

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 a 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, I am so excited we have Rick Friedman. Rick, how are you doing today?

Rick Friedman:

I'm good, Michael. How are you?

Michael Cowen:

I'm doing great. Before we get started, I need to say thank you to Law Pods and Law Pods produces this podcast. They make it really easy, because Rick and I just have to talk and they do all the recording editing, making sure the sound goes right, even the cutting the clips to advertise the podcast for us. So

thank you to Law Pods. And if you're thinking about doing your own podcast, I highly recommend Law Pods. Now that I've got that out of the way, Rick, how are you doing today?

Rick Friedman:

Doing fine. Just busy and stressed, like all trial lawyers. But other than that, very good.

Michael Cowen:

Why are you still stressed? You're at the top of the game. You're incredibly successful.

Rick Friedman:

It's like being on a hamster wheel. It never stops. I think as I've gotten older, that's been the primary stress, has not been performance anxiety anymore, or those sort of things, but more there's never an end. And you know that as well as I do.

Michael Cowen:

I do. I do. So you and I talked a little bit about the show and you've had so many incredible verdicts, multiple nine figure verdicts. Your last verdict against Monsanto I think was \$72 million. And we talked about it, but rather than talking about specific cases, we talk more about how you got those results and what you've done to get yourself to get those results. Is that all right?

Rick Friedman:

Sure. Absolutely.

Michael Cowen:

So let's just start with it. I think most people know who you are, and not only do you have all the big verdicts, you're a hugely influential author; *The Way of the Trial Lawyer*, *Becoming a Trial Lawyer*, *Rules of the Road*, *Polarizing a Case*. some of just essential books that if you're going to try cases you need to have. You've written and you've developed and shared with us, and I really appreciate it. But what did you do to develop yourself over the years as a trial lawyer?

Rick Friedman:

Well, probably in the initial years, the most significant thing is I just immersed myself in trial stuff. And back in those days, there were not many books written for trial lawyers. There were not many videos. And what seminars, CLEs there were there were dramatic exceptions, but by and large were not particularly good. So I just read everything I could find, including things that were not directly trial related. Social science stuff. I just studied and studied and studied every way I could to learn as much as I could about this weird thing that goes on, which we call trials.

Michael Cowen:

Any particular mentors or authors that guided you along the way?

Rick Friedman:

Well, Mo Levine, Jerry Spence were probably the two biggest influences in terms of books or recordings, I would say. There are plenty of others. I could talk forever about the various books that influenced me. There's a book by Al Julian on opening statements, which was very influential in my early years. I don't

even know if that's still in print. And at different points in my career, different books had influence. So after almost 50 years, it's hard to single out something. But I would say Mo Levine and Jerry Spence. Bill Barton was a huge influence too, relatively early on. He's a fairly well-known lawyer in Newport, Oregon. And he pioneered the cases against the Boy Scouts back in the early 80s. And phenomenal lawyer. He became a good friend many years later. But before I ever met him, I was reading his book and he was a really big influence as well.

Michael Cowen:

Did you ever get to work with Mo Levine or Jerry Spence?

Rick Friedman:

No. No, no. Mo, I think died before I was sworn in as a lawyer. And so I never met him. Never. And Jerry, I did get to meet and talk to and do a CLE with. So I had a lot more contact with Jerry, but never really worked with him on a case or anything like that.

Michael Cowen:

So as far as... it's one thing to read the theory about how to do things, how did you go about actually putting it into practice in the courtroom?

Rick Friedman:

I just kept going in for trials. I don't think there's any other way to really get there. And being in front of someone, you have to persuade. It doesn't have to be a jury, it could be a judge, could be a public utility commission, but repeatedly having to get up and persuade people on my feet. I don't know another way to do it.

Michael Cowen:

Now, I don't know about your experience. I have not been undefeated in trials. Have you ever lost a case?

Rick Friedman:

Numerous, numerous cases. Yes. I made a vow about 10 years ago that I was always going to mention a case I lost in every CLE I did, just to kind of make that point, because I think at least when I was coming up, it was... well, actually, there was kind of an arc when I first started practicing. The average even general practitioner, small practitioner lawyer would be in trial several times a year. And that sort of died out over the years. And as it died out, the more public figure celebrity trial lawyers began to not talk about their losses as much. And over time, I think lawyers who started practicing let's say in 2000, I think could easily get the impression that the successful trial lawyers they read about and watched never lost a case, but it's not true. So yes, I've lost numerous, numerous cases.

Michael Cowen:

I really think one of the things that keeps us from developing as trial lawyers, and I'll be honest, I still feel it when I get a mediocre verdict or a loss, even though I know it's intellectually, no, it's not true, but there's some secret sauce or secret formula out there and someone else has it. Because they have it, they not only win, but win big every single time, no matter the facts, no matter the situation. And that somehow I just don't have it. So I just have to give up and let someone else do it. Ever felt that way?

