

Michael Cowen:

This is Michael Cowen. And welcome to trial lawyer Nation.

Voiceover 1:

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.

Voiceover 2:

You want the facts to be consistent, complete, Incredible.

Voiceover 3:

The defense has no problem running out the clock. Delay is the friend of the defense.

Voiceover 4:

It's tough to group affirmed by trying to hold on and micromanage. You've got to front load a simple structure for jurors to be able to hold onto.

Voiceover 5:

What types of creative things can we do as lawyers even though we don't have a trial setting?

Voiceover 6:

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.

Voiceover 7:

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:

Welcome to Trial Lawyer Nation. I'm joined once again by my partner, Malorie Peacock. How are you doing today, Malorie?

Malorie Peacock:

I'm doing good. Happy to be back as usual.

Michael Cowen:

Great. Well, before we dive in, I want to say a thank you to our trustee sponsor, LawPods. LawPods makes our lives so easy. Malorie, all you and I have to do is talk. They do all the recording, producing, editing, putting it out there in the web and wherever it goes for people to listen to it and even make the ads and stuff for us. They're so great to work with. Really couldn't do this without LawPods. So how are you doing, Malorie?

Malorie Peacock:

I'm doing good. Just hanging in there and excited to talk about our topic today. I think it's something that we've talked about a little bit before, but I think we have a little bit of a different angle on it today, so I'm excited.

Michael Cowen:

So don't keep us in suspense. What's the topic?

Malorie Peacock:

So today we're going to talk about how to communicate and deal with difficult clients. It's kind of a broad topic, but we have a couple of things in mind that I think that we want to talk about, how to keep people happy, what you have to do as the lawyer to make sure that your difficult clients are just as happy as your easy breezy clients.

Michael Cowen:

Absolutely. But before we jump into that today, this is coming out on the 15 May. We're 31 days away, 32 days away from our big rig boot camp, and I'm getting excited for that Malorie.

Malorie Peacock:

Oh, my gosh, me too. I am so excited. And we have so many people registered already. I know we don't have a lot of seats left, but I'm excited that we're going to see so many fans live. And some people are still registering online, I think. But I think most people are coming Live.

Michael Cowen:

And you actually are going to be a game show host.

Malorie Peacock:

I am. I have to work on my game show voice. I don't have a game show voice, but I'll see what I can do. I'll see what I can pull off.

Michael Cowen:

Yeah, I know. Elizabeth Banks is hosting, I think. Press your luck. You might want to watch her. She's doing a great job on that.

Malorie Peacock:

Okay. All right. Well, I have to get to my.

Michael Cowen:

Trying to think, who are the great women game show hosts? You're not the van white. You're the Pat sage actor. Barker so maybe look at how Elizabeth is doing. She's classy and does a good job with it, but it's going to be a lot of fun. We're going to do for ethics, instead of just lecturing on ethics, we're going to make it a game show format, and people are going to be competing for some pretty cool prizes.

Malorie Peacock:

Yes. I don't know when we're going to announce the prizes, but I already know what they are. I'm very excited.

Michael Cowen:

We're going to announce them right now.

Malorie Peacock:

Oh, what are they Michael?

Michael Cowen:

Well, there's going to be, for the quote unquote losers of each of the first three rounds, they're going to get a nice gift card. That's a lot more than the cost of attending the seminar. But the winner of each of the three preliminary rounds gets a trip to Las Vegas. We are going to pay the airfare for two people and a hotel room at the Cosmopolitan. So we're not going to go put you up at Circus Circus or something. It's going to be a hotel that you or I would stay at if we were there with our friends.

Malorie Peacock:

Yeah, the Cosmopolitan has been my favorite.

Michael Cowen:

Then the grand prize winner gets a trip to Napa, California. Again, we pay for airfare, we pay for hotel. Then we also arrange transportation to and from the airport and to the wineries because we would hate to see someone drinking wine and driving themselves. And so it's going to be awesome trips, awesome prizes. We also have other just kind of drawings for prizes. It's just a fun environment on top of learning and sharing what we can about trucking cases and trying cases, and I give and share resources, but we also have a lot of fun.

Malorie Peacock:

Yeah, no, it's going to be a ton of fun, and I can't wait to see everybody there. We very carefully curated the topics this year because we thought Michael and I and Sonya all sat down, and we thought we need to make sure that we're not giving people stuff they've already heard before. We want to make sure that there's a lot of new stuff. And what are some of the new things that we're going to be talking about this year Michael?

Michael Cowen:

