

Warning:

Warning: This episode contains details of the Sutherland Springs massacre. Portions of the show will cover issues of domestic violence, gun violence, and content that may be disturbing to some listeners. Listener discretion is advised.

Dedication:

This episode is dedicated to the memory of all those whose lives were taken in the Sutherland Springs massacre, the survivors, and their families.

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 a 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 bigger verdicts, get more cases and manage your law firm. And now, here's your host, noteworthy author, sought after speaker, and renowned trial lawyer, Michael Cowen.

Michael Cowen:

Today on Trial Lawyer Nation, we have attorney, Jamal Alsaffar. How you doing today?

Jamal Alsaffar:

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

Michael Cowen:

I'm doing great. Jamal just had a massive verdict in a case against the federal government arising out of the mass shooting that was done at a church in Sutherland Springs, Texas. It was such an interesting case. I mean, I've been following you from afar. I've known about other great results you've had over a number of years, but this one was just really incredible and I really want to talk to you about it.

Jamal Alsaffar:

Well, I'm actually really flattered. I want to mention that I kind of feel insecure because I don't know that I'm worthy of this podcast because I really love this podcast and I really do learn so much from you and your guests and I'm real appreciative and humbled just to be on.

Michael Cowen:

Well, getting a big verdict on a case where I told all my partners, "Don't take those cases. Let someone else handle them." If that's not enough, I don't know what is.

Jamal Alsaffar:

Okay, good.

Michael Cowen:

So tell me a little bit about yourself.

Jamal Alsaffar:

Yeah. I'm born and raised in Dallas, fifth generation native Texan, with a very interesting background. My name is the way it is because my dad's from Iraq, born and raised in Baghdad and came over here to study engineering at SMU where he met my mom, who's native Texan, at a middle Eastern mixer dance at SMU. And so that's how it all started. I was born and raised in Dallas and then came down to UT to go to college and always known I wanted to be a trial lawyer ever since I was 15.

Jamal Alsaffar:

And so I did a lot of mock trial in high school and at UT and then in law school. And then I met my wife in undergrad when I was 19 and both of us are trial lawyers and she's my law partner. So we have three kids together. She's my boss and she's my law partner as well. And so we've been at the firm that we're at now, it's National Trial Law, but historically in Austin known as Whitehurst, Harkness. It's been around about 50 years. We're celebrating our 50th year anniversary this year. I'm very lucky to be partnered with this group because my first mentor was Bill Whitehurst.

Michael Cowen:

Wow.

Jamal Alsaffar:

And he sat me down at my first jury trial, I think it was like a \$10,000 case back my first year out of law school. I wasn't with the firm. He's just an extraordinary mentor. I think he was even the state bar president at the time when he sat me down over lunch, handed me his jury file, voir dire file, to help me go through and understand how to ask questions on voir dire. Told me you better tell them this is your first ever jury trial and that you're nervous because you'll never get to use that again, so I did. And so from there, to be able to call, to be able to be partners with him and owners with him is really quite an honor. So, that's kind of how I got started. I had good mentorship and I just kept at it.

Michael Cowen:

And then you've done a lot of Federal Tort Claims Act cases, cases against the government, and I know you've done a lot of even medical negligence, Federal Tort Claims Act cases, how did you get into those?

Jamal Alsaffar:

This is the best question to ask because anyone who's done a FTCA, Federal Tort Claims Act case, FTCA cases, like how the heck and how in the world did you get involved in this? And it's pretty straightforward. We got a birth injury case that came out of one of the Army hospitals in Texas and didn't know FTCA from Adam. We just knew we do a lot of birth injury cases around the country and the case came through, two of them at the same time out of the same Army hospital, and that's how we learned it. We said, "Okay, well it's a federal case and can you sue the government? Can you sue the federal government?"

Michael Cowen:

Yeah.

Jamal Alsaffar:

So, that was like 20... Gosh, almost 20 years ago. And we ended up trying the case and getting two verdicts on that one for those military families. And we learned very quickly that, you know what, yes, it's hard. You have to go through all these immunity traps. You have to have all these unique legal questions and your fee is reduced and it's a federal bench trial and it's everything we're told is just terrible as a plaintiff lawyer.

Jamal Alsaffar:

But we got such good results in those two cases and we realized very quickly that we felt that these military families were just not getting trial lawyer representation and we were hearing that from the federal judiciary as well. And so once those two cases happened, we got another one, and then we figured out as well that these are the federal rules of procedure. We can do this all over. They're uniform. We just need to work with local council and we can do these all over the country. So, that's kind of how it spread. So most of our national practice is related to the FTCA and then our in-state practice is just catastrophic injury.

Michael Cowen:

So what are some of the challenges? You mentioned a couple briefly. So there's a limit on fees?

Jamal Alsaffar:

There's a 25% cap on fees for the FTCA. So, that's number one. That's if you take it to court. If you settle it pre suit, it's 20%. And so there's also an architecture set up, a pre suit architecture that you have to follow. You have to file a form 95 claim form, you have to go through an administrative pre suit process for at least six months. You can't file it right away. You have to cooperate with the government, even though they never do anything during that time period. And then there are a couple of different moving targets in terms of statutes of limitations, but then you can file. And then once you file, it has to be in federal court and it's mandated that it's a bench trial. So, that certainly presents its challenges. Your attorneys that you're against are the United States attorney's office.

Michael Cowen:

And one thing I learned the hard way when I took one of these on referral where someone else had already done the claim form is that your damages are typically capped at the amount on the claim form.

Jamal Alsaffar:

They're absolutely capped. In fact, we had one birth injury case that was referred to us and they put a huge number on that form but we ended up getting twice as much as that number at trial. Now it wasn't their fault, the referring lawyer, it was too late for us to change the form.

Michael Cowen:

Right.

Jamal Alsaffar:

And we, on fifth circuit, just said, "I'm sorry, you're back down to that number that was in that form." And so it was a real wake-up call. So from then on, I mean, what I always tell everybody that has these cases, put a huge number. There's no downside.

Michael Cowen:

Yeah.

Jamal Alsaffar:

They don't even care what that number is unless it's too low. They don't care if it's too high. It's not like they receive it and go, "Wait a second, Jamal's asking for \$100 million? That's ridiculous." They don't even look at it until after you get a result and then all they care is, "Well, is that result higher than what they put in that box?" And if it's not, they're like, "Shoot, we can't do anything about it."

Michael Cowen:

It's not like they're going to settle the case with you pre lit anyway.

Jamal Alsaffar:

No. Hardly ever, especially on a very significant case.

Michael Cowen:

So tell me about the Sutherland Spring shooting first before we get to the case.