Rick Friedman:

Oh yeah, absolutely. Actually, one of my mentors was a guy named Jim McOnis who's a criminal defense lawyer and became a good friend of mine and actually was in our firm for a while. But relatively early in my career, I had a criminal case and I took him to lunch to get advice. And kind of at the end in sort of despair, he was so smart and perceptive about the case and he saw things I hadn't seen, and I said something to the effect of, "I should just let you try this case. Why am I even bothering? You are clearly so much..." I didn't say it quite that way, but basically the sentiment was, you're clearly so much better at this. I should step back and let you do it. He had no patience for that. He said, "No, that's ridiculous. Then we'd only have one lawyer trying cases."

Whoever is "the best" would be trying all the cases, which obviously is impossible. And he said, "The goal is everybody has to develop themselves and get better and better and do the cases that come their way." And then the other point, which I don't know if you've thought about much, Mike, I certainly have is you might be perfect for a particular case and get a better result than I would. And then I might be better for a different case and get a better result than you would. It's a very personal thing that we do, and there's a lot of, I don't know, art and personal energy of various sorts that goes into the results that... so it's not a one size fit all. There's not a secret sauce, there's not a formula that applies to every case.

And one of the thoughts that popped into my mind about a year ago doing a CLE, because there's often a question and answer period, and I realized the answer to every single question in a CLE is, it depends. Should you submit the medical records? Should you ask for damages for non-economic loss? Should you put your plaintiff on first or last? The answer to all those is it depends. There's really truly... I can't think of any one sort of technique or approach that is appropriate for every single case. Just not possible. But I think that gets lost, especially for younger lawyers, just like you were saying. They think that if they just find the right formula and then follow it, everything will be fine. Well, this is way too messy a profession for that to ever work.

Michael Cowen:

And so if you had quit after an early loss, you never would've had all the success that you've had on all your wins. I guess my question for you is how do you pick yourself up after a loss to move on to the next one?

Rick Friedman:

Well, that's changed over the years. The first 20 or 30 years of my practice, I would say I wasn't so conscious of it at the time, but most of my efforts were kind of ego-driven. Each trial was a referendum on me. And not just my skills as a lawyer, but sort of my worth as a human being. And so if I lost, I had to get back in right away to win, so that I could have my self-esteem back. I'm oversimplifying a little, but not a whole lot. But it was also extraordinarily painful. If every verdict is going to be a referendum on your worth as a human being and your quality as a lawyer, boy, that's a lot of pressure every time in addition to the normal pressures that go with trying cases. And after a while, I realized there are bigger things at stake than me in these trials, and to the extent I can get myself out of the way.

You and I talked before we started about my most recent book, that's really what that whole book is about is, how do you sustain yourself in this kind of a job where you are going to lose... if you go to trial, you are going to lose. That's just a given. Sooner or later, unless you're extraordinarily timid, you're going to lose. And as I got myself out of the way, the losses still hurt. But I would rather lose and be a plaintiff's lawyer than win and be a civil defense lawyer in any particular case or in my career. And so that sort of helps me too. Okay. I stood up for what I believed, I fought as best I could. I probably made some

mistakes along the way, but they were not mistakes of laziness or lack of trying. And so, okay, we lost, and now I pick up and go advocate for those same values in the next case.

Michael Cowen:

You said getting yourself out of the way. I think I know what you mean by I'm not 100% sure. What do you mean by getting yourself out of the way?

Rick Friedman:

I'll just speak for myself, although I suspect I do see this in lots of other people. I was extraordinarily shy and very self-conscious as I began my career and through much of it. And as the trial became less a referendum on me, in my own mind became less of a referendum on me, it is a hard thing to explain, but the way I sort of envision it is I became invisible. The ideas and things are passing through me to the jury, but if my hair's a mess, whatever I'm self-conscious about at that particular day, my shirt is wrinkled, I'm fatter than I want to be. Whatever the issue is, it's not important. I just let that all go and try to be invisible in essence. I'm not invisible. There is something passing through me. But all that sort of neurotic worry about myself, one of my early insights a few years into practice was that juries don't... it's a paradox.

They don't care about us, and they do care about us. And they don't care about us is they don't care if my hair is a mess. They don't care if my shirt's wrinkled. They may even comment on those things, but they don't care about them. Those are not going to be outcome dispositive in any sort of way. The only thing they care about is this personal, reliable source of information? Period. And so I can let all that other stuff go of how I look, how I sound, all the things everybody worries about. Just over time, I kind of gave up, to be honest. Early on, I would've loved to have been able to have a presence like Jerry Spence in the courtroom, or have a voice like Mo Levine and all my heroes. I would've loved to be more like them, and I couldn't.