Well, first of all, I've got my trial guides book coming out by end of the summer, and it's all based around a nine step method for maximizing value in trucking cases that you, Sonia, and I have created. Working together, we kind of figured out, like, what were we doing kind of instinctively, and how can we make that a process? And we've talked about that a little bit, but we're going to go into a lot more depth. But what I am doing for the first time is kind of doing the mini method. When you have a case that's not a seven figure case but you still want to get as much, maybe you have a \$50,000 case and want to turn into \$100,000 case. You've got a \$200,000 case you want to turn into \$300,000 case. What are the things you can do affordably that don't involve hiring a bunch of experts, hiring a bunch of consultants to find what I call the piss off factors and maximize the value of those cases. So that's going to be a lot of fun. Another thing is we've worked real hard on trying to always improve. So we've learned from a lot of different consultants on how to give an opening statement. But I think we're kind of taking it one step further and we've developed our own method that really draws the jurors in as kind of like the fact finders of detectives from the beginning and where I'm going to share that publicly outside the law firm for the very first time. Frankly, that's something I wouldn't even share on the podcast because there's some of our friends in the defense that listen on the podcast but we would not allow them to attend the boot camp. So it's more of a safe space for me and of course the normal trucking stuff we're going to go deep into what are the best regulations, how do you use them, what is the evidentiary predicate we need to lay to get the regulations and the other safety standards in? We're going to go share the top ten resources that we use in our cases so that you will walk out not only knowing what they are and how to use them, but to the extent we can, we're going to provide copies. And if it's something that's too big or too copyrighted a copy, at least get QR code of where to order it and get it yourself. How to get the dirt

on the motor carriers and how to use it. And then of course, when you are lucky enough to have that really big case but the trucking company only has like a 750,000 or million dollar policy like where else you can look, how to identify what kind of cases you have. And then how to make such a case where you can again. Someone else would have settled the case for 750 or a million. But you find a broker or a shipper hidden motor carrier and you're going to get 20 or 30 million. It we're going to share how you do that so you can do it in your cases and we're going to have a lot of fun while doing it. So if you want to come, just go to [Bigrigbootcap.com](http://Bigrigbootcap.com). We are filling up, but [Bigrigbootcap.com](http://Bigrigbootcap.com) and you can register, so let's dive in there. So, Malorie, have you ever had a difficult client?

Malorie Peacock:

No, never. Yeah, of course, we all have. I've had a range of difficulty, too. So there's some people that are just a little bit of a pain in the ass, and then there's people that just need a lot of attention, so we've had it. I've had all kinds, and over the years, I've developed, I think, different strategies for dealing with different kinds of difficulty because someone can be difficult for a lot of different reasons.

Michael Cowen:

Absolutely. What are some of the reasons you see clients be, quote unquote, difficult?

Malorie Peacock:

So I always start with remembering that if a client is difficult, it's typically not a personality flaw. Usually it's because they've come to us at the worst time in their life with something terrible that's happened to them. And so they're just down and out and having a hard time. Now, one of the reasons that they could be difficult is a personality law. So I think that's one is that they're just difficult people to begin with, and they've always been difficult, and that's just the way that they are. But I think more often it's because of the situation that they found themselves in, which is something to do with their injury. Maybe they have a brain injury or the amount of pain they're in, or just desperation because they can't work, or their mortgage is coming due and they're not sure how to pay it, or there's a lot of financial stress on them or something like that. So there's a wide range of why someone can be difficult. And I think the hardest ones to deal with are the ones that are difficult just because that's their personality and they've always been that way.

Michael Cowen:

Yeah. I want to start before we start talking about how we talk to the clients to try to keep them happy. How do you talk to yourself? I think you started on it. How do you talk to yourself so that you're in the right frame of mind when you deal with a client that's being rude, being demanding, maybe crying, yelling, whatever it's going to be?

Malorie Peacock:

Yeah. I mean, I always start with thinking, this person has come here because something terrible has happened to them. They're not here to talk to me because they're at a great point in their life or the highest point in their life, or something really fantastic has happened. It's always because it's probably the lowest point they may have in their life. And so when I think about that, I think, how would I feel if I was in that situation? And what would I need from maybe the only people that will listen to me? What would I need in that time from the people that will listen to me. And I think the biggest thing is someone that will listen and someone that will care. And we can offer both of those things. It's just a matter of getting yourself in the right headspace to listen and to care. It's not that I don't always care about my clients, because I do, but sometimes, some days you can care more than others because we all have our own personal stuff going on. And so you want to make sure that when you're having those conversations, you're in that right mindset to give them the attention they need and to care the most that you possibly can for them at that time.

Michael Cowen:

And this is so hard to do, but I think it's so important to just try not to take it personal, although they may be, sometimes they do. Exactly. You're not doing anything on my case. I mean, that doesn't happen that often. But you don't care. You just care about the money. People will lash out, and a lot of times it's just because they need to vent again. They're going through something really stressful, they're frustrated, and they just need to get it out. And sometimes if you just let them get it out, once they've kind of gone through it and processed it, then you can actually have a real conversation with them and get there. But if you just start arguing with them right away and they don't feel heard, then you're never going to have a good conversation with them.

Malorie Peacock:

Right. And we have to have difficult conversations with people, which makes it even harder. Right. So they're already upset, they're already having a hard time, and then whenever they hear from their lawyer, it always feels like, okay, what now? And what are they asking for from me today? And what's going on in the case now? And unfortunately, with what we do, it's never even if you settle a case for multiple millions of dollars, it's still not necessarily good news to them, because there's something terrible that happened to make that settlement possible. So rarely do we have what a client would actually consider good news. Right. It might be good news to us, it might be good news for the case, but really, for them, all of it is kind of bad or mediocre at best. We have to keep that in mind, too.

Michael Cowen:

Yeah. I think the first key, I think, to dealing with potentially difficult clients is to not give them a real justification to be justifiably upset with us.

Malorie Peacock:

Right.