Jamal Alsaffar:

Well, I always tell people this, because you would think this would be a memorable event and the tragedy of our country is its very hard to remember. We have categories of mass shooting cases. Oh, but was that a church or was that a movie? Was that a concert or was that wherever? And this one is on November 5th, 2017, a former Air Force service member walked into this small town, I mean 200, 300 member town, in the middle of nowhere between Austin and San Antonio, one stoplight town, walked into this small Little House on the Prairie church and within a few seconds shot and killed 26 members and injured 22. All ages, all backgrounds, men, women, children, grandparents, including wiping out almost five generations of one family. Absolutely one of the worst things I've ever heard about it. It was captured on video, so it's one of the worst things I've ever seen and one of the worst events I've ever heard described by the people who survived.

Jamal Alsaffar:

And so the question is, "How on earth did the federal government bear not only responsibility, but ultimately all the responsibility in our case for what happened?" And you might remember, I mentioned he was in the Air Force, and while he was in the Air Force, the Air Force convicted him multiple felonies, including domestic violence, beating up his wife and abusing his kids, fracturing his kid's skull, and put him in jail. And most people may not know this, but there's a federal law that requires every single law enforcement agency and prosecutor who convicts somebody to enter those convictions into the FBI background check system, and that includes all the air force and military law enforcement organizations, but they didn't do it for this guy. They didn't enter his background information and he purchased a gun legally, because of that failure, at an Academy store, the gun and ammunition and all material he needed to commit this mass murder.

Jamal Alsaffar:

And so that was the primary legal reason why they were held liable.

Michael Cowen:

So I'm just trying to think what are some of the legal challenges for getting the federal government liable and tort liability for someone failing to report criminal convictions into the government database so they would be ineligible to buy firearms.

Jamal Alsaffar:

So the major thrust, so we faced 12b6 motions to dismiss on that issue. And the government's main defense in that situation was, "Hey, listen, we cannot be held liable legally under the Federal Tort Claims Act for this failure to follow federal law because there's no analogous state law duty in Texas that would make a private person liable." So, that's a lot of words. Under the FTCA, the FTA that says, "Hey, here's how the federal government is liable. We are saying that when they commit acts of negligence that are similar or analogous to acts of negligence that would make them liable if they were a private person in Texas, then you can sue them." So you just have to show that the kind of negligence you're talking about here is the kind of negligence that if they were a private person, they could be held liable as well.

Jamal Alsaffar:

So, that was what the big fight was over and then they also fought over foreseeability and proximate cause. But the real one was is there a legal duty that you can be held liable for if you're the federal government and the long story short is we said, "Of course there is. There's a whole list of federal cases out there that have held that the government is liable for these kinds of failures to report, these kinds of failures to act when you have a mandatory duty to act." And so the judge sided with us on that, and then later, they tried to summary judgment us out on foreseeability and causation, which was a whole nother fight that we won as well.

Michael Cowen:

Before we get to foreseeability, I mean, what excuse did they have for not reporting this?

Jamal Alsaffar:

Well, at the end of the day, they didn't. One of the things we learned and uncovered was there was a 30-year history of the federal government not reporting on a massive scale, not reporting felons to the background check system. And we had dug up various Department of Defense inspector general reports and various internal warnings that have been going on since the late 80s to the military.

Michael Cowen:

Wow.

Jamal Alsaffar:

And I'm not talking about here or there, I'm talking at 30, 40, 50% failure rates, like just not doing it. And then we focused our discovery on the little base in New Mexico where the shooter resided and where he was convicted. And when we dug into what those offices and the law enforcement agency there had, their failure rate was even higher. And they were just not trained properly. Some of the officers had no idea they were even required to report it, much less where to report it and how to submit the paperwork.

Jamal Alsaffar:

And then we discovered that there were internal checklists that actually had on the box, had on the checklist two boxes, "Did you submit this to the FBI, fingerprints and the conviction? Check yes or no." And they would check them and not submit them. They would just...

Michael Cowen:

Oh wow.

Jamal Alsaffar:

I called and told the judge, I said, "This is just pencil whipping a checklist. This is what they were doing." And so that's what we learned. So when we dug down from the macro level, from the DOD level, all the way down to the what are you doing in that office in New Mexico on that base, we just found a systemic problem that had been going on for a very long time. One of the last things I told the judge in the liability closing was this 30-year negligence where the government just refuses to take accountability has to stop right now and it has to stop with you. And that made it into his findings.

Michael Cowen:

Has the government done anything to fix this problem?

Jamal Alsaffar:

Yes. One of the things that gave our families a lot of comfort was, before we even got the verdicts back, and I know because of this litigation, we've confirmed a couple of things. The first thing is, to our horror, we found out that just the Air Force alone, just the Air Force, remember there's the Army doing this, the Navy doing this, the Coast Guard, but just the Air Force alone, which is one of the smaller, much smaller than the Army, they had failed to report over 5000 felons to back background check system. We learned that. And as a result of litigation, we got all 5000 of those felons back on the system and as a result of litigation, the entire system of reporting and checklist system has been automatized and modernized from the DOD level, so every single branch of the military has a completely different system in place. In fact, it's a system that our experts recommended.

Michael Cowen:

Oh, great.

Jamal Alsaffar:

And that's rare, you know this. We all know this as trial lawyers is we always feel good when we help a family, but we always wonder is it serving a greater good? And we don't often know, and we don't often get a case where we can say we did something for the greater good. And I was sitting with a federal judge friend of mine in the middle of this litigation who wasn't involved in the case and I just mentioned that fact to him and he just said, "Whoa, Jamal stop right there." He said, "If that's all you get done, how many times do you get to know that because of this litigation, an entire country has been made safer?"

Jamal Alsaffar:

And we talk about community safety all the time. That's what our cases are about, but to be able to verify that on a national scale was important because it was shocking to me that it wasn't done despite high level investigations telling the military this has not been done. And I think the reason for it is that the federal government is not used to getting sued and they're not used to having their laundry aired in

public like this. And so, I'm grateful that the judge first found for us on the motion to dismiss, because if he didn't, I don't think this would've happened. I don't think these changes would've happened.

Michael Cowen:

That's awesome. Undoubtedly, someone's life is going to be saved for this.

Jamal Alsaffar:

It has to be because we know the Army and the Navy fixed it too, so if we're talking about 5000 felons not being reported and now are in the Air Force, you're talking double or triple that for the Army and the Navy. And these are people now that the ATF, especially recently with the higher budgets being given to the ATF, every one of those folks who have tried to get guns who are felons, now can be prosecuted.

Michael Cowen:

Wow.

Jamal Alsaffar:

So there's a lot of levels. It's not just preventing guns, but those who've purchased them can now be prosecuted and put in jail with an automatic 10-year sentence. It's very easy.

Michael Cowen:

Oh wow.

Jamal Alsaffar:

Yeah.

Michael Cowen:

So they said another issue was foreseeability. How did you show... I mean, I could see the defense arguing that it's foreseeable that he'd beat his wife or beat his child, but how was it foreseeable that he'd go shoot up a church?

