

Michael Cowen:

This is Michael Cowen and welcome to Trial Lawyer Nation.

Speaker 2:

You are the leader in the courtroom and you want the jury to be looking to you for the answers.

Speaker 3:

When you figure out your theory, never deviate.

Speaker 4:

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

Speaker 5:

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

Speaker 6:

It's tough to grow firm by trying to hold on and micromanage.

Speaker 7:

You've got to front load a simple structure for jurors to be able to hold onto.

Speaker 8:

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

Speaker 9:

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:

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're broadcasting again live from the AAJ annual convention in Philadelphia. I have my good friend and great trial lawyer, Michael Leizerman. How you doing, Michael?

Michael Leizerman:

I'm doing great. Thanks for having me back, Michael.

Michael Cowen:

Thanks for coming on. Before we get started, I want to say a thank you and a shout out to LawPods. LawPods sponsors this podcasts. They do our production. They're here, they got the lights and the

microphones and headphones and everything for us. They do all the editing. They just make life so easy because all I have to do is talk to you and they do everything else. So, if you're thinking about doing your own podcast and don't want to have to learn all the different software and buy all the equipment, I highly recommend LawPods.

Michael Leizerman:

I'm very impressed with LawPods right now.

Michael Cowen:

So Michael, you've been on the podcast before, so a little bit of background. You're a trial lawyer, probably one of the best trucking lawyers in the country. Not probably, you are one of the best trucking lawyers in the country, you're ... Got a book, was it Litigating Truck Accident Cases?

Michael Leizerman:

Yeah, you got it right.

Michael Cowen:

And one of the founders of the Academy of Truck accident, the attorneys, one of the founders, if not the founder, of the Truck Litigation Group. But on top of all that and all your prior big verdicts, you have a recent \$18 million verdict.

Michael Leizerman:

Yeah, I tried a case in May of this year, 2023, in federal court in Detroit. It was a case that went on for five years and the clients were very frustrated. I was frustrated for them because we had three different judges and we were delayed by COVID and had multiple trial settings because of all of those different reasons. And finally, five years in a couple weeks after Tracy and Joe's son, Dylan, died in a car truck crash, they got their day in court. It was a trial that I feel very good about. Yes, because of the verdict numbers, the money verdict that the jury gave and because it was a trial that was healing and cathartic, even before the verdict came out for my clients. And that's something that I believe strongly and love to talk about.

Michael Cowen:

I do want to talk about the case and your strategy and how you worked it up, but that is so profound. Do you mind if we start there?

Michael Leizerman:

Sure.

Michael Cowen:

With the cathartic effect because we hear so often ... We get all this pressure to settle cases and wrongful death case, these judges and mediators and sometimes even they're like, "Do you really want to retraumatize your client and put them through reliving everything that happened? You just got to settle the case because it's just not fair to your client to put them through that."

Michael Leizerman:

We hear that probably in every case, from the mediator, from the judge. "You'll retraumatize," you're exactly right. And I simply disagree with that. I think that it is true sometimes, and I think there's a way in which we can handle our cases throughout and a way we can try our cases that is healing and cathartic.

So, part of that is an attitude readjustment, to have that in mind right from the onset. That includes how we talk to our clients from day one. It includes asking them, "What are your goals in this case, what do you want from me?" Most of the time people say, "I want you to win. I want you to get as much money." But not all the time. Sometimes people say, "I want to know what happened. It's killing me to not know exactly this, or was the truck driver on the cell phone," or whatnot.

And then people are afraid. Our clients are afraid of trial, of depositions, if we don't prepare them properly. People hate public speaking. No one wants to expose their life in this very intimate thing, the relationship they had with someone who was killed. They don't know, are their personal values going to be attacked, or things in their life that they're not so proud of?

So to me, it's spending a lot of time with the clients before their deposition, talking about the love ... And so, most of my cases are wrongful death cases. I think this definitely applies in injury cases. It especially applies in wrongful death cases. And I used to talk about it, I think in a way that was too convoluted and I'll give my law partner, Andy Young, credit for coming up with a much simpler metaphor. And that's the big balloon.

So when I prep clients now ... I'll say, like in this case, Dylan was the young man who was killed. What was Dylan's favorite color? He loved red and blue. It's always interesting, that was the first time I got two colors. Loved red and blue. Well, your job in this case is to fill a red and blue balloon with love.

Everything you talk about, I want you to fill that balloon until it's so big that the jury and the judge and everyone can't help but see it. And anything that doesn't go to filling that balloon is not important.

You weren't there in the crash. And it's a little different if someone was in the car. "No, I wasn't there." So the other side is going to ask you questions about his driving habits and did he use his cell phone when he drove and this and that. They're going to ask you in the complaint, "You've asked for this or that." In this case it wasn't punitive damage but, "You've pled certain things. What does that mean?"

You're not there to answer those questions. If they ask you about a time distance analysis and a crash reconstruction, that doesn't fill the balloon, you're not there for that. You hired me and I've got the best people to talk about that. You are here as an expert in your love for your child. You fill that balloon and that's your sole job.

