court. We thought she was just going to meet us there. She was going to be our first witness, I don't know where the like doing that, but I really needed to tell the story of what happened with someone that would say

my client was hurt and I was worried the truck driver would say she didn't look hurt. So she wasn't there.

Michael Cowen:

And so we had to start with a video, but we didn't panic. We just did what we needed to do. And we got our case on and our other witnesses, we went and we put them on. We told the story, we thought they needed to tell and got them off. And we were concise and respected the jury's time. I felt very comfortable. I didn't feel rushed. I think I had good pauses, good eye contact. I got two new toys for this trial.

Michael Cowen:

I got what they call the King flipchart. So it's like a flip chart, but it just double wide. And it was so much easier to write where people could see it. And I only used it for the closing. I wish I had used it with the witnesses. It probably would've meant we would've gone a little longer in the trial to do this, but I think it was to slow us down a little bit when the witnesses said something important. I think I'd like to have like one sheet that said before, one sheet that said after, and then write down things.

Michael Cowen:

I thought we had good witnesses. We had our client, her husband, her daughter, a friend of hers, her niece and her sister. Of course, they're all friends and family, but who else? I mean, she didn't work. She was a recent immigrant in the United States. I thought it was going well.

Michael Cowen:

I thought I did a really good cross of their expert, evidently maybe. Maybe not good enough, I don't know. Well, they found some injury. I mean they had their medical expert and they had their bio mechanical expert. I thought I did a really good job with the bio. Maybe it wasn't good enough. It's hard to tell.

Delisi Friday:

You mentioned that our client was recent immigrant and I know our client is a fluent Spanish speaker. So I'm interested to hear, was there a point where you thought it makes it a more difficult case when you're trying to tell your client story and they are not fluent in English?

Michael Cowen:

It makes it a lot tougher, even though I'm sure a lot of our jurors probably spoke Spanish too. One is that I speak Spanish, but I would say I'm about 80, 85% fluent. And I think I still have trouble really fully being able to get their story and teach them how to tell their story without some help. At least one of our associates is a native Spanish speaker and she was a great help on that.

Michael Cowen:

But the interpreters, they always get a few words wrong and the context, the tone of voice, the expressions, you lose all of that. You lose the ability to have someone just look the jurors in the eye and talk to them. And I think having the majority of our witnesses being Spanish speaking, although the defendant was Spanish speaking too, but he was just such a minor thing, he didn't fight liability. They didn't agree to liability, but he admitted he wasn't looking and he hit her and it was his fault.

Michael Cowen:

But I think it made it a lot harder to tell a story. I think the other thing is I love our doctor, but our doctor was originally from Puerto Rico. He's a brilliant doctor, but he has a very thick accent. And he sometimes is struggling for the word, whereas their doctor, who's their pay doctor is a great communicator.

Michael Cowen:

And I'm really looking for, on our cases when we have our doctors that don't communicate well, a good plaintiff's IME doctor, someone that can examine our client, client review all the medical records and then speak coherently and persuasively on behalf of our client. I think that would be very useful to have in our cases.

Delisi Friday:

Absolutely. When you talk about communicating with the jurors, if you have someone up there who is trying to really think about what they're saying, I can see where, as a juror, I'm wondering, are you thinking about the word or are they hesitating with their response as well? That I'm sure was a challenge. You mentioned that you had two new toys and you talked about the King flipchart, but what was your other toy?

Michael Cowen:

We just got a magnetic whiteboard and had Raul in our office, he's our graphic designer, just -- you know, one of the challenges with the Spanish speaking witnesses, the way she would describe the crash when you got an interpreter that could get confusing. And so we just got a magnetic whiteboard and we just did cutouts of the truck tractor in her vehicle. And we were able to use those to describe how the crash happened.

Michael Cowen:

I was going to use it with my client, but then it was so clear when cross-examined the defendant driver first, before I put her on, although I didn't need to, but I used it in my opening, I used it with him and it really did help.

Delisi Friday:

Good. We'll definitely have to share a link to purchase the King flipchart and also share some photos of the magnetic boards with the visuals. But it was a process for us to try and figure out how to make those magnetic visuals work. So it wasn't right at first, but eventually we got to it and then when you used it was something simple, but it made it easy for people to visualize what happened and to tell a story.

