

Michael Cowen:

This is Michael Cowen and welcome to Trial Lawyer Nation.

Speaker 2:

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

Speaker 3:

When you figure out your theory never deviate.

Speaker 4:

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

Speaker 5:

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

Speaker 6:

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

Speaker 8:

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

Speaker 9:

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

Speaker 7:

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.

Speaker 10:

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'm joined today by my good friend and now partner, Alex Begum. Alex, how are you doing today?

Alexander Begum:

I'm doing good, Mike. Thanks. Good to see you today.

Michael Cowen:

Good to see you. And you got a \$2.17 million judgment on a really challenging case and as soon as I heard about it 'cause you and I had been talking about it as you were getting ready for trial and even on

the weekend, we had lunch while you were trying the case. And I thought it was a case given the challenges that you overcame, that would be an interesting one to talk about. So, thank you for coming on.

Alexander Begum:

Yeah. Absolutely.

Michael Cowen:

Before we jump in, I want to thank LawPods. LawPods sponsors this podcast. They make it really easy because all you and I have to do is talk. Rob Ingalls from LawPods does all the rest of the production, cuts up editing, cuts up our promotion ads for social media. So, if you ever think about doing your own podcast, I really do recommend LawPods. So, Alex, you've been on the podcast before, but it's been a few years, so give me a little background for those who don't remember you from years ago.

Alexander Begum:

Yeah. So, I was born and raised in the same town that you were born and raised in Brownsville, Texas, tip of Texas. Spent my childhood years there, started my first office there and started at first practicing, this is now about 20 years ago, just kind of general practice. We took divorces, we took contracts. I had a couple of partners back then. One of them did criminal law after a couple of years. I was hired by some insurance company guys that did the cross-border insurance program back when NAFTA first came around. And I got a lot of experience dealing with the personal injury side and personal injury defense side. Doing that work for about three years. During that time period, I kind of slowly started developing a niche and a focus for PI and then really it was about year four or five where I personally was doing 100% nothing but personal injury law.

Michael Cowen:

What was it about personal injury law that drew you to it, that it made you choose to stop doing everything else?

Alexander Begum:

For one, I liked it. That's the biggest thing. I had tried my hand at and backing up here just a second. When I went to law school, I didn't know any lawyers. My dad was not a lawyer, no one in my family was a lawyer. In fact, neither of my parents have college degrees. And so, I really thought when I was at Trinity University, my major was in finance and I was so unsure about what I was going to do that when I went to law school, I actually one of the requirements that I had was that I do a JD-MBA. So, I did my master's in finance thinking that it was going to use the law degree as kind of a booster to the finance side. It turned out to be the other way around. The finance came in handy when I was doing the law practice, but it's not like something that I knew that I was going to do.

And so, when I started practicing, I was lucky in this respect and that is that I partnered up with two other aggressive young guys and we didn't know better. We really dealt with a lot of different types of legal issues and in the first couple of years of doing that, I got exposed to lots of areas of law and through that process of elimination and exposure to everything, I think that was a huge advantage for someone like me that didn't know necessarily that they wanted to do law. I really just got attracted to that type of law. Obviously, on the financial side that was also happened to be a most profitable area, but that's truly not why I chose it. It really is just something that I always considered to be challenging and fun.

Michael Cowen:

It is fun. And you are fairly unique, maybe two or three other people in the country like you, but you actually run multiple law firms. Well and there they're bigger firms for PI firms. And at the same time, you have developed yourself as a trial lawyer and can try a case. And there aren't many people that are running big advertising direct to consumer or handling some real volume with a number of... I mean you have enough employees to handle it well, you're not just a mill, but to have that kind of volume and that many employees but to still try cases and win and do it well, how do you manage to do both?

Alexander Begum:

Obviously, it's taken a lot of time and effort to try and get that balance correct and I don't think I have it perfect even now. I realized a few years ago as we were growing that I needed to do something right and I kind of followed in your tracks. We've been talking about, not to plug anybody, but we've been talking about Chris and maybe help from a management perspective bringing in professional managers, non-lawyer, professional managers to help with some of the running of the operations and talking with you and signing up for Chris. And also, just reading other really inspirational books like Fireproof and some of these other lawyers that really turned the business of law into something that you really don't differentiate between any other type of industry or business. I started that journey about two, three years ago at least trying to land in that area.