I just couldn't. And so I kind of gave up and thought, all right, the facts, the values, the plaintiff, all those things are so much more important than me, and those things are going to pass through me to the jury. And we see the opposite of this all the time. A lawyer who comes in, who's sort of strutting, or stiff, or it manifests a number of different ways, but those lawyers you can tell are more concerned with how they come across than winning or losing. And I remember quite distinctly, I don't know, three or four trials into my career thinking; well, in the first three or four trials it was, "Dear God, just I don't care if I win or lose, just don't embarrass. Don't let me embarrass myself." And then it was, you know what? I'd rather embarrass myself and win then try to make a good appearance and lose. And so that was an evolution. But yeah, I can't even remember your question now.

Michael Cowen:

No, that's great. No, we were talking about what you mean by getting out of the way. I know what my experience is, and I thought I was further on that journey that I really am. I'm finding out this summer, but I've been working really hard on what you call getting out of the way. To me, it's like I'm the guide. My role in the story is to be the guide, not to be the hero. The jury's the hero. I'm just trying to give them the tools they need and trust them to do the right thing. Have you found it's more fun when you get your ego out of the way to be in trial?

Rick Friedman:

Oh my gosh, yes. So much more fun. And a good example of that, you had mentioned before we started, The Polarizing book. I have so many people call me or email me and say, "It's so much more fun doing

polarizing than before." And I think one of the reasons is polarizing sort of takes the core moral issues of a case. They're calling our client a liar, a cheat, and a thief. And we're saying, no, the defendant hurt them and caused these problems. There's a real moral conflict there. There's no room for me in that equation. And I think it's a relatively simple way that has caused people to get out of their own way, at least for a time when they try cases. And I think that is part of the way you get out of the way, is to identify those moral forces at war in the courtroom and of course identify with the ones you identify with. And now it's not you. Now it's something bigger than you

Michael Cowen:

Before I go. And I do definitely want to talk about what you call the concept of moral truth. I think that's really important. But before I get to it, have you had to do any kind of personal work to get out of the way?

Rick Friedman:

Oh yeah. Tons. Tons.

Michael Cowen:

What all have you done?

Rick Friedman:

Well, losing a lot helps actually. Honestly, you realize you can fail and get up and go again. So that's part of it. And then I've been in therapy for probably 23, 24 years. That's been very, very helpful. Therapy and psychodrama, which is a form of group therapy, those are probably the biggest things that have contributed to me being able to get out of the way.

Michael Cowen:

And I'm so glad that you've been, I guess, brave enough, honest enough to talk about that. I probably should have been in therapy for the last 20 years. And in one of your books, was it *Becoming a Trial Lawyer* where you talked about... one of your books, you talked about trial lawyers should be in therapy, and it finally got me to cross that bridge and actually do it.

Rick Friedman:

Oh, cool.

Michael Cowen:

And it has been, not only for my trial work, but for my being a son, being a father, being a husband, it has been so much better. And my life is so much better. And honestly, I'm not going to give you 100% the credit, but I probably-

Rick Friedman:

Well, you had to do the work.

Michael Cowen:

I had to do the work, but it almost gave me permission. It's like, well, if Rick Friedman can do it...

Rick Friedman:

Well, it's not just me. Jerry Spence made therapy. A form of therapy. Psychodrama a certain part of his trial college. Mo Levine was doing what he called psychoanalysis back in the early 1960s. I think Bill Barton, many of the excellent trial lawyers have either been in therapy or... how long have you been doing it?

Michael Cowen:

I'm trying to think how long I've been doing it. I know it's less than eight years. I know it's more than five. So it's somewhere in that...

Rick Friedman:

And you're still at it?

Michael Cowen:

Oh, no. It's kind of improving my trial skills. I don't think I'm ever going to be perfect. And so as long as I have room to improve, I should keep working.

Rick Friedman:

I don't know. What impact have you thought it's had on your trial practice?

Michael Cowen:

I think the biggest thing is that it's not all about me that I can let go. I think part of it's that I am good enough. I think I had a lot of self-doubt even when I had success. Just a lot of feeling that I wasn't as good as other people. I wasn't deserving. I had incredible codependency issues. So I felt like I had to save everybody, including my clients, and realizing that my clients are going to survive. And so my job is to let them make the choice on whether to go to trial or not, and then give them the very best trial I can give them and give them everything within my power. And then it's up to the jury. It's not my job to decide the case. It's my job to give the jury the tools they need to decide the case.

And about 85% of the time, I believe that. It feels really good. And it's a lot of fun. The day after a mediocre result... I'm sure you're the same way. I don't let the defense offer judge what I consider a win or loss. I have what I believe my client deserves, and if I don't get it's still, even if... the biggest verdict I've ever had, I felt like crap afterwards. Even though it was a multimillion dollar verdict, I felt like my client deserved more and it didn't feel good. Whereas other verdicts that were much smaller, but I felt like, but for this injury, for this client, this was the right thing and it felt great. But learning is not about me. But learning that I am good enough and just learning to love myself, it's been a tough thing.