Jamal Alsaffar:

I think we were lucky on the one in terms of the evidence, because this is not some magic that I did or any of us did. This was just gum shoe work and discovery. What was very interesting to me in this case is I usually don't have huge discovery fights with the federal government. You're in federal court and the judge who's going to be your jury is the one ruling on motions, so you don't really want to hide stuff from your juror. You want to cooperate. So, that's the upshot of it.

Jamal Alsaffar:

Not in this case, the Department of Justice attorneys handled this case on the liability side and they put up a huge stiff arm from the get go. I couldn't even get mandatory rule 26 witness lists, like people with personal knowledge, they wouldn't give me. Because it went all the way up. It was very high level stars on your shoulders type of people who were negligent here. They wouldn't even give me the mandatory disclosures that are required by the federal rules. They wouldn't give me any documents for months,

any documents. And we had an early... I had to file a motion for sanctions and I usually don't like doing that. I try my best to avoid it in federal court. Go to the hearing, I didn't ask for sanctions, I could have, but I didn't. I just said, "I just want the names and I want the documents and I need them now."

Jamal Alsaffar:

And we walk into the hearing. All the lawyers on our side came. It was full of the plaintiff's lawyers. Looked like the entire San Antonio plaintiffs bar. And then the Washington lawyers came down and judge walks in, looks at the US attorney and says, "Have you given Mr. Alsaffar the witnesses and the documents he asked for?" And the US attorney says, "Well, your honor, before we..." And he goes, puts his hand up, he said, "Have you given Mr. Alsaffar the witness list and the documents under rule 26?" "No, your honor, we haven't." And then he just says, "I'm very angry. I need to cool off."

Michael Cowen:

Wow.

Jamal Alsaffar:

"I'm going to take a 10-minute recess. You need to call Department of Justice right now in Washington and get me an answer on whether or not you're going to do this and I'll give you 10 minutes." And he walked out. And you know, I hadn't said anything and I've never had that happen in a federal hearing. He comes back. They said, "We talked to our folks in DC and they said no." And he said, "Okay, I'm going to sanction you." And that hardly ever happens in federal court. It really doesn't happen. It doesn't happen without me saying a word. I didn't even ask for sanctions. And he said, "Mr. Alsaffar, how many of these folks sitting behind you are representing the plaintiffs?" I said, "Well, your honor, all of them." There's a lot of lawyers in this case. And he said, "Okay, well go ahead and submit their hourly for how long they worked on this motion and how long they've had to sit here and I'll sanction the government for all your billing for that."

Jamal Alsaffar:

And of course they turned over the information and then we were off to the races. And once we got that information, we realized why they were holding it back so much because the level of negligence and how high it went all the way up to the Secretary of the Air Force. And so I think that their hope was, "We just got to keep this as long as we can from them because once they do, the dam will open." So, in answer to your question, foreseeability in the shooting, that was a big issue, and really what we found out was it was really kind of mind blowing, Michael, because not only did they know this guy was violent. Those domestic violent crimes were committed with guns.

Michael Cowen:

Oh wow.

Jamal Alsaffar:

With guns. And that's just the beginning. He had been institutionalized in the mental hospital by the Air Force twice, including for trying to use a gun to kill himself. While in the mental hospital, we got the discovery of his computer searches while in the hospital. We found out that he was searching on the internet how to commit a mass shooting and how to get weapons, body armor, tactical clothing, all this

stuff. So we got that information and then we found the government actually knew about that. They knew about those threats. And then he had threatened twice to commit a mass shooting on the base.

Michael Cowen:

Wow.

Jamal Alsaffar:

To his superior commanders. So we understood why they kept this from us when we had to fight for it because that is not only, I mean, I believe that because he had committed violence and then obviously he had used a gun in threatening, that was enough, but we also discovered that he was institutionalized while threatening to make a mass shooting and planning one. He was planning one. He tried to plan one after they released him.

Michael Cowen:

Was this a random shooting or did he know people in that church?

Jamal Alsaffar:

That's a great question because it was not random. The judge found it was an act of domestic violence. One of the things we learned was, we hired the top gun violence expert in the country. He runs the Johns Hopkins Gun Violence Research Center for the NIH. And one of the things he told us was one of the most foreseeable mass shooting people are two factors, ex-military and history of domestic violence. The percentage of mass shooters that have been documented as being both ex-military and domestic violence abusers is close to like 50%. It's really high.

Michael Cowen:

Wow.

Jamal Alsaffar:

So, in terms of the randomness of it, that church is where his wife grew up in. His wife had threatened to divorce him a few weeks and a few days before the shooting, and his wife's mother was a very high level member of that church and that church was sort of his wife's sanctuary. That's where she would go to escape him. And he had threatened violence against his wife's mother shortly before the mass shooting. So he viewed that church as the place that was where my wife was going to go to get away from me and I cannot let that happen. So it was not a random act either. It was actually related to the very thing the Air Force convicted him of and failed to report on.

Michael Cowen:

That makes a lot more... I didn't know enough about the case. The foreseeability is something I had wondered about. So tell me about, first of all, how did you become the lead lawyer? There's a ton of plaintiff lawyers on this case.

Jamal Alsaffar:

No. Well, I think the answer to your question is probably what you said at the beginning. Could you please tell me what on the earth is the FTCA? So, I think that there was not a lot of experience in the FTCA and I just had an unusual amount of it. And I know a couple of the lawyers approached me, and

Dan, one of the local lawyers too, said, "I know you've done a lot of this work." It's a great question because, despite all of that, like I said, the list of lawyers on this case on my side are far better than me and really skilled and they're usually the ones managing these big toxic cases or these big mass tort cases. And the question why me is, I think first of all, I didn't ask to be. I didn't ask to be. I didn't ask for any kind of common fee either.

Jamal Alsaffar:

My main purpose was I really think we can win the federal case and a lot of people didn't agree with me. And I just said I really think we can. I think it's our best one. And so I just sort of, at the very beginning, laid out... I didn't decide to file this case with my claims until I knew I thought I could win. So I'd already really thought out the plan. I was like, "Here's what we need to do in the next year. Here's how we need to make sure we make the pleadings and write them in a way so that we avoid all the traps the government's going to bring up for immunity defenses, and these are my thoughts and here's my plan." And I think that helped. I think that was like, "Well, I don't have anything to say against that."

Jamal Alsaffar:

And a lot of these things people hadn't even thought of because it is a very unique area and we had to make sure our pleadings did not plead us accidentally into all these exceptions to the FTCA. So I made sure that we approached it from that standpoint. I volunteered to draft the complicated pleadings first, well before we were required to file them. And I just did the work early on. And I think that gave them a lot of confidence. And then one of the things I love doing is I love coaching. I'm a licensed coach and I coach all my kids and I've been a coach for almost 13 straight years in sports and, in particular soccer.

