

Michael Cowen:

This is Michael Cowen and welcome to Trial Lawyer Nation.

Voiceover:

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When you figure out your theory, never deviate.

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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 are joined by a fantastic trial lawyer and a good friend. Ed Ciarimboli out of Philly. How are you doing, Ed?

Ed Ciarimboli:

I'm good, Michael. Thank you very much and congratulations on your recent success. That was a outstanding, outstanding verdict that you guys had in Texas. Great, great, great work.

Michael Cowen:

Thank you. I really appreciate it. Before we get started, as always, I want to thank our sponsor LawPods. You've seen the good work they've done. We're here recording live at the Academy of Truck Accident Attorneys Symposium in Atlanta. They've set up the lighting, they've got all this cool audio. All we have to do is talk. He goes back and mixes it, gets rid of the background noise, makes the clips to market it, so people can actually watch and listen to this thing. LawPods makes my life so easy. If you want to do your own podcast, which I recommend, it's fun to do, it's a good way to get your name out there, I highly recommend LawPods.

Ed Ciarimboli:

Those guys are great. I have a face for radio and they make me even look good sometimes.

Michael Cowen:

Wow, that's hard to do.

Ed Ciarimboli:

It is. It is.

Michael Cowen:

I'm playing my friend. So, we were going to talk about, you're one of the lawyers that actually tries cases.

Ed Ciarimboli:

Yes.

Michael Cowen:

I think we were talking before, you've tried over 60 cases so far.

Ed Ciarimboli:

I think it's probably closer to about a hundred since the beginning of my career. And it's interesting. I know you try a lot of cases, so that either means that you and I are very bad at settling cases-

Michael Cowen:

Or selecting them.

Ed Ciarimboli:

Right. Or selecting. Either we're bad at selecting cases or bad at settling cases. One of the two. But many years ago, one of my mentors, a guy named Paul Sceptur, Paul said to me, he's like, "Listen, I've never seen somebody as bad at settling cases as you are. You're terrible." He said, "You better get good at trying cases, because you really are just terrible at mediations." And so yes, and I enjoy it. As you do, I enjoy the process of being in the courtroom, the workup of the case, and certainly the theater of being in a courtroom in a live trial.

Michael Cowen:

I think trying the, especially earlier in your career when you're building your skillset, I think trying the crappy case, I think it's important for a couple of reasons. One, we get the repetition, so we're in there, we're getting the skills. So you have the comfort level when you go into the bigger one. And I had a second reason.

Ed Ciarimboli:

Well, I could tell you, do you remember your first trial?

Michael Cowen:

I do remember my first trial.

Ed Ciarimboli:

I remember my first trial, I represented a fraternity brother that had slipped and fallen in the shower of the fraternity the day that they were leaving for spring break. It was a new construction in this shower. And I remember getting handed the file and thinking to myself, "This is terrible. This is an absolutely terrible case." And then when I dug into it, I learned that the contractor had actually used wall tile on the floor and it was super slippery.

Michael Cowen:

Oh, wow.

Ed Ciarimboli:

Yeah. So it ended up... We were successful in it, but I remember walking in to pick that jury and the judge saying to me, "You're seriously going to try a drunk fraternity brother slipping and falling in the fraternity shower, the day he's leaving for spring break." I said, "Yeah, it doesn't sound that good on paper, but I'm telling you, Judge, it's going to go well." So what was your first trial?

Michael Cowen:

Well, I guess my first one without a jury, was one of our referring lawyers at the firm I went to work for as a baby lawyer, his aunt was buried in the family plot at what they believed to be a community cemetery. There was someone that had retired from the Border Patrol, found some old deed and say, "No, there's a cemetery corporation for one of my ancestors. And this cemetery is for the heirs, friends and servants of Dawn so-and-so. Your aunt was not an heir, a friend or a servant, and so you need to dig her up and put her in the paupers' cemetery across the street."

Ed Ciarimboli:

Oh my God.

Michael Cowen:

And so it was really a trial over whether he could prove that whatever this weird cemetery corporation from a hundred years ago, that we couldn't even find evidence existed. But there was a deed. Whether or not he had the right to tell her to get out, dig up your body and go somewhere else across the street. She's still there, we won the trial.

Ed Ciarimboli:

That's good.

Michael Cowen:

And it was a really important lesson, because I had four arguments that I had and the Judge at the end got up and said, "Well, you're wrong. All four of your arguments are wrong." But told the other side, "But you're wrong too, because these are the elements you have to prove A, B, C, D. You didn't prove C or D. Therefore she stays there." And so I just learned take the win anyway you get it. You don't have to be right, just take it.