I've had to learn that I would do things for everybody else. So I have to start doing things for myself. I have to start making time for myself. I had to physically... running has been a big part of my development, even though I still have more weight to lose, I've lost quite a bit of weight. And it's still a struggle. But when I exercise, take care of myself and eat better, I feel better and I do better when I give into my old bad habits and I don't feel as good, lots of things.

Rick Friedman:

That's so encouraging. When I first started saying to people in CLEs, that's the other promise I made to myself that I would start talking about it in every CLE. And probably not a month goes by where I don't get one, two, or three communications from lawyers who say something like What you just said; I wish I

had done this earlier. It's changed my life. Thank you for giving me permission. All those kinds of things. It's just something nobody talks about much. But my personal theory based on just observation is the kind of people attracted to this type of work are people who have had struggles in their lives of a sort where therapy could really help them.

I know I'm in that category and most of the lawyers I know, it's really the exceptions. I can think of three or four lawyers I've met, really good trial lawyers over the years, who've not been to therapy, who probably didn't need it, and the rest of the... And what I like to say at the CLEs is, the more you think you don't need it, the more you probably do. So yeah, I'm glad you brought that up.

Michael Cowen:

Absolutely. Going back to the trial stuff in your books, you talk about a concept of the moral truth. What do you mean by that?

Rick Friedman:

Well, I guess first of all, I'm not a philosopher. I think of it more in terms of what I observe in the courtroom. And virtually every case we do, there's a conflict going on between certain moral values. Like if we're representing someone, I don't know, a property manager who was rear-ended and now has a back problem, sort of a very basic kind of case. If you think about our case, we go in and we say, "Oh, this person through no fault of their own was hurt. Now he can't fish with his son every Saturday morning like he used to." Well, we're putting a value on that human connection with his son. Meanwhile, the defense is saying, "Well, you were able to continue with your job so you haven't lost any money. So this time with your son..." they don't ever say it this directly, but the time with your son has no real value.

And then we say, "Well, he can't sleep at night. So he is irritable, and that affects his relationship with his wife." And then they say, "Well, you have no lost wages and your medical expenses are only \$3,000." And so there is a conflict there of values that is available to most plaintiff lawyers in most cases, which often gets overlooked. We may unconsciously stumble into it and use that energy. But yeah, many of my books are designed to take advantage of that kind of energy and say... because I think jurors respond to that very strongly, jurors want to do the right thing. But how we frame the issues for them is obviously going to affect how they view the issues and how they decide the issues.

Michael Cowen:

So going back to that car crash case, what are some things you would do then to frame that moral conflict or the moral truth of that case?

Rick Friedman:

Well, one thing might be if it's a case suitable for polarizing, which would be if the defense is he's not hurt that bad, or he's exaggerating, or best of all he's faking, then we're in a position to an opening statement say, "Mr. Smith can't fish anymore with his son. He can't do this. He can't do that. And the defense is going to tell you that he's faking or exaggerating his injuries. And if you find he's faking or exaggerating his injuries, you should throw him out of here with not a dime. And on the other hand, if he is telling the truth, then what they're doing is reprehensible. After running the red light, they are accusing him of being a liar, a cheat, and a fraud, and that's just an excusable, and you should give him a full verdict." So that's the basic core theme throughout the case: is this person telling the truth or not? If you're lucky enough to have them saying he's not,

Michael Cowen:

Which you very often have.

Rick Friedman:

Which we very often have.

Michael Cowen:

Yes. And the one thing I like about polarizing, it really changed the way I examined the experts, or I call them paid opinion witnesses on the other side, and they try to get away with, well, it doesn't seem consistent. He should have gotten better. Call him out. Are you saying he's lying? Are you saying his coworkers are lying? Are you saying his spouse is lying?

Rick Friedman:

And that brings up a really good point that I try to emphasize to young lawyers, especially taking depositions. But it applies to cross-examination too. I call the clarifying cross. You can destroy an expert witness on the other side without catching them, without having that gotcha moment just by forcing them to clarify what are they actually saying? Well, you say the evidence is inconsistent. Well, what does that tell you? Are you saying his disc isn't bulging? Are you saying his nerves aren't inflamed, whatever the issue is? Or, oh, you're saying he's reacting more than he should to that? Well, pain is subjective, isn't it? Like how much should he be reacting to it, or what are you basing that? Just these clarifying questions drive the defense experts crazy, because as you know, many of them, their method is to insinuate without ever saying anything directly and hope that the jury gets suspicious. Their job is to create doubt and suspicion. So as we clarify their position, it becomes less and less tenable a lot of times. So yeah, I totally agree.