Jamal Alsaffar:

I've taken professional licensing classes and I love them because they're a lot like our CLEs, Michael. Neuroscience and how to psychologically motivate people and how to get people to listen, how to not tell people what to do, but have them come to you, which is what we do with juries. And I just was like, this is just like trying a case, motivating kids, keeping parents happy, all that kind of stuff. And so I kind of found that my natural coaching experience and the way I led my team and I led the group like I coach. I listened, I tried to communicate clearly in understandable language. I try to communicate regularly and I tried to not boss my way into the conversations. I tried to make sure I gave them what I thought was the right thing and then listen to their response and respond, which is what I do when I coach and I think it really put everybody at ease that I wanted to do right for everyone.

Jamal Alsaffar:

And that was also important is I did not focus just on the clients that I had. I tried to focus on the overall goal of helping everybody at once. And so I think that helped.

Michael Cowen:

Yeah. I think your experience in actually trying bench trials against the federal government too, and how to advocate damages to a federal judge, as opposed to a jury of six or 12, at least gave other people a comfort level with you. Because I think to me, it's one thing to try a single plaintiff in a Federal Tort Claims Act case, but to try one that's this massive if you haven't done it before, that has to be frightening.

Jamal Alsaffar:

Listen, I want to tell you the truth here. It's not like I had any experience in doing a mass casualty federal tort claim case. This is actually one of the most unique trials that's ever been done in the history of the FTCA. You cannot find many that are done like this. There's very few models. And so it really was interesting because when we talk about the actual damages trial portion of it, that was a whole unique challenge of how do we do this with a federal judge. Now I had a ton of experience with serious cases with federal judges and bench trials, but putting all of those together into one was a unique challenge that none of us had really had. Now, some of us have had similar state cases, but to do it in a federal setting was unique.

Jamal Alsaffar:

And I couldn't come in and say, "Oh, I've done a mass casualty FTCA case." I hadn't. And I was fine with admitting that. I mean, part of that was just like, "Here's what I'm good at. Here's what I know what to do. Here are my ideas. You tell me on this issue how the best way you think to do it is." And I think that helped. My biggest goal was I need to build trust and I think I was able to do that by being honest about what I could do and what I could not do.

Speaker 11:

Each year, the law firm of Cowen, Rodriguez, Peacock pays million 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](mailto:delisi@cowenlaw.com). That's D-E-L-I-S-I at [cowenlaw.com](http://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:

How did you manage this, I guess, communications and egos with that many alpha trial lawyers in one case?

Jamal Alsaffar:

I was joking with a judge friend of mine because he asked me that question. And I said that's really probably the one thing I... I don't want to say hardest, but most challenging because I have to admit, I have to say that the folks I worked with that have great experience and have every right to believe they know what they're doing because their results have been amazing, is that they were very, we obviously had our disagreements at times, especially when we got to damages because everyone, boy that's where you really show your stuff, and I have to say that it was really, probably much more cooperative than I expected. And I think maybe the reason for that was that I tried to have this case win before you begin.

Jamal Alsaffar:

I really tried to have it lined up so that the strategies were in place, the rules I was using, I mean, heck I still use the rules of the road type approach. You know, I had all those done and ready before the complaint was filed and really had a strategy of how to approach because I did, along with my partner, Tom Jacobs, I need to mention him because he and I tried and litigated most of the case and did most of the depositions. We really had a game plan and I think once five or six of those were done and we started seeing that, "Hey, they're locking the case in," it was sort of, "Well, let's not screw this up."

Michael Cowen:

Yeah.

Jamal Alsaffar:

And so I had a lot of trust at the beginning and then when we had the 12b6 motion practice, I think that's when we locked it in. I think that's when they said, "You know what, you really handled this well." The US brought the Associate Attorney General of the United States down to argue against me and the 12b6 and we just were really well locked in and he came up to me after of the hearing before the judge ruled and said, "Well, you really kicked my ass today."

Michael Cowen:

Wow.

Jamal Alsaffar:

So I was like, "Okay, good. Everyone heard that. That's what I needed." So, once that trust was built, like I said, I don't think there's any replacement for doing the work and showing people you're doing the work and then trying to honestly communicate regularly. We had a lot of communication. There was not a lot of surprises. I really tried to... We emailed frequently with status updates. I held a lot of joint calls regularly. And when I communicated, I tried to say, "Here is what I think is going to happen," and then generally that would happen. So again, I think that built up trust. Okay, it seems like they've kind of figured out how this is going to go.

Jamal Alsaffar:

And then once the liability trial came, Michael, I mean, you're talking about hundreds of thousands of documents and they kind of knew, "Well, you and Tom have been the ones who know these without even thinking about it. It's probably better that you handle all the experts." So one thing we didn't do, by the way, which I thought was great, we did not depose any of their government's experts. We went with no depositions and that really worked out well because I knew they wouldn't settle. I knew they wouldn't settle. I knew there was nothing to be gained by having a good deposition other than letting them know how I was going to attack them. And because I had the certainty and clarity that they would never offer a dime before the liability trial, it was actually a relatively simple decision, which I don't say easily, because I really do that on a case-by-case basis. And it turned out to work very well. They had no idea where we're coming from at trial.

Michael Cowen:

And is that the advantage of not deposing the defense experts is you're not giving away your trial strategy?

Jamal Alsaffar:

Yeah. And you know what's interesting is that I say that despite the fact that we had an enormous amount of motion practice and I actually filed and won a partial summary judgment. I did that because I'm like, "That's my judge, that's my jury. I want him to see the evidence before trial. I want him to know we're going to come in ready to bear." And he actually ruled in our favor on partial summary judgment. So they knew what I thought was important, but my partner Tom and I made a very calculated decision that even though we had a lot in summary, because filed a motion for summary judgment in response

and so we had to respond to that. So it was just a cavalcade, an avalanche of documents. We really intentionally kept out some real bombs from what we had milled in the documents from the judge and saved them for trial.

Michael Cowen:

Wow.

Jamal Alsaffar:

And when I say bombs, I'm talking things that, and I know this gets into a little bit of the liability trial itself, but one of the things I was concerned about was we had fought so hard on the motion practice, we had shown the judge so much of our hand in terms of what our documents were and they did as well, I was a little concerned that he would be bored.

Michael Cowen:

Yeah.

Jamal Alsaffar:

He'd be like, "I've seen this before." So we really made a calculated decision to pull back some really big, big documents that we knew would be very helpful. So we knew we had enough to get beyond the fact question. And so the stuff that really hit them hard on foreseeability and causation, our plan was every single day of the liability trial, we would drop anywhere between two to four new documents or facts he had never seen that were eye-popping, one of which was we had subpoenaed or we'd requested in production the security logs for all the bases around the country on a certain time period because we had learned that this shooter had tried, after he had been kicked out of the military, he had been banned by the entire military from entering any base.

Jamal Alsaffar:

So we knew in order for that to happen, they'd have to have a security log which listed him as a do not enter guy and that his ID, if he tried to access a base, his ID would show up on the database. So we requested all that information. So we got back that this guy who had, remember, threatened a mass shooting on base and threatened to kill Air Force members in a mass shooting, had tried not only to reenter the base they had evicted him from in New Mexico multiple times after he was let out and convicted, but that not long before the shooting he had tried to enter the San Antonio Air Force base and the military in response had heightened his security alert status.