Ed Ciarimboli:

Absolutely.

Michael Cowen:

But my next three were jury trials. They were personal injury cases and they were defense verdicts. And I remember a little disheartening.

Ed Ciarimboli:

I'm going to tell you something; it's not a defense verdict. You came in second.

Michael Cowen:

I came in second.

Ed Ciarimboli:

That's all. You just came in second.

Michael Cowen:

Because I remember I'm a young lawyer trying to get a real name with baby associates somewhere. And some people started talking crap and talking smack like, "Yeah, he's lost three in a row. This guy's no good." And then the fourth one is not a huge case by our standards today, but we had 3000 something dollars in chiropractic bills, a girl that seemed just fine afterwards, minor collision and we got \$76,000.

Ed Ciarimboli:

That's awesome. That's great.

Michael Cowen:

And that changed everything, because nobody else was getting \$76,000 in those cases. And so then we just tried a bunch of tough cases and sometimes we got the red ribbon and sometimes we got an okay verdict, but every third case we would get a verdict exceeding the policy limits on a case where they're offering 3000, 5,000 bucks and got a name for myself and more importantly, just got comfortable in the courtroom, just trying. Back then I was doing 10 to 15 a year. Sometimes we would even pick two juries, pick one jury in the morning, pick a different jury in the afternoon on Monday, try the first case starting Tuesday, try that one Tuesday, Wednesday, get a verdict, and then come back Thursday, Friday, get a verdict.

When you won both of them, it was awesome. Then I had a day where I did a criminal trial and a civil trial the same week. So I picked two juries on Monday. Then we came back and we tried most of the criminal trial, but the judge says, "We'll come back at the end of the week, we'll do the closing, because I got some other stuff to do." So I then did the civil trial and I got a low medical bills only verdict in the morning. And then I got a guilty on my client in the afternoon. I think I'm the only person I know that's got their butt kicked in trial twice, two different juries, same day.

Ed Ciarimboli:

Listen, I've had some stinging losses. I can't even say that I've ever experienced anything along those lines.

Michael Cowen:

Well, my client was on the roof. We tried self-defense and people had threatened him and he really did have a reason to be... He was a juvenile, he really did have a reason to be scared, but instead of calling the cops, he dressed all in black, got on the roof, waited for them and yelled, "Die motherfucker, die," and opened fire with a shotgun.

Ed Ciarimboli:

Not a good idea.

Michael Cowen:

Thank God the gun jammed and he didn't kill anybody. And look, they're all doing okay now. The kids, they've gotten past that. They're adults, and I've heard actually from his girlfriend, actually hired me on a case, he's doing a lot better now.

Ed Ciarimboli:

Good, good.

Michael Cowen:

So it makes me happy. But yes, those trials, I didn't make money on them. Even the ones that I won, I didn't make that much money, but I got a bunch of trials. And now when, and I think it's the same for you, when we're in the courtroom on something substantial, we're not worried about how do you authenticate an exhibit? How do you ask the question? Where do I stand? How do I move my body? You get more natural.

Ed Ciarimboli:

For me, walking into the courtroom now is just, it's such a rush. I love it. I love being in the courtroom, because I have that body of work and they didn't all go perfectly and witnesses faltered or things didn't come together as we thought they would, but now it's helped with preparation for sure, for trial. And now when we walk into try a case, it's pretty airtight and we have a good process and it's ever evolving. Obviously we're trying cases differently now than even two years ago or three years ago. And that's what I love, just that I really do think it's an art and like yourself, I know you're always pushing the envelope, trying new things and some of them work, some of them don't, but I think that that's what really sets people like yourself apart from lawyers who say they try cases or lawyers that do try cases, but they always say, "Well, I've been doing it this way for 25 years." Well, if you're doing it that way for 25 years, you've probably been doing it wrong on some capacity for 24 of those 25, because you're not learning and evolving.

Michael Cowen:

Or things like I learned, I had a system for trying car wreck cases that worked from '98 to '03, it was working really well. And then it stopped working. Something changed culturally with the jurors in the community where I was trying them and I had to say, "Well, I don't like the way these verdicts are trending. I need to do something different. I need to go learn something different, try something different." I want to ask you something, before we... We had something we were going to talk about in this podcast, which is going to be; lessons we learned trying cases in COVID and then how you've done that to improve the way you're trying cases post-COVID. But before we go that, I want to talk about a mindset thing and you've tried a lot of cases, you've had some incredible results and you've had some results that probably aren't going on your website.