We already had supervisors and we had management systems, but they really weren't professional managers. There were people that had been with the firm, whether they were paralegals or lawyers that had put in those kinds of positions. And so, I realized a few years ago that I really needed more help in the administration of that law firm. And that journey still continues. I mean, we're still nowhere near where we want to be, but I think that for many years trying to do it all took a huge toll on the time that I was able to spend with my family, with my kids, and if I had to do it over again, I would've implemented these kinds of systems and these kinds of management ideas years ago because I think we would've also been in a whole different stratosphere by now. How do we have those professional managers years ago?

Michael Cowen:

Yeah. It's interesting when we met, I think it's been 20 plus years that we've known each other and worked with each other. I felt like I was probably a lot further ahead on the trial lawyer part. And frankly, you are already, even though you're younger than me, you are a lot further ahead on the business part. You started running a good business way before I even thought to try to run a good business. And then over the years I've watched you develop where you've become a damn good trial lawyer and I've become less incompetent at running a business.

Alexander Begum:

The world has a way of balancing things out.

Michael Cowen:

It really does. But as your friend, it's been a real joy to watch your development. I want to talk about some of the trial stuff and then I want to swing back to the business stuff, then I want to go the case. So, on the trial stuff, what have you done over the years to develop yourself as a trial lawyer?

Alexander Begum:

So, if I had to say the most important thing is not being afraid to go and try a case, not being afraid to go and lose a case, you learn more from your losses than you do from your wins.

Michael Cowen:

Tired of learning.

Alexander Begum:

That's right. I think I'll never be able to put this into words. Only trial lawyers know what I'm talking about are people that have been in trial multiple times. But after you've been in trial enough times, the way that you prepare for a case, the words you choose in your pleadings, the motions that you file, the way that you take depositions, why it is important to object during trial depositions in a proper way. Why do you take a trial depo versus a discovery depo? Why you designate certain types of witnesses during discovery? And I can go on and on and on, but you just don't get it. It doesn't matter how many times you sit down and try and tell someone, this is our process, this is why I think you should do it, or this is why we want it done this way. You'll never get it until you're in there and you start seeing it come together in that beautiful thing that we call a trial.

Michael Cowen:

Absolutely.

Alexander Begum:

So that's one is just getting in there and trying as many cases as you can, which I did when I was really young. I had some great mentors, and I had an opportunity. There was a lawyer that had been around for a very long time in the valley, and he was kind of winding down his practice. He gave me a ton of files, like two, 300 files that he had in his office and said, "Hey, all of these either need to be litigated or filed and take whatever you want." And that gave me a ton of work and a ton of experience really early on. And then I had the opportunity to go to the Jerry Spence trial lawyers' college.

And then even today, if you look at my desk, I probably have three or four books on my desk at any one time that I'm reading about how to improve trial skills. I literally have Lisa Blue's book right here in front of me. You saw it was traveling with me before this trial. I was just rereading it again, just knowing that that learning never stops and the day that you stop learning or trying to improve yourself is the day you're going to start losing in trial.

Michael Cowen:

Absolutely. I think you're absolutely right. We read the books, you need to go to the classes, but nothing substitutes just getting in there and doing it and you're going to get your nose bloodied and then you're going to clean yourself up and go back in again. And that's the only way to master it.

Alexander Begum:

Yeah. And I can't tell you how many folks say, "Well, what's the one book that I need to be a good trial lawyer?" And the thing is that at least what feels good to me or what's worked for me is I take nuggets from everybody. I've tried to be someone else in trial and it's never worked out.

Michael Cowen:

Absolutely.

Alexander Begum:

I will never be Jerry Spence. I just won't. No matter how hard I try. Okay. I don't have the personality of a Mark Lanier. I wish I did. I wish I had that preacher. I wish I could quote gospel. That's just not my personality. And so, you get these beautiful nuggets from what other people do. You make them unique to you and you use them offensively in the best way that you know how to use them. But it has to be natural to you because if you're trying to do something that's unnatural, the jury's going to look at it like it's theatrical or it's uncomfortable because if it's uncomfortable for you, it's magnifying that 10 times to your audience.

Michael Cowen:

Absolutely. Well, I want to kind of turn to the business side. So, for a lot of our listeners are running their own firms, we all have room to improve on the business side, but people, I just came back from a conference in Charlotte and a lot of people were coming up and telling me their favorite parts of the podcast are... The trial stuff's neat, but learning how to run a business better in a firm better really interests them. So, what are some things you'd advise people if they want to start the process of going from a law firm that's kind of the traditional kind of run as a law firm, don't think a lot about business to creating a sustainable business?