Jamal Alsaffar:

So we had this document that they had never seen. Well, there were so many documents they just didn't know. Their experts had never seen it. And so when we dropped it on the judge while we were cross-examining their experts, the judge just stopped. Every time we talked about it, said, "Tell me the document number, the exhibit number. Tell me the date on that document and tell me the time on that document."

Michael Cowen:

Yeah.

Jamal Alsaffar:

And then I would start asking, and he'd say, "Mr. Alsaffar, can you stop? Tell me the date on that document, tell me the exhibit number, the time." Of course, which you're just like, obviously this judge is very, very engaged.

Michael Cowen:

Yeah.

Jamal Alsaffar:

The other thing that we just discovered and we left for trial was we had discovered through his mental health file that the government, when they investigated him for his conviction, had learned that he had raped seven women.

Michael Cowen:

Oh my gosh.

Jamal Alsaffar:

And that two of them were while he was in the Air Force. And so they had all this information on him. And so their experts hadn't reviewed this and they didn't know this. And so they were saying, "There's no foreseeability this guy would commit this kind of act." He was a such a deviant criminal that they knew about. The government was trying to say, "You can't hold us liable, this guy's a monster." And so our theme was, "He was a monster, but he was a monster that you knew better than anyone else, even more than his family knew, and you let him loose."

Jamal Alsaffar:

And so the fact that the Air Force and the military had actually banned him and protected themselves. The judge actually said this in the middle of the trial. He just said, "You guys keep saying that it wasn't foreseeable, but the plaintiffs just showed that not only did you protect everyone on base in New Mexico, you protected the entire Air Force in every base around the country from this guy, but you didn't protect any of us." I mean, that's what he said.

Michael Cowen:

Wow.

Jamal Alsaffar:

I mean, that was our theme. The Air Force cared more about protecting themselves than they did about us. And I mean he parroted it, but he was correct to. So the one of our biggest approaches that I found successful is that sort of holding back those documents every day and making sure that every day, and by the second or third day, everyone in the courtroom staff, including him, you could tell they're like, "What are Tom and Jamal going to tell us today that we didn't know." And that was really helpful. Even our own co-counsel were like, "I didn't know that." A couple of days towards the end of the liability trial, they would come up to us go, "What are you going to do today? What are you going to show today that we haven't seen?" Again, even though it's a federal bench trial, I thought it was very important that the judge be just as engaged as I would want my jury to be engaged as well.

Michael Cowen:

Yeah, I think that's something we forget sometimes, it's not just about the facts, it's about keeping the fact finder somewhat entertained and engaged and part of the process.

Jamal Alsaffar:

And this judge didn't want us to use any demo... I love using a combination of technology and boards. I love to hold something. I love to draw. I love to write something and I love to be able to get up and walk over and point at something. So I had some of the best demonstrative boards I'd ever done in terms of timelines, in terms of rules, and in terms of some of the facts that sort of proved our essential case, just really beautifully done. I was really happy with them. And he wouldn't let us use most of them except for one, which was weird. And the one he did let us use was the timeline and it was all factual. Everything was factually based and it was just a beautiful timeline showing sort of the progression of his madness that the Air Force knew about, combined with the aggressiveness of his weapons purchase as that got worse, and how each one of those weapons purchases would've been caught by the system had they reported and would've subjected himself to law enforcement prosecution.

Jamal Alsaffar:

In fact, one of the things that we draw... I've got to tell this story. I'm sorry. This is just-

Michael Cowen:

Yeah, tell it. Please.

Jamal Alsaffar:

Because I'd forgotten about it. One of those pieces I'm telling you about of evidence is we had third-party requested production of the Comal County sheriff department's video file. Because we had learned right before the shooting, three days before the shooting, there was some kind of disturbance or something on his property out in New Braunfels. That's where the shooter lived with his family. And so the Sheriff's department went there, had their body cams on and interviewed this guy three days before the shooting. So we subpoenaed the recordings and on the video the shooter is arguing with the cops aggressively. It was something minor, but what do police officers do every time they go visit a person that they don't know about? They get in their car and they look up the system. Well, if the Air Force had reported these convictions, they would've said, "Oh, this guy I'm about to go see is a felon so he's not supposed to have any guns." All right, so that's the backdrop, right?

Jamal Alsaffar:

So the police officers show up, the shooter comes out, argues with them, is kind of aggressive, is like, "I don't like cops. I don't talk to cops," all this stuff that would put any police officer on red alert. Then this guy, the shooter says, "Oh, by the way," and he taps his right hand on video, taps his hip, goes, "I'm carrying too." Which is fine, right? It's not illegal to carry, but the point is, if that conviction had been reported, they would've said, "Oh, this guy's a felon, he's not allowed to have a gun."

Michael Cowen:

Yeah. It was illegal for him to carry, they just didn't know it.

Jamal Alsaffar:

It was, and the moment he did this on camera, and so we froze that when he did that, we circled it in red, and its like, "That was the moment he gets arrested and is an automatic 10-year conviction. It's not even close. It's like open and shut case. He's admitted it." But obviously they didn't do anything because they're like, "Okay. I mean, you're allowed to."

Michael Cowen:

Yeah.

Jamal Alsaffar:

So, that was one of those sort of bombs that we dropped. That was one of those facts that sort of that day was just like, "This is ridiculous. This is insane." Which is just really another thing to always remember is really mine for discovery. You never know. Because that was a third-party discovery. We had learned through the other records that, "There was some kind of visitor disturbance call. Well, let's go contact that sheriff's department. Let's subpoena the records. Oh, it looks like they had a camera. Let's go ahead and subpoena the camera." I mean those kinds of things that you kind of have to go to get that information. But that was just yet another, I think, effective demonstrative that we broke down and used to show the opportunities here that had the Air Force done its job.

Michael Cowen:

So tell me, how was the trial broken up?

Jamal Alsaffar:

So we were bifurcated. So the liability trial was in April of last year and that was about a month, a month and a half, and then the judge took a couple months to do the findings and enter his judgment in our favor. And he found the government 60% liable, so they're 100% responsible for the damages. And then he, two months later, set the trial date for the damages trial and that was a whole nother issue because then he said, "Now Mr. Alsaffar, I want you and the US attorneys to get together and figure out how to present this case efficiently damage wise." Because there were like 90 family members.

Michael Cowen:

Wow.

Jamal Alsaffar:

And I said, "Okay." So the government comes back and says, "This trial will take six months." I come back and say, "I can do it in a month, your honor." And then of course they laugh and the judge is like, "How the hell are you going to do this in a month." Long story short, he kind of said, "Mr. Alsaffar, I'm going to give you your shot." Because I knew a couple of things. He didn't want a six-month trial. We were in the middle of COVID, so we had done our liability trial half hybrid in person, half by Zoom. So I was there the whole time masked. We had plexiglass everywhere. Witnesses had to be brought in individually. No one could come stack the courtroom. It was only the lead lawyers and the witnesses. The witness had a plexiglass. Everyone had to wear a mask, take it off when you talk, you couldn't use the podium, all this stuff. You've been through this before too.