And then we'll role play it. So they ask you a question about your complaint says this or that. "I don't know anything about that. Ask my lawyers." When they ask you about love and filling the balloon or what you'd like to do with Dylan, that's what you're an expert on. That's what you talk about and that's all that you talk about.

"Wow." There alone people, these clients and all my clients, I'm sure yours too, sigh of breath of relief. "Okay, I can do that. It's painful and cathartic and I can do that. Don't put me in a position where I'm going to embarrass myself because they're going to ask me a legal question I don't know the answer to." When we go over and over, that's not your job, your sole job is to fill that balloon. They get it.

Michael Cowen:

So, we talked about the getting them ready for their deposition. How about the trial itself? How does the trial serve as a healing process?

Michael Leizerman:

So, the first part is the prep once again. To remind them, because the deposition will have been a while ago, this is just like the deposition. We're filling the balloon. It's talking about hope, when that applies. Because I don't believe in putting in hope artificially. Sometimes it's very difficult or maybe they're not at that process yet. But when it's really there, that's great.

And to create an examination where they have an idea of the vignettes from life that we're going to talk about, but it's not rehearsed. It's going to come out a little different each time, but I know generally where I'm going to go. And when you do it like that, what will mostly happen, like in this trial, is the other side will not cross-examine. And once in a while they will. That usually works out pretty well also. But to answer even more directly, it's my mindset ... because it's a little different in every case. What does it take for it to be healing? Because people need different things to heal. That to heal doesn't mean 100% healed. It just means it's part of a process.

It's very important to me to be compassionate. So, I wrote, as you know, a book called *The Zen Lawyer*, and that's about being present, that's about compassion. Being a compassionate lawyer. And to me, compassion's a very specific thing. It means wishing well for all beings. Of course, I have a duty to my client first. So, I want this to be cathartic for them. I want this to be healing for them. And when possible, I want it to be something that is healing, or helpful, or certainly not harmful to the defendant, to the judge, to the jury, to everyone involved.

And so, bringing that mindset, there's a little creativity. How does that manifest in each case? But when you look for it, you'll find it. And in this case was a pretty good example of that with the defendant.

Michael Cowen:

And I want to ask about the case, but you said one thing I don't want to forget, so I want to ask you now. You talked about when it's there, going into hope. How is there hope in a wrongful death case?

Michael Leizerman:

Yeah, every case is a little different. And here, what's interesting was I explored the hope and didn't end up using it in trial because in the moment it just didn't feel right. And where the hope was, these parents had a very, very close relationship. They're divorced and each one of them individually after the divorce, certainly before that, very close relationship with their son.

So, very difficult for them to literally get out bed after this happened. And so, I would ask them, "What did finally get you out of bed?" And for them it was, if I'd say religious or spiritual, but it was this idea that Dylan was watching them, that they didn't want to let him down. The father talked about it, Dylan was a prankster and he had left a hand print, a glow in the dark hand print on the dad's door when he was alive.

And now Joe says, "That door comes with me if I ever move. That door will be my bedroom door forever. And when I'm feeling down, I just put my hand on Dylan's hand and just connect with him."

So, is there a hope that life is the same again? No, it'll never be the same. But a hope for as much as we can hope for, that we keep on living. We get through it the best we can. So, I want to explore that. And it's very difficult. I mean, to do our job right, really takes digging in with people and asking those hard questions. And once in a while, you'll find it's very hard to find the hope.

Michael Cowen:

How do you make the time to spend so many hours with your clients?

Michael Leizerman:

I handle 10 cases at a time.

Michael Cowen:

Because you can spend hours with somebody and not be present, but if you're not really present, you're not going to get ... You understand what I mean by present? I mean, you need to be fully engaged where they are at rather than trying to push them to say what you want them to say. How do you get yourself in that mindset?

Michael Leizerman:

It's exhausting when you're done with a day or half a day. I know well, because I know you do this with your clients as well. So for me, I make sure I get enough sleep. I do that by the way, before trial because I've made the mistake of I know there's always more to do, always more to do. And I've tried a case after going to bed at 2:00 in the morning and I won't do that anymore. I cut off and get a good night's sleep.

I'll also invite other people from the firm, can be another lawyer, can be a paralegal. For years I've worked with Joshua Carton, so bring him. Recently worked with Jesse Wilson. So sometimes, bringing in an expert and part of that, of course Joshua is brilliant, can work with other people. Part of it for me is just to give me a little bit of a break because it is hard. If you're in your fourth hour working with someone, you need to take a break.

I've also gone to breaking this into chunks because I find that I'll get myself physically and emotionally ready. My clients need a break. So, more and more I do this myself and I might meet for three hours and just say, "Okay, we're going to do lunch," or, "I'll come back again tomorrow," because our clients are not used to just opening up and being this emotionally available and vulnerable.

Michael Cowen:

Do you find it makes a difference to where you do these meetings?