Michael Cowen:

And what I mean by that is, one, we have to act diligently on their cases. I mean, if someone calls you saying, you're not doing anything on my case, and you go and look at the case notes and no one has done anything on that case in the last 90 days, I mean, it's like, well, they got a point, right? They have a right to be upset about that. And so I think all the things we do of our regular meetings and reviews and making sure that we are constantly making sure no case is falling between the cracks, that people are working on the case and that we're documenting what we're doing. So if the client calls and we're not available and they have to talk to a paralegal or the paralegal is not available and they have to talk to the receptionist, someone can go look in the file and say, hey, this is what they've been doing on your case, rest assured, we are working on it. We've sent out discovery. We have a deposition coming up. We have a trial coming up on this day. They're talking to the insurance address. They're trying to get them to pay your property damage. These are the things they've done. They've sent in the estimate. They've called them, they've emailed them. We're going to follow a lawsuit if they don't pay it, whatever it is, being able to tell the client, hey, this is what we're doing and really having done it is really important if you want to keep clients happy, I think another thing, again, we're really big on what we call our client contacts. We're always all over our people because the clients aren't always answering the phone the first time you call. But we have a role that there is a we talk to clients fairly often, but there is a deep, what we call client contact call at least once every 30 days. That has to cover certain subjects. And so at least once every 30 days, we're asking them how they're doing, but not just fine, like, okay, do you still hurt anywhere? Where does it hurt? Are you seeing a doctor? Do you need help getting set up with a doctor? If you're still hurt and hurt and you don't have an appointment coming up and then letting them know right, then this is what's going on in your case. So this is what we've done. This is what we're doing. So you're proactively telling them before they ask you. It saves so much time because then it's a pain to help make all those calls, but it's even more of a pain to deal with angry clients call not knowing what's going on, and then they get all stressed out because they have the story in their mind. That when no one's doing anything on my case, when in fact you really are working on their case, but you just haven't told them. So those kind of things and then asking, do you have any questions when it's a paralegal making the call? Do you want to meet with a lawyer or anything? We can set up a lawyer meeting if you need it. And most of the time they say, no, I'm fine.

Malorie Peacock:

Right? I think sometimes our clients feel like we call them too much, but I'd rather call them too much than not enough. I tell clients that at the beginning of a case. I say, hey, we're going to call you every 30 days, probably more, but we're going to call you at least every 30 days and tell you what's going on in the case. And I know sometimes it's going to feel like you don't want to talk to us or you're sick of us, but we just have to tell you what we're doing in the case because it's important that you know, and we never want you to be wondering whether we're working on the case. And I think that's one of the biggest fears I think a lot of clients have when they hire a lawyer is, is this person going to take my case seriously? Are they really working on it? Is this ever going to get resolved? Is this even moving forward? And having that reassurance every month helps prevent problems later down the road.

Michael Cowen:

So I want to talk about some of the common frustrations that we see with clients and kind of your ideas for how we deal with them. So one is what I see early on is property damage. I mean, the most urgent things to somebody after a crash is to get a vehicle that works again. And a lot of times I see they either don't have their own insurance or for some reason they just refuse to use it because, darn it, they cause a crash. Why should I have to use my insurance? But a lot of times they don't have their own full coverage and the other side drags its feet. I think some of the trucking insurance companies purposely don't settle property damage because they want the client to get frustrated and stop treating so they can settle the whole case cheaper. So what do you do when you have a client frustrated saying, hey, I don't have my car. Why haven't you got my car fixed?

Malorie Peacock:

Yeah. So I think the first things first, you have to set the expectations early, which is I cannot make someone pay you money on something. I can ask and I can follow up and I can be annoying and I can be a pain in the ass until they do something. But the only way to ever get any money in your case, whether for property damage or for a bodily injury claim, is to file a lawsuit and go to trial. Now, we don't do that right away, especially if we're trying to resolve a property damage case necessarily, because that delays everything. So the better avenue is to be a pain in the ass until they pay it. But I think keeping them updated with how often you're communicating with the adjuster, what you're doing to move their property damage claim forward, makes a difference. And I think having some understanding, most people have only one mode of transportation, and so if they don't have it, they can't get to work and they can't get their groceries and they can't pick up their kids and there's all kinds of other headaches involved with it. And understanding that and thinking to yourself, how would I feel if I was in that position? Can make a big difference in the way you're communicating with clients about it.

Michael Cowen:

Yeah, we had a recent case and the man was justifiably upset because he needed his car. It was actually a truck. He needed the truck to make a living. And the other side was slow playing the property damage and he got upset. He went to talk to another lawyer. We sent the file to another lawyer and the lawyer said, well, you need to go right back to doing a hell of a job. But one thing we're doing now is we're making sure every time we communicate now, which we're doing daily to try to get it resolved. We're texting him, let him know, hey, we just called them again. Hey, we just faxed them again. So he knows it's not us and at least he knows we're fighting for him rather than thinking we're the ones that are in the way. It's a pain in the butt. But if you don't do that, if you don't spend like the minute to text the client after you send the communication, then you're going to spend 30 minutes with an angry person a week later trying to calm them down and convince them you've actually been doing things right.

Malorie Peacock:



And when they're feeling desperate in that situation, they want you to call every day. They want you to be on top of it. And the fact is you are doing that and so you are doing it, so you might as well tell them you're doing it so that you save yourself that headache later.