Michael Cowen:

Only we didn't have the budget in this case to do animations, but when you do animations, there's always a cross-examination to be done on animation because you're always having to assume something knowing exactly what happened frame by frame, which is what an animation, is really tough. But if you just get the cars, and you could get toy cars.

Michael Cowen:

So the problem with toy cars is unless they're a magnet and mounted vertically, the experts playing when the jurors don't really see what's happening, I like this because it's up and all the jurors can see it.

Now we still had the jurors. It was a little more challenging because the jurors were spaced out due to COVID concerns still.

Michael Cowen:

We actually had to wear masks when we weren't speaking in trial and then the jurors, some of them were in the jury box, two were on the side, but they were all spaced out, not like they normally would be all next to each other in jury box. So it was a little more challenging to put our visuals where they could all see them.

Delisi Friday:

Well, I like that you still did something on a budget. Not everyone's going to have the money to do an animation. So I really loved seeing the creativity. And when you have a low PD case and you don't have a ton of money to put into case expenses, that's when you need to be creative.

Michael Cowen:

And we could have put magnets on some model cars too, if we wanted to. But I mean, just basically, we all found some stock images of a tractor unit and a car. And that couldn't have cost more than 20 bucks. And then I don't know what it cost to print them on phone board, but it wasn't that much. And then we just bought some magnets at Michaels, or I don't know where we went, Hobby Lobby or somewhere, and put them to the back and had to figure out how much magnet was too much where I didn't want to move and how much magnet was okay.

Michael Cowen:

But I mean, the whole thing, I think the magnetic board cost us a couple 100 bucks, but the whole thing for the rest of visual was probably 30 bucks, 40 bucks. So you can be creative and you don't have to spend a ton of money.

Delisi Friday:

I agree. You mentioned [O'Dollies 00:29:05] assisting with translating for our client. You tried this case with two other attorneys. And we always talk about growing from within and training and becoming elite. And I think part of that is making sure that everyone gets to learn from Michael Cowen and be a part of it. So tell me a little bit about how did you use the associates in this trial and what do you think were some takeaways that they came with?

Michael Cowen:

I had them each take two of the witnesses. I had Robert do the two English speaking before and after witnesses, the client's daughter and niece. And I had O'Dollies do her sister and a friend of hers that they were in English classes together. And they used have breakfast together. Both the big things is to say how well she was doing before and how she's not the same afterwards.

Michael Cowen:

It's a little scary because I know nothing against either one of them, but I've tried 100 and something cases. I think Robert's been involved in a couple trials. O'Dollies just got our license in November and never been in a trial before. And so I know it's going to be, they're not going to do it quite as well as I

am. They're going to do a little different, but how else do they learn? And this way, if they forget to ask a question, I can still pass them a note. And I think they did quite well.

Michael Cowen:

The other nice thing is we all met together with the witnesses to learn what stories we had to tell. And so we all met and, "Tell me how she was before. Give me examples, give me stories. Tell me how she's different afterwards. Give me examples." So we're never telling them what to say, we are spending time with them.

Michael Cowen:

Now, the one issue with this case is this case should have been tried in 2020, and then COVID stopped it. And so, because it was federal court, everything got frozen back in 2020. We've since learned a lot about getting more photos and videos and stuff we didn't. We ended up with one photo from before. It was a photo, her doing yoga, which I thought was a really good photo because she was doing like a headstand, which I don't think you could do if you had a [crosstalk 00:31:03] disk.

Delisi Friday:

That is not easy.

Michael Cowen:

The defense suggested that that may have been what created her disk.

Delisi Friday:

Oh my gosh. Really?

Michael Cowen:

Yeah.

Delisi Friday:

Wow.

Michael Cowen:

They said that would've been a lot more force on your neck than the crash. May have been too, who knows? But it was a force your body's designed to take, it's a different kind of force. But it made it a lot easier, because I didn't have to prep every witness. I mean, it's overwhelming to go try to prep... Especially when it's out of town trial.