Alexander Begum:

Yeah. That's a mouthful for one, if you do not understand financials and you don't have the ability to go out and hire someone that does in your office, that's key. Fortunately, for me, I've always understood the financials and I've been driven by financials. And so, for me, business plan, projections, budgeting, establishing financial patterns, for me from the very beginning was critical. I will tell you that most lawyers that I know do not have those financial skills. You need to either get familiar with those financial, get some type of basic financial acumen so that you can understand financial patterns. You understand how to use debt effectively. You understand how to budget. Because there is predictability in our industry, in our business, if you know what to look for. And that is really, really important for running a business. It's just understanding the financials, how to tax maximize both on a personal level and on the law firm level and doing everything you can to tax maximize.

Then with that basic understanding, then you can do some other creative things. You can market better, whether you want to do the consumer marketing or lawyer marketing, which is more kind of your formula at your office. They both have their challenges and you're competing with very, very sophisticated, well-funded people in our world today, not just in your own city but in your own state. And in some cases, nationally, like in your case, you're competing nationally with some of the greatest lawyers that do auto trucking litigation in the country. And so, you have to have an understanding of what it's going to take to break through to make that connection with either the consumer or with your base. And obviously, there's a lot of strategy. There's a lot of different routes you can take, and that's a whole art form as you know in itself. Now, there are some basic principles that I think everybody should follow to that end.

Michael Cowen:

Like what?

Alexander Begum:

Well, if you're doing consumer marketing as an example, one of the most important things that every study will tell you is that top mind awareness is probably the most important attribute when you're

talking about promoting a consumer brand. It doesn't matter whether it's a law firm or a soda. People think that when you walk into a grocery store that you make the decision to buy a certain type of toothpaste or soda that day, you're kidding yourself if you don't think that that decision has been made for you years and years and years and years ago. So when you walk into the supermarket and you chose Colgate over Crest, whatever the brand preference is. You've been branded whether consciously or subconsciously for years and years and years. And marketing to consumers is no different for a law firm. And that familiarity, whether it's on a conscious or subconscious level, is always going to win out when you look at all the studies.

So what is important, and again, I'm doing now just consumer type marketing, what is important is top mind awareness. Well, how do you create top mind awareness? Well, recallability is very important. And that's why you see individuals like the hammer or the strong arm or these monikers or in our case the law giant. These monikers, if you market them correctly with a positive message, the recall ability becomes very, very important. So what I tell my digital team as an example is since phone books are kind of out of use now. When someone searches on Google, to me it's no different than opening up page 85 where the attorney section starts on a phone book. A person is going to go through that phone book, i.e., Google the look at the top. I think the statistics are that the top six or seven of the first people, the first law firms that show up on a search get something like 95% of the business.

It's horrific if you think about it. And it's scary if you think about it when you understand how difficult it is to land on those pages and the first six, seven spots, but that's not enough. It's not enough to be on the shelf. Going back to the supermarket example, because if someone walks in to a grocery store and they see a Colgate and they see a brand that they've never heard of, consciously, subconsciously, they're just never going to choose that brand unless it's different. Now there's exceptions in the consumer market, which is price exceptions, but in our industry where we're not charging a price per se, that distinction falls away. And so, people are looking for familiarity, they're looking for brand awareness, and they're going to make a decision on the law firms they see based on that, on recall, familiarity, and positive association. So, if they see six, seven law firms and they recognize two or three of them, those are going to be their final choices.

Michael Cowen:

I was just saying one interesting thing I've noticed, I've seen a few law firms try to compete on price, like advertising a lower percentage fee, and I've never seen them last.

Alexander Begum:

Yeah.

Michael Cowen:

I almost think the consumer thinks that you don't want the cheap lawyer in your personal injury case. You want the best lawyer personal injury case.

Alexander Begum:

Because people are not price sensitive in our industry because they don't have to come with a checkbook, then they want the best. And in most consumers' minds, the best means it's more expensive, right? And so, there is room for those. Not to say that there isn't a small percentage of consumers that you will convince with a small price or with a better price, but all the studies that I've seen show that price is not the driving consideration, at least in the PI segment because we've looked at all those

options. We say, "Well, what if we just advertise 29% on a Pevely?" You can play all kinds of games, right? If you file it or it goes to trial, those rates can go up.

But the fact is that every study that we've seen where they've tried that, you just don't get that much upside for it. And in fact, because of the lower fee, you may actually not have the same amount of revenue or the same amount of profitability that you would've had. You just used that money and advertised with a regular fee and came up with a different message.

Michael Cowen:

I want to go on now to the trial said we're going to talk about all this other stuff is really interesting to me too. I've learned so much from you. Let's get a little background. Tell us a little bit about the case.

Alexander Begum:

Yeah. So, by the time we went to trial, the name of the case was the Michelle Gibbons case. That was the name of my client, is the name of my client. It was about four years from the date of the crash. The crash itself is pretty simple. It was a commercial vehicle, it was a pickup truck, it was a Dodge 350, and it was owned by a construction company. One of the workers it's a small medium-sized construction company, I think 50 total employees or something like that. And it was a three-vehicle crash.

So, the defendant, the primary defendant, the driver of the pickup truck crashes into a Mercedes SUV, and then that Mercedes SUV crashes into my client's Honda. It was like a 20-year-old vehicle, and there was a lot of pictures taken at the scene. The police showed up, they actually didn't even take an actual crash report, they just did kind of an incident report and at the scene you could not see any damage to my client's vehicle. Zero.

Michael Cowen:

Ouch.

Alexander Begum:

Yeah. Not even a tiny little scratch. And the front of the middle vehicle had almost zero damage. Now the damage done from the first impact to the middle car was significant. I mean, that was a significant crash.

Michael Cowen:

An easier case if you had that client.

Alexander Begum:

It would've been a much easier case. And then the other difficult parts about the case are that she went to the hospital two days later, so she didn't go the day of. She didn't report any pain the day of. Then there was an allegation of a ghost driver on that day that allegedly cut off the defendant driver causing him to make an evasive maneuver that then caused him to crash into the car in the middle. And he actually gave that version to the people involved in the crash and then to the police officer, although in varying he had different versions.

As the case progressed, he changed it up a little bit, but the difficult part is that there was no injury, at least from Ms. Gibbons at the scene. She didn't go to the hospital. So, she goes to the hospital two days later and then she doesn't go back to treatment for four months, almost four months. It was like 130 days, zero treatment, no doctor, no nothing, and then goes to see a family doctor and then starts the

therapy and the pain management and the injections. And so, those were some significant issues that we had to overcome.

Michael Cowen:

So, yeah. That's it.

Alexander Begum:

Well, and I really truly believe that she was injured in this crash, and she goes and gets about 220,000 plus of medical care, mostly pain management with one or two particular providers, Tricity here in San Antonio, and then consultants in pain medicine afterwards. And of course, in Texas, they get to hire now coder billers and they get to say that the medical expenses were too high, and the jury gets to hear some of that testimony. And so, those were some pretty significant issues that we were dealing with.

Speaker 10:

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

Michael Cowen:

I want to take these one by one. So, let's start with, I saw the photos. I couldn't tell the vehicle had been a wreck between you and me when you showed me the photos. How did you overcome... How could someone get this hurt where the car looks fine, they look fine right afterwards, yet four years later, they're in intense pain?

Alexander Begum:

Yeah. I think it was a book that you may have recommended that I read years ago. It was Gary Johnson winning the impossible case. I think it was the name of his book. But he talks about a technique in there called Judo Law. And this is an exercise that I do. Me and my team do it on every trial. And when I'm giving associates advice on what they should start with, I always tell them, start with this. Put your worst points of the case on a board, and I don't care how long it takes you. I don't care if it takes you a day or 10 days, but you better find a way to frame that weakness into your strength. And if you cannot do that effectively, then you need to find another person to try that lawsuit or you need to settle that lawsuit.

And that's what we did. And when I saw the, "Gap in treatment." I talked to the client. I read her deposition and I said, " You know this is a very stoic woman." And she's someone that was a mom of three children, single mom, African American, low wage earner, worked harder her whole life, busted her butt her whole life. The last thing she wanted was to go and build a case. The last thing she wanted was medical treatment and bills and expenses. She thought that she was going to be able to tough out these injuries like she had done with many things in her life before.

And so, from voir dire through opening through testimony with her, we turned that one issue into our biggest strength in the case. And for example, in voir dire, I said, "By a show of hands here, how many people have toughed out an injury? They thought, 'Man, I'm hurt. I should go to the doctor, but I don't want to incur that bill. I don't want to incur that expense.' By a show of hands, how many people here over 30 days? Over 60? Over 90?" Half the jury panel had their hand up over 90 days.

Michael Cowen:

Wow. So, you normalized it?