Michael Cowen:

You also talk in your books about dealing with uncomfortable facts. What do you mean by uncomfortable facts?

Rick Friedman:

Well, we all have facts in a case we wish were not there. I remember reading a transcript of a Jerry Spence trial from many, many years ago. And I forget all the details of the case, but it was a client who'd become a paraplegic in a car accident, but it was not his fault. The accident was not his fault, but he had been drinking and had some drugs in his system. And Spence in opening statements said... I forget the guy's name. Say it's David. As he worked his way through the story of the case, and the ambulance is coming to pick up his client. And he says something like, "And David wanted me to tell you right up front, in the beginning of this trial, he had been drinking and he'd had four beers or whatever it was consistent with his blood alcohol, it was found. But what you're going to hear is that had nothing whatsoever to do with this accident."

And so that's the kind of... or Bill Barton wrote a whole book on this called Recovering for Psychological Injuries. And the point he made from doing those Boy scout cases and other sexual abuse cases of children is he said, "The average lawyer wants a kid in the Boy Scouts who came from a perfect family and then got sexually abused. He said, but those aren't the kids who get sexually abused. They're the ones who are lost and need a father figure and are already hurting. And those are the ones, these people." And so Bill was the first person I heard to really talk about taking what seems like bad facts and turning them into good facts.

The classic example I get, Bill's example is preexisting psychological injury, but you can have preexisting physical injury. Okay, I've got a high school basketball star driving his grandmother to the grocery store and they're in a car accident and she suffers several broken bones because she already had osteoporosis, and he walks out uninjured. The fact that she had osteoporosis, this preexisting fact, which we wish wasn't fair, which actually makes our case stronger. And so very many times a fact, which we wish wasn't there, can become a good fact for us, or at least we can neutralize it by the way we talk about it.

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 a partnership. And now back to the show.

Michael Cowen:

Now, I've read all your books, but the one that I keep going back to remind myself to simplify my cases is The Rules of the Road. And I know you try cases that on their face are incredibly complex now. I think that's one of the reasons you didn't want to go into the facts. You can take the whole podcast just giving us the background to bring us up to speed on the case, but you somehow get jurors to understand them. So I just want to ask you, first of all, for those that haven't read your book, what do you mean by the rules of the road?

Rick Friedman:

Well, yeah, there's a whole book on that.

Michael Cowen:

Yeah, there is.

Rick Friedman:

Basically the purpose of that book, I continued to get stumped by the concept. I first used it in insurance bad faith cases where the insurance company has to have a reason... depending on the state of course, but basically the insurance company, if they have a reasonable basis for their claim denial, then it's not bad faith. So this term "reasonable basis" was driving me crazy because the insurance companies would come in and they would say, "Okay, it turns out we were wrong. She really is disabled, but we had a reasonable basis for thinking she wasn't." Look, out of these 55,000 pages of medical records, here's one that's where a doctor says maybe she's not hurt. So we had a reasonable basis for saying maybe she's not hurt, even though the overwhelming weight was against them.

And that was driving me crazy, reasonable basis. What is reasonable? And of course you get that in negligence cases as well. And so the concept of rules of the road is to fill out or inform that word reasonable. What does it mean in this context? So for example, if this is a public swimming pool, we talk about was the pool owner or whoever's running it, the management, were they negligent for only having two lifeguards, or whatever the issue is. And you could put a group of people in a room who know... just pick 12 people off the street, put them in a room and say, give them all the facts and say, are they negligent for not having more than two lifeguards? And different people have different opinions, and it's going to be random how that comes out. And so the concept of rules of the road is to fill in those blanks.

Once you hear that the Red Cross says that for every, I don't know, 100 square feet of pool, you have to have an additional lifeguard. Well, now we've got a standard. That's what the Red Cross says is reasonable. And I just made that up, by the way. I don't have any idea what... but once you hear that for a pool of this size, you need four life preservers on the walls. They only had three. So it's looking for standards to fill in. And yeah, basically that's what the book is about, how to find those standards, how to use those standards to deal with the ambiguity. Because I think the book starts off with a sentence, something like; complexity, confusion and ambiguity are the friends of the defense. That's what they rely on almost always. And our job is to overcome complexity, ambiguity, and so on.

And so the rules are a way of finding those standards to simplify the case and boil it down to what did the defendant actually do wrong here? Because as long as we're in the world of reasonableness, you might as well play the slot machines. It's going to be luck who's on your jury and all of that. But if you can bring specificity to those words, reasonable, that word reasonable in context of your case, now confusion, complexity gets to be a problem for them. It's hard for them to make things complicated and confusing.