Michael Cowen:

So you got to go there to prep them and being able to break up, we all went to the client's house and I got two, they got two, and they each had two and it made it easier to prep. It made the trial a lot easier when I'm doing two or three witnesses a day, instead of doing every witness. It's a little less fun, honestly.

Michael Cowen:

I mean, I enjoy in watching them blossom and watching them do things, but it's also more fun just to go cowboy it up and go do it yourself. But I think from now on, I'm going to try to, every time I'm in trial, to let someone else develop, because frankly I love trying cases, but I'm looking at a trial calendar and being the only person really trying cases of this firm is overwhelming.

Delisi Friday:

It is.

Michael Cowen:

And I want other people to be able to do it.

Delisi Friday:

A few of our fans might be saying, "Michael Cowen trying a low PD case?" So what was your reasoning behind trying this case then? Is it to teach because you did get to teach two of our other associates some skills and help them have that trial experience that they don't normally get. So was that part of why you thought, "Okay, I'm going to try this case with them?"

Michael Cowen:

No. I tried it because I knew could win it honestly. And I've tried it because I believed in the case, but my partner, Mallory, is on maternity leave and I may have let her try this case without me. Robert and O'Dollies are good lawyers, but it's not fair to throw them in, to go try a case when it's been years since Robert's tried a case and then he's never first shared a plaintiff's case.

Michael Cowen:

He's been in trial on the defense side, but he is never been in trial on the plaintiffs side. And then she's brand new. That wouldn't be fair to the client, it wouldn't be fair to her. It was also one of our big referring lawyers who we get a lot of work from. And we've been doing referrals from him for like 10 years, I think. And not one of the cases had ever gone to trial and to let the first one, especially a tough one, get tried by someone else.

Michael Cowen:

If we didn't get a perfect result, I'd be like, "well, Hey, I'm giving it to you. You're sitting in the B team," even though I don't consider them the B team, he would. And so this way I can at least say, "Look, we've done everything we can. I tried it." But also I hadn't tried a jury trial to verdict in two years. And this was the first.

Michael Cowen:

I mean, if we had one in October, we tried for a while. I mean it settled, but this was my first chance to get back in there and do it. And I was so looking forward to it. I remember after the depo more -- the defense lawyer says, "Well, check your email. You're going to have an offer coming in." And I was actually like, "Man, hope they don't offer me good money. I want to try this thing." Then the offer was 25,000. Well, that's easy. I still get to try this thing.

Michael Cowen:

But I wanted to get back in there and mix it up. I'm trying not to take these cases anymore just because it is true that all the time I spend on this case is the time I've not spent on the burn death case I have set for trial on May. I've got amputation case set for trial in August. We've got several other death cases and amputation cases in the office that need my time.

Michael Cowen:

And so on one hand at this point in my career, I probably need to say no to these cases because I want to put the time in these other cases deserve. Not that I'm too good for them, it's just, there's only so much energy to go around and only so many hours in the day.

Michael Cowen:

I also think I need to have the community to know that I'm not the only person that can try these, that there are other great lawyers in South Texas that can... And maybe some up and coming five to 15 year lawyers that need this opportunity and want this opportunity. And some of them are going to pop some of these and let them have them.

Delisi Friday:

I agree. You mentioned early on and I want to circle back on that, because we've talked about it before. You didn't have the client in the courtroom because you didn't want the jurors looking at her the whole time. So tell me a little bit about why you made that decision again here and how did that go?

Michael Cowen:

It was not awkward at all. I had her in the courtroom when she testified, she was also sitting in the gallery when other people were testifying on the second day of trial. And I had her sit next to me in closing. I thought that was important, but I don't like to have the client sitting there in clear view of the jury through the whole trial.

Michael Cowen:

One, she doesn't speak English. She looks like she's just sitting around bored and wondering what's happening in a foreign language where she understands like every fourth a word. The other thing is the jurors are going to be watching her. She says her back hurts if she sits down too long. Well, how long has it been since she got up? So she may be sitting there struggling because she doesn't want to be getting up and down while they're interrupting the courtroom proceeding.

Michael Cowen:

But I think, oh she must be faking. Her neck is hurting? "Well, how is she moving her head?" I mean, so instead of paying attention to the evidence or paying attention to her, typically you get rid of her and then they focus on the defense.