Michael Leizerman:

I do. I like to meet initially, or the many of the first meetings, at the client's house, for many reasons. The household's memories. Another something else I'll give Andy young credit for, is he'll say the home is witness. So being in the home, if you see the room, like in this case, in a lot of death cases, that has not been touched. There's still the same dirty laundry, that they'll still have the smells of Dylan in them that they will not move. Maybe some year, maybe not. So, those kinds of things are very telling.

Also, that's where the clients are comfortable. I met once about a year ago with a client at my office because they insisted. But other than that, for over a decade, I don't meet with clients at the ... They don't know where my office is. I go to their house. I have clients all over the country, but I go to their house. That's where I want to meet.

Now, before the deposition, if it's going to be in our office, or some office that I have access to, then I'll bring them there so they're comfortable with the space. And before trial, I definitely want them to have been in the courtroom and been able to, if not sit in the witness stand, at least see the courtroom and be familiar with it.

Michael Cowen:

Yeah, I think that's just so critical, that going to the client's house and it's not ... I think one big thing is they are more comfortable in their home than they're ever going to be in a lawyer's office. But all the little things you see, I mean, not just the room, just what they have on the wall, the pictures, you just get

a feel. I mean, trial is about facts, but it's also about a transfer of emotion and you have to have an emotion to transfer it, and you just get such a feel from being at the house, that you just don't get when you meet people in your office.

Michael Leizerman:

It's absolutely true. The extreme of that, story from a long time ago I like to tell, it's a client who invited me to stay at their house overnight. I like to do that when I can. And I was in the basement. This was a young man who was killed, young husband and father and the daughter, the little girl also had a room in the basement. At about 2:00 in the morning, I hear screaming. So the next morning it's breakfast, and I say to the mother, "Thank you. Everything is very comfortable. And how was little girl this morning? I heard her screaming." "Oh, oh, I'm sorry if that woke you." "No, no, no, it's no problem." "I'm just sorry. Ever since her dad died, she wakes up screaming at 2:00 in the morning every night. Never did that before." I'm looking at her and she said, "Oh, I guess that's something that would've been helpful to tell you, wouldn't it?" "Yes. And now I've learned that, thank you."

So, as an extreme, I'm not saying you always have to sleep at your client's house. And I would've never known that, hadn't I done that. So, it's really caring about your clients and being willing to enter their shworld, which many times looks very different from yours. All of our little personal worlds are very different. Entering it and by doing so, finding the themes that transcend the demographics that so many lawyers think matter and simply don't. The political demographics, the racial demographics, anything else that can be put into a category, is not important to me.

Michael Cowen:

So, let's talk a little bit about the case. So, what happened?

Michael Leizerman:

Yeah, such a simple question that's hard to know where to start, right? A young man was killed and his mother and father love him dearly and miss him horribly. The way the defense tells the story is that a 21 year old was on his cellphone, speeding, and a truck pulls out in front of him. And had he been paying attention and not speeding, he would've been able to avoid striking the truck. The way I told the story was there's a truck that is driven by a worker for Crossfire, who's in from out town doing work on pipes, gas lines, in the middle of farm fields.

And every day he gets off the same exit where there's a stop sign. There's a little bit of a blocked view to the left because of the way the guardrail is. And every day, he pulls up, carefully knowing that his view is partially blocked, so he needs to look extra carefully and pause before pulling out to turn left to get to the field where he's working. And he does that every day, Friday, Saturday, they work on Sunday, Monday, Tuesday for seven days. Until this day, it's Friday back in 2018.

So, that's what the truck driver knows from his prior experience before the day of the crash. And what Dylan Monty, 21 years old, knows is that he drives this route often because it's the route from his girlfriend's house where he spends the night half the time, the other half the time it was at his dad's house. And he comes down this road over a bridge that crosses the interstate and there's cars and trucks that pull off the off ramp. And he sees them pull up from between where the guardrail ends to the fog line, this what I call the full visibility zone. He sees people roll through it, slow down and stop and let him pass.

So, on this day, what happens is the truck driver gets off the exit, runs through the stop sign. When he's in the full visibility zone, he's looking to the right, he's not looking to the left, and pulls out into traffic. Dylan sees a truck that's slowing down in that shoulder zone, like he would've seen so many times

before. And usually they stop but this truck driver at the last moment, instead of stopping, punches ... This is his testimony, punches it and lurches out in front of him because he wasn't looking to the left.

So, the truck driver admitted he was responsible, that this would've never happened had he looked to the left. This would have never happened. Had he stopped before entering the intersection and he admitted that he was a cause of the crash.

So, what happened in trial was Crossfire's lawyer and his lawyer, the defense lawyer, gets up and says, "This truck driver's admitted his fault. This has really affected him. This has ruined his life too. But Dylan did two things wrong. He was on the cellphone and he was speeding. And yeah, we shouldn't have pulled out, but that's one thing. So, they did two things wrong. You should find 66 and two thirds percent against Dylan. We did one thing wrong, it should be one third against us."

Michael Cowen:

And in Michigan law, what would be the effect of that?

Michael Leizerman:

A zero recovery. And so, I called them out on that. I said, "They're only paying lip service to being responsible." They come in and they want to say they're responsible and they're a cause. Well, the truck driver does, but they're really not taking any accountability because they want to get off scot-free and pay nothing. So, that was one of the themes.