Alexander Begum:

I normalized it. And then in my opening, I framed it, we get to go first. And I made that one of our biggest strengths, and then I made it part of the story of our client is how stoic, how strong and how determined she was to get through this without any type of medical intervention.

Michael Cowen:

But how about the property damage part? How did you handle that?

Alexander Begum:

Here I got to give props out to Colonel John Smith. I think that it is a mistake for anyone that handles a low property damage case to not use visuals, crash test visuals, because individuals simply cannot, cannot in 100 years visualize how the body moves inside a vehicle in a rear end or side impact collision unless you watch a dummy or live person. Colonel Smith has a-

Michael Cowen:

He's a biomechanics expert.

Alexander Begum:

Yes. He's a biomechanical expert. We've been using him for many years. He has a set of videos where he himself has gone out and done crash testing at five miles an hour, seven and a half miles an hour, I think maybe up to eight and a half miles an hour. And then you really can't go more than that because the threshold of injury to the human occupant is just too great. But even at the seven and a half mile per hour impact, he was using this really strong middle-aged muscular guy all hooked up to all the sensors and even getting hit at seven and a half miles an hour, you see how that body moves in that car for a young, healthy, muscular individual. We were able to take off the bumper and we did see some under bumper damage to the actual bar, the under-frame bar metal bar when we popped off that bumper. So there was some damage there. The defense expert put the impact at a Delta-8 so eight miles per hour. Colonel Smith had it at 15 in light as a minimum and likely 20 as a Delta-V.

Michael Cowen:

Wow.

Alexander Begum:

And so, those were the differences in opinion, but I was able to show the jury a crash dummy test and man versus machine, they have these really good series of a crash test at 10 and at 12 and a 15 using crash dummies. And those crash dummies just fly out of the car. And when you see the damage to the vehicles using those crash tests, zero in the back. And so, if you show them those videos, it doesn't matter what the defense lawyer says at that time because the defense expert's just talking calculation and math. They're saying, well, based on studies that I've seen, usually people, the population at these speeds usually don't report any type of injury.

Well, what they do is pretty sneaky. This is getting granular, but they go, and they get a NAS study or a NISA study. And what they do is they go and get these pictures that seem like there's a lot more damage to those vehicles. And then they see, well, what do those people in those crashes report? But the problem is that NISA and NAS only go for the day of injury, and they go and get the hospital records for the day of injury and then they say, aha, they didn't report cervical or lumbar pain. Therefore, no one could ever have a lumbar or cervical injury in these kinds of crashes. And it's really deceptive and nasty and it's unfortunate that our court system even allows that kind of testimony to come in, but they do. And so, the inverse to doing that to them is to go out and get a bunch of NAS photos and NISA photos that show no damage to the vehicle and then show the jury that in some of those instances, people died or had massive fractures or loss of limb.

And you can find them and say, "Well, if you're going to accept that junk science, let's also look at these." But we are telling you don't even do that. Just look at the videos at the actual speeds of the collision that this car was involved in, right? And that won the day because one of the questions I asked and put to the jury at closing is, "Why wouldn't this expert show you a video of an impact speed at eight miles per hour as he was alleging this crash occurred at? Why?" The reason is because it's going to show that someone can get injured and that's why he didn't show it to you. And that was a game over. I mean, at that point. So, if you get anything else out of this video is if you're going to try a low impact case, you better have those videos that show, and you better have an expert that can prove up those videos and show the jury that they can visualize how that body and how that dummy moves inside the car.

Michael Cowen:

But that means you got to spend some money on a case that has big gap in the medical treatment, low property damage. How much did you spend on this case?

Alexander Begum:

We're into it for about right under \$200,000.

Michael Cowen:

Wow. Those are some, I just say guts. I might normally use a different body part if we weren't.

Alexander Begum:

So, Mike, you've known me a long time and I know that this was a question you've always asked me. You're like, "Why are you hauling three, four doctors into the courtroom on this case, on this type of case?" You were asking me that question 10, 15 years ago, and I said-

Michael Cowen:

I was.

Alexander Begum:

Yeah. I said, "I don't care about this case-" And don't get me wrong. I care about this case, but I care about the 100 behind it. I care about the same adjuster on this case that I'm going to face on the next 100 files or the adjuster in his little microcosm of an office that handles cases for a particular region. And if they know that they have real exposure on these kinds of cases with a particular law firm, I'd like to think in my mind that it makes a difference. Today, I can't tell you whether I'm right 100% of the time, whether that really did make a difference. I have to believe it makes a difference. I have to believe that at

least for the defense lawyer who you've gone and mopped the floor with three, four, or five different times on these exact kind of cases, he's begging and pleading for more money from that adjuster.