Michael Cowen:

That book actually came out at the perfect time in my career, because at the time, I was heavily involved in automotive product liability cases. And I'd go to these seminars and these people would be talking about all this really complicated stuff, looking at testing millisecond by millisecond, talking about Delta Vs. All these engineering terms. And I thought I had to know all that and explain to the jury, and then I'd look at trial transcripts from lawyers that were actually winning these cases at trial. And I'm like, well, that's racist. They're leaving all that stuff out.

They're just talking about the roof wasn't strong enough and it crushed it and broke someone's neck. And they didn't talk about the strength to weight ratio or the Delta V or the row rate or any of that stuff. And then I read your book. I'm like, well, we don't need to make it complex. We just need to make it simple. We need to find rules that they have to agree to or look bad not agreeing to, and that they broke and it just made... okay, I can do this.

Rick Friedman:

Well, yeah, and the thing is, and mostly you do need to know all that stuff, the underlying complexity to even know how to simplify and make up the rules in the first place, so you go off in the wrong direction. So it's not like you don't need to know it, but you don't need to show the jury all of that. But it's hard, once you've spent all that time learning all that technical stuff, to not want to bring it out and show it around and utilize it directly. But a lot of the time that's counterproductive.

Michael Cowen:

And I think it goes back to the getting out of the way. Just because I can know this stuff, the point of the trial is not to show the jury how smart we are, it's to give them the tools they need to do the right thing.

Rick Friedman:

Absolutely. Yeah, absolutely.

Michael Cowen:

So what do you do in your cases to develop the rules of the road to using your cases?

Rick Friedman:

I usually start with really basic principles, which are different than in my mind, the way we write way Pat Malone, my co-author and I write about this. Even before the rules, there are principles. So if we take the swimming pool example, what's a basic principle about swimming pools? Swimming pools can be dangerous if not properly operated. Well, we know that's true because someone's dead or drowned or whatever happened at the swimming pool, and you could say the same thing. Semi-tractor trailers are dangerous if not properly operated. Football is a dangerous game to play if not properly supervised. So that's a first principle in almost every case. And then I don't know if we... what's another principle? Many of the people who go to a public swimming pool are non-swimmers or poor swimmers. There's another principle. So just what are some truths about this product or about the defendant's business or whatever it is you're suing over?

What are some truths about it? And so I start making a list of those kind of principles. I almost don't need to know anything about the case other than plaintiff was run over by a truck that didn't have a forward alarm warning that things are in front of the truck. Just knowing that you can start doing principles. And then I usually... well, if it's a swimming pool thing, I will. I'll go look at the Red Cross book on swimming pools. I'll look at local public health standards for... what's the county say? What's the state? What regulations are there, what statutes are there, what guidelines are there? And just one, often overlooked source is contractual.

So for example, if the public entity has leased the swimming pool to the YMCA, there's probably a contract between the YMCA and the county. Looking at that contract, there's often really good sources of principles and rules right there in the contract. So always on the alert for is there a contract between my defendant and some third party or other defendant that would inform, again, the term reasonable or whatever it is we have to prove?

Michael Cowen:

Do you think there's any types of cases for the rules of the road aren't always the best approach to use it?

Rick Friedman:

Oh yeah. In these days, I'd say of the cases I've done in the last 10 years, I'll bet close to half of them I don't use rules of the road with the jury. I still find it extremely helpful to put the principles and rules together because in a way that's how my brain works. And then I annotate them. So like, oh, I don't know. I'm trying to think of... like the Monsanto cases I've been trying recently, I put together... I have a 95-page annotated list of rules of the road. Like 95 single space pages with all kinds of references to exhibits and so on. And then we do actually show a set of them in the beginning to the jurors, but I don't... and then our first witness uses them, and then we don't talk about them again for various reasons.

But I think there are cases where they don't work so well. But I have a hard time right in this moment thinking what they are other than... I guess it would be cases that are just kind of so obvious or, yeah, I don't know. I may have overstated it. It may be more like 25% of the cases I don't use them in. But again, I can't recollect one right this minute that I didn't.

Michael Cowen:

I can think of a we're in collision case where I've seen lawyers go too far.

Rick Friedman:

Yes. Oh, traffic cases. Oh yes, I totally agree. Actually, when the book first came out, there was a lot of discussion about that at CLEs and such, see, because in traffic cases, every juror thinks they know the rules anyway. So if you start being hyper-technical, the traffic manual in the state says you have to do this, which nobody does, I think you start to get into trouble. So yeah, in traffic cases, I don't think I would use them unless it's like a traffic design case, like designing an intersection or something. But in terms of two drivers who have a collision, I don't think I would ever use rules of the road for that. I know some people have successfully, but it's not what I would do.

Michael Cowen:

Where we use them is more in the trucking cases when the truck driver needs to do something different than what a passenger car driver was, or more importantly, showing how to run a trucking company, what a trucking company is supposed to do, then they get really useful. But for you're supposed to pay attention and not hit somebody parked at a red light. I think when we get too pedantic on that, we can lose credibility.

Rick Friedman:

I agree 100%. 100%. And yeah, absolutely.

Michael Cowen:

So what's some advice you can give to our listeners that want to develop, 10, 20 years from now, they want to be the next Jerry Spence or Rick Friedman. They want to maximize their own potential as a trial lawyer. What's some advice you can give?

Rick Friedman:

Well, the first advice of course is don't try to be the next anybody, but be yourself. Because you'll always do a better. I guess it's good for younger lawyers to hear this, you, and I know it's true, but phenomenally successful trial lawyers come in all shapes, sizes, backgrounds, genders, sexual orientation, races. And every characteristic you have can be a plus or a minus. Like if someone is exceedingly good-looking by traditional standards, that can be a plus, but it can also turn some jurors off. Somebody looks more regular. That might be more trusting. You've got to work with what you have and develop what you have without letting that limit you.

One of my favorite authors is a guy named Michael Mead who studies myths. He's sort of like a modern day Joseph Campbell, and he talks about the difference between fate and destiny. And fate is what you're born with that you really cannot change. You're born with blue eyes. You could put contacts on, but basically you can't change that. You were born in Rochester, New York, you cannot change that. That is a fact. That is your fate. You were born there. And then destiny is what you're pointed towards. But you don't have to necessarily go there. You may regret that you don't go there. So I think of developing as a trial lawyer kind of the same way. I'm never going to be as tall as Jerry Spence. That is my fate. I'm never going to have a deep voice like him.

There are plenty of other things I'm not going to have like him. On the other hand, I have qualities he doesn't have that help me be a better trial lawyer. So it's developing your good qualities or your strengths, I guess I would say, and always looked at through the glass of how am I going to be trustworthy? Who do I trust? And you can do that, you can study that in your interactions with ordinary people in civilian life. You go and if you watch people that: oh, I tend to trust that person, you can sort of pay attention. Why is it that I'm trusting them. And this person kind of puts me on edge? Why am I on edge? Well, it's all about them or whatever.

I think in one of the books, I use this as an example. If you've got a week-long vacation with your spouse and you've been looking forward to it all year, and you go there and it's a place that rarely rains and... I don't know where. Some beautiful place, and now it's raining, it's going to rain every single day that you're there, that gap between what you were expecting and hoping for, and the reality, is where people get into trouble. And so you can spend that vacation miserable that it's raining every day, or you can say, "Okay, it's raining every day. Now what am I going to do? How are we going to have fun? How are we going to relax? How are we going to enjoy each other?"

The same thing in terms of trial. I so wish I had qualities I don't have, but I don't have them. And I can spend my life frustrated that I don't have them, or I can see... a good example is I cannot memorize anything to save my life. I cannot do it. I have tried over and over and over. My brain just will not... I can't even memorize the first five sentences of an opening statement. I cannot do it. And so there are many very successful lawyers who can give a whole two-hour opening without looking at a note, and I can't do that.

I got to have notes. I wish I didn't. I used to beat myself up about it. Well, too bad I got to do that. Well, that gap between where I wish I was and where I actually am, you can spend all your energies spinning your wheels in that gap, or you can just step out of it and say, "Well, here's what I got to work with. How am I going to be the best trial lawyer I can based on what I have to work with?" But also, so that's one side of it. Then the other side is sort of the self-limiting thing. I've seen so many lawyers saying, "Oh, one of my problems is anger in court. I tend to fly off the handle too much, but that's just the way I am." Well, no, but when I say accept things, I'm not saying you shouldn't work on yourself to be... that's not just the way you are.

If you've got an anger problem in court, you need to be in therapy. You need to be working on that. So it's again, the difference between fate and destiny. What are the things you can change? What are the things you can't change? Where can you improve? So I didn't give up on memorizing things right away. I tried and tried and tried even before I became a lawyer and just realized I cannot do that. So maybe that became fate, but I got other skills, other abilities, and I am absolutely convinced that anyone smart enough to get through law school can be an effective trial advocate if they're willing to work at it. A lot of the super successful people, they'll tell you, luck played a big part in their careers. You can't control your luck, but you can become a very competent trial lawyer that you can be proud of. I think everybody has that capability.

Michael Cowen:

So what are you doing now to work on continuing to improve yourself?