Ed Ciarimboli:

Yes.

Michael Cowen:

So, I think one thing that happens to people is they don't try cases, because they have such a fear of not doing great. They have such a fear of losing or getting second place, however you want to put it, or looking bad, stumbling. How do you get past that, so you can go in there and enjoy it?

Ed Ciarimboli:

Yeah, it's a great question. And I would say that 10 years ago probably would've been a far different answer. And 10 years ago I would've said, "Hey, I don't get over it. I'm ruminating over it. And these things are really, they're front and center in my mind." And now I meditate a lot. My wife owns a mindfulness company, so that's been a big part of that journey, just getting to a point that, A, you're comfortable with yourself and realizing that, look, there are things that are in your control and things that are not.

And for me, it was getting to that point that I'm going to work as hard as I can, I'm going to prepare as hard as I can. I'm going to go in there and do the absolute best that I can, but at the end of the day, 8 or 12 or 10 people are going to make a decision and it could be on something that is completely unrelated to anything I did in the courtroom. And so I can't control that. And I think once I got to that point where I had to feel comfortable in what I was doing and whatever the result was, was the result. And that was it. And so now I look back on cases that we've won and lost over the last couple years, and I look at the process and I said, "Did we do that right? Did we go in there?" And if I could say, "Yes, we did," whatever the result is the result.

Michael Cowen:

It's not that we don't learn from, "Okay, well this didn't go well. I would like to do it... Like, "If I try it over again, would I do it differently?" Well, hell yeah, I didn't win.

Ed Ciarimboli:

Right, right.

Michael Cowen:

Of course. Why would I do the same thing over again the same way, but not letting it destroy you, because I see some people like, "Well, this jury didn't like my tie, so I'm never going to wear a green tie." And I'm never going to never do this and never do that. And jurors don't know, they don't know why. No one of us really most of the time know why we decide things. We have an emotional decision and then we come up with a rationalization for it, so we can drive ourselves nuts talking to the jurors afterwards.

Ed Ciarimboli:

Oh, well, and it's funny when you say talking to the jurors. So there was a judge in Philadelphia, Judge Jackson, and she retired a couple years ago, but I remember I tried a case, it did really well, had a great result. And I said, "Do you mind if I talk to the jurors?" And she said, "Don't talk to the jurors afterwards." And I said, "Why not?" She said, "Because if they tell you that they just decided this case, because they liked your tie," or some reason, she said, "You're going to have an obligation to come in and tell me; Judge, they didn't follow the law." She said, "You can't control how they arrived at this decision. You can control what you did in the courtroom. You can control the evidence that you put in for the case." She said, "But at the end of the day," she's like, "Don't talk to them after you lose and don't talk to them after you win." And I think it's a very instructive piece of advice, because it could drive you nuts.

Michael Cowen:

It can.

Ed Ciarimboli:

It could drive you crazy.

Michael Cowen:

I hear a lot of really smart people that say we should talk to them or hire somebody to interview them. I used to, it drives me nuts. And we had a case and I still think we made the right decision settling. We tried it for a week. At the end of the week, before the trial, they said they would never pay a million dollars. And right before the trial, we open a million dollars on table, but it's gone in 24 hours. And we tried it for a week and we got an offer that was a multiple of that. And the client was happy. I was happy, thought it was a great settlement, and we had tried a week of our case, but our plaintiff hadn't gone on yet, which could have really turned against us, because we'd made the...

It's a brain injury case and the plaintiff looks kind of normal. And so then we went and talked to the jurors afterwards and the defense lawyer asked them, "Well, how much were y'all thinking about awarding?" And all but one of them were between 10 and \$15 million, which is way more than what we settled for. But that doesn't mean that's where they would've been after my client testified, after the defense. But it was like... So the next time that Mallory and I tried a case, and again, we settled it. Actually, I don't know how this ever happened. We somehow settled it for a million dollars more than our demand the Friday before trial, like on Thursday. Everything went perfect in trial. Sometimes you go to trial, you get your ass kicked. Sometimes just everything is working out, everyone's freaking out.

Ed Ciarimboli:

You catch lightning in a bottle, for sure.

Michael Cowen:

And it was happening and they saw it and the excess people freaked out, and it got done. And so, we were talking to the jurors afterwards, they wanted to talk to us, and then the defense lawyer was about to ask and I said, "I'm going to leave the room if you ask. I just told the jurors, "Don't tell me." I said, "This is what happened to me last time. If you all were going to give a lot more than what I just settled for, I don't want to feel bad about it. I want to talk to you about what you thought about the client, what you thought about how we put things on." And then I learned they hated watching video depositions. They said it was painful. They said they paid attention, but it was so hard. In that case, we had to do a lot of video, because our client was an oil field worker and all the witnesses were all over the country. But you can learn a lot. But I also met lawyers that just drive themselves crazy, because they're making changes based on the rationalizations for not the reason.