The other theme, if I could return to it, was really the idea of love and healing. So, the truck driver was at trial. There's no question that this has very much affected his life. Like so many defendants who are involved when there's a wrongful death, whether it's a doctor, a truck driver, another car driver or whomever, they're human beings and most of them, takes a toll on them as well. So, the truck driver sits through trial head hung in just a depressed presence for the whole trial.

And then in closing, well throughout his direct exam and in closing, his lawyer argues, "You've seen what the truck driver has gone through. Basically he's already paid." I didn't object, but he used a improper golden rule argument. He said, "Put yourself in his shoes. Imagine if you'd gone through this. He didn't mean to do this and he's already suffered enough from this."

And so, I had to really examine that and do what I call being fierce and compassionate. So the fierceness is calling their bluff saying, "Come on, the truck driver is doing the right thing." As a matter of fact, one of the few things they objected to in the whole trial was when I said, "Well, when you say you were a cause, you'd admit you were most of the cause, right?" "Objection." They wouldn't let them answer that. Why wouldn't they let them answer that? Because that would've meant they had to pay something. So, it was definitely calling them on that and saying, "Here's a truck driver who's doing the right thing, but the company won't take any accountability."

The second part of this trial that was really most important to me was the compassion for the truck driver. So, I thought about doing it when my clients were on the stand, but I thought it would seem contrived even though it was legitimate and genuine from them. So, I did it in closing and I talked with them at length about this. So, I was able to honestly say to the truck driver, "Joe and Tracy forgive you. They know this wasn't intended. They appreciate that you've owned up to your part of this. And they ask you on their behalf, and this is what Dylan would want, get on with your life. I know how this has affected you. Don't make this a double tragedy. I don't know if you'll listen to me or not, or if it sinks in today, or maybe when you're thinking back on this, but please get on with your life. Go live life." And then turn to the jury and say, "And whatever you do with that, that's not part of your considerations. But

we do hope truck driver takes that to heart and you have to answer these questions on the verdict form. Let's go through them." And we did that.

So, I'm very much hoping that the truck driver heard, that he takes that to heart. I don't know how much more I can do and even leave an opening if they want it for the clients and the truck driver to communicate in the future. I don't want to be too pushy on that, but certainly if anyone ever asked me about that, I would help.

Michael Cowen:

So, did you have any facts, other than the refusal to truly accept responsibility, that would generate anger towards a trucking company? Like a bad driving record, no training, that kind of stuff?

Michael Leizerman:

Oh, the opposite. I brought in their good safety record, which has been very interesting because we're waiting for a decision on remittitur. They argued, even though they didn't object throughout, that I somehow demonized the company.

I called the corporate rep of Crossfire by video designation and played the portions where the corporate representative, where I asked him questions about their safety program and the PowerPoints that this safety director had developed. I said, "You trained the truck driver on these things." "Yeah." "And you would expect them to do this and that." "Yeah." "I've looked at this. I think this is a good safety program. I agree with what's in here. You've done a good job." "Oh, thank you very much."

I made a decision to play that. I'm not sure I can articulate all the reasons why, reasons why. I definitely wanted to show that we weren't looking to punish the company. And if I try to articulate, it might be more of just coming from a place of fairness because I know ... and we did many focus groups, five focus groups and mock trials, that people want to know that, well, was this a safe company? Did this driver have a bad driving history? And that wasn't the case here. And I wanted to call attention to it and to actually say, "I said in closing, we're not here to punish. You heard that the company was generally a safe company and the truck driver here didn't do what he was supposed to and he needs to be accountable." So, it's the opposite of what I think many people think you have to do.

Michael Cowen:

Yeah, because we hear so often that the jury doesn't care about your client, they only care about themselves. You have to make the company evil, a danger to them, to get the jury so mad that they just out of rage or self-preservation. They go and allow this huge verdict. But you did the opposite.

Michael Leizerman:

Maybe I could have gotten more than 18 million, but I wouldn't want to get it that way. And I don't think so because I think ultimately there's a credibility that matters more than anything.

Michael Cowen:

So, what was the verdict? Let's kind of put it, so the damages were 18 million, what did they do on liability?

Michael Leizerman:

Liability was 85%, 15%.

Michael Cowen:

85% on the trucking company?

Michael Leizerman:

Correct. And they broke it down for past ... there's no grief allowed in Michigan. So, in other jurisdictions I've been. I think this would've been double. Usually the jury will give the same amount for loss of consortium as they do for grief and mental anguish. But here we just had a consortium, which is defined as companionship, largely in Michigan. That's the law that we had.

Voiceover:

Each year, the law firm of Cowen Rodriguez Peacock pays millions of dollars in co-counsel fees to attorneys nationwide on trucking and commercial vehicle cases. If you have an injury case involving death or catastrophic injuries and would like to partner with our firm, please contact us by calling (210) 941 1301 to discuss the case in detail and see where we can add value in our partnership. And now, back to the show.

Michael Cowen:

So, if you didn't have anger, what do you think motivated the jury to allow \$18 million in honoring your client's loss?