Michael Cowen:

Now, you might want to turn to a text instead of a call or an email instead of a call because you don't want to spend an extra 30 minutes a day venting. I mean, then you can't get anything done. But whole point is to avoid that and maybe you can have a weekly event and hopefully sooner or later the insurance company do the right thing and pay the property damage. But that's a big issue. How about, here's another situation I see a lot. We do a lot of work with clients of sustained traumatic brain injury. And one of the things I see a lot in traumatic brain injury is often they have memory problems and so the client will call saying, no one's called me forever, and I don't know what you're doing on my case, but you have called something. All right, what do you do with that kind of client to kind of diffuse that situation?

Malorie Peacock:

So it's tough. So it depends on the client and depends on what their issue is. But typically if you know that you have a client with memory issues and you've identified that early, you should set up a system where whenever you call them, you also send over a text that reminds them what you talked about. So, hey, just a reminder. We talked about blah blah blah today. Or thanks for calling me back so that we could discuss whatever it is, just to have something, maybe not the exact details of everything you talked about, but just so that when? Later? They say, you haven't called me in three months, you can say, well, please look back at your text messages. That's a reminder of when we called. Or look back at your emails. We sent you an email every time we talked. And then just keeping really good notes yourself about when and how you communicated so that there's at least some kind of trail that you could give to them. And a lot of these people with brain injuries, even if they don't admit that they have memory loss, they do know or have noticed it in other areas of their life. And so a lot of times when you can show them proof they've calmed down, right. They know it's an issue that they have. They forget it's an issue that they have. But it feels familiar. And so just being able to say, I sent you, look at your text messages, it's there will diffuse the situation.

Michael Cowen:

Absolutely. And the good thing now we use Filevine, but other case management programs do this. We can send the text from the case management program, which is good for two reasons. One is you have a record of it. And so let's say someone else is talking to the client. Let's say you're talking to the client, but you know it was the paralegal that talked to the client. You can say no, so and so talked to you. Look at your text. She texted you on this day and she texted you on that day after your conversations, which helps a lot. But the other thing is that they don't get your personal cell phone number. I know I have a debate with other lawyers about this. Some lawyer know they give every client their personal cell and they're available 24/7 for their clients. I'm not, I love my clients and they can call the office and make an appointment with me. And we will talk on a time that is convenient for them, when I am prepared to talk

to them, and when I am not trying to enjoy time with my family or when I'm not needing to take a nap or take a break. But I do also really value my personal time, and I just draw that boundary that I'm available when I'm available, and I will make myself available. I have to do it at night. If I have to do on the weekend because of their schedule, I'll do it. But I'll do it when it's planned out. I'm not going to let them interrupt my life and interrupt what I'm doing. The other thing is, frankly, when we're in court or doing a deposition, you have to have your phone off anyway. And if they're blowing up your phone and getting upset because they thought the rule was they can call you twenty four seven and you're going to drop your hearing or drop your deposition to go talk to them, it creates a problem. Whereas if the rule is you can call my assistant between 8:30 and 5:30 and we can set up a meeting, they accept it and they're happy with it. No one expects a big time lawyer to be available 24/7, just like no one expects a doctor to be available 24/7. They might say they want it. But the fact is, if you could draw that boundary I still have happy clients.

Malorie Peacock:

I do too. And I think this is a really critical component of keeping clients happy, is laying expectations early about what your communications will look like, how often they'll be, and what the expectations they should have for the communications that you'll have. And I tell clients at the beginning of every case, if you pick up the phone and you call me, I will probably not take your call. And I don't give clients my personal cell phone, but I won't take your call out of the blue because I'm working on someone else's case. And if you have a question for me, I want to be able to have a full answer for you. And I don't want to be distracted by something else. I don't want to be impatient because of something else going on. I want to be able to give my full attention to you. And the only way that we can do that is if we set up times for us to meet. And I'm happy to set up that time whenever it is right, if it's in the evening, if it's on a weekend, but setting up the time so I can be prepared to give my full attention to them and to have a meaningful conversation where they can get the answers that they want or they need. And I never have anybody complain about that. When I set up that expectation early, I've never had a client that said they didn't like me because I wasn't available to take their call at 11:00 at night while I'm asleep. So I've not had that issue arise. But it's about setting expectations.

Michael Cowen:

Yeah, I do it very similar. I tell them, when I'm working on your case, I will be doing nothing but working on your case. And so when I'm diving deep in your case, I'm going to have my ringer turned off, I'm going to have my email off, I'm not going to be checking things. In fact, I don't even have a phone in my office so that nobody can interrupt me when I'm working on your case. But for that reason, you also can't interrupt me when I'm working on your case or someone else's case. And so, the system I have set up is I've got a wonderful assistant, her name is Reagan Sanchez. You can call her. She will find a time quickly, as soon as we can where we can meet, she will tell me what we want to talk about. I will be 100% prepared to answer your questions. And we'll do it at your convenience, as quick as we can. But that way I'm doing the same with my other clients. So when they're calling me, I'm not going to interrupt the work. Important work in your case because someone else wants to talk to me. They're going to wait and then still talk to me. And no one hasn't. Like I said, the only people they ever have a problem with is

sometimes the referring lawyer that lives twenty four seven and is freaked out all the time. And they give all their clients their cell phone number. Some of them don't like the fact that they have no boundaries in their life, and they don't like the fact that we're doing ours because they've convinced themselves that you have to do that to get cases. But usually after we worked with someone for a year or two, they understand it works. And sometimes they even start maybe turning off the ringer on Saturday morning or something so they can have a little bit of life.

Malorie Peacock:

Yeah, I mean, I think setting the expectation is the critical component of it and two, we're not doing something that requires at least me and Michael aren't practicing the kind of law that requires someone to get an answer about something at one in the morning. We don't do family law, we're not doing criminal law, we're not having people arrested and they need immediate assistance to get out of jail or someone's not returning the kids and so really there isn't anything in what we're doing at least that requires us to be available at midnight. If you have that mindset going in, then I've not found that clients have any kind of problem with it. And you just have to keep your promise. If you say that they'll be able to get a meeting with you or an associate within 24 hours after they call and make an appointment, then you need to stick with that. You can't give them an appointment three weeks from now or something like that because then that will cause other problems but I also find that when I schedule time to meet with people there's less time spent in the meeting. Everybody questions are answered and I'm more prepared. I hate when people call me out of the blue and expect me to just know whatever it is that they want to talk about. And I've not had any time to look into it. And so then I'm on the phone trying to look at it as they're telling me about it, and it just takes longer. And people are less satisfied with the answer because sometimes you need to look something up. Whereas if you're prepared for it, the conversation goes much better.

Voiceover:

Each year, the law firm of Cowen, Rodriguez, Peacock pays millions of dollars in CoCouncil 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 by calling 210-941-1301 to discuss the case in detail and see where we can add value in a partnership. And now back to the show.

Michael Cowen:

Yeah, they don't have the confidence in you because you didn't have the answer right off the top of your head. Whereas when you're prepared because you knew what you're going to talk about, then you sound like you're on top of the case. And then they feel safer and they're going to be more trusting. Here's. Another thing that I've seen I'm seeing a little bit of a trend lately is that they're usually some of the less sophisticated clients that in negotiations. Someone tells them, you got to bargain, you got to start high. And they think, they have to bargain with us. So when we tell them, like, we want to demand this number no, you have to demand a higher number. And we think your case is worth X, and they'll

come up with five X and they're bullshitting. At the end of the day, they will take less than that. But they've somehow been convinced by somebody that they think they're negotiating with us and they think they're the negotiators and we're like, we're trying to work together on a negotiation strategy. How do you deal with that? I know because we had lunch talking about this.

Malorie Peacock:

Yeah, it's a challenge. Each client has their own reasons for doing that. So you have to kind of identify where it's coming from first. So is it coming because they have their sister's, friends, cousin who got \$8 billion because they stubbed their toe, right? Or is it coming from a place of fear that you're not paying attention to their case or you're going to settle it cheap? Or is it coming from their own fear that we're going to push them to trial when that's not really what they want or where is it coming from? So identifying the source of it. And then I think the most important thing is reminding yourself that this is their case. At the end of the day, we do have to do what they want. And the more that you fight with them about it, the more they think they're proving some point to you. Right? If you get worked up about something that you know is wrong, then they're going to start thinking, oh, okay, so she does see my point. She does see where I'm coming from. Or she's trying to get me to settle cheap. Because see how desperate she is to settle my case. She's afraid to try it or whatever it is I think the more you fight back, the less persuasive you are, frankly. So sometimes I just tell clients, okay, that's not my advice. I don't think you should demand \$800 million on your case. I don't think it's going to get it settled. If your real goal is to get it settled, then I would recommend a million dollars, something more reasonable. But if you really don't want to get it settled, then that's fine, we'll just go to trial, and this is what trial would look like. And them hearing me be okay with that, I think, makes them realize, okay, she's giving this advice because she really does think this is a good strategy to get it resolved. Right. She's not just trying to push me to settle something because she needs money.

Michael Cowen:

Yeah. And I think that's one big thing is I'll tell clients, like, look, it's always your decision, because the fact is, you have one case. This is your only case, and I pray this is the only significant case you ever have in your life, because I pray you never go through anything like this again. I mean, the fact is, if we go to trial and we lose, I'm going to feel sad. I'm going to feel bad for you, but then I'm going to drive back home to my nice house, and I'm going to go have a bottle of wine and mourn at the loss, and the next day, I'm going to go back to work, and I'm going to settle on the vacation. I'm going to do just fine. I'm not saying that to sound cocky. I'm just saying you're the one that's going to have to bear the consequences whether we win or lose this thing. So it's 100% your choice. And I've had clients that they disagreed with me, and sometimes every now and then, they turned out to be right. I mean, not normally, but the other thing I've told them before is because when I think they're just being insane, remember we had one client. It wasn't the client, it was a relative that wanted us to go up, and we were at a really high number to begin with and then wanted us to start going the other direction in mediation. And I'm just like, look, we can do that. But I just want to tell you two things. Number one, you are really maximizing the chances that we're going to go to trial. I mean, I would almost rather just tell them, like, we don't want to settle with you, right. Because we're acting in a way that's not going to lead us to settle

the case if we keep going up at mediation. I mean, there's times when you go up. There are strategies where you go up, but not in mediation and not after the first demand. I mean, you demand some insane number, and then you start raising it from there. When they give their first numbers, I said the second thing is, honestly, if you ever want to settle the case and that's up to you if you don't want to settle cases, let me know. We'll go try it. But if you really want to settle the case, you don't see it this way. But to other lawyers or to the insurance people, you're making me look like I don't know what I'm doing, like I have no control. And it's going to mean that at the end of the day, I'm going to lose my ability to negotiate you a good settlement, because then I'm going to have to go back if we want to settle. If you decide you want to settle a case and then collapse, and I'm going to have to have a desperate negotiating strategy. So, again, if you insist on it, I'm going to ask that we not I would ask that if you're not happy with the demand we made 15 minutes ago, if you think we need more money than that, then I suggest we just tell them that we're not interested in selling anymore. Buy. But if not, just realize that what you're doing is destroying any chance of ever settling the case. And of course, the people that are playing those games are the ones that want to settle most. Usually, the ones that are willing to go to trial are the ones that are listening to your advice, saying, you do what's right. You're the lawyer. And then when they don't offer enough money, they're fine going to trial with you. The ones that are playing all the games are just trying to maximize their recovery, not realizing, like, that's what I'm trying to do. The piece of this.

Malorie Peacock:

Right. Usually it comes from a place of fear. That's where I find that it comes from most often. That's why I say, when you're dealing with it, you just fighting back. Makes them more scared. It feeds into it more. And so knowing that that's where it's coming from, you have to address the fear issue.

Michael Cowen:

I find it's the fear, and it's the friends and family they're telling, no, this is how it works.

Malorie Peacock:

Right.

Michael Cowen:

And frankly, there are, unfortunately, lawyers that do try to just get a case settled. The clients aren't being difficult. They won't. They'll just try to settle it. So you have to kind of convince them that you're willing to do it. Malorie there have been times that we've been wrong, and we've been very happy to be wrong.

Malorie Peacock:

Sure, yeah. No, I tell clients that, too, when I tell them this. I say most of the time, I'm right. When a

client pushes me to trial, and you should have settled, usually it doesn't turn out as well as you thought it was going to, but I can be wrong, too. And I think, Michael, you're probably thinking of two specific cases where we were very wrong, and happily so. You're happy to be wrong.

Michael Cowen:

Yeah. One, we actually had the client sign in writing that we recommended that she take a certain amount and that we thought we were likely to lose the case. And then just everything fell in place at trial. Honestly, after jury selection, that was not our advice anymore. It's just one of these everything the defense did everything wrong. They could do everything possibly went right for us, and we got a verdict for ten times the amount that we recommended he settled for, and I was so happy to be wrong. The other one was one that we really pushed the client to take a mediator's proposal and pushed, pushed really hard and got them to agree and then the defense wouldn't pay it. And then luckily, we were wrong and they were wrong. And then the trial went a lot better than we thought it was going to go, and they ended up paying. I can't give any numbers specifically because of confidentiality, but it was a million dollars more than the mediator's proposal that we accepted and they rejected six days prior. Because when you get into trial, things change. So I am very happy that I have sometimes been wrong, but I've also more than once said we're probably going to lose this case. And then we've, lo and behold, lost the case, left money on the table. But that's the client's decision, and frankly, we will survive. We will go on to the next one.

Malorie Peacock:

Yeah, I think you have to have that perspective when you're talking to clients because one, it brings them back down to reality. So remember, it's coming from a place of fear more than anything, and sometimes they're right, like Michael said, but most of the time it's coming from that place of fear. And so being the calming force in the room, that's like, okay, well, I'm your lawyer. I do what you say. But there is reasons I'm giving this advice and here's the reasons I'm telling you these things. It can bring people back to reality, and sometimes it doesn't. And you have to be okay with that. As the lawyer, you have to be ready to say, okay, it's your case. We're just going to just go try it then. And it is what it is, and that's fine. I'm a trial lawyer, and we're going to do a great job for you, but we can't guarantee that you win, and we can never guarantee that.

Michael Cowen:

And frankly, there are some people who are so toxic that you need to ask the question, okay, I'm listening. I'm communicating well, I'm being honest. I'm letting people vent. But some people are just miserable people that make everyone's life miserable. And they're wanting you to go on an insane they're wanting you to do things that ask for insane amounts of money that you don't think the case is worth. No jury is going to think the case is worth. You have somebody with a chiropractic case that wants you to ask for \$10 million and won't take any less than that. What I tell people is the contingent fee contract is not a suicide pact. You do have the right, you make that decision. Either you're going to put up with the person and treat them kindly and with respect and try to defuse the situation, or you're

going to say, look, you obviously need a better lawyer than me because I can't get you what you want. And so I'm going to give you the opportunity to find that better lawyer and I'm out. And if it's in litigation, you've got to file your motion and do it early enough where the court lets you out. So hopefully you've been commuting with the clients, you sense these problems earlier, and if it's make sure you're not doing it when there's a trial coming up the next week, or when the statute of limitations is going to run in the next 30, 60 days. But some people, you're never going to make them happy. They're going to be such a drain on your time and your emotional energy for the one to three years their case is going to draw on, and then they're not going to be happy at the end. And usually those are the cases that you end up cutting your fee almost to nothing because you want these people out of your life. I mean, there is, I think, the situation where you just have to draw the boundary and say, this is not the right client for me. I don't want this person in my life.