Rick Friedman:

Well, there's a lot. It's a funny question because as I've gotten older, it's been less about techniques. In fact, the last book I wrote, *The Way of the Trial Lawyer: Beyond Technique*, that's the title. There's a reason. It's like the techniques interest me and they're important for lawyers to learn the techniques and they're fun to talk about. But really my focus now is sort of on human connection. I have all kinds of barriers to human connection going back to my childhood, and so continuing therapy, continuing working in psychodrama, continuing to push myself both in my personal relationships and in my professional relationships to be more kind, to be more open to other people, to their points of view. Those are the sorts of things I think I'll be working on my whole life. But it's that kind of stuff that we haven't really talked directly about this, but there is the message and there is the messenger and the message we can think of as the facts of our case.

The messenger is us, the person delivering those facts to the jury. The messenger is extraordinarily important. I don't know if you've ever experienced this, but I'll say probably in 20% of my cases we get to closing argument and I feel like I have to ask the jury to take a leap of faith over some difficult part of my case. And about 20% of the time, I think it's only because of the relationship I've formed with them over that time that they're willing to jump over that gap in my case. I'm not saying it's legally deficient, just they're hard parts in the case where you're basically asking the jury to take a leap of faith with you, and how to be the kind of person who it's worthy to put that faith into, so they're willing to take a leap of faith with you. That's the work of a lifetime.

Michael Cowen:

And what are the characteristics you think that make us, I guess, a good messenger, a credible belief-worthy messenger?

Rick Friedman:

There's the basic stuff that I think we were all taught; credibility. Be prepared. Don't promise anything you can't deliver. Be honest. But there is what my last book was about though is what's the rest of it? And I think the rest of it, as best I can tell and figure out, is having the case not be about you, but be about something bigger and maybe even bigger than your client, which is sort of heresy in some circles. But I think the forces at work in the courtroom are even bigger than the client most of the time. And so figuring out what those forces are and aligning yourself with those is extraordinarily important.

Michael Cowen:

So for people who want to learn more from you, I know you've got a bunch of books on trial guides, that's trialguides.com. How else can people learn from you?

Rick Friedman:

If they go to trialguides.com, if they type in the promotional code RFCLE, which just stands for Rick Friedman CLE, they get 10% off, which is nice because the books are super expensive. It's an unfortunate... talking to the Trial Guides people, fewer and fewer lawyers are trying cases, and so fewer and fewer people are buying trial books, which means they have to price the books more expensively than they otherwise might, which has been a bone of contention between me and them. But so what did you ask me? You asked about the book.

Michael Cowen:

I said, any place else where you're speaking, any seminars, any other opportunities to learn from you?

Rick Friedman:

Well, we have a seminar we've been doing once a year for the last seven or eight years called Ethos, which is... we actually have one coming up in October which tries to develop the messenger basically. It's a four-day program here in Bremerton, Washington, and we go from about 8:00 in the morning to 8:00 or 9:00 at night. Work on the messenger. Got that coming up in October. And yeah, I'm not writing a book right now. And at various times I speak. CLEs. There's stuff on YouTube, I don't know, there's stuff around. I was going to invite you to that, Michael. I can't remember.

Michael Cowen:

And for the seminar, if you go to rickfriedmantraining.com and we'll have a link in the show note, you can learn about his Ethos seminar and any other trainings he has coming up.

Rick Friedman:

I was going to invite you to that, Michael. I can't remember.

Michael Cowen:

If I can go, I would love to go. I just need to look at my... And the reality is that most of them I won't end up going, but I am set for trial after trial after trial this year. We're going through the COVID backlog. In fact, if they all went, I would try more cases than I wanted to try every year. About three a year is what I wanted. I did 10 to 12 when I was doing smaller cases a year. And that's more than I want to do at my age and with the relationship I want to have with my wife and my children. You got to get ready for five, typically try one.

Rick Friedman:

Absolutely.

Michael Cowen:

But if I could possibly go, I would love to go and learn more from you.

Rick Friedman:

All right. Shoot me an email when we're done and I'll send you the application.

Michael Cowen:

Oh, perfect. Rick, thank you so much for coming on the show. I really appreciate it. I've learned a lot, and I hope we get to meet in person and I get to continue to learn from you.

Rick Friedman:

Thanks, Michael. I enjoyed it.

Michael Cowen:

And selfishly for the listeners, I've got my own Trial Guides book coming out, *A Big Rig Justice: A Comprehensive Guide to Maximizing Value in Truck Accident Cases*. I hate the title, but it's good for the SEO, but it is five years of my life. Everything I know about Trucking Cases put into one book. Comes out September 19th. You can also get that at trialguides.com. For those who do trucking cases for having the Academy of Truck Accident Attorneys Seminar Symposium near the end of September in Atlanta, Georgia. It's a great comprehensive program. I'm speaking, but so are lots and lots of other great trucking lawyers. I encourage people to attend that as well. Go to academyoftruckaccidentattorneys.org, or look at the notes in the show notes to learn more about that. Thank you all for tuning in at Trial Lawyer Nation. I look forward to talking to you all again next week.

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Voiceover:

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