Jamal Alsaffar:

And then we had some of the witnesses come in through Zoom while we were in the courtroom, some of the witnesses were live. So, that was all challenge. The good thing is I have an incredible team. Ray Sipsa does all of my trials and they're technology geniuses. So we went through a lot of practice sessions to the point where the court was just using our guys, Ray Sipsa and our team to manage everything. I mean, he was just totally relying on us to make sure it went, which is really great because that I think increased the trust factor. And then I worked out a plan, which was very difficult, but I worked out a plan which was really critically important to figure out which witnesses were the ones we really needed to call to prove our extraordinary damages case and which ones we didn't need to call.

Jamal Alsaffar:

And so I had every attorney sit down and go, "You got to pick two to three people from each family and that's it." And so we got to cross-fertilize. We had a lot of people who were not family members who were in the church who witnessed some of the damages of the other plaintiffs, so we had to really cross reference a lot of people, and then terms of fact, the witnesses that were going to prove the loss and the injury. I was like, "You got to limit it to two or three otherwise we're never going to get this done in the month and we've got to put them on and off in no more than an hour, even the main plaintiffs." Because I did the math. I'm like, "We get six hours of real trial a day," which is bench trial. You do.

Jamal Alsaffar:

You don't have any breaks for jury breaks. You just have two breaks a day and that's it. I'm like, "We get six hours with the number of people we have and then we have all our experts." So it's not just the members, it's the experts too. The life care planners, the damage experts, the neurologists, all that. We have to be very, very, very efficient. So, that was really hard. And then the Delta virus hit.

Michael Cowen:

Yeah.

Jamal Alsaffar:

And so luckily the boosters had come around. I had a lot of recalcitrant plaintiffs in rural Texas, I mean, say no more, who maybe weren't favor of shots. Let me just leave it at that.

Michael Cowen:

Yeah. I live in that county.

Jamal Alsaffar:

So the government was like, "We don't want to do this trial because not everyone's going to be boosted and we don't want to catch COVID." You know, they were using COVID as a way to delay it even more. So I volunteered to set up a COVID testing center in an extra conference room in the federal courthouse in San Antonio. And I didn't know what I was doing. I just said, "Your honor, if I promise you we will have my team set up a testing center and we will test everyone 15 minutes before they walk in the courtroom and I will not allow anyone to come in who has a positive test." And he was like, "Will you be willing to do that?" And I said, "Your honor, I'm telling you I will do that. I will figure it out. I will show you the tests. I will do the tests you want us to do." We even talked about that. This is trying cases in the time of COVID, talking about the quality of COVID tests.

Jamal Alsaffar:

And again, I did that because I wanted to find any reason I could to make sure these families got their trial heard, but I cared about the judge trusting us too. And I was like, "Listen, these are valid concerns. I have these concerns and I don't want to make anyone else sick, so we'll do these this little extra mile." So we had in a room next to us... I mean, it was hilarious. If you walked in, Michael, in one of the conference rooms next to the courtroom, it was just a long table with all these testing kits laid out and we had a person or two always in there and we would get a call, "Client's here." I said, "Shuffle them to the COVID room," and they would get their test, they'd come back with the negative. And I would say, "Your honor, okay, they're negative."

Jamal Alsaffar:

And he really appreciated that. He said no one had ever done that. And of course, there's not a lot of experience here on this. So that's also what was so unique about it is we got through the first one with COVID and then a new strain hit and then we had to figure out a way to make everyone comfortable in that way too. So we were able to do it all the while having to tell these terribly hard stories.

Michael Cowen:

Yeah.

Jamal Alsaffar:

Like how do you tell... I related it to what these people went through in this church room. The size of this church, Michael, was... I actually measured the courtroom that we were trying to case in before the damages trial and I went back to the church itself. It'd been preserved and it had been whitewashed literally to clean off all the blood and the brain matter and the body matter. It was awful. But it was preserved as a memorial. So I spent a lot of time in the few weeks before the damages trial just sitting where my clients were sitting and just spent a day sitting in that chapel trying to experience what they went through as best I could because I hadn't been there in a little while.

Jamal Alsaffar:

And the thought hit me, "How do I make him understand what it must have felt like?" And you know we had all of-- how we're going to do it. So I measured the church sanctuary and I said, "This feels like the size of our courtroom. It's not big at all. It's tiny. And I think this place my might be smaller than our actual courtroom."

Jamal Alsaffar:

So I had the Texas ranger who was one of our main witnesses measure the courtroom and then measure the church and they were almost identically the same size.

Michael Cowen:

Wow.

Jamal Alsaffar:

And if you think about a church and a courtroom, they're very similarly laid out. You have pews in a church, you have pews in a courtroom. The judge sits up high on his pedestal. The pastor sits up high behind their pedestal when they give their sermon. And in this case, the first shots that came through

from the outside of the building were aimed at the head of the church, aimed at where the pastor spoke, which is frankly where the judge speaks or where we're standing at our podium. So there was a real pause when we introduced the room to the judge. There was a real sense of every time the door opened in the courtroom, people were kind of edgy, because they were put it into that courtroom. Because where the door was in the church is the same location where the door is in the courtroom to walk in.

Michael Cowen:

Oh, wow.

Jamal Alsaffar:

And so it was very, very much, you need to understand the space as much as we can because we have these bystander claims, right? These children and these people that survived witnessed and went through this trauma. And even those that died, some lived several minutes through multiple rounds of him coming in and out. And they were trapped animals. I described it, I said, "Your honor, this wasn't just a war zone. This was a war zone in a close combat, tiny house." That's how you have to think about it. It's not in an open area. It is close combat warfare that these children and these people went through and saw, and they had nowhere to go. They had no escape. And so, one of the things that I thought would be good to talk about was just sort of how did we present that because I didn't want to overdo it, but he needed to understand what these people went through.

Jamal Alsaffar:

We had a video. There was a video. They had videoed the service. There was a video camera going on when shooting went in and I decided not to use it. And I did not enter it into evidence because I thought... I actually told the judge... The government actually thought I was going to enter it. They just were like convinced, "Well Jamal's going to just make this a gore fest."

Michael Cowen:

Yeah.

Jamal Alsaffar:

All the evidence of the people after this shooting, their bodies, the autopsy pictures, or the pictures that were taken at the scene, which were horrific, I put under seal and I told the judge, "You look at it when you want to, but I'm not going to show any of these things in trial." The government was convinced I was going to enter the video and I didn't. And I told them I wouldn't. I kept telling them I wouldn't, they just didn't believe me. And then the day before trial, they moved to have that video entered into evidence, not me.

Michael Cowen:

Oh wow.

