

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, and credible.

Speaker 5:

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

Speaker 6:

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

Speaker 7:

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

Speaker 8:

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

Speaker 9:

Whatever you've got to do to make it real, you've got to do to make it real. But the person who needs convincing is you.

Voiceover:

Welcome to the award-winning podcast, Trial Lawyer Nation, your source to win bigger verdicts, get more cases and manage your law firm. And now here's your host, noteworthy author, sought-after speaker and renowned trial lawyer, Michael Cowen.

Michael Cowen:

Welcome to today's Trial Lawyer Nation. I have with me one of my colleagues, Robert Disque. Robert, how are you doing today?

Robert Disque:

I'm doing well Michael. Thanks for having me on.

Michael Cowen:

Thanks. Before we jump in, I just want to thank our sponsor, LawPods. LawPods, as you just met Rob from LawPods, they are so great. They do all the production, editing, quality control, advertising,

everything else for this podcast. They're great, they're easy to work with. So if you're thinking about doing your own podcast, I highly recommend LawPods. Robert, we've worked together for years, but our audience is just meeting you for the first time. Tell us a little bit about yourself.

Robert Disque:

Yeah, and thanks for having me on the podcast. Long time listener. Glad to finally be on it. I've been an attorney for 10 years now. I went to Baylor Law School with the intent on being a litigator and now I have the intent of being a trial attorney after having worked for you, I understand a bit of the difference between the two. So been an attorney for 10 years, been with you for five years now. I did five years on the defense side and now five years on the plaintiff side, significantly enjoying the plaintiff side more. I think we'll get into that in just a little bit of a second.

In terms of my personal life, if you want to know a little bit about me, I'm an avid gardener. That's kind of my main hobby. I think I learn a lot of law skills in the garden as a matter of fact, mostly patience and a willingness to accept mistakes. I also dabble in a little bit of mycology, mostly for the shady parts of the garden, and I'm married to a wonderful wife. I've been married for eight years now, about eight and a half, and just kind of working on that every day.

Michael Cowen:

You said something that caught my ear. You said you wanted to be a litigator, now you want to be a trial lawyer. What's the difference?

Robert Disque:

In law school, they taught us a lot about litigation and how to work up a case. That's what I felt. And Baylor's really good for that. They have their practice court program. They teach you the rules. I went out of law school kind of having the rules memorized and then you're ready at that point to work up cases, and I consider that to be a litigator. You're ready to work up a case, you're ready to get it settled.

A trial attorney on the other hand is what I'm learning to be here. And I didn't learn that until I switched sides and started working for you. And that's really more of what I consider to be the presentation. It's putting everything together, not only in a matter that will be admissible at trial, but in a way that might actually be interesting to the jury. It's going to catch their attention, it's going to motivate them. We're going to get the emotional responses we want. So in my mind that's being a trial attorney, is the step from that, from knowing the rules to knowing how to keep a jury's attention and inspire them to give the result that you want.

Michael Cowen:

Which is easier said than done.

Robert Disque:

Absolutely.

Michael Cowen:

But it's a constant journey. But I think the first thing is recognizing that there is a difference and it's things that get us so worked up in the pretrial process often mean nothing to a jury. And learning how to distill the case into those fundamental points that are going to really resonate with the jury and then having the courage to cut out the rest, I think is so important on becoming a trial lawyer.

Robert Disque:

Absolutely, and one thing I've learned from you too is you have to take yourself out of it because we are in the litigation aspect of it and the work up to trial, we're having all these fights, the other side's doing shady stuff and the jury's never going to know about all that stuff. So we really have to put that aside when we go into the courtroom and we can't let our own anger and frustration dictate the way we try the case. It's the jury's emotional response, not ours, that matters.

Michael Cowen:

Absolutely. And I think that humility is so important and just like I said, just being able to focus on the jury and not on ourselves. So why did you want to become, let's say, first a litigator, why did you want to do this kind of work?

Robert Disque:

That is a fair question. So back in college I had an idea that I wanted to be an attorney, and so I took a bunch of communication classes. I was afraid of public speaking at that point and I started getting more comfortable in front of folks. So I figured, well, if I go into law, I should probably do something that involves speaking in front of people. So then I chose Baylor Law School because they're known for that. I had a choice, I had two full ride scholarships to choose from, University of Iowa and Baylor Law School, and I ended up choosing Baylor because of their practice court program. It's funny, I knew a Baylor grad and he told me, no matter what you do, do not go to Baylor. It is unnecessarily hard. Yeah, he said unnecessarily hard. They put you through this program, you don't get any sleep.

They yell at you. They call it the boot camp of law schools. He said, it's just not necessary. And that convinced me to go there. I was like, well, if it's that bad, then they've got to be, there's a reason for it. They're preparing me for something. So I went there, absolutely loved it. And in the third year program, they assign you a case that you have to try against another classmate and I had a personal injury case and I was really drawn to that.

My sister is a tax lawyer at that point, she was pushing me down the tax lawyer route, encouraging me to litigate tax cases, but I realized the human factor really gets me going. It's a lot more exciting to me to be dealing with somebody who's injured and trying to get them back in a good place than it is to try and make sure corporations don't pay their taxes, which if you ask my sister, that's her job, to make sure corporations don't pay taxes. I kind of had this idea that I wanted to be in the courtroom and that's the route I kind of pursued until I wound up here and started learning a lot more about what that entails.

Michael Cowen:

But you didn't start off doing plaintiff's work. You started off on the defense side. What led to that?

Robert Disque:

Fear, mostly. I graduated from law school and just didn't have much self-confidence. Maybe that was part of the practice court program getting yelled at every day, but I just graduated kind of feeling like I was nothing, feeling like I was worthless and I would never make it. And I let that fear and I let that self-doubt kind of drive me to the defense side. It doesn't matter if you win cases on the defense side, you can really be a litigator and just collect a paycheck from the insurance company. And with all that self-doubt, I thought, you know what? I'm never going to be anything. I should just go collect a safe paycheck. And so that's what brought me to the defense side.

Michael Cowen:

So what kind of work did you do on the defense side?

Robert Disque:

Oh man. Too much too soon. So my first case I ever had was a trucking case, traumatic brain injury. Yeah, the 18 wheeler I was representing swerved into oncoming traffic. The driver chose to go left into oncoming traffic rather than going right into an empty field because he didn't want to hit the truck in front of him, driven by his brother. So that was a tough case and I ended up having to go to my boss and say, this is a little bit over my head right now. I'm fresh out of law school. This traumatic brain injury stuff is a little complex. So thankfully they assigned me a partner. They kind of took that one out of my hands a little bit and I got to learn on that one.

But I always do think it's interesting that my first case ever was a trucking traumatic brain injury case, which is something that we handle all the time nowadays. But it's just night and day difference between back then being fresh out of law school and then now having worked with some of the best in the field, having all these resources, legal sources provided by other members of the community, of the trucking community, and then also working with some of the best experts out there to really understand the brain injuries. It's just funny to me the difference in how they were handled.

Michael Cowen:

So, on the defense side, what kind of training would they provide you?

Robert Disque:

On the job training was mostly what it was. I really felt like as a defense attorney, my job was to rack up billable hours and they hammered it home. It doesn't matter if you win or lose on the defense side, just rack up as many billable hours as you can, especially after I went and said that I needed smaller cases. Back then I had a docket of car wreck cases, and so that's where I got most of my training. I was taking multiple depositions every week on car wreck cases for the first year of my career. That actually was really helpful. And then I was reading other resources as well like, *Winning at Deposition*. I think it's D. Shane Reed wrote that one. And reading other resources, kind of learning by myself at that point to try and make my practice better. But yeah, overall on the defense side, there was not a focus on training because again, it doesn't matter if you win or lose, you just got to show up.

Michael Cowen:

How about as far as, on the plaintiff's bar we have such a good community of sharing resources and ideas, any of that on the defense side?

Robert Disque:

Not nearly as much, and I have loved that with the plaintiff's side, how everyone's willing to share. There's the idea that a rising tide lifts all boats. On the defense side, you're really worried about that other medium-sized firm in San Antonio. Are they going to steal your insurance company client? And so there's not much sharing for that reason. Everyone kind of keeps things to themselves because they want to make sure that they've got all the progressive cases. They want to be the bad asses with the one angle that works. So yeah, really I did not experience much sharing on the defense side, nothing like I've experienced on the plaintiff's side.

Michael Cowen:

What is some of the things you learned by working on the defense side that has served you well as a plaintiff's lawyer?

Robert Disque:

So I've learned empathy for defendants. They're going through something stressful as well, and I think that's useful. Just having empathy is good, understanding that they're going through what may be one of the worst situations of their lives. I've been there on the day of fatality crashes with my arm around a trucker who killed somebody. They're balling into my shoulder. So I do see that there's a human aspect to it. Defendants are worthy of respect. You got to treat them well, and I think that's something that some plaintiff attorneys overlook, but if you treat everyone with respect, if you treat everyone like a human being, trying to understand what they're going through, I think you get better results. Even just understanding that the defendants, they have gone through one of the worst experiences of their lives, even just knowing that they desperately want it done. Most of those truckers don't want to be dragged into court.

Even just knowing that I think helps me understand where to put pressure, kind of helps me understand where to find the common ground with the defense attorney whose job is to watch out for his client, a lot of them get confused. You ask a defense attorney who's your client, and they'll say, oh, the insurance company and the trucker, it's the trucker. Let's get you refocused where your attention needs to be. Let's both focus on that trucker's best interest, which is you resolving this case, let's focus on my client's best interest, which is maximizing the value.

Michael Cowen:

What are some of the biggest mistakes you saw plaintiff's lawyers make when you were on the defense side?