Delisi Friday:

I'm curious, you mentioned mindset and feeling really good about this case. So what was it that made you feel like you didn't have to worry about the result while you were in the case? Was it the prep that you did for case? Was it the prep you've been doing on mindset? What helped you feel like that?

Michael Cowen:

It's the prep I've been doing on mindset. It's the acknowledgement that I have absolutely no control over what the jurors are going to do. I have the ability to try to persuade them. I have the ability to give them the tools they need to do the right thing, but I cannot make them vote my way. And so I just have to give it up.

Michael Cowen:

And so I tell myself, "I'm going to have fun." I don't know whether I want to win this trial or not. I've told that to people. I'm not saying I'm kicking their ass. I'm saying I'm having fun. Because if we think of the two ways we could have done this, I don't think it would have changed the outcome had I been more pessimistic during the trial?

Michael Cowen:

But I would've had a miserable time or this time, at least I had a great time and then got my kicked instead of... I think I have a friend that put on my Facebook. It's like when you ride a bull, you got to stay til and it bugs you off sometimes, some of that. And I feel like I just rode a bull for seven seconds. Because in rodeo, if you don't ride the bull for eight seconds, you don't get any points. So it's like, I had the great experience riding the bull, but I didn't get to hold on quite enough. I didn't quite get there.

Delisi Friday:

For what it's worth, you still got on the bull. And I think every trial lawyer who goes to trial regularly enjoys the adrenaline rush and the thrill and everything beautiful about going to trial.

Michael Cowen:

And if you don't go to trial, if you don't get up there and to take a swing at it, then you can never win. I mean, the best home run hitters, one out of three, one out of four, they knock out of the park and they strike out a lot. The trials that we have, we're going to absolutely destroy them. They pass on those cases generally.

Michael Cowen:

And so the trial cases you get to try tend to be the ones that are tougher. And so you just have to let it go and we do hit some of them. And I've hit these kind of cases. And that's the one thing that frustrates me, because I know I can do it. I know the jurors out there that can do it, but it really depends on who's on the jury and we just didn't have the right panel on this case.

Delisi Friday:

You mentioned the panel. I'm not a lawyer, so please correct me if I'm wrong. But when you are trying a case in state court versus federal court, don't you need a unanimous verdict?

Michael Cowen:

He decided to go with 10 instead of six, because I guess he was worried about losing some because of COVID, which made it even worse, because then you haven't had 10 people they're unanimous. And so you have one or two skeptics that can really pull your verdict down. I mean, they were out for two and a half hours, so they were definitely talking about it. I definitely have some people on our side, just not enough. I think one of the other things that was tough in this case is that I didn't have a villain.

Delisi Friday:

What was it like not having a villain?

Michael Cowen:

It was tough because we had survived summary judgment on the lack of training, but it was a weak case. And I didn't think I really had causation on the lack of training. I mean, we didn't have a trucking expert. I don't think one would've helped. I mean, they claim they did a little bit of training, but they didn't train specifically on you need to look where you're going, don't get distracted.

Michael Cowen:

But I thought I would've lost credibility because I know that the custom in Laredo, Texas is to train your drivers because I've had enough cases there. And so if I said, you need to do all this training and everyone was going to go home and talk to their husband, their cousin and they're like, ah, "That's bullshit. No one does that," that I would lose credibility.

Michael Cowen:

And also, I didn't think it was a piss off factor. And the driver admitted that he didn't really make much an excuse for it. I mean he tried to say he took his foot off and it was a neutral. And my lady said he hit the gas and she heard him, but it wasn't that much of a piss off factor. I tried to make the experts being deceptive, a piss off factor. I've done that before, in this case it didn't work.

Michael Cowen:

They were being reasonable. They were like, "Yes, she had a soft tissue injury, but we didn't cause the disk injury." This was really minor, five miles an hour. Maybe it costs this and give her some money for that. But it's not hard enough to injure a disk. I didn't have a really good villain and it made it... It's so hard to get a jury to give money just because your client's hurt. They usually you get big money when someone's done something wrong and they're mad about it.

Michael Cowen:

And I wasn't able to find anything that would make people mad and it made it a lot harder. And I think we have to look for that in every case, but it's not always there. I mean, sometimes it really is just, like this one, an accident in the parking lot.