Michael Cowen:

I agree.

Alexander Begum:

It's making a difference either on the lawyer's side or the adjuster's side.

Michael Cowen:

I agree. I totally agree. If you're going to try a case, then it's about more than just that one case. And so, you have to spin in a way that may not be rational if that was the only case you ever had.

Alexander Begum:

That's right. And I do it on every case by the way, it doesn't matter. I think we talked in our last podcast. I had another case with 3,000 in meds and I brought in a radiologist and a biomechanical. We got a 300 some thousand dollars award with 3,000 meds. I think that one was one hospital visit and one MRI and two chiro visits. But you do this to them enough times and they know who they can pick on and who they can't pick on.

Michael Cowen:

Yup. So, how did you prove the harms and losses that your client suffered? I mean, she sounds like a fairly stoic person.

Alexander Begum:

Yes. So one, she had extensive medical treatment. We took the deposition of Dr. Yuri [inaudible 00:31:05] who at the time of his deposition, she had only seen one time and he gave us a low back surgery recommendation for right under \$90,000. So that was one way. And then I also proved it up through Dr. Bengali with Tricity.

Michael Cowen:

He's a pain management doctor?

Alexander Begum:

Yeah. Pain management doctor. And he talked about all the treatment that he had reviewed, everything she had gone through, the fact that it's probably permanent and life altering. And you and I have talked about this, and this is a secret that I think a lot of defense lawyers don't understand, adjusters don't understand, but plaintiffs can use this as a sword very effectively. She had three different radio frequency ablations. The burning of the nerves, in my case, charges were 19,000 per procedure. Consultants and pains were only 15,000 per procedure.

So, we argued to the jury with a life expectancy chart that she had 25 years left. She's going to need one about every eight months, give her the one at the reduced price of 15,000. Don't give her the one at the 19,000 price. So, the jury gave her every bit of that 36, 8 months divided by 25 that it was like 36 times \$15,000 plus the surgery plus other future expenses. But if your client has that radio frequency ablation, it's so easy to go. And life care planners even miss this Mike, you know that?

Michael Cowen:

Absolutely.

Alexander Begum:

The best way to get that is from the pain doctor. And if your client got the radiofrequency ablation and you want to make that argument that she's going to need it for the rest of her life, you better make sure she's had one every year leading up to trial. And Ms. Gibbons did, she in fact had had one three weeks before the trial.

Michael Cowen:

I don't know how many times, and my lawyers are now pretty educated, but it happens again and again, we get new lawyers. Someone wants to send out a demand. Luckily, we have our valuation committee, and they're like, "Well, the client got better after the shot, so the case isn't worth that much." I'm like, "No."

Alexander Begum:

Yeah.

Michael Cowen:

The client got a radiofrequency ablation 'cause they burned the nerve. That nerve's going to grow back, that pain's going to come back. And so, you demand it out and the defense never believes it. You demand it out as with a life care plan or with an estimate from the doctor about what it's going to cost. And then lo and behold, on 98% of the cases within a year that pain's back. Then the client gets another one and then the pain goes away again.

And then jurors understand not only do you need to get these treatments, but then for life, you're wondering when is it going to come back? How much can I bear? I really don't want to have this done to me again, but if I pick up my kid, is it going to hurt so bad I got to go get my nerve burned again? Getting out of the car, am I going to twist wrong and now I'm going to go get my nerve burned again? It gets to the mental anguish, it gets to the future pain, and of course a big model for the future care. So those are cases that I think the defense is used to getting away with basically cheating our clients because our clients got this temporary fix and then they convinced us to value the case as if that's a permanent fix.

Alexander Begum:

Yeah.

Michael Cowen:

And then I think clients have lost millions in value. We've gotten multiple seven figure recoveries and radiofrequency ablation cases when you have good liability.

Alexander Begum:

And I'll tell you that the life care planners are going to hate me for this, but how many times have we gone out and hired a life care planner? And they put the whole kitchen sink in there like a menu. They put a cheesecake restaurant menu of things they're going to need in the future. And then the defense already spends two hours going through every single item that the client hasn't had in the past two years

by the time they go to trial or worse. They start comparing the proposed charges that the life care planner got to the actual charges of the physicians in the case.