Ed Ciarimboli:

And there is no rational basis.

Michael Cowen:

It's emotional.

Ed Ciarimboli:

It's a very emotional thing, especially in a jury trial. And you get 8 or 10, 12 people in a room together and they're all going to have viewed that particular witness piece of evidence differently. And now there's going to be horse-trading on numbers and everything else. So you just don't know. So I've given into; look, I can control the process. I can control what we do. I can control the fact that we're going to

focus group things and do data surveys and everything else, try to figure it all out. But at the end of the day, we may just not get it right, or we may get it right and not know why we got it right.

Michael Cowen:

Yeah. So for our listeners that are struggling with this, they want to try more cases, but they have that stress, they have that fear. What are some things that you would recommend for trying to improve the mindset of letting go of the outcome and focusing on what you can control?

Ed Ciarimboli:

Yeah, I think one thing, and everybody has to do whatever makes them feel comfortable in terms of... For me, it's certainly exercising. I know you're a big runner, and I think you have to feel good physically first and then get yourself in a good head space, whether it's meditation or yoga or whatever it is, because things that are going to let you develop skills, so that you don't have to focus on the results all the time, you're focusing more on the process. And especially doing a lot of meditation, and Michael Leizerman and I talk about it, because he's a big meditator and it's something that has helped calm my mind, so that I'm not always like, "Oh my God, I got to worry about this and this and this and this and this."

And so I think that my best advice to people would be; take care of yourself first. And if you take care of yourself first and you get yourself in both a good head space and good physical head space, the losses, you're going to learn to deal with them a little bit, I think a little bit better from a stress standpoint. It's a tremendously stressful job, so certainly would encourage more people to do things like that.

Michael Cowen:

I totally agree. I think just getting back in there and trying another one, forcing yourself.

Ed Ciarimboli:

Oh, absolutely.

Michael Cowen:

I tried one in July to August, had a mediocre result, was pissed off about it, and then had to go try another case and had a great result. And I was not any better of a lawyer in the second trial or any worse of a lawyer in the first trial, just they had different facts, different juries. And if I had let the first one get me down and I chickened out and wouldn't try the second one.

Ed Ciarimboli:

Or you would've taken probably a mediocre offer, because you were a little gun shy. And that's one of the things that-

Michael Cowen:

Oh, they didn't give me that option in the second one.

Ed Ciarimboli:

Yeah, I know. Yeah.

Michael Cowen:

I would've taken a mediocre offer.

Ed Ciarimboli:

You and I have talked about; we've tried a lot of zero offer cases.

Michael Cowen:

Yeah, that was a \$50,000 offer on the amputation where the workers' comp would've gotten all of it, zero in the client's pocket. No, that was easy. I can't claim bravery there.

Ed Ciarimboli:

Yeah. No doubt about it.

Michael Cowen:

Okay. Well, let's talk about, so trying cases during COVID, you actually tried cases when everything was shut down?

Ed Ciarimboli:

I did. I tried three cases during COVID, and I know you had tried one, and you and I had actually talked about when you were getting ready for trial, and I think we have a very similar experience. What was taken away from us during COVID was our freedom of movement. Even in the courtroom, judges made you stand at a podium and you had to wear a mask and everything else. And so we really worked very, very, very hard at creating this medium that allowed the jury to still have an experience in the courtroom, but not have the same experience. Because when we tried the cases, the jurors were spread out all over the gallery. They weren't connected. So it was a very... Witnesses were in the jury box instead of on the witness stand.

So, we really had to work hard to create some type of atmosphere where even though I wasn't able to have a big board and point on the board or have the witness get off the stand and explain something to somebody. So, we used a lot of visuals, TV monitors, PowerPoint, a lot of graphics. And one of the things that we really worked hard on was shortening the trial.

Michael Cowen:

Okay.

Ed Ciarimboli:

Because I think that people didn't want to just sit through that whole environment, they wanted to get the information that they needed to make a decision on the case, do it quickly, but it had to leave an impression. And so, one of the things that we really started to work on was that our questions had a corresponding visual component in the courtroom.

Michael Cowen:

Tell me about it. Can you explain that?

Ed Ciarimboli:

Yeah. So, what we would do is we started to use a lot of, yes/no matrix charts.