Robert Disque:

So it's kind of cliché, but treating truck cases like car wreck cases. A lot of them kind of just went through the motions on the trucking cases. Ones where I tended to pay out more were cases where opposing counsel was kind of hounding me every week. And I know depending on the size of your docket, you may not be able to do that on all of your cases, but the big cases, you really got to hound the other side, be aggressively proactive, is the phrase they used at Baylor. Because God, there were cases where I would love the attorney on the other side, it'd be a great personal injury attorney and I would hate to get a phone call from him. I would hate to get an email from, I was like, oh God, what are they doing now? What's coming down the pipeline? So it was people not pushing cases that I saw the most that hurt their value.

Conversely though, also people pushing the wrong cases and there were times where I'm like, is this guy just an idiot or is he bluffing? He's got a case that's terrible, it's not worth anything, liabilities against him and he's sending me emails every week. He's trying to do something to me every week. So it's funny, I think really you got to evaluate your case and figure out which ones you need to push the hardest and which ones maybe you put on a settlement docket or just try and settle them out. That's something I love doing here is we've got the Tuesday case evaluation meetings and that helps me understand how I need to rank my cases, which ones do I need to be doing something every week on? And then which ones do I have the associate handle more work on? The associate can send them a letter every week, but I find that really helps is just going in front of all the other attorneys, presenting the case and having you all just tell me how much attention does this one deserve?

Michael Cowen:

I know we've talked about the Tuesday case valuations and we're actually doing this on a Tuesday, so we're doing one of those in an hour and a half after we get done with this podcast. But for the listeners that haven't heard, can you just tell us a little bit more about what those are at our firm?

Robert Disque:

Yeah, so the Tuesday case valuation is before we're allowed to send it demand or engage in negotiations, we have to present the case to every other attorney at the firm, I guess who's there at that Tuesday. I also like to use it just for kind of figuring out my cases, which are my best cases, which are my worst cases. So for me it's not necessarily just, what's a good settlement value on this one? Is this a case that I invest a bunch of time in or not? Or I even like to brainstorm ideas. Sometimes I have an angle, I might say, Hey, I think we've got this one defendant hanging out there. Is it worth going after this long shot? Are we going to get good return on our money? Kind of like it works really well with broker cases. Is this the type of case where we want to turn it into a broker case?

So getting back to the meat and potatoes of it. Every Tuesday we have this meeting and the attorneys submit a case and then you have to walk through the good, the bad and ugly. Those are essentially even categories on our little valuation form. And we do everything from an analysis of liability, an analysis of aggravated liability, throw in photos so everyone can see what it looks like, talk about our clients. The non-economic damages I think are a huge thing. I don't understand somebody's case until they've explained the non-economics to me. We produce this valuation form, we send it out on a Friday, everyone has the weekend to look over it, Tuesdays we meet, and then you just present all that to the group and get their input. A lot of times it's what's a good demand value for this one and then what's a good settlement value for it based on all the factors that I kind of laid it out.

But I've found it to be invaluable, not just for sending demands, but even just for looking at cases, running theories past folks, or sometimes just random questions. Sometimes they're in the middle of negotiations and the other side throws you a curveball, they throw you a weird number and you can go to the group and say, Hey, I've got this weird number. How am I going to respond to that? One that I really loved was, there was an attorney who really had gotten his ego wrapped up in the case and the other side kind of low-balled him and he just didn't want to negotiate anymore. And he took that to the group and you kind of told him, you got to take your ego out of it. This is a case that needs to be negotiated, it needs to be settled, make the next move. And you kind of told him where to move.

Michael Cowen:

Yeah, I've learned going to trial and losing or getting a really bad verdict does not help the ego at the end of the day. You get all mad, you want to prove a point, but as you said, you've got to work the right cases. We want to maximize the value of every case, which is for that particular case, what is the most that we can get for our client? You've got a good liability, a good injury, or God forbid a death, then you want to push that case real hard. You want to be sending them something every week.

But sometimes our cases have a lot of problems. They have an MRI the week before that looks just the same as the MRI two months afterwards. They've had the prior crash that they didn't tell you about, but then they either remember it at the depot or the defense brought up after their depot after they lied about it. That's a different case and that needs to be treated differently. So when we're saying I just don't want people to think we throw some cases away, it's just what will add value for this case? What won't?

Robert Disque:

Yeah, definitely. And I hope I haven't given that impression that we-

Michael Cowen:

I don't think you did. I just want to make sure that we're not, I've learned that I need to be super-duper clear because sometimes I accidentally send a message I don't intend to send.

Robert Disque:

No, that makes sense.

Michael Cowen:

Not just to the podcast, but even within the firm. I've learned, I've got to be super-duper clear about some cases are dogs and hopefully we don't take dogs, but sometimes they slip in, but you still want to be right by that client. You don't want to just sell it for pennies on the dollar, but you also can't sell a 1973 Chevette for a million dollars.

Robert Disque:

That's absolutely true, and that's something I learned on the defense side too, is on the cases that are dogs, not a whole lot is going to change in the weeks leading up to trial. I defended some dog cases and the plaintiff attorneys really think that the value's going to change right before trial, get to the courthouse steps and all of a sudden they'll pay out well on a dog case. No, that's not the way it works on those cases. The defense attorneys will be glad to go try those. They think they're going to get a win, so they're excited to try them. When I had those cases, I was excited to try them and the valuation doesn't really change leading up to trial.

You may throw a little bit more money at it, but what I was seeing, and especially now coming to this side and better understanding is any additional money we would've given them on those cases in the weeks leading up to trial, they spent on their experts and they spent on their trial preparation. So there are certain cases where you really got to look at them hard, figure out the strengths and weaknesses, and on a lot of those cases, you're not going to gain anything by pushing it to the courthouse steps. That's the one where you do the depots, you go to mediations, see what their number is. Maybe you take some expert depots to show the weaknesses, but pushing it to the courthouse steps on a dog case isn't going to do anything for you.

Michael Cowen:

Conversely, on our biggest cases, especially if you have excess insurance carriers involved, you often don't get the top dollar until you're trying the case.

Robert Disque:

Absolutely, absolutely. And we've had that experience a few times back when I was working on Mallory's docket, we had some cases settle very well a few days into the trial. But that's the thing, is you can't push all your cases to the courthouse steps. You got to choose the right ones. The dogs aren't going to increase in value and they're going to take away from the other ones where you actually can gain a lot of value.

Michael Cowen:

Now the one issue is we might want to settle a case, but they're not our cases. Our clients always make the decisions. What have been your strategies for when a client has a case that's better settled early than at the courthouse steps, of talking to a client to get them to accept the realistic value of their case?

Robert Disque:

I think the key is brutal honesty and telling them early and often. And what's funny is clients, my experience universally, has been that clients really respect that. They've maybe talked to other lawyers before they get to us. They've maybe talked to other lawyers before they get to the referral partners, but a lot of them have the idea that they've kind of been bull-shitted. Somebody else has told them that they have this great case or somebody else has kind of hyped them up on it. I actually like to go in and explain the strengths and the weaknesses. That is probably not my first meeting with the client, but one of my first three meetings with the client, I'm going to talk about strengths and weaknesses of the case and I'm going to lay out all the weaknesses and my plan for attacking, but I'm going to lay things out and say this is how they're going to go with it.

You had an MRI a week before the crash that shows the exact same things. You were reporting the exact same pain levels a week before the crash. This is how the defense is going to treat that fact. This is how I would treat it on the defense side. And you just kind of get them used to the idea that not every trucking case is a million dollar case, because of certain facts some of them are going to be valued differently, and the clients generally like that. I've had clients tell me that they trust me a lot more because I tell them the bad news.

Michael Cowen:

Absolutely. And I think that's so important is just to not be, so many lawyers they're so scared of the clients they don't want to tell them the bad news and then they expect some mediator to come in and do it all for them. And I just don't think that works very well. I think our clients respect us more if we tell them the truth. If they know that you have their back and you're not just because you're scared of trying the case, you're looking for a quick buck. Once you get past that with them, they usually are pretty appreciative of honesty.

Robert Disque:

And with my clients, I think I go into a lot more detail than other folks do, but even to the point of if I take their corporate rep depot and I don't think I've gotten gross negligence, I'm going to have a call with my client where I say, I don't think I've gotten gross negligence that opens them up to stipulating at trial and here's the results of them stipulating to liability at trial. So I'll go and I'll have those talks with them and get in the weeds when it comes to the strategy. And the clients may or may not follow all the strategy, but I think at the very least they like that I'm trying to explain it to them. And at the end of the conversation they understand, oh, there's a chance that at trial they're going to try and make this whole dog and pony show about the value of my medical bills, and we're probably not going to get gross negligence on the jury charge.

So I really think that helps folks understand the value of their case. That, and I always ask them too, one of my first conversations with them is what amount of money do you want in your pocket? What amount of money would make this worth it for you? And then as we go and as either positive or negative things happen in the case, I reevaluate that with them. And so by the time I get into mediation, I typically know exactly what my client wants in their pocket and I have a strategy of how I'm going to put that in their pocket.

Michael Cowen:

That's great. You have a lot more patience than I do. I probably am more of a, I've got your back, trust me, here's the big 30,000-foot view, but we're all different. And that's probably one of the reasons that I do big strategy stuff and let somebody else do the day-to-day at this point in my life.

Robert Disque:

And that's something that actually came from being an associate too. I recently took over my own docket, but those long conversations were a lot easier to have as an associate. You have a little bit more free time, but it's something that stuck with me because I noticed that it worked so well that it's something that I've carried over and I always want that client to know that we're on the same page, that I'm willing to explain everything to them. I feel like at the end of the day, I've had to have a couple hard conversations with clients where you say, this is not a stellar case, it has a lot of problems. I'm not going to be able to meet that amount of money that you wanted in your pocket. But when I've talked them through it, when they've been hearing from me for six months about the strengths and weaknesses of the case, I feel like at that point, if the case really does turn out to have some significant weaknesses, they know it. They understand it at that point, and they're willing to adjust their expectations.

Michael Cowen:

Yeah, I think it's really important not just that the client hear you, but the client knows that they've been heard by you.

Robert Disque:

Absolutely. I think that is incredibly important, feeling heard. And I know that from our perspective, there have been times where I've come to you at the firm and your response is, thank you for bringing that to my attention, let's set aside some time so I can hear you out. So just from my personal experience, I know that I love being heard. That often means more to me than getting the thing I wanted, is just having the opportunity to explain it.

Michael Cowen:

Yeah, I think we've had that specific discussion before. You tell me something, I tell you, no, but first of all, I listen to you and then I explain to you why the, no, and then it's okay. Whereas if I just told you, no, without listening to you and you'd think I was just an asshole that didn't care about you.

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.

Robert Disque:

I trust deep down that you see the big picture, that there's something that I don't see, but I always like having it explained to me because then we're on the same page. And I try to do the same thing with my clients, and I've found that they really appreciate it.

Michael Cowen:

Turning away from trial stuff. I've read a book called, Radical Candor, that's really changed my... Now, because of my basic personality, I don't like having hard conversations, so I have to really psych myself up for it. But I find that there is a lot of pain that's avoided by being upfront and honest and transparent early on, good, bad and ugly as opposed to putting it off and putting it off and delaying and pretending

like everything's okay and waiting until things just fester so bad you have to deal with them. And I think that's true in firms and that's also true with our clients. The sooner we tell them there's a problem with the case, the better.

Robert Disque:

Definitely. Definitely. I think I'm about three quarters of the way through that book right now. It's definitely worth a read. It's a good one.

Michael Cowen:

Oh, good.

Robert Disque:

And I also don't want to give the impression that I only have rough cases or dog cases. We got some really good ones on this docket too. Some cases that I'm really excited to work on, some cases where I might be able to change some lives. That's the big thing that gets me going is I feel like maybe once a year I get a case where I have a really deserving client, a great person, and I can change their life for the better. And for me, that's really what keeps me going. So I've got a couple of those on my docket, but of course, having taken over a docket that's been in the hands of several different attorneys recently, you get some of those cases that folks just kind of kicking the can down the road.

And so I tell the other attorneys at the firm that I'm blessed to have my docket. I have some really good cases, but I have some cases that other attorneys just kicked down the road and so that gives me an opportunity. On some of those cases, there's maybe not as much risk. I have a couple cases where I think it'd be amazing if I won at trial. There's very slim chance of me winning a trial, but it'd be amazing. Those are kind of no pressure cases. It's like, all right, if I want to try something new, if I want to try a different strategy, that's the case to do it on. So I do consider myself very blessed to have a few great cases and then a few cases where I can be a little bit more free to try things.

Michael Cowen:

And I want to talk about that transition. But before I talk about the transition from being an associate to having your own docket, I want to first of all talk about your transition from being on the defense side to being on the plaintiff side. So first of all, what motivated you? I know I put an ad out I guess five years ago or so, six years ago, whatever it was, it all blends. And I apologize, time just blends in for me. When you get old, it just starts going real quick. But what is it that motivated you to apply and to try to switch sides?

Robert Disque:

So it was actually a fatality deposition and I was the defense attorney. This young man appears to have been high on cocaine, and he crossed into oncoming traffic and hit a couple of different commercial motor vehicles. And I was representing one of those commercial motor vehicles. And so I had to do several depositions of grieving family members, but it was just this one mother and she really broke down. And at that point, I think I was struggling with empathy, but they really don't encourage empathy on the defense side. One of the firms I worked at, they told you not to call plaintiffs by their names. They're plaintiffs, they're not people, they're plaintiffs, they're people asking for money. And that wasn't really sitting with me. And then in this deposition, it's like the empathy floodgates burst open, and I left that depot thinking that I was on the wrong side of things.

I was like, I did her a disservice today. I really grilled this woman when I probably could have gone lighter. And I just walked out of there feeling like an absolute asshole, and I was actually ready to just quit law. I was like, I don't know what I'm going to do. I'll just move off to the forest and become a logger or something or go live in a cave in the woods. And so I was really struggling at that point and I agreed to speak to a recruiter on behalf of a friend, I don't think she was applying for this job. But I spoke to that recruiter and then while I was on the line with him, he said, Michael Cowen's looking for someone and I think you should really interview with him.

And at that point, I had actually sat in on a few depots that you had done. I wasn't assigned to the case, but I had kind of been a warm body and covered some depots on an oil field case of yours where you just knocked it all out of the park. Everything you did was just spectacular. You had the 3D models, you were walking people through where everything was, and so I already knew your name and I knew what you could do. And so when the recruiter said, you should talk to Michael Cowen, I jumped at the opportunity and then it's kind of where we are now.

Michael Cowen:

That's awesome. So you switch over, you come to us, initially you're an associate. What was the biggest difference, I guess, between working on the defense side and now switching to the plaintiff's side?

Robert Disque:

So I think the big difference is I can change people's lives every once in a while. On the defense I still got to help people. The truckers are still going through a bad experience. You can help them out through a tough time. But being on the plaintiff's side, it's the opportunity to change someone's life for the better. There was one case we had shortly after I started here where a young woman was hurt in a horrific crash. An eighteen-wheeler had parked partially on the side of the road, partially in a travel lane. She's riding in a passenger in a vehicle, the driver is texting while driving, and they just smash right into that thing. You and Mallory, it was one of Mallory's cases that you worked heavily as well, and y'all got a result that changed her life. I think they were living in basically a one-bedroom shack.

They got mattresses on the floor, multiple family members sharing a mattress. And after that case, that young woman was able to go and buy a house and family members had their own bedroom for the first time. That to me is the big difference is that we can change someone's life. I know you've changed the industry a little bit. You've gotten defective tires taken off the road. That's an opportunity that you don't have on the defense side, or at least I never encountered on the defense side. So that's the big thing to me. The other thing is the lack of billable hours. That's surprisingly important to me, because on the defense side, everything is tracked. Some companies now, a minute is not the smallest increment of time anymore for some of those companies.

So some of them have you billing, and it used to be like a 0.1, now some of them are billing like 0.05, 0.025. So they've really changed the way that they bill. And as a defense attorney, you start thinking in those terms. I'd have a conversation with my wife and I'd be like, well, that's a 0.2 down the drain. I could have been earning some money. And it really warps the way that you think about time and your social interactions because to me, time started to be money. And I just don't think that's the way it is at all on the plaintiff's side. On the plaintiff's side, it's intelligence and strategy equal money. On the defense it's just how many hours can we rack up on this case? And so that to me is a huge difference, just looking at time differently.

Michael Cowen:

Yeah. So you were blessed to work with Mallory, and I know initially you just got assignments. Eventually she would make you as primary on a number of cases with her kind of supervising it. And then this year we had an opening, someone left the firm and you had the opportunity to then jump in. Mallory hated losing you because you were so great on her team, but you had earned it and you took over someone else's ongoing docket. So first thing I want to ask you is what is the biggest change from, even though you had a number of your own cases working under Mallory to just not working under a partner, but having your own docket that's your responsibility?

Robert Disque:

The biggest change is having to see the big picture on all of the cases all of the time. As an associate, Mallory would send me tasks or she also gave me a lot of leeway where I could kind of look at the case and choose what tasks I was going to do. But really on a day-to-day basis, I was writing a Daubert motion, responding to a motion to compel or an MSJ or maybe taking a corporate rep Depot, something like that. But every day was I had one thing to knock out and I would just focus on it that day and knock it out. Now it's a lot more of looking at the big picture. Instead of doing the Daubert motion myself, I'm tasking someone with it. Instead of doing the response to motion to compel, I'm tasking someone with it. And so it's a lot more of a management or people staying on top of the ball or they're doing what they're supposed to be doing when they're supposed to be doing it.

And then also kind of doing some of those day-to-day activities. I still take a lot of corporate rep depots. I've been taking a lot of them recently. There's some days where I'm doing depots every day of the week, and that's kind of a good week. Some days I'm doing depots on multiple cases every day of the week, throw in a couple mediations. So it is having to look at the big picture, having to spend more time analyzing the cases. And this is actually really enjoyable though. This is something I love. It's looking at the cases, kind of doing the issue spotting, figuring out what needs to be done, who's the right person to do it, what timeline does it need to be done in.

So that's really been enjoyable and especially on the bigger cases. You sat me down like a month ago, and then on your bigger cases figure out what you're going to be doing every week. You need to have an idea for how you're going to push them forward every week. So that has been a big difference there. On a Monday morning, first thing, instead of starting a Daubert motion, I'm looking at my cases and figuring out, all right, what's the game plan for this week? What's the plan of attack for each of these big cases?

Michael Cowen:

That's great. Yeah, that's so important. It's so easy to get lost in the whirlwind of all the little things that have to get done in all the cases that you don't work up your big ones. And like you said, when you have that right case, when you have a client that's going to present well to a jury with real damages and real liability and enough insurance coverage to pay real money, those are the ones where you want to be doing something every week. But if you just let the defense and your clients and the courts kind of set your schedule instead of being proactive, you'll never get around to doing all the big things you need to do on those big cases.

So just being, I love that you're doing that, you're being proactive and saying, these are my rocks for the week. These are the things that on my biggest cases I'm going to get done this week, I'm still going to have to get other stuff done, but I'm going to fit the other stuff in between instead of trying to fit the big stuff in between all the little crises that inevitably come up as a lawyer.

Robert Disque:

Yeah, and I think your viewers have heard this before, but what did you mean by focusing on the rocks or talking about the rocks first?

Michael Cowen:

Oh, yeah. Well, I got this, I'm sure it's been around from that, there's a book I read called, Traction, which is talking about something called the Entrepreneur Operating System, but it's a concept of how do you get the big things done. And so let's say you have a big glass jar and you want to fit, you've got a pile of rocks, you have some big rocks, you have some pebbles, you have some sand, you have some water.

Well, let's say you put the sand in first and then the water, and then you add some pebbles. So you don't have any room for your big rocks. You've already filled up your jar. But if you put the big rocks in first and then you put the pebbles, the pebbles will fill into the space around the big rocks. Then you put the sand, the sand will fill in the space around the pebbles, and then you pour in the water.