And then now you've got a really confused jury, and I've made the decision in our office, our new policy is unless there is an actual fusion surgery or larger, we will not use a life care planner anymore because you can get every single bit of pain management future damages through a pain doctor or through a surgeon. And I know some people out there are going to disagree with me, but if you look at a case law this year in Texas, you do not need a life care planner to get future damages. The threshold was actually very low. In fact, your own client can testify about her injuries and the jury has the ability to infer and to arrive at a number that they believe is reasonable for future care.

Michael Cowen:

Yeah. They can base it on the cost of the past care.

Alexander Begum:

Yeah.

Michael Cowen:

But it's better and you have a pill at risk. It's always better to have a doctor testify in reasonable medical probability.

Alexander Begum:

Don't get me wrong. You need to have a doctor to testify about future medicals as a higher standard. I'm not saying to anybody that you just use a client, and we did. We had two doctors in this case. But my distinction is with the life care planner is that we open up the door to so much attack and so much inconsistency because they throw so much in there that the client never gets 90% of the time two years prior to the trial. And this life care plan is like, I mean, you haven't done 80% of the stuff on here and the charges that they're using are less than the charges that your own doctors billed for.

Michael Cowen:

It's a problem. And just be sure for our listeners, be sure, look at your expert designation rules in your jurisdiction. Make sure you disclose the fact that you're treating doctors going to be testifying as to future medical. There are some federal cases that would require a report from the doctor. So, if you're in federal court, look at that. I know we've had to go ask our doctors to give written reports before, even though they're a treating doctor because there are some federal courts that believe that when it comes to future care, that's not necessary for the immediate treatment and therefore you need to have an expert report as if they were retained. But they still have so much more credibility as treating doctors than anyone that's getting paid just to come talk on a lawsuit. So, how did you handle the cross? So, they hired someone to say, "Well, your medical bills are too high."

Alexander Begum:

Yes.

Michael Cowen:

How'd you handle that?

Alexander Begum:

Again, from the very, very beginning, they hired a coder biller, and if anybody knows who these people are, they're really back-office secretaries that get told by a physician, this is our charge that we established through a billing committee or through our research and all you're going to do is submit the charge. So, they're never involved in the process of establishing what are reasonable charges. They're never in those meetings, so to speak, right? And so, if you go into those depositions with that framework, that mindset, they're going to want to talk about, well, I based it on Medicare reimbursement or it's public information, or I based it on context for health at this percentile. If you look at it from that framework, the kind of questions you'll ask are going to be different. Have you ever been part of a billing committee that's actually set rates for any medical practice?

Have you ever worked for a pain management doctor? Have you gone out and spoken to medical pain doctors about what their charges are and why they charge those rates? And so you just start going through that process and you're talking common sense the jury is going to get so, their eyes are going to gloss when you start talking about percentiles and context for health versus fair health versus Medicare reimbursement. Honestly, that is a wash. You just start attacking them from outside of the cage and put them in their position, which is, "You're a back-office secretary. The doctors tell you what to bill because they come up with the rates, yes or no?"

"Well, yeah, typically that's the way it happens." And then we had Dr. Murphy through Vertex testify in our case, and he said just that. He said, "Look, she seems like a nice woman. I'd read her report, but she's basically a back-office secretary that I paid 12, \$15 an hour for in my office, and they've never told me what rates I'm going to bill. I'm a 30 plus year practicing physician double board certified. I'm not going to have a back-office secretary tell me what a charge that I bill is reasonable or not reasonable." And that argument just won the day.

Michael Cowen:

Perfect. I was thinking, man, maybe you should have witnessed waived the medical bills, but you didn't. And it really worked out.

Alexander Begum:

There were some mistakes made by the defense lawyer where we supplemented medicals and bills and he didn't give all of them over to her. So, she was only able to contest, I think 80 or \$90,000 worth of the bills, and she brought them down to like 45. We had in our motion in limine that he could not ask the jury to speculate and infer that same discount to the remaining charges. He went ahead and dated anyways, violated the motion in limine. He actually came up with his own little chart that he computed himself. Of course, we objected. We went up and the judge said, well, you never disclosed this chart. You never showed him this chart. He can't cross-examine you on this chart so you can talk about the inferential discount, but you can't show the chart. I didn't think it was a good ruling either. But overall, we had a great judge, but they're making these kinds of decisions and he basically acted as an expert in trying to tell the jury what the reduction should have been on charges that he didn't submit to his expert.

Michael Cowen:

So, I want to kind of wrap it up with how did you in closing motivate the jury to do justice in this challenging case?