Michael Cowen:

What's a yes/no matrix chart?

Ed Ciarimboli:

I'll give you an example, in a trucking case, where you have certain criteria that obviously the company needs to follow to hire a safe driver. So pre-COVID, you would have your expert going up there and saying, "There has to be an application for employment." And then you'd show the application or lack thereof. Drug test, road test, driver orientation, the inquiries, the previous employers, all these steps. We couldn't do that during COVID, because you wouldn't be able to walk up and here's the file, show the jury what's not...

So, what we started to do was take all this information and condense it down into one slide, that now our expert or the witness, the safety director for the company or whomever it is, if you're on cross, you're just able to go through and now start asking, "All right, is there an application for employment?" "No." "Is there a drug test?" "No." And so now there was the question had a corresponding visual image that now left an indelible impression in the jury, like, "Oh, there is no application for employment. They didn't do inquiries." And rather than having all the... We have all the documents, but now rather than going through, I don't want to say the dog and pony show, but it was a dog and pony show, now it's quick hitting items and then these visual summaries of large volumes of information. It's become invaluable for us, and we use them in depositions now, even moving forward.

Michael Cowen:

Yeah, you've been kind enough to share some of the stuff you've done on some depositions where it's just beautiful.

Ed Ciarimboli:

We work hard on it. We have a great in-house tech guy, his name's Chris Spence, he is part of every case from day one, and he does all of our PowerPoint graphics in-house. And we've tested them too, that's the other thing. We didn't just come up with, "Oh, let's do this." And we started testing these with data surveys and focus groups, and they loved it. It was instead of having 20 minutes of a cross, it's four minutes of a cross.

Michael Cowen:

Yeah. I think the other thing is that you ask all the questions 20 minutes later, they don't remember the first things you asked about. You made these great points, but if they don't remember them, whereas when you have it in writing, even if they were zoning, because some jurors going to be zoning out at any given part of trial.

Ed Ciarimboli:

No doubt.

Michael Cowen:

We're human.

Ed Ciarimboli:

No doubt. Yep.

Michael Cowen:

We're going to be watching lectures today from very great speakers, and there will be points in time where we're going to be thinking about something else, because we're human beings, but then they can go back to it and it then stays there and it reminds them.

Ed Ciarimboli:

And they see it. And I think that was one of the biggest takeaways that we got from COVID was, look, let them see more things. And when I say see more things, not just documents, because they could be boring as hell, but let them see more things that we've created that move the needle, in our favor, and tell the story in the way that we want it. We just did it with expert depths, past couple of weeks, where this particular expert, he has an opinion, and his opinion is, "Well, you shouldn't check the safety scores before you hire a motor carrier." And there's 11 industry sources on the other side that say you should. And so now we created a visual, where on the left-hand side, it's these sources. On the right-hand side, it's just this guy. So now when you look at it, you're like, "This guy looks like he's full of shit."

Michael Cowen:

Yeah, exactly.

Voiceover:

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Michael Cowen:

So what's your advice to people, if someone wants to start and figuring out, "How can I incorporate more visuals or more graphics into my practice?" Because it's not just for the trials, it's for the depositions.

Ed Ciarimboli:

Absolutely. I think one of the things that I encourage everybody to do is when you're sitting down to prepare for your deposition, if there is a category of information, look at that category of information and can you now translate that into some visual image? Whether it's a yes/no chart. Whether it's a timeline. It could be a graph, a pie chart, whatever it may be. Can you take all that and can you create some type of image for all of that information? I'm a firm believer that the answer to that is usually yes, a hundred percent of the time. There's not many cases where we're like, "Well, geez, there's no image. There's no image for this." There is, but you got to look at it.

And so, I think we get into a habit where we're just asking questions. And I think one of the things that I would tell people, when you look at your depositions, think about trial and think about, "How am I going to create something that I'm going to be able to use moving forward?" Putting it in summary judgment motions, that's one of the things that we've been... Visuals that we're creating now. We're filing proactive summary judgment motions, putting those visuals in there, helps educate the court as well. And now the other thing is when the judge sees this in a summary judgment motion, he or she is far more inclined to now have no problem with it in trial.

Michael Cowen:

Exactly.

Ed Ciarimboli:

I certainly think that that was one of the big pushes on the defense bar, why they wanted to change the federal rule on visuals, because it is effective. And that's how people learn. And I think they wanted to go back to the dark ages where they don't want people to see anything. They don't want people to look at anything.

Michael Cowen:

And we forget in law school with so much reading and listening to lectures, and we learn to learn that way, but most people don't. And even lawyers, there's some very visual... I'm not a visual person, naturally. I take notes and it's there, and that's how I make decisions. But I found that it's not my job to learn the case, it's my job to teach the case.

Ed Ciarimboli:

Right, absolutely.

Michael Cowen:

And I need to-

Ed Ciarimboli:

Well, you did something brilliant though, when you had that model. I remember you were working on, it might've been the case during COVID. Man, I thought that was just genius.

Michael Cowen:

Well, it wasn't supposed to-

Ed Ciarimboli:

Genius.

Michael Cowen:

Yeah. We were trying to show... It was a case where someone ran a stop sign, but it wasn't just a stop sign. There was a stop ahead sign. There was an intersection ahead sign and a junction sign and it was over half a mile of sign, so the driver said he blew through all of them. So, we wanted to create a visual. And at the time, we didn't know about COVID. We were [inaudible 00:27:18] driver case. So I wanted to show that this driver had many opportunities, clearly had to be distracted. We said he was playing with his phone. And so we built a 12-foot-long scale model of the scene.

Ed Ciarimboli:

It was awesome.

Michael Cowen:

And then had to scale little 3D printed cars to run on there. And then of course, then we had to figure out, COVID happened, how can we use that? So we had to really work with the video people to practice and practice. It's awesome, and it almost looked like an animation, because we would pan through there, but I had to hire a professional camera crew. But the case was worth it. And then follow the car along, and you can see the little signs. But it really does present that visual. I'm really big about, now, I'm trying to move from just the graphics to things that you can touch and hold, 3D printing. 3D printing's got so cheap.

Ed Ciarimboli:

Oh my gosh, it's fantastic. Moving in the right direction, because we're doing the same. If somebody can see it, if they can touch it, if they can feel it, they're far more likely to remember and have that imprinted in their memory, whatever it is. And so we're always like, "All right, we're going to use PowerPoints. We're going to use our bodies as a visual as well." Models, especially on damages. If people can see and touch where the broken bone is and the rods and the pins, man, it leaves such an impression on them, as opposed to maybe just a static image on a screen.

I know we've talked about this before, we've used animations, but you got to be careful with the animations, because sometimes they may show something, you may see something that when you show it to a focus group, they're like... They're looking at it in a completely different way. So you got to be very careful with the animations. But yeah, just giving the jurors a visual experience in the courtroom I think helps us tell the story and also tell the story in the sequence and manner that we want it, that hopefully we'll be successful.

Michael Cowen:

So now that we've pretty much come out of COVID, at least most of the country hopefully has come out of COVID, and the jurors are in the jury box together, you can move around the courtroom, you don't have a mask on. How have you incorporated what you learned in trying cases in the weird COVID environment to trying cases now where we're closer to back to normal?

Ed Ciarimboli:

Yeah, I think pre-COVID, I would never really contemplate or did, or did it very infrequently having witnesses Zoom in.

Michael Cowen:

Yeah.

Ed Ciarimboli:

Now it's commonplace. I actually think that jurors, it is the expectation if the witness can't be in the courtroom, that they're going to just be Zoomed in. And I think they get annoyed if it's just a static video, because the technology is so good, and they're so used to seeing it, whether it was on television, every talk show, they're Zooming people in. So, I think that's one of the things that now, especially with our experts, we're like, "Look, we don't want to put you on video. If you can't come live for whatever reason, we're going to Zoom you in at a particular time." And I think that's one of the things that has made our presentations a heck of a lot better, especially expert wise.

And one of the things that it has forced us to do is when you're going to Zoom somebody into the courtroom, you know what you're not going to do? Have them testify for three hours or whatever. It is

short. It is hitting, it's very focused. And then especially even with the Zoom, we've been able to incorporate visual images. So now you see the witnesses Zoomed in, but there's still a big screen in the courtroom that's showing the visual images. So, that's one of the things that we've done and incorporated.

And then now from some of the lessons that we've learned during COVID and just juror's attention spans, what they want to see, our trials are so much shorter. They really are. We work really hard at getting them down to giving them the information that they need to make the decision in our favor and nothing more, and trying not to waste their time at all.

And then finally, the other thing that I would say we've taken from COVID and now are really hyper-focused on in our cases, is the sequencing of the case.

Michael Cowen:

Okay. Tell me about that.