Malorie Peacock:

Yeah, I'm thinking specifically about probably it was a million years ago at this point, but there was a year, Michael, where we were back when we were still doing some slip and fall stuff, we had two people, two separate clients come in and had slip and fall claims. And we get into the case and then in discovery, we get a video of what happened. And I don't know what was in the water, but both of these clients insisted that the video had somehow been doctored by the it was just so outrageous, and they wanted us to hire experts to prove that it had been doctored. I don't know. I mean, they just couldn't see reality. The fact is that the videos were not doctored.

Michael Cowen:

And the value of the cases weren't such that someone would spend the money to doctor. And by doctoring, they would have had to put signs where there weren't signs, have our clients doing things, it would have to be incredible, multimillion dollar CGI, Hollywood movie level.

Malorie Peacock:

We just said, I don't think we are the right lawyer for you and we cannot help you if this is the position you're going to take. We cannot go down this road with you. I'm sorry. We're just going to have to part ways. And we did.

Michael Cowen:

But most of the time, I find when you just tell the client, like I said, if either they're just scared or they're trying to take someone else's advice and they could work through it. Or frankly, their case is so good, I can think of some clients where parts, because of trauma they went through, they were a real pain in the ass. But their case, the seven figure fee we're going to get at the end of the case, I was willing to put up with it, then you do it. So you just have to ask yourself, is it just worth the squeeze? Am I willing to put up with this person either because I really, really believe in the case or because the amount of money we're going to make on the case. And then so you try to work through it, but if not, you either put up with

them or you don't or you get out of it.

Malorie Peacock:

Sometimes. People sometimes need to be called out on their bullshit too. Whenever I have clients that say my cousin's friend that's a lawyer is telling me X, Y and Z, I say, great, have them call me. I will be at the office all day on Tuesday and I will be waiting for their call to call me, to talk to me about their brilliant legal strategy that they have. And I'm happy to hear it. If they have some great legal strategy I've never heard of, let's do it. And nobody ever calls me. There's no friends, cousins, lawyer that is talking to them. It's a challenge. It's just about calling people on their bullshit nicely and not accusing them of anything, but just saying, have them call me. I'd love to hear these new legal strategies that I've never heard of before, and I've only been doing it for a really long time, but let's see if this person that works in house for GE has some strategies about personal injury law.

Michael Cowen:

Exactly. And they never call.

Malorie Peacock:

No, because you're calling them out on their bullshit, but you're being nice about it, right? So everybody can save face. And what you want is your client to be able to save face and you move forward with your relationship. They know, you know, nobody ever talks about it again, and we move forward.

Michael Cowen:

Exactly. And same for the people that want the insane amount of money. Usually you just, okay, well, let's go try the case. And then you don't argue it anymore. And they usually come around, well, can we see what they're willing to pay before we go try the case? I really don't want to try the case. Well, okay, that's your decision. I love trying cases. Trying case is fun for me. It kind of sucks for you because you're in this foreign world and it's all stressful, but I'll be having a blast when I'm doing it. So if you want to go try it, let's go try it. And that usually, like I said, the positive, but with respect and also just not ever creating the impression that you need the money. Because once the client thinks you need the money, then the trust is gone because then they're going to be so suspicious that you're going to sell them out because you need the money to pay your bills. Even to the point where I dress better now, because when I meet with clients, I used to think, well, you got to dress down because I don't want to look like I'm better than them. And now I'm not wearing a full suit to work every day or anything, but I dress better because I don't want to look like I need the money.

Malorie Peacock:

Michael, how do you deal with I mean, I think everybody's been here, which is sometimes you do need the money. You do need it to settle, and the client is being crazy, and you could get really good money on



the case if only they would listen to you. I mean, what do you do with that dynamic? I mean, sometimes you really do need it to settle.

Michael Cowen:

You fake it till you make it. You act like you don't need the money or you'll never get it.

Malorie Peacock

I think that's right.

Michael Cowen

Because once they sense that you need the money, either they're not going to trust you or they're going to start a second negotiation over your fee, and they're going to try to get your fee down so they can maximize their recovery. And look, let's face it, there are times when we've been blessed that over 20 something years, we've been able to build up lines of credit and stuff where we now very rarely need the money. But I remember really needing the money many times in my career. And typically, if you just tell the client, okay, well, let's go try it, then they don't really want to try it.

Malorie Peacock:

Yeah, that's right.

Michael Cowen:

And they come around because you just call their bluff and you do it nicely, and you let them save face when you're doing it. If that's what you want to do, we'll try it. But if you want to see what they're willing to pay, I can do that, too, but this is the only way we can find out what they're willing to pay. But if you don't want to try it, then we'll go try it. Don't worry about it. And they usually turn around pretty quick.

Malorie Peacock:

Yeah. And I do want to remind people, too, the opposite has happened to us, too, where we know we could get more money by waiting or not settling right now or continuing to negotiate. But the client wants to settle, and you don't want them to because you know you can get way more money if they just let you. But it's their case. And at the end of the day, if they say, settle for this lower amount, I need the money now. I need it to be done. I can't do this anymore. You have to. You have to just do it. So you build up trust both ways. So if they say, I'm out, I'm done, be done with this, then you have to listen to them too. I mean, you could try to convince them, but again, when you start getting too desperate, then they stop trusting you for anything. This money or other money, and it has the same effect.