The water will fill in the space around the grains of sand. And the analogy is that the rocks are the big things that are going to move the ball forward on your biggest cases. The water is all the little bitty things, the emails you're getting, the phone calls you're getting that you didn't want, all those little things that were constantly coming up and demanding your attention. If you have notifications turned on your Outlook, I don't have them turned on, but if you have them turned on, those are the little things that are just constantly trying to get your attention. And so if you don't make a conscious effort to make room for your rocks in your jar, you only have so much time in a week or in a day, you will not have any room for your rocks. Your big stuff will never get done because the little stuff will just take up your whole day and all of a sudden it's like six, seven o'clock and you still haven't gotten to one or two of the big things on your to-do list.

Robert Disque:

I appreciate that explanation, and I appreciate you telling me that multiple times as well. You've mentioned it in basically every meeting we've had, focus on the rocks, focus on the big things, and that's been good. I've needed that guidance.

Michael Cowen:

Well, that's how you're going to make your money.

Robert Disque:

Definitely. Also, I think a lot of attorneys are perfectionists. We're definitely Type-A people, and it's so easy to want to be a perfectionist on every case. The little fender bender with the exact same MRI and complaints, you want to knock that one out of the park just like you want to knock your TBI with the drunk driver out of the park. And so it has been helpful kind of getting the reminders from you that I need to focus on the most significant things and focus on not only the most significant cases, but the work that is going to push those forward in a meaningful way.

Michael Cowen:

Absolutely. Another, I think change from working on a team under someone else and having your own team is that you're leading a team now. You've got a paralegal, you have someone getting you medical records, you've got an associate attorney. What's that like, transitioning from being, I guess a second in command on a bigger team to being the person in charge?

Robert Disque:

It's been a big difference because now I'm the one that everyone comes to with the questions. I used to be the first line for Mallory. So on Mallory's doc, it's kind of like the paralegals would come to me first with questions, and then if I couldn't answer it, I'd go to Mallory. At least at the moment, my team's working where every question is coming to me. I think we're going to make some changes to that in 2024. Christine actually sent me a message the other day saying, this is absurd. Just the amount of questions.

Michael Cowen:

Christine, your associate?

Robert Disque:

Yeah, Christine my associate, she was like, this is absurd the amount of questions that you have to answer on a day-to-day basis, so we're actually going to work on her kind of being the first line. That's a big thing, is just being the person who's determining the strategy and then dictating what happens when and who does what but then also still being the only person who can answer most of those questions.

Michael Cowen:

It sounds like we have some opportunities for better training, so people might need to learn if there are questions that keep coming up over and over again that we might need to do a better job at the firm and training our non-lawyer employees too, it sounds like.

Robert Disque:

Yeah. Yeah. It's a really fine line too, because a lot of the questions, I look at them and I'm like, oh, man. To me, it's kind of an easy answer. Frankly, I love those easy answer questions versus me having to go dig for 20 minutes to come up with an answer. And it is at times frustrating getting those, but I'm also glad that they're reaching out if they have any doubts. So for me, it's a really fine line. I don't want to stifle people, but I do want them to be able to work a little bit more independently than what I'm seeing right now.

Michael Cowen:

Absolutely. How do you organize? You've got to have time to do your legal work, take depositions, review documents, draft motions, but you also have to be keeping your team accountable. You need to let them know what you want done, how you want it done, and then check up to see whether they're doing or not. How do you structure your week to do all that?

Robert Disque:

And for me, it's a lot more about structuring the day first. And so I guess I will start with week. So we do a weekly meeting where we look at the calendar, we look at what's coming up and get the big picture that way of what do I have to do each day? And then I figure out what needs to be done in preparation for that. But on a day-to-day basis, I do that as well. So when we do our weekly meeting, I kind of know what mediations, depositions, hearings I have coming up that week. But then when I get here in the morning, one of the first things I do is look at what new messages have come in since I was last here, is there anything on fire I need to deal with? And then I plan my day after that in terms of what are the big things I need to do today to accomplish my goals?

And then throughout the day, I check in on the team as well. I very rarely take a full lunch break, typically eat some yogurt at my desk. So part of lunch is, are people on top of the tasks that I've assigned them so far? Is everyone doing what I've told them to do today? Are we line to meet our mark for the day? And then in my afternoon I'm doing something, I'm pushing the ball forward somehow. And then the evening I go back and recheck, have people accomplished what I told them to today? Are we online for tomorrow? So it is really three kind of check-ins with me, before the day starts, at lunch, and then at the end of the day. And I think at the end of the day check-in is really important, and I encourage Christine to do a check-in at the end of the day, what new tasks have you gotten?