Ed Ciarimboli:

Yeah, so I'll just give you an example, a case that we tried last year. Normally I would say, "Okay, well, we're going to put on... It was a trucking case, and I would say, "All right, we're going to put on the safety director," or whomever it is. Or, "We're going to play the safety director's deposition clips." And so now, what we've done is instead of doing that, we have as our first witness, whomever that person is going to be that's going to tell the story from the opening. So now, I've opened, I've told the story in exactly how I want it, and so now I want my first witness to mimic what I've said in the opening.

And so now, whomever that witness is utilizing all of these tools, the deposition video clips, whatever visual images we have, putting it into that frame and that sequence, because that's when the jurors are going to be most attentive, that first witness. And if you just put up a first witness and it's just a talking head, you've lost that critical opportunity to really now engage them and move the needle towards a victory. So, the sequencing is something we work really, really, really hard on, figuring out first witness, second witness, just like-

Michael Cowen:

Last witness.

Ed Ciarimboli:

Last witness, yeah. First witness and then the other... It's going to sound crazy, but the witness after lunch, because juries are just like we are, we're most focused when we get to work in the morning, and then you getting back from lunch, and that's the witness that everybody now's going to be paying attention to, not necessarily the witness at four o'clock in the afternoon when everybody's ready to doze off.

Michael Cowen:

And sometimes when you have, let's say the defense took a video of a witness, that's not going to be so great for you, maybe put them on at 3:30, 4:00 and they have to do it by video.

Ed Ciarimboli:

Exactly.

Michael Cowen:

Maybe make that video a little longer before they get to the bad point, then people went to sleep by the time they get to it.

Ed Ciarimboli:

I know. I totally agree. They always say, "Hey, do you mind if we take this witness out of order, put this video in." I'm like, "Yeah, no problem. Let's put them on at 3:30 or 4 o'clock. And inevitably you look over at the jurors, they're nodding off for that, so yeah. But those are, I would say, some of the key takeaways that we have learned during COVID and now, I think making our trials a lot more streamlined and the presentation of the evidence a lot more efficient.

Michael Cowen:

Yeah. And one lesson I've learned on that is it's not that you're trying to do... I talked a lot to Joe Fried about this. He used to use the term speed trial and he stopped that, because you get this, like; you got to rush through it. You still have to take your time and give the information in small enough bites, so the jury can get it, give them time to absorb the material to understand it. It's just you're not spending time on a bunch of extraneous stuff.

Ed Ciarimboli:

No question. I played basketball in high school and college, and John Wooden... My college coach was a big, huge John Wooden guy, and he would say, "Move quickly, but not in a hurry." And that was something that left really an impression on me, especially in our practice. If you're moving quickly, you're moving efficiently. But if you're in a hurry, especially in a courtroom, you're just rushed. Believe me, I'm a firm believer in what Joe's trying to do and doing it in a more efficient manner, but I think you're right, not speeding. You're not speeding, you're just doing it more efficiently.

Michael Cowen:

But you're also learning to not make every possible argument. Sometimes if the defense says something really stupid, just let it stay there, press the jury that they're going to understand that's stupid.

Ed Ciarimboli:

It's just stupid.

Michael Cowen:

You don't have to cross examine... If you've got 10 things you can cross examine the defense expert on, just do your top three. That's strong. You don't need to do seven, eight, and nine.

Ed Ciarimboli:

No, half the time we're doing it for ourselves rather than the jury-

Michael Cowen:

Or we don't trust that our three best are good enough, and so we got to put our other seven arguments, because well, what if the other three didn't work?

Ed Ciarimboli:

Right, right. No, no question about it. I couldn't agree more. Imagine if you were in the jury box, would you want to hear all that? And the answer is no. One of the really fascinating things that we did was I made all of my lawyers be focus group jurors for a case, and then they saw firsthand. They're like, "Oh my God, this is dreadfully boring. We need to shorten this clip. You need a visual image here." And they start to see it, especially if you watch a video dep that you've taken of a doctor, and it's the doctor, and then two lawyers just talking, you're like, "I may jump out of the window here in the courtroom, because I can't take it anymore. I just can't take it anymore." So, those are some of the things that we've really been trying to work on moving forward, learning from COVID.

Michael Cowen:

Well, it's so good that we've been able to get something good out of something that was so horrible. One thing, I'm just curious, and if you can edit it out if you don't like the question. So when you're picking a jury now, do you ever have people that still show up with a mask on?

Ed Ciarimboli:

I do. I do.

Michael Cowen:

What do you think about those people?