Michael Cowen:

We have told them, like, look, this money is not going to go anywhere. So yes, we can take it, but can you just give me another two weeks? Can you let me try to get you a little bit more? I want to see that. And sometimes that works. And sometimes I remember this was a long, long time ago. I had a wrongful death case. It was my first California case. And we're at mediation, and when we had one death and someone else had another death and we're at mediation and the other clients, the other death claims, they walked out of mediation. They were like sky high. And I knew the person on the other side, and she came to me saying, look, Mike, I know this isn't what we normally would pay on this value on the case, but if I can't settle the whole case, I can't get you full value. Like, I can't pay you what I normally pay you because we're still paying defense costs on this case. And so I told the clients, look, let's just leave. I can get you more money. And like, look, we like you, but every time we deal with this, it reopens the pain I don't want to deal with anymore. It's a death. Money is not going to bring the person back. We're not going to retire on the money you're telling us you're going to get us out on anyway. We just want to be done with it. And at the end of the day, I said, okay, what's your case? Are you sure you don't want to think about it for a week? No. Okay. So we settled it. I wasn't proud, and I had to go say, look, just so you know, it wasn't me they're doing. Against my advice, don't expect this to happen next time. But at the end of the day, I still got paid. They went on with their lives. They were happy, or as happy as they can be on situation. They're happy with the representation because their goal was met. It was a number that they thought was respectful for the death. The fact that we could have gotten more wasn't important to them. It was more important to them that they were able to resume the healing process and move on with their lives. And again, I'm not the one that lost a loved one. It was not my call to make. Well, any other tips on keeping clients happy?

Malorie Peacock:

I think one of the most important things is that you do set aside the time that a client needs to vent, to talk to you. Sometimes we are truly counselors, and you have to be that role sometimes. And sometimes it's hard to be. I mean, some people are hard to love, and it is what it is. But if you don't set aside that time, it's going to ruin your relationship with the client. And setting aside time, I've had clients just vent at me over the phone for an hour, and they need it. And it's not a waste of time, I will tell you that. To let a client do it's a waste of time if you do it every day. But setting up time to allow for that space is so critical to your relationship with the client and to their feeling like they got the representation that they deserved.

Michael Cowen:

And to do that before you're talking about money, to do it early so that they trust you. They have to know that you've listened to them, that you understand what they're going through, or at least you're trying to understand what they go through and you're hearing them. And then they need to see that you're fighting for them. And you're not just out to make a quick buck. Take the first offer. You're willing to try it. You're willing to follow their directions. When you do that, you really do build their trust.

Malorie Peacock:

And making sure that you call it when it's not time to have the hard conversation. So I know this drives my paralegals absolutely insane, but I'll set up a call with a client to talk about, I don't know, something difficult, like we need to send a demand or there's not as much coverage as we thought there would be, or something went awry in the case. And I get on the phone with a client, and we start having conversation, and it's not the time, right? And so telling yourself, okay, well, we're going to have a different conversation today, and we're going to have to have this harder conversation later, and just setting up another call. Sometimes it takes two or three calls to get to the bad news just because in order for the message to be heard and to come across the way that you need it to, sometimes it's a couple of conversations. It's not just one.

Michael Cowen:

Yeah, I think the other two things is give the client the time and the space to process. And then don't be afraid of silence. Like, sometimes you got to sit there in silence while they process. If you try to fill it with words or try to pressure them into doing what you want, it does not allow them to heal and to trust and to process. Also, I guess the final pointer, if you're doing a wrongful death case, be mindful of the anniversary of the death, the wedding anniversary, the birthday, Father's Day, or Mother's Day. Don't talk settlement around those days. Don't deliver big case news around those days. Those are days. When people are going to be emotional, and you have to respect and honor that. And if you have a client who's Mexican American, Mexican Mother's Day especially. They're from Mexico. I mean, in Mexico, they celebrate Mother's Day on a different day.

Malorie Peacock:

Yeah, I think it's today, right? May 10. I think this is coming out later. We're recording this a little bit in advance, but I think it's actually today. I thought you said that.

Michael Cowen:

I'm not sure, but I mean but it's some of those cultural things you need to learn if you're going to represent people so that you don't maybe they just came back from the graveyard putting flowers on the grave because it's the anniversary of the death or because it's Mother's Day or their birthday. That's not the day to come talk about, well, we need to come down off our offer because we got some problems with contributory negligence. Okay, well, this has been good. These aren't the funnest parts practicing law. I mean, going out there and kicking the other side of the butt is a lot more fun. But this is so important because we are representing human beings and making sure that the people we represent know that we care about them, that they feel honored, they feel valued, and they feel like they can trust us because they really can is so important. And it's one of the reasons I love practicing law with you, Mallorie.

Malorie Peacock:

Thank you, Michael.

Michael Cowen:

Well, thank you all very much for listening. I hope you all can come to the boot camp if you'd like to. June 16 again, that's [bigrootbootcamp.com](http://bigrootbootcamp.com). Come by and say hi. If not, please join us next time on Trial Layer Nation.

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Voiceover:

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