Michael Leizerman:

I think the jury really felt the loss, that we made it palpable. They felt what Crossfire took from this family, and that was by coming up with stories, the direct exams, which were under an hour each, that really spoke to everyone. So, it was very interesting we had a jury ... Oh, and this is the first case I've ever tried where I got zero jury selection. Usually you get a follow-up question or something, but none of that, nothing.

Judge picks a jury. We get a jury with a police officer, with an engineer, with two college students, one from University of Alabama, one from Yale, a fabricator, a retired person, a realtor. Interesting cross-section of people in the world, different ages. Some parents, some had not been parents.

So, I told the story, it's interesting to rewind a bit. I was worried because the defense had put in as exhibits some Facebook posts and some of them showed Dylan's room and a derby car, smash up derby, demolition derby car, that was like the Dukes of Hazzard with a confederate flag. And then his room had similar type of icons, that I think some people could be offended by, or certainly could divide, or raise red/blue issues.

And let me back up and say, and they raised issues for me. I had to find ways to get beyond that, so truly fall in love with the family, which I did, and bring that to them. So, what that sounded like in trial was talking with Joe and saying, "Tell me about your relationship with your father. Well, what did you like to do?" "Loved to hunt. I was always his dog." "What?" "I'd go fetch the critters until I was old enough to hunt on my own." "How old was that?" "Eight years old. I'll never forget. That's when I could take a hunting safety course." "What'd you get for Christmas that year, Joe?" "I'll never forget the look on my dad's face. It was the biggest smile I've ever seen him have. When I opened up my Christmas present, eight years old, it was a 20 gauge shotgun."

So, I was able to look at this jury, including the student who's going to Yale, who I think had a very different upbringing from what I could tell. I said, "Wow, my dad was a high school teacher and that's not

how I was raised. And we did different things. And it sounds like that was pretty important to you." "Oh, there was nothing better. That was time with dad."

"And how about when Dylan was born? What do you guys like to do together? Hunt? Fish?" "Yeah." "Safety course?" "Yep. When he was eight years old, took a safety course." "How about Christmas?" "Oh yeah, don't you know it? 20 gauge shotgun. I was so proud of him."

So, I was able to take this thing that sounds like you could ... Some people might say you gave an eight year old a shotgun for Christmas?

Michael Cowen:

I'm from Texas. That does not sound outrageous. But I understand a lot of people would, yeah.

Michael Leizerman:

And this is in Detroit, so there's some people who are out in the country, there's some people from the city, and I was able to just take that and show, what was really important was the time together. And there was something that I asked that it fascinated me. I asked Joe, I said, "Do you think you could have been a better father?" Said, "No." And I talked about that in closing. I said, "I was thinking about that and it could sound pretty arrogant because I certainly could be a better father. And I think of failing. And you know what? Maybe Joe's right, I don't know what more he could have ... " He had a fishing charter he was getting ready to give to his son. They spent time, really what more could he have done?

And, so I like to talk to a jury to answer all the questions I know they have. Like why do we have to do this? Why don't we have a chart that says this is how old you are, this is how many times you texted your parents that month and here's the value of the case. We don't do that because you the jury, are the computer. You're the ones that bring common knowledge of this relationship, let's say, versus one where there's an estranged child. And I just can't imagine a closer relationship than this mother and father had with their son.

I know that was palpable in the courtroom and the jury felt it and it was reflected in their verdict. I invited the defense, said if they disagree with this, suggest some other way to think about, this is how I think about it. The Michigan law requires you to put a future value for each year, for the consortium. And I suggested a million dollars a year. Defense got up and said, of course, "Don't give anything. You should find two thirds, one third fault. And if you do ... " it's the first time I've had them take me up on it, " ... it should be \$250,000 for each parent." But without explanation.

And then they ridiculed me saying, "Mr. Leizerman spent 40 of his 50 minutes in closing talking about money." Yeah, yeah, I did. Absolutely I did. And he talked about it for 10 seconds, \$250,000. That's it, without explanation. And the jury gave 250,000 per year for the rest of each of their lives. I don't know if that number was coincidental that it was the 250 they asked.

Michael Cowen:

And he probably wasn't suggesting 250 a year, was he?

Michael Leizerman:

No, no, no, he was not because that was their last offer basically, it was the 250 per parent per year. So, it doesn't have to come from anger. The law makes sense when you think about it, the value of the consortium, the value of the companionship, which is time together, which is love. You can actually focus on that.

We'll see what happens with the post-trial motions. I certainly feel great going into them, knowing that I followed the rules. I wasn't trying to pull any kind of ... I don't know, get something in to improperly influence the jury. We talked about what you're supposed to talk.

Michael Cowen:

I want to go back to compassion and the compassion you actually had for the truck driver that caused the death. How did your compassion influence the way you cross-examined him?