Ed Ciarimboli:

So, that's a great question, Michael, because I'm trying cases pretty much all over Pennsylvania. And Pennsylvania is a really interesting state, because as James Carville once said, "You got Philadelphia, Pittsburgh, and Alabama in the middle." So we have very, very, very liberal pockets. Philadelphia, I can't remember the cases that we've picked post-COVID, I don't think anybody shows up with a mask on. Same with Pittsburgh, out in Allegheny County, although there are some pockets of Allegheny that are different. But you go pick a jury in Carbon County, which is 98% Republican and very, very, very conservative, nobody's wearing a mask. But if somebody comes in with a mask, now all of a sudden, what's going on here?

And so it's a really interesting... You see those people turn on that person. And you know that, "Okay, this is going to be... In counties like that, you see the very, very, very clear line. But like I said, Philly, there's a few people maybe that still will wear a mask, but it's predominantly not worried about. But in some of these other small rural counties, it is an issue, because you know that that particular person, for whatever reason, still has this belief that they need to wear this mask inside in order to protect themselves from COVID.

Michael Cowen:

Yeah. I struggle with it, because first of all, I have my own personal prejudice, which is like why the...

Ed Ciarimboli:

I know.

Michael Cowen:

... are you wearing a mask now?

Ed Ciarimboli:

I know. I know.

Michael Cowen:

We've all had it by now. Come on, let's get on. Not forgetting that different people have different physical conditions, people at home, but my instinct of, "Man... It makes me think of the image I saw on Twitter the other day of a guy is riding a motorcycle without a helmet and has a mask on outside. You're like, "Come on."

Ed Ciarimboli:

No, I know.

Michael Cowen:

Your risk assessment's not very good here, buddy.

Ed Ciarimboli:

Not at all.

Michael Cowen:

Now, but part of that, well, you know there's someone that's really safety oriented, they're fearful, but are they going to be feeling like they're endangered the whole time? Are they going to be able to focus on the case in a mote with someone else when they think, "I might die from being here next to all these people"? And then just like I said, the group dynamic, the jury is a group dynamic. If that person is more likely to advocate for me, because they're a safety person, is everyone else going to say, "That's one of those mask wearing liberals, I'm automatically and instinctively going to go against anything that they say."

Ed Ciarimboli:

It is so polarizing. You're a hundred percent right.

Michael Cowen:

I've been striking mask wearers. I haven't said that publicly before, but I'm just curious as to what other people thought about it.

Ed Ciarimboli:

I don't disagree at all, because I do think there's a few issues that are just in our culture right now that are so polarizing that it can totally distract everything that you're doing in the courtroom, and that's one of them. And I think that you're right to strike them. I have the same belief, because I want a neutral playing field, and I don't want, if there's 11 people in the box and one person wearing a mask, they're going to go into deliberations and that one person is going to be pushed to the side. And if that person is very on my side or on my client's side, these other 11 people are going to cannibalize that person and it's not going to go well. So, I think now when I look back, I think I have also struck every person that has had a mask on in the last year and a half.

Michael Cowen:

Yeah, we had one surprise. She ended up being an alternate. She didn't wear a mask for jury selection, but when the trial started, she started wearing one every day.

Ed Ciarimboli:

Interesting. That's interesting.

Michael Cowen:

But she was an alternate and didn't make it on there anyway.

Ed Ciarimboli:

That's very interesting. So, yeah.

Michael Cowen:

Last thing, you've talked a lot about graphics. Of course, this is almost like a radio show, a podcast. You can't see the graphics, but we do have a website. Do you have any you'd be willing to share that we could put up on the-

Ed Ciarimboli:

Absolutely.

Michael Cowen:

... triallawyernation.com website? You can go to the episode page, see some examples, because I've seen them. You've done some incredible stuff. I take them on my show, and go, "Look what Ed is doing. We all need to do this too." Sonia and Mallory are so much better than I'm at the graphics, but I have people that are so brilliant at graphics already, but every time we see something really good, like some of the stuff you did like, "Look, we can take this to another level. Look what he's doing. We could do that too." And I'd like the listeners to be able to go in there and see some of that.

Ed Ciarimboli:

Oh, absolutely. Absolutely. Yeah. I'll share a couple of PowerPoint presentations that we've done on visual aids and yeah, I'll shoot it to you and you can put it right up on the website.

Michael Cowen:

Awesome. So it'll be on the episode page, so just get there, triallawyernation.com, find the Ed Ciarimboli episode and we will have them there in the show notes.

Ed Ciarimboli:

Michael, thank you so much for having me on. Really appreciate it.

Michael Cowen:

Oh, thank you. I really enjoyed seeing you, and I'm glad we're going to be able to spend some time together here in Atlanta.

Ed Ciarimboli:

Absolutely. Take care.

Michael Cowen:

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