Delisi Friday:

Well, and you talk about this a lot on the podcast, but also in your annual big rig bootcamp, which is coming up in June for anyone listening. But you're right, you also can't just make one up to make one up. And I agree with you. I think it wouldn't have felt right, or real, or honest if you had made one up simply just to make one up.

Michael Cowen:

I also wouldn't have helped, because it wouldn't have been real and we wouldn't have gotten away with it. I mean, I'm all for looking hard in every case for the root cause. It's just a lot harder to get jurors upset about a five mile an hour parking lot crash than it is when we have our big smashes. But it doesn't mean we should get cases sacked, because people really do get hurt and someone needs to fight those.

Michael Cowen:

And fortunately or unfortunately we still have someone in the office that I will be triangle and I want to win some. I've done it before, but I'm not going to win all. When you try the tough cases, you're not going to win 100%. But the only way to lose permanently is to quit doing them. I mean, I'll get them next time.

Delisi Friday:

Well, and those people still deserve their dating court and you gave it to them.

Michael Cowen:

I didn't get her everything she deserved. And I am sorry about that. And I wish that I had some way to do it. I don't know of anything else I could have done other than you take... It's like, are you going to be black today? You're going to be right today. You don't know. And I think that trials, there is some randomness to it.

Michael Cowen:

We've seen in focus groups, we present the same case and we break people up in different deliberation rooms. I mean, we had one room with zero, another room was 51 million. I mean, they can be that wildly divergent. And so you try cases and there is a component to look involved.

Michael Cowen:

And then the only way you get lucky is to either, I guess you can be like cherry pick. And when we try the perfect case are those of us that have to try real cases. You just keep swinging and you know that sometimes, like this one you got on first, sometimes you hit a home run and sometimes you strike out, but you just got to keep swinging.

Delisi Friday:

Well, I'm happy you got on base.

Michael Cowen:

At least, it could be worse. Like I said, it could be worse.

Delisi Friday:

It could.

Michael Cowen:

But at the same time, I'm not going to lower my standards. I am not going to lie to the rest of the world and pretend like something's a victory when I don't believe that it was. Because I don't think there's any integrity of that and I'm not going to let it make me quit. I was here early was one of the first people at work this morning and we're going to work on the next cases. We're going to get ready for the next trial and looking forward to getting back in the ring.

Delisi Friday:

Well, I'm happy you're here. I'm happy we did this. I am very proud of you for being real, and open, and honest about your experience. I think that's the only way that we all grow and sharing this, I think is a part of that. So thank you for doing that.

Michael Cowen:

Well, thank you. And hopefully our listenership doesn't drop off now.

Delisi Friday:

No. If anything, I encourage everyone to go to our private group Trial Lawyer Nation insider circle, show Michael some love. What you did today was difficult and I'm honored you let me be a part of it, but I also encourage everyone to share as well.

Michael Cowen:

And I just want to encourage you as courts opening back up, get in there and try cases. It doesn't matter. The fact is the next time I have a case against this lawyer and this adjuster, they're more likely to settle with me because they know that I didn't chicken out. And they know that I tried the case well, and they know that Jerry was out for two and a half hours and it could have gone either way.

Michael Cowen:

Nothing bad happens to you for trying cases. No, one's going to take your license away. People aren't going to stop giving you work. No one remembers your losses, everybody remembers your wins. Get in there and mix it up. And if you keeps swinging, you're going to hit something. So get out there and swing.

Delisi Friday:

And your client was still happy and thankful at the end.

Michael Cowen:

She was.

Delisi Friday:

And it is our job to fight for them. So she had a great fighter.

Michael Cowen:

She's a wonderful person. And if I had more to give her, I would've given it to her.

Delisi Friday:

I think you still gave it to her.

Michael Cowen:

I gave her everything I have.

Delisi Friday:

You still did a great job and I'm proud of you.

This transcript was exported on Apr 01, 2022 - view latest version [here](#).

Michael Cowen:

Thank you.

Delisi Friday:

Well, thank you Michael, for doing this and for sharing and being honest.

Michael Cowen:

Thank you.

Outro:

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