How do you prioritize them? And is there anything that's coming that's on fire? If something comes in on fire at five p.m., you can't just leave that for the other day. You can't leave that for tomorrow. So I think it's vitally important to go through at the end of the day and see what's come in and see if there's anything that's going to make me stay later or come in earlier. And thankfully we've got Filevine. I really enjoy Filevine. I like the way that the messages come in. I like the way that you can assign tasks and put deadlines on them, and then run a deadline report to make sure people are staying on top of everything. So a lot of that's done with Filevine. A lot of it's running multiple deadline reports every day just to make sure everyone's staying on top of things.

Michael Cowen:

Yeah, that's so important. And not only have a case management system, but then to actually use it to make sure that we're all getting the things done. And I think that gives you the confidence to work on your rocks, to work on your big stuff because if you can see that the other stuff is getting done that you're not always panicking, well, do I have a deadline today? Do I have limitations coming up? Do I have a discovery deadline popping up? You're getting warnings, you're seeing it in advance. You're planning it out weeks at a time, like, okay, I have these deadlines coming up.

So that's why as much as I hate being like an insurance company and requiring reports, that's why I require a 90 day before expert deadline report, disclosure deadline report, and a 90 day before trial report just to make sure that people are thinking of these things in advance so you're not having things sneak up on you. Then you can plan it out and you can really put aside this time to work on the big things and to really add value to your cases. And really that's where the fun and creativity and growth as a lawyer is when you get to really dive in deep on things and work on it.

Robert Disque:

Oh, absolutely. One of the most enjoyable things is taking three uninterrupted hours. That was a big thing you taught us. Just take three uninterrupted hours and do a deep dive on your case and finding a different angle or finding a gem just really, really kind of boosts me with that. It's nice being able to set that time aside, but it's nice getting something out of it. I always compare our profession to either gambling or professional sports because I think there are times when you're really up, you're flying high, and then there are times where you're down.

Just the momentum has shifted and things are not going well. And I really think that when you feel one of those momentum shifts on one of your cases, it's great to do three uninterrupted hours to figure out how you're going to shift that momentum back. And there's just a big psychological thing with that to me too. If I feel like momentum is against me, I'm not feeling good, so I got to go and do a deep dive and find some angle that I haven't already found so I can shift that momentum back and get myself back in the game.

Michael Cowen:

I'm going to end by one thing that's totally foreign to me, and that is you like gardening. That's not something that is... We're all different. We all have different things that bring us joy in life. What is it you love about gardening and then how does that carry over to make you a better trial lawyer?

Robert Disque:

Yeah, I really appreciate that question. Thanks for bringing it up. Gardening is one of my hobbies and my passions. I think the most important thing with gardening is it teaches patience. You literally have to wait for this thing to grow, but it's also taught me the importance of focusing on the process and not the results. And I think as a young attorney, that's vitally important. In the garden a lot of it is about trying different techniques, watching something grow. But quite frankly, I grow a lot of produce for the neighborhood animals. I back up to about a 10 acre green belt. We've got possums, raccoons, families of birds, and so God, I've grown blueberries and blackberries for years now. I've got several bushes and I'll get a couple of berries off of them every year.

And so I could start putting out netting and really preserve my harvests. But part of me doesn't want to do that. I actually enjoy kind of feeding the nature, drawing all these animals into my yard. And so for me, it's not what is the size of my harvest going to be, it's really enjoying the moment. And I guess gardening for me is an opportunity to be out there, to be in nature and really to be in the moment. I'm kind of centered when I'm in my garden. That's one of the few times where I'm not thinking about work, I'm not thinking about what's going on in my relationship. I'm just out there. It's funny, in that moment thinking about watering, have I added enough water to this plant at this moment? And so I've learned that that is vitally important. And then also not always caring about the results. It really is the act of being out there, the act of being in the sun, in nature in the moment that is so much more important to me than are the birds going to save me some blueberries this year?

Michael Cowen:

And I think that does really carry over to trial work then, because it's not that we don't care about the results because we do. We care very deeply. We really want to win. We really care about our clients. But you don't have any control ultimately, you don't control the result a hundred percent. Now if you half-ass it and you don't get prepared or you make bad arguments or you don't know your rules and you go into trial, yeah, you're going to get your butt kicked. But even if you do everything perfect, one, we don't get to make up the facts.

What happened has a lot to do with whether we win or lose, and then who the jury is and just kind of the interactions that happened during trial between you and the witnesses and the other side and the other side and the witnesses. It is a living, breathing organism when you're trying a case and you don't have any control over that. You can do things that maximize your chances of winning. So if you just focus on enjoying what you're doing, doing the best job with what's in front of you, and then letting the verdict take care of itself, it really does lead to better verdicts and a more joyful trial experience.

Robert Disque:

Oh, absolutely. Absolutely. The joy is in the doing of the thing, not in the result.

Michael Cowen:

Although It is fun to win.

Robert Disque:

Oh, absolutely. It feels a lot better to win.

Michael Cowen:

Well, Robert, thank you so much for coming on. I've loved practicing with you. I look forward to many, many more years and hope everyone's gotten something out of this and look forward to having you all join us on our next episode of Trial Lawyer Nation.

Robert Disque:

Thanks for having me, Michael. I've enjoyed it.

Michael Cowen:

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

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