Jamal Alsaffar:

And I objected and I said, "Judge, you don't need to see it. You know what happened. You don't need to see it. We'll do our job. We'll put you through it." But I said, "Frankly, I've seen it and I've seen it a lot and it's not okay. You are going to be living with these images for the rest of your life and I don't think

you or your staff need to go through that." They still moved it and the judge was like, "Well, I guess I have to because it is evidence."

Michael Cowen:

Wow.

Jamal Alsaffar:

And I said, "Well, your honor, I want an under seal. I don't want any media seeing it. I don't want these family members seeing it," because I'd kept it from my family members.

Michael Cowen:

Yeah.

Jamal Alsaffar:

And so what happened was, from my perspective, I thought this was a big misstep. I said now the government has forced this into evidence and I'm like, "You don't need to see it." So what I did instead was I used the stills right before the shooting, so nothing from the shooting, but literally a second or two before the shooting, I just took stills of the community. It was such a loving space the second before it turned into hell. It was kids running around and laughing. It was children hugging other constituents. All of them hugging, parishioners hugging each other, and laughing and singing.

Jamal Alsaffar:

And so those stills I showed as a, "This is the dramatic turn this thing took," and then we had the 911. There were a ton of 911 calls. So I did audibly, I put the audio in, and then we had pictures. We had a lot of pictures of what the church looked like afterwards, after the bodies had been removed, all the body fluids, all the 500 bullet holes in the pews. And then I brought the actual bullets that I had the ranger sort of dramatically bring the bullets and show them because I wanted the judge to know these bullets are not little pellets. These are specifically designed to do massive damage to the body and to do it in a fast, high-impact way. And he was handling the actual bullets taken from people's bodies.

Jamal Alsaffar:

So what I wanted to do was I thought it was very important for him to understand the sights, the sounds, and then the smells. The Texas ranger who headed this investigation was maybe one of the most impactful damage witnesses because, not only could he describe the aftermath, but this dude, this guy's the head of the Texas Rangers, he's seen cartel stuff, which is about as bad as it gets. But this scene he walked into he said was the worst in his life. And when I just asked him, "Tell me what you saw when you opened the door to the church. Just tell us what you saw." He started crying.

Michael Cowen:

Wow.

Jamal Alsaffar:

This hard, tough... And he just sobbed. He just couldn't stop. And this is the head of the Texas Rangers and it was really impactful. And then the real hard part was how did you prepare the plaintiffs who were in the church? And it was important to me that we made it simple, but straightforward. So I really tried

to draft a very simple, but detailed enough outline for everybody so that we could follow a framework of let's just use a couple of pictures to show him where they were sitting, let's spend a few minutes on the scene before, and then what they heard and smelled and saw after because it was really remarkable. Each person you talked to saw, heard, smelled, saw something so different and so just crushing.

Jamal Alsaffar:

And then we transitioned into, "All right, tell me about the pain and suffering after," and then the sort of wrongful death losses. We knew it was a federal bench trial, so let's use the jury charge. Let's make sure that each, I just had an outline that had each of the actual jury charge elements spelled out, so make sure you hit these points and here are the five or six leading cases that show you the facts that the appellate courts like to hear to support these kinds of damages. And so we really had a very... Because I told the judge one hour or less for each of these, and I was like, "We are not going to violate that."

Jamal Alsaffar:

And of course everybody was like, "I don't know that I can do that." And so I was like, "Well, here's how we're going to do it. We're going to have to structure these in a certain way. I'm not going to tell you what to ask, but we're going to structure it this very specific way so that we hit those points."

Michael Cowen:

Yep.

Jamal Alsaffar:

And we end up doing it. It was really wonderful to see everybody come together because at the damages trial, I could only put on my clients and the other lawyers did put on their clients. So I was really concerned that we'd have one lawyer taking two hours and then another three, doing their own thing. And in the end, we were able to... Again, this goes back to coaching, communicating, organizing. We went over it and over it and over it beforehand and we made sure that the plan was agreed upon and that it was stuck to. And man, these guys, these lawyers did it in their own unique way, but really we followed the plan and I think it was really impactful without being too much, if that makes sense, right? Just the right amount while creating a record.

Michael Cowen:

Now my least favorite part of a trial is waiting afterwards for the verdict. And the really part I hate is the time between when the judge says you have a verdict and the time they read it.

Jamal Alsaffar:

Yeah.

Michael Cowen:

That's to me the only stressful time anymore. But how long did you have to wait?

Jamal Alsaffar:

Oh, you want to talk about waiting? So that's the thing that's the hardest about federal FTCA cases is its months. Its a long time. And so, the hardest one in this one, Michael, was the liability one because I don't know if we won for these families and I don't know if we won enough percentage so that we could

have meaningful damages trial. That one was the hardest because it took two to three months, which by the way, is quick for a federal judge.

Michael Cowen:

Yeah.

Jamal Alsaffar:

And the reason it takes so long is they write out their opinion, a hundred page plus opinion. We submit post-trial findings, so we wrote out a long post-trial findings that cited only the record. So we get the entire record transcript and then we file our findings. In fact, after the trial, that just documents everything based on the actual record. And then the judge takes a couple of months. So it is hard. You get an indication, like I felt like I'd won, but the thing I really didn't know was is he going to find the government 30%, 20%, 40%? We really wanted it and thought it should have been over 51 and it was, and that was the right thing to do. But that was hard because you find out through an email.

Michael Cowen:

Yeah. And just for the listeners from other states, Texas, 51% or more you have joint and several liability.

Jamal Alsaffar:

Yes, of course. I suggested 70/30 and they suggested zero.

Michael Cowen:

Yeah.

Jamal Alsaffar:

Which was a mistake. They should not have done that. They should have accepted some responsibility, but in any event, he had what he needed to find the right decision. And so when he came down in 60, that was what we needed. And so for the liability one, it was really hard because you get notified by an E-notification and you open the document and you go right to the bottom. And so the moment the email came in, I was just off my desk and I walked back to my desk and my slack channel for my Sutherland Springs trial team was blowing up. You know, "Oh, I'm on page 10. What is it?" And I'm just like, "Oh my God, the verdict's in." That's how I found out.

Michael Cowen:

And what was the damages verdict?

Jamal Alsaffar:

It was \$230 million.

Michael Cowen:

Wow, from a federal judge.

Jamal Alsaffar:

Yeah. You know, God, I'm not going to be one of those guys that I'm disappointed in the number. It was actually a really reasonable number because we had 19 of the 26 who were killed were in the case and then the same number for those that were injured. And so when you break it down individually, he really put it squarely in what is considered reasonable ranges for deaths and injury. Not as much as we wanted, but 10 times as much as they wanted, but for me, when everyone asked me, "What do you think the verdict's going to be?" I said, "I think it's going to be somewhere between 225 and 250."

Michael Cowen:

Yeah.