Michael Leizerman:

Well, it influenced it greatly. Starting with, I asked Joe and Tracy, and this was after we had built the trust of working together over time because they wanted to be in the courtroom. And I asked them, "Could you please sit out in the hallway?" And so, I started the cross-examination with, "I like you and I want to thank you for owning up to your part of what happened here and I want to go through exactly what you're owning up to. Let's be specific about that. And I want you to know I've asked Joe and Tracy to sit out in the hallway. I don't want this to be them staring at you and some kind of psychological game. I want you to feel comfortable just answering the questions."

I hadn't done that before and I was going to have them in there because I wanted him to look at them and I realized there's part of that that's fair enough, they have to live with it. Why not have him look in their eyes? There's part of that was just ... just didn't feel right to me and wouldn't help him, I don't think. I think it was me trying to ... If I had done that, would be trying to influence him out of guilt and I just didn't feel good about it. I asked him to sit in the hallway and I think it worked very well. It worked because it came from a genuine place and I think it doesn't hurt that the jury sees I care. I'm there trying to get to the truth and trying to do it in a fierce and compassionate way.

Michael Cowen:

Now, it sounds like you did actually have some comparative fault, legitimate comparative fault, from what I'm hearing, that maybe he was speeding, maybe he was on the cellphone. How did you handle that?

Michael Leizerman:

Let me start with the cellphone because the second judge we had before she was promoted to the Sixth Circuit Court of appeals, granted our summary judgment, keeping the cellphone out because there wasn't enough evidence. What the evidence was that everyone agreed to was that when the police officers came, there was a cellphone on the ground, they turned it over and Snapchat was open. There was a Snapchat story. This judge, thankfully when he got the case based on some new law in Michigan, reconsidered that decision and set it aside and two weeks before trial, let the cellphone evidence in.

Michael Cowen:

Two weeks before?

Michael Leizerman:

Yeah, I say thankfully because now there's nothing to appeal. And they would've probably appealed that after I got over my initial shock of, "Oh my goodness, I don't want to continue with this again, what's going to happen?" Like, "Okay, let's deal with this."

I say thankfully, actually for two reasons. One is takes away the appellate issue. The other, which is something that blew my mind, is that the last focus group we had done, second to last one we had done, one of the focus group participants started talking about after lunch, about Snapchat and the cellphone. I said, "What are you talking about?" We never talked about Snapchat in the focus group or the cell phone at all. He said, "Well, I just searched on the internet, Monty versus Crossfire and this came up, this whole thing about ... " I said, "Let me see that." And I realized, especially in federal court, but in larger states too, where the dockets are online, if you search from PACER, it's not PACER because you have to have a subscription, but all these other third-party free services, Case Finder and Case Researcher and Case Law and whatever the different websites are, those aren't the names of them, you pull up the motion that was filed in the judge's order.

So, if you have a case and you file a motion in limine, assume that juror is going to see it unless you filed it under seal. I realized that we spent the rest of the focus group talking to the focus group participants saying, "Well, the judge would tell you not to look." And half of them said, "I understand that, but I would look anyhow."

So, I was actually considering should I bring it up anyhow because what if there's a good chance that some of them are going to see this? So, I just dealt with it head on and talked about, once again, it's actually looking at the basic jurisprudence. I talked about burden of proof in opening and closing and they have the burden on this and I know that that can be a technical thing and it's more than a technical thing when the jury understands it. We entered in because it was so last minute and no one had experts queued up because it was two weeks before trial. We just worked back and forth to a stipulation that we read to the jury that here's how Snapchat works. When it turned over, the Snapchat story was there. It was posted 12 hours before.

And then I was able to say very honestly, you heard, "I don't know, was Dylan on it? It's physically possible. Had he looked at it at breakfast and then thrown his phone on his chair? That's physically possible too." They have the burden, they can't meet it. That means something. They want to blame him just because he is 21, he must've been on Snapchat. They can't prove it. I think the jury understood that.

Michael Cowen:

That's awesome. You've tried a lot of cases and you've had some incredible results. What do you think makes a good trial lawyer? Let me rephrase that. What makes a great trial lawyer?

Michael Leizerman:

What makes a great lawyer, first of all, and definitely trial lawyer, the first thing that comes to my mind is listening. There's so many people say, "Oh, my niece is such a good arguer. She's always arguing with people, she should become a lawyer." I say, "Well, maybe, but arguing is not what makes a great lawyer. I think listening is one thing."

The second is courage. So, I kept talking about fierce and compassionate. Having the courage to stand up and be vulnerable, to say things that might counter what popular opinion is. Not to go to the place of anger or whatever it is for you, but I think having the courage to be there. And most important for trial lawyering especially, is presence. And there's a whole lot in that. I think there's courage in that. I think there's self-awareness. There's a certain trust in the moment that things will be okay if I'm not in my head trying to plot the next question, but I can actually be here with the jury, with my client being a conduit, I believe strongly in presence. I do the Trial Guides Tip of the Day and so I get to, like you, interview some amazing lawyer, probably many of the same and over and over, great trial lawyers say credibility is the most important thing. I've been thinking about that a lot lately and thinking, well, what is credibility though?

So, I would say presence is very important. That includes credibility, that includes trust, that includes a willingness to listen. It's all of those things together.

Michael Cowen:

So, you have a law firm, it's the Law Firm for Truck Safety. Did I get that right?

Michael Leizerman:

You did.

Michael Cowen:

All right. You've gone from being a smaller operation to now having a decent sized firm. What motivated you to want to have a firm?

Michael Leizerman:

Yeah, thank you for asking that. It was not something I had to do as in a place where it was fine to just be Leizerman and Associates and I would've done just fine financially and even being in the world, doing some of the things I wanted to do. But I couldn't do all the things I wanted to do.

And so, it started the Law Firm for Truck Safety. My first partner was Andy Young and his brother DJ and that was largely ... it was for many reasons. Andy does all trucking, have shared values of compassion and he is an amazing safety advocate, who really cares about safety. And I wanted to do more of that. He's been an inspiration to me that way. So I thought let's partner up. We're also both in Ohio, so it made sense for us to join efforts. He's a wonderful human being and trial lawyer.

So, he joined up and then we started talking about, well, who are other people that share our values? Who deal with only trucking, who it's important for them to be compassionate and not so ... I would say fierce and compassionate because you can be compassionate and people can walk over you and you don't get good results. So, I think it's fierce and compassionate and then joined with Matt Wright in Nashville and Joe Irvin in Oklahoma. There aren't that many people out there that are doing all trucking that are in a situation where they would want to partner or we'd want to partner. There's certainly some other people I can think of, but it's something we thought about, growing slowly and making sure that there were these shared values.

So, for me, that helps me be in the world in a way where I can help more people, where as a firm we can help each other do things like role play and strategize many of the things we're talking about. So, we'll brainstorm all these ideas and I'll get great ideas from them and certainly contribute my ideas as well.

Michael Cowen:

So, going into your wanting to do good in the world, you also one of the co-founders of the Academy of Truck Accident Attorneys. Tell us, and I mean, I'm sure a lot of our listeners are ATA members, but not everybody knows what ATA is. What is ATA and why did you found it?

Michael Leizerman:

The Academy of Truck Accident Attorneys is a group now of over 1,200 lawyers and paralegals. We're over 1,000 lawyers and a couple hundred paralegals who focus on plaintiff's, trucking work and don't do insurance defense, or trucking defense work. It was important for me to start that organization for a few different reasons.

I mean, there's other organizations that are doing some of those things but not just focused on trucking. Joe Fried and I, who co-founded it, saw a need. Well, back when we started it, one of the big motivators was to have a board certification in truck accident law, so that it's not just the person that advertises or says there's a truck lawyer. Some of them who advertise are great truck lawyers, maybe questionably so. But to establish a certification that was an objective standard of experience and knowledge that the consumers, the public, could rely on. We thought that was very much needed.

Apparently it was because we were able to get that push through and the ATA approved that 2018, we were able to get it pushed [inaudible] in just a couple years, which thought it would be more like a five to 10 year arc. So, that was part of it, was recognizing that as a specialty area.

It also was important to us to be an organization that is concerned about safety advocacy. That's not our primary goal, it's one of our goals. There's other safety advocacy groups out there. So, our goals are education and safety advocacy and sharing. So, for me, I've been in different organizations that share, and I'll give an example. The AJ's Trucking Litigation Group is an organization that shares, I was the first chair of it and now it's been over 20 years. And it continues to have leaders who are people who care about sharing. ATA does that and some things that we do there in addition to that, that we can do not just because we're a 501 (c)(3) but because Joe and I have really and other leadership have focused on that.

I know I can only help so many 10 clients at a time. I can help in our firm, 50, 60, 70 clients at a time with all the different lawyers and there's 5,000 people a year killed in truck crashes. Let's say the majority of those are the car's fault. There's still 2,000 people and families a year that deserve the very best representation. So I hope, I know, that we have an organization of people who share and help lawyers do the very best they can to help their clients and who are interested in, maybe they do it a little differently than I do, but in doing it fiercely and compassionately and trying to leave the world a little safer and better place.

Michael Cowen:

One thing that makes me want to be ... I mean, I'm blessed to be a part of ATA and makes me feel really good about being part of it. It's not just sharing, but you and I were talking a little bit before the podcast, there's transactional sharing, like I'm sharing with you because you're giving me something back, as opposed to having the abundance mentality that I am sharing with you and I wish you well and the universe will take care of me. You don't have to give me something back. You have shared so much with people that will never be in a position to directly give you something back, but you still share.

Michael Leizerman:

As I say I feel like I have to. I don't have to, but I want to. What's the alternative? The alternative would be, and certainly thoughts go through your mind, thoughts have gone through my mind, "Oh, what if we don't start an organization like this?" What if we're not sharing so much? Maybe some of the top cases will come to me. Maybe there won't be as many truck accident lawyers in the world. Is that how I want to be in the world?

Michael Cowen:

Maybe you have to pay money to go to the Michael Leizerman trucking course. But you're not doing that. [inaudible], you could, but you're not. And I have a lot of respect for, and I also believe that when you go with an attitude of abundance, the universe does take care of you because neither you or I are suffering financially because of this mindset.