Alexander Begum:

The impetus for a lot of this stuff, because I remember years ago you told me to read Bettinger's Twelve Heroes, One Voice. I remember you read it and you're like, "Man, I feel like I want to go try a case. It's so motivating.

Michael Cowen:

My win weight tripled after that.

Alexander Begum:

That's right. That's right.

Michael Cowen:

I was in a rut.

Alexander Begum:

So, I read that book years ago and I start with that in voir dire. And one of the first things I start talking about is how powerful juries are. And I always show two pictures. I show a picture of the Ford Pinto and then I just throw it out there and I say, "What is this?" I'm really always surprised that even young jurors know what that is because it says a sign, don't hit my back with a Ford Pinto picture. And if people that are listening to this podcast will know that the Ford Pinto case is the case where Ford did an analysis of financial analysis of what it was going to cost to just pay off the dead people that were going to burn alive in their cars versus recalling them and they thought it was cheaper to just pay off the dead people.

Well, of course juries came in and messed up that math for them. So, I explained that in the case and I said it was those heroes that made a difference. And then I talk about the Erin Brockovich case, and I see this picture of a black nasty stuff going into this beautiful pristine river, and I asked him about that and what they know about it. And I said, "Well, guess who put a stop to that?" Those juries and you guys have a megaphone. And even though there's not media in here, and even though there's not a lot of spectators, I promise you what comes out of this courtroom is going to affect not just the legal community, it's going to affect Barrett County. It's going to affect Texas. You guys have megaphones. You have the opportunity to be heroes, not just for Ms. Gibbons, but for your community.

And that is my focus throughout the trial with the way I even ask questions to the client. What do you want these heroes to do for you? What are you asking these heroes to listen to you say to them now? And you and I know that as much as we want to believe that juries make decisions for the right reasons, all the psychology tells us that's not accurate, right? They're only going to make a decision if they feel that they're making it for themselves. And so, to the extent jurors want fame or they feel like they're going to be interviewed or they're going to be somehow put on a pedestal because of this really important decision where they've awarded a bunch of money, right? Or second, they're going to be, if you believe in reptile, is they feel like their decision is going to make them safer.

It's going to make them live in a safer community where their children, their offspring, are going to be protected. They themselves are going to be protected. And every single closing I end with, and just remember folks, if they can do this to her, they can do it to anybody. And that's how I ended this closing. And that's just very reptilian. And obviously, there's a lot of hero talk. I tell them, we talk in more dire about how juries have been heroes. We talked during the testimony about what Ms. Gibbons wants from her heroes. So that theme of them being heroic and doing something heroic and heroes have a tough time arriving at that conclusion. They always do.

The other thing I empower them with, and I learned this from Tom Crosley in his last close that I thought it was brilliant, is he basically instructs a jury and say, "Look, and I used the word heroes." I said, "There's going to be probably the majority of you are going to be 10, 11 heroes that are going to be wanting to do the right thing." There may be a couple, one or two folks on your panel that are not going to want to do the right thing for Ms. Gibbons, and it's okay for them to have an opinion, but if 10 of you have already decided on a particular question, move on. There is nothing in the rules in the jury charge or in the jury instruction to say, "You have to continue to dialogue with people that don't want to be heroic for her."

Michael Cowen:

Yeah. Because Texas only requires 10 out of 12.

Alexander Begum:

Right. And so, I empower them with that. And I say, "Look, if you've got 10 heroes, 10 heroic members that have already decided that question, move on." Because I've had juries come back and tell me after six hours, seven, and I asked them, "Why did you take so long?" They said, "Well, because we had one or two people." But they kept arguing with us. So, I give that story, I said, " You have to make this go faster. You don't have to entertain those one or two people. There's already 10 of you heroic people that want to do the right thing."

Michael Cowen:

Well, you did a great job. Congratulations. And look forward to our next trip to New Mexico together.

Alexander Begum:

Yes, sir.

Michael Cowen:

Since you and I are partners there. And everyone, thank you for joining us in Trial Lawyer Nation. I hope if you enjoy this content and you do trucking or think about doing trucking or company vehicle cases, we have our big rig bootcamp. I know you'll be there with a bunch of your lawyers here in San Antonio. It's a beautiful place. La Cantera Resort, July 12th. Check out bigrigbootcamp.com for more information in the register. Again, it's bigrigbootcamp.com. It's cheap. It's only 249 bucks for a full day of CLE, and it's a great program and a wonderful experience. So, hopefully all you all can come and join us there.

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Speaker 10:

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