Jamal Alsaffar:

And they were like, "Why? I think we're going to get..." And I said, "No, no, no, because I think that it's really important for the judge to not be anywhere close to an outlier. He's worried about the fifth circuit. And if he comes somewhere in that range, there's really nothing they can say about the reasonableness of the verdict."

Michael Cowen:

Yeah.

Jamal Alsaffar:

I mean, of course it's a lot of money. Of course, it's one of the largest that I think the government has had to pay. But when you look at what happened and you look at the damage and the evidence we put on, that's really what's key is his findings. You look at the evidence we put on, it's absolutely reasonable. So I think from that perspective, he could have gone several million per each one I think and still totally been within what I think would've been a protected record, but it was, to him, I think it was very important that he got a number that he thought could easily be secured on appeal and I think he did that.

Michael Cowen:

Yeah. And is it going up on appeal?

Jamal Alsaffar:

Well, they're on the clock.

Michael Cowen:

Okay.

Jamal Alsaffar:

They're on the clock and they have settled a few cases, mass shooting cases, that are not as large as this one. This is the only one that's been tried to verdict. And so we're just waiting. The level at which this is handled, this is handled by the Solicitor General and the Attorney General of the US. That's where the decision will be made. So it's a pretty high level. And I think one of the interesting things about this is that, the way the government looks at their case is a lot different than the way private parties look at their exposure. I mean, the federal government's the biggest corporation in the world. In fact, one of the US attorneys use that quote on me in deposition and I used it against them in a hearing.

Jamal Alsaffar:

But it's true. I mean, they make decisions primarily based on long-term exposure to legal issues rather than, "Oh, am I going to have stockbroker revolt? Am I going to have insurance questions?" You know, they don't make decisions the same way that private companies do. And the thing that I'm most comfortable about is that the way we handled the legal issues early on and the way the judge particularly handled them, he is a conservative judge. He's a Republican judge, which is fine because some of the best judges I've ever had in these bench trials have been conservative, but he is a law follower and he is a good legal mind and he is very well respected at the fifth circuit as he should be.

Jamal Alsaffar:

And so I felt when we drew, because we just drew him blindly. I said, "I think this is a good thing because I think we're right and this judge is going to preserve this record properly and he's not going to find for us unless we are absolutely right on the law. And if we can get this judge writing that opinion, we know it'll be the most well-researched, well-written and well-founded opinion." And I think that's what we got.

Michael Cowen:

That's awesome. Well, I hope you all keep it and I hope the government continues to do the right thing and actually follow its own rules and keep these convicted felons from buying guns and that you get some kind of peace for the families.

Jamal Alsaffar:

Thank you. And let me add one thing, because I think that's a really good point because we all talk about, do these things work, do these laws work, and I can tell you one of the most interesting things about this case was we cross-examined at trial the head of the FBI who runs the criminal justice background check system. So the head of the FBI, the director for that section, and one of the things that was clear as day and was important I think to the judge as well, is that these background check systems work. They work at a very, very high level of keeping guns out of the hands of felons. And everyone says, "Well, it's so easy to get a gun." Well, the bottom line is this, these criminals want to get guns the easiest way they can and when you put up hurdles, it really keeps guns out of these folks hands if you follow the law and report these folks.

Jamal Alsaffar:

And one of the most interesting things in this trial was having the head of the FBI being asked by the US Attorney to essentially throw the FBI background system under the bus. Our cross was like a direct. "This is a great program, isn't it? You have just in this year alone prevented a million felons from getting guns." And she's just up there on the stand, Michael, reluctantly agreeing that her department is really good at what they do. And the judge sniffed that out right away. And in fact, after she was done said, "I find it very unusual that the federal government is trying to argue that their own system doesn't work when their own FBI director is clearly having a difficult time with that notion."

Michael Cowen:

Yep.

Jamal Alsaffar:

You know, again, credibility, credibility.

Michael Cowen:

Yeah. For those of us that like to own guns, but don't particularly like the idea of crazy people with felony convictions next door owning guns, it feels good.

Jamal Alsaffar:

How about crazy people who have been institutionalized, have committed felons, and have threatened to commit mass shootings?

Michael Cowen:

Yeah.

Jamal Alsaffar:

I think we all can agree on that.

Michael Cowen:

I think you and I can agree on that. I'm not sure everyone in Texas would agree with that.

Jamal Alsaffar:

Well, you'd be surprised.

Michael Cowen:

Yeah, you stack it up that much, probably so. Well, it was great talking to you. I look forward to meeting you in person sometime soon and great work, not just having the courage to take on a tough case, a case that frankly I wouldn't have had the courage to take on, but then doing incredible work and getting an incredible victory.

Jamal Alsaffar:

Thank you. Well, let me just tell my wife, it was my wife's idea, Laurie Hagenbotham, my partner, and she told me to do it so I just listened to what she said like I told you at the beginning. She's the boss, so I did it.

Michael Cowen:

I want to do a whole nother podcast with you on practicing with your wife because that's something I don't think I could do. I think that would be another one, but we'll schedule that one if future.

Jamal Alsaffar:

You should. She's wonderful. She's amazing. She just had a trial last week in San Antonio and kicked butt. A lawyer asked me that last night actually and I said, "Well, my advice is not to work with your wife, but my advice is also if your wife is my wife, you absolutely should work with her." For us and our relationship, it's been the best thing that's happened to me, but I always say, "Hey, it probably tears apart other relationships." But we're two trial lawyers. We love what we do. We don't mind talking

about what we do all the time and I've always sought her advice as my best council and so it's really worked out.

Michael Cowen:

That's awesome. Thank you so much for joining us.

Jamal Alsaffar:

Thank you for having me. It's been one of my great honors to be on your show. I love this show and I hope others find this one as helpful as I find all your others.

Michael Cowen:

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

Speaker 11:

Each year, the law firm of Cowen, Rodriguez, Peacock pays millions of dollars in co-council 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](mailto:delisi@cowenlaw.com). That's D-E-L-I-S-I at [cowenlaw.com](http://cowenlaw.com). She will coordinate a time from 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. This podcast has been hosted by Michael Cowen. It is not intended to, nor does it create the attorney-client privilege between our host, guest, and any listener for any reason. Content from the podcast is not to be interpreted as legal advice. All thought and opinions expressed herein are only those from which they came.

Speaker 1:

Cowen's Big Root bootcamp will be coming to you live Friday, June 17th, 2022 from historic downtown San Antonio, Texas. In person seating is already at capacity so act now and secure your virtual spot to our professionally produced seminar, available via zoom webinar. Visit [triallawyernation.com](http://triallawyernation.com) and click seminar on our menu to join the in-person wait list or register for virtual attendance. And to all those who already registered, be sure to contact Allison Bradley to take advantage of our exclusive 50% discount on your hotel stay. Just email Allison at [allison@cowenlaw.com](mailto:allison@cowenlaw.com). That's A-L-L-I-S-O-N at [cowenlaw.com](http://cowenlaw.com). Register now and we'll see you there.