Michael Leizerman:

We're doing very well. And some people would say it's education-based marketing. I think it's beyond that. I agree, and I think of Rena, my wife and law partner has really taught me that the idea of abundance mentality, there's enough there for everyone. And by sharing, you share not because it might come back, you share because you want to share and make the world a better place. And what's amazing is it usually does come back.

Michael Cowen:

It does. And even, there is a facet to it, let's be honest, to education-based marketing. But what it is if you truly share everything and you're happy for somebody if they do it on their own, then when it's the right case where you do add value to them, they're going to go to you, not someone else that says, "You have to bring me in or I won't let you know my secrets." Like there are any real secrets here. I mean, work hard, love your client, be brave. I mean, these aren't things that we have in a hidden safe somewhere.

Michael Leizerman:

Absolutely. And look, I'm very human and it's taken decades to shift my mindset so that in the past ... I remember one of the first times, maybe the first time someone said to me, "Oh, thank you. I used your closing argument." I think it was on damages in a wrongful death case, " ... and just got a \$30 million verdict. Thank you so much."

And the first time I heard that there was a part of me that wanted to make a smart Alec comment like, "Oh yeah, where's my referral? Oh, that's nice. Why didn't you bring me in? I'm glad I could help you." And that's just acknowledging part of me that can be greedy, part of me that wants more. And by recognizing that part of me, to really think about that and feel that. And now I really feel not 100%, 99.9% when I hear that, truly, truly thrilled. "Michael, you got another huge verdict. I'm so happy for you and your client." For real.

Yeah. You didn't bring me in. That's okay. Good. I got enough. That's fine. I'm really thrilled. So, that's been a process for me, and I do feel that way. I know you do too.

Michael Cowen:

To me, the true growth is when you can be happy that one of your referring lawyers got a verdict without you. That would be the ultimate growth, where you've proven that you have true abundance. I'm 95% of the way there. I'm not going to lie and say I'm 100%, but I'm getting there.

Michael Leizerman:

It's a process. It's not like we reach a state of enlightenment and stay there. It's why I meditate every morning. It's a process to everyday, remind myself, I'm grateful to be alive. I'm so lucky for what I have. Yes, I've worked for it, but there's a lot of people who work really hard, who don't have the material or other success that you and I have. So, every day I sit, I'm grateful to be alive, and I think about what can I do today to help reduce suffering in the world, to help do good, to help best represent my clients? And I include myself in that because for a long time, I didn't. And also to make this fun and to reduce suffering in my life.

Michael Cowen:

Absolutely. Well, you have done a lot of good in my life and I appreciate it and I hope everyone listening got something out of it. Please join us, ATA is having our annual symposium in Atlanta this year, September-

Michael Leizerman:

I believe, 27th to 29th.

Michael Cowen:

So, if you do trucking, you're thinking about doing trucking and you're a plaintiff's lawyer, you really ought to sign up [academyoftruckaccidentattorneys.org](http://academyoftruckaccidentattorneys.org).

Michael Leizerman:

And can I plug my Zen Lawyer workshop?

Michael Cowen:

Oh, absolutely. That's also been life-changing for me and really helped me break through some of my own blocks that were keeping me from being fully present in the courtroom, so please.

Michael Leizerman:

That's nice, thank you for saying that. Joshua Carton, trial consultant extraordinaire, Rinsen Roshi, a Zen master and six degree black belt in Aikido, and myself have been teaching this now for, I think this'll be the ninth year. And it's a little different format now than when you went through it because it's now being held at the Zen Temple in Toledo. It's in October. Don't have the dates offhand, but you can go to [thezenlawyer.com](http://thezenlawyer.com).

Michael Cowen:

It'll also be in the show notes.

Michael Leizerman:

Great. I know, it's in October this year and we've changed it to not just a workshop, but a workshop and retreat. So, what that means is people stay at the temple in bunks. There's a hotel option if people are really opposed to it. But last year some people thought they want to stay at the hotel, ended up in the bunks.

We have a lot of fun the first night, a little party get to know each other. And then after that we still have fun, and it's a retreat. So, lights out at 9:30, everyone gets a full night's sleep. There's a morning bell that wakes everyone up. And it's a silent retreat, largely. I mean, we certainly do work getting up and practicing presence and opening and talk about trial skills. But there's, for example, no cellphones, no drinking, and I know a lot of people need to check email. So, we've actually developed ... We have lunch together, we have a rest period where everyone rests, and then we do a group email practice. Everyone open your email from a place of being grounded and centered, from a place of compassion. Read the email, respond to it. Given the other side, whoever you're writing to come from a place of compassion, give them the benefit of the doubt. Write your email, take a breath, read your next email, and we'll sit around for 30 or 60 minutes and do that together in silence, and it's really ... People are reporting, and for me, it's life changing. It's very important to me to integrate.

It's not like I can be a good person when I come home, but life is so stressful. Everyone always asks about this work life balance, and I know at the end of our program, but I would just say that I believe they can, and for me do, coexist. That we can hold these values through the work we do. We can be champions and advocates for our clients, while still being compassionate.

Michael Cowen:

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