

Michael Cowen:

This is Michael Cowen, and welcome to Trial Lawyer Nation.

Voiceover:

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

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You want the facts to be consistent, complete, and credible.

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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.

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

Michael Cowen:

Today on Trial Lawyer Nation, I'm lucky to be joined by a great friend and an even greater trial lawyer, Sach Oliver, out of Arkansas. Sach, how you doing today?

Sach Oliver:

Hey, I'm blessed beyond measure, Michael. I'm about to be better spending this time with you. Thankful to be here.

Michael Cowen:

Well, thank you. Before we jump into our conversation, I want to as always, thank our sponsor, LawPods. You just met Rob from LawPods setting this up. They do all the production, all the editing. They make it real easy. You and I just have to talk and they do all the hard work, so I really appreciate them. And if anyone's thinking about doing a podcast, which is a lot of fun to do, I highly recommend LawPods.

This is one of the rare episodes I highly recommend. I mean, go ahead and listen to it, but get on YouTube or on the website and watch the video, because there's some pretty cool stuff in the background that Sach is going to talk about. You're going to want to see if you try cases, because it's going to make you a better and more creative trial lawyer.

Let's just talk a little bit about your background. Well, tell me a little bit about you and your practice.

Sach Oliver:

Sure. We live here in Arkansas. My wife Cody and I live on a cattle ranch operation here in Northwest Arkansas with our daughters Reese and Reagan. We have an office in Rogers, and just absolutely love it. We have an interesting practice. We focus on 18-wheeler litigation across the country, and keep about 20, 24 cases at a time. No more than that. And it's just a lot of fun.

Michael Cowen:

It is a lot of fun. When I met you, we talked together at a program, and you gave a demonstration. It was an opening statement you did in a case that resulted in a \$75 million verdict against a trucking company. And it was so impressive that I wanted to have you on this podcast, and then you were nice enough to let me be one of your reviewers. You've got a book coming out called *Depositions Are Trial*, coming out June of this year. It was an incredible book. I was blessed to get to read it early so that I could give you a blurb. And I said, "I got to get you on the podcast." I already wanted to get you on because your opening was so awesome. But then when I read the book, I really wanted to get you on. So I want to talk a little bit first about, what did you do to become the Sach Oliver that could get a \$75 million verdict?

Sach Oliver:

First I had to fail a lot. That's where I like to start, is a series of failures. But one, thanks for those kind words, Michael. I really enjoyed teaching with you at ATAA Boot Camp. That was so much fun, and meaningful. It was equally great for me. And so thank you for that.

And that question, how do you get to where you get a verdict like that, is you try a lot of cases and you just continually learn from all these great trial lawyers around us, and apply what works with us and our skill sets, and then keep trying cases. And I can say that's the main thing. I get asked that question quite a bit, and I will tell you that it's interesting, but it's, life is a series becoming either more humble or more egotistical. It's either one extreme or the other.

And what I see when I start watching very, very good lawyers who get continuous good results, they're focusing on going that more humble route. And that's what I've had to focus on. And so I kind of have a theory or mentality called H-A-T, HAT, Humble Abiding Truth. That's our mantra at trial is that, "Hey, we're going to be humble before the jury. We're going to be abiding in Christ, and we're going to bring the truth. No matter what it is, here will be the truth." And so since we've taken that approach and that's been who we are, we've seen great results, quite frankly.

Michael Cowen:

I love that. I'm blessed to work with a lot of lawyers within my firm and co-counsel, and one of the things I get a lot is, you get this fear, like, "What if this fact comes in? What if the judge rules this way?" And maybe it's because I've been there, and maybe it's because I know if I lose, I'll get back up anyway. But I'm like, "Well, it's the truth, right? I mean, just trust the jury. I mean, are we still right? Should we still win? Well then why can't we just trust the jury to get it right?" And just having that humility instead of trying to control everything and just getting the story we want to tell. Tell the truth.

Sach Oliver:

I had to go through that. Last summer we tried a case that my thought, my personal opinion is that it should have come in more. It was a high offer of \$300,000 from the other side. The jury returned a verdict for \$2 million. And it's at that point where, "All right, I'm thankful and we accept this verdict. And thank you ladies and gentlemen of the jury, and that's why we needed you." And so I know that feeling, Michael, completely, what you're talking about.

Michael Cowen:

My biggest verdict at the time, it was a wrongful death case and I remember the drive. I had a four-and-a-half hour drive home, and I felt like crap because I thought it should have been more. Verdict was much more than the offer. It was no one but Mallorie and I felt bad about the verdict. Our client was fine with it, opposing counsel was pissed off about it. But yes to us. And same for, maybe it's because I didn't

ask for the money, but Mallorie and I tried a case and got a nice verdict last fall. She asked for the money. I didn't ask for the money. We split up liability damages. So I felt great about the verdict, but she, again, the jury gave 17 and a half, but she asked for 35. So she was like, "I thought the case was for 35." But I think it's just getting that humility. We have to trust them that they're going to get it right.

Sach Oliver:

That's right. We got to trust it. And then I also get a question along those lines, is that, "How are you so confident?" And the answer to that is really simple. It's called prepare to confidence. And that's our philosophy, is that the more we prepare, that's where confidence is derived. No other source. If it's coming from a different source, I call that false confidence. But if we prepare and we prepare... And we've got a trial that starts here, May 6th, what is that? Just in a few weeks. And our visual aids, I'm doing dress rehearsals Monday with Philip Miller as the jury consultant. And Tuesday, we've got 24 jurors coming in Monday, another different 24 coming in Tuesday, and we're doing these dress rehearsals and we'll do a full jury selection process with our team, because we're recording it in the crowd.

So the other lawyers on our team will be in the crowd, staff in the crowd, recording it along with Philip Miller. And then I'll do opening statement dress rehearsal of course, where we'll use our two-by-four timelines, which here it is. This is against R&L carriers. That's why you see the green that matches the same color of green as their logo and their tractors. And so it's, where am I at now? Well, I'm pretty ready. You can tell. Where will I be at next Wednesday after having done this on 48 different jurors? So that's what I mean by preparing to confidence.

Michael Cowen:

I think that's one of the great things about having a smaller docket is you can put the time in to give your clients the trial they deserve and to prepare to get as ready as you need to get.

So a lot of people listen to these and don't watch them. So the two-by-four timeline is something that blew me away when I first saw it. Can you tell us, just kind of describe to us what it is, and I don't know if you can zoom the camera in for those watching on the website or YouTube or not, but if not, just describe it to us, because it's really cool.

Sach Oliver:

Sure. Well most cases, not every case, but most case has a timeline, and I bet the overwhelming majority of lawyers listening to this had used a timeline in trial and depositions at different times. And so we have used every version of timeline you can imagine, from on the big boards, like a big foam board and you've got the timeline across here. We've done that. We've done the timelines on a PowerPoint screen that we've all done, and I've seen some awesome ones. And I've even done timelines on a table like this table here. By the way, this is a Portland table so that we can use it in trial and it moves around, and you lay it out. We've done timelines with duct tape on the floor in front of the jury before. So there's lots of ways of doing this. And I'd say I've never seen what they call a wrong way.

One thing that we started doing around, I think we uncovered this in the pandemic when we were doing a lot of jury research and jury testing during the pandemic, and we're testing out different ways, is where we came up with a two-by-four as a way, one way to do a timeline. That is what's behind me. But it's as simple as going to Hobby Lobby, getting dowel rods and hot glue guns and different trinkets to represent time periods, significant time periods in the case. And you drill holes in the top of the timeline and then you put a dowel rod in as you're telling your story. So in for example, this particular two-by-four, it starts out and the two-by-four is naked. There's nothing on it at all. So it allows you to grow with the jury and tell the story incrementally as you build the timeline as you walk through it.

On March 5th, 2020, the truck driver got another driver's log violation with R&L that they knew about, and then you plug in the dowel rod and you walk through it. And then while it starts out naked, nothing on the two-by-four, nothing on the timeline, when you finish on November 17th, 2021, just a few days before this wreck, R&L issued a three day suspension for this truck driver, but took no action to suspend the truck driver. If R&L had simply taken the action that they should have, they would've suspended him, and there never would've been a wreck where a family of four is crushed right as they're going to do Thanksgiving dinner with their family.

So that's how we build it. So that's just one way of doing it, but it's something that's working well for us and we like it, and it meets my personality, as you know Michael. That's where it's kind of like you got to find something that fits you, and carrying in an old two-by-four and stuff from Hobby Lobby, that just meets with who I am.

Michael Cowen:

I think it's brilliant, and I think for a few reasons. One, it's just something physical is so much better. There's people that need something physical than a PowerPoint timeline. It also stays there. A PowerPoint timeline goes on when you go to the next slide. A big old two-by-four with flags and other things in it stays in the courtroom, so they can go back and look at it. I'm sure you use it over and over again with witnesses and opening and closing, and it's just easier to remember. It spells it all up, and I love it.

I'm getting ready to do a deposition in a case with bad maintenance where because of the poor maintenance, the brake pedal came off of a cement truck because someone had secured it with a nail instead of the cotter pin that it was supposed to have. And the company-

Sach Oliver:

Oh, my goodness.

Michael Cowen:

... had years of problems with maintenance, and I'm just thinking about how I can go to show that whole story. It'd be so fun if they're dumb enough to let me try that case. I want to talk a little bit though. I mean, how did you come up with that idea?

Sach Oliver:

Well, it was through failure. It was at a, I will remember it very well because it was at a jury simulation, an in-person jury simulation in Jonesboro, Arkansas where we brought in like 72 jurors on day one and then another 72 separate jurors on day two. And this might've been a three-day where we bring in 36 on the last day. And we had, in that case, I remember it was a timeline on a foam board, and the jurors were really confused on what happened and when afterwards. We were just getting a lot of feedback about need a little bit more clarity on when this happened, when that happened. And we tried a different timeline on a PowerPoint slide and slowed it down the next day. And we still, we got less negative feedback from the jury that night in the focus group, but we still got some confusion on some huge timeline pieces of evidence.

And Philip Miller was on that case with us, and that night he goes, "We got to do something different." And so we were up until midnight, which I don't ever do by the way. So it'll be up till midnight, it's got to be very creative time. But we were up late before the third day... Whenever, I'm going to give the credit to Philip, I don't remember exactly, but I think it was Philip who suggested a linear timeline physically in front of the jury that sits there, for the reasons you just said, Michael. And somehow amongst the group,

we came up with a two-by-four and went and got one. And we didn't have a drill because we were not at home, we were traveling. And so we took duct tape, and I literally in front of the jury would just put something in there and I'd duct tape it to the two-by-four and took a Sharpie and wrote on the front of the two-by-four, on the third day of the jury simulation. Had no problems.

The jury understood the timeline, they were able to tell our client's story and deliberate and discuss the critical points of the case. And thus the two-by-four was birthed. And of course it's developed now where you have drills and we can do the lettering just right, and we can even do paint coloring to meet the theme of the corporate defendant. So it's just kind of grown and developed.

And I want to point out, the first time I remember hearing about corporate red flags was Zoe Lopez, who is superstar lawyers. The first time I remember it, I don't know who, but I give her the credit because that's where I learned it. But here we're able to... Until I got to do this drill right. Too much, that all needs to be re-drilled. But we also can go through here and do corporate red flags and delineate out, "Hey, here's where we know the corporation knew about this red flag," and then we put the red flag in for the jury.

Michael Cowen:

Yeah, that is so great. And so to do this kind of stuff, you have to get ideas. Of course you worked with Philip Miller, who's a great trial consultant. I'm pretty sure we've had him on the show before. If not, we need to, but I'm 99% sure we've had Philip on. You said you've also learned from other trial attorneys. How did you learn from other trial lawyers?

Sach Oliver:

Well, a variety of ways. When I was very young, by association. I would associate attorneys on cases. And my first 18-wheeler case, this was back in 2007 or '8, maybe, somewhere in that range. And at that time, Don Keenan was a very, very, very, everybody knew about Don Keenan and all that kind of stuff. And so I associated Don Keenan on my first 18-wheeler case, as an example of what I'm talking about. And then throughout the years, for different types of cases, I associated John Romano on a case, and so I used it as an example to where early on that's how I did it. I found out who these great lawyers who've been doing this a long time, associated them, tried the case together with them, took depositions with them and learned a tremendous amount. Now where we are is like you and I just together for two days, learned a tremendous amount from each other.

Michael Cowen:

Absolutely.

Sach Oliver:

One of my dearest and closest friends is Joe Fried. Last Friday, he and I were on the phone for three hours brainstorming a case together. Even though we're not working the case together, we call each other. We have that kind of friendship. And that's where I'm so thankful to have just these wonderful friends in my life. Dino Colombo called me last night, and we were brainstorming a case. Sean Claggett and I talking about it. And so you just got to go down, Ed Saramboli and Jay Vaughn, and all these wonderful people, Carl Solomon. That I think you know all these folks, Michael, and there's much more than that. But what I mean by that is, if you allow yourself to be out there in the educational world of how to handle these cases, what you realize is, we're willing to share and help, just like what we're doing right now, in order to see your client do a little bit better or your family do a little bit better, and things like that.

Michael Cowen:

What is it about our tribe of the plaintiff's world? I think the plaintiff's trucking world's especially a good example that we do that. I'll just flat out tell you, you're doing big trucking cases across the country. I'm doing big trucking cases across the country. We're good friends, but there are cases that you and I both would like to have, and yet I can come on here and tout you as a great lawyer and I don't feel threatened by... I mean someone might hire you instead of me, and that's okay. I've got plenty of work. It's not like that in all fields. I mean, I have people saying, "You're crazy. Why are you putting a competitor on your podcast? Why are you talking great about him?" What do you think it is about our world that we're like that?

Sach Oliver:

I get that question. And just like this book, everybody's like, "Why would you take your philosophy? This works so well, and why would you share it?" And I don't call them secrets, but a lot of people are like, "Why are you telling these secrets and putting it out there?" And I come from a culture of teachers. My mother's a schoolteacher, my grandfather's a schoolteacher, and even my grandparents who weren't professional teachers taught Sunday school every Sunday. And so I just feel like both sides, my mom's side, my daddy's side, they're teachers. And that's the culture that I was raised in, is that you're supposed to share and teach and give. And we've just been blessed to figure out some techniques that work well for the clients that need it the most and we represent, and so we share those things.

Now, our particular philosophy, I believe that God has called me to represent certain clients in certain cases. He knows, but I don't know what those are. And so it's so interesting, the stories that I hear on how people got to me from across the country, and it's always something so fascinating that I never could have predicted. And Michael, I feel the same way with you, I feel. And so that philosophy, there's no competition then.

Michael Cowen:

I agree.

Sach Oliver:

Then it's meant to be. So that's the way that I approach it. And I will just say we all may have a different philosophy, but when we're amongst those friends, the ones who are in it for the true, right reasons from the heart who want to see a client, their lives changed after this wrongdoing. They want to see justice occur so that this might not happen again to somebody else. They really would like to work with the trucking company to improve this policy, this drug culture that needs to shift and change. They're willing to go visit with them. That's what I'm seeing. And I'm not seeing, "Oh my gosh, I want this case. I don't want you to have it."

Michael Cowen:

Yep. There's unfortunately more than enough tragedies out there that we can all stay employed. And I agree. I find if we just have faith and we share and we give and then we get taken care of. And frankly, you and I both have more than we ever need anyway. I mean at this point it's about what our kids are going to get, or bonuses. It's not like we need more. Thank God.

You've been able to work with really good consultants like Philip Miller, really good lawyers. You mentioned Don Keenan, John Romano. But you and Don Keenan, for example, are very different people. I can't see you going up there and imitating Don Keenan and being very effective, just because that

wouldn't be you. How did you figure out, "What can I take from those lawyers? But what's me?" How did you figure that out?

Sach Oliver:

Once again, I think that was a process of maturity. So when I was in my 20s, and I was ego-driven quite frankly. I was not where I am now. I was really after success and ego, and that was what was driving me and that's not right. And it was like a panther that's tearing me up inside. But I was there and I was just trying to, what's going to win? What's going to win? What's going to win? And I remember, oh my gosh, my wife made so much fun of me. But I went to Dillard's and I bought one of those shirts that Don Keenan used to wear. He might still wear them. I don't know, I haven't seen Don in many years. But back then he used to wear these white collared shirts with these little gold pins and then it was pinstripes down here, and he smoked cigars. And I went and box cigars and a suit and pinstripe shirt like Don Keenan wears.

And I put it on and my wife absolutely started laughing and making fun of me because that's not who I am. I have my, now with I am, I got my belt buckle on that I won team roping and I got my boots on and I got my \$26 Wranglers on. So that's who I am now. But I was trying to be somebody I wasn't then. I was not getting the results and I was frustrated and I was pursuing it, and I kind of went through a series of things like that. But I'll just tell you, it took a series of failures and some life events to humble me and wake me up to maybe realize, "You know what, maybe this is about something else. There's something much more significant. And I need to figure out who I am and what I represent and what's the most important thing in my world with my faith, with my family." And when you get that figured out, all of a sudden lawyering ain't that hard. Yeah,

Michael Cowen:

Yep, I agree. And it's also more fun.

Sach Oliver:

A lot more fun. The closer we are to figuring out who we are in our hearts and what we represent, what we're passionate about, then it just kind of exudes out of you, but it makes going to work so much more fun.

Voiceover:

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

Michael Cowen:

I want to talk a little bit about your book. And one thing, and in fact, I sent you an email when got it. It was like the introduction of the very first chapter. I mean I knew that you had the largest 18-wheeler verdict; separately, the largest 18-wheeler settlement in the State of Arkansas, the largest construction work zone verdict in Arkansas, the largest single vehicle verdict in Arkansas. But your first trial you talk about in your book is not one of those cases. Tell us about the very first trial you talked about in your book.

Sach Oliver:

Yeah, my very first jury trial representing Julie Holmes, and they made a, State Farm made an offer of \$1,500. We turned it down, we went to and we had a one-day jury trial. And the jury returned a verdict for, I always call it beginner's luck, down to the penny what we sought, \$15,992 and 93 cents. And so I like to lead with that story. One is because that's where we started, that's what we were doing, and we're still doing the same thing today with the way we represent people. It's just on larger cases and there's a lot more money involved. But yeah, I love to tell that story. And then of course I like to tell my good friend Joe Fried, who invented the speed trial, "Hey man, I was doing speed trial. I did this trial in one day back in 2006," and of course we laugh about that now.

Michael Cowen:

And of course Joe doesn't call it speed trial anymore, because I think people were getting the wrong idea that you should go as fast as you can, rather than cutting out the unnecessary and going at the speed you need to go.

Sach Oliver:

Clarity, that's the new word.

Michael Cowen:

I think clarity, yeah, that's the... I mean I've been trying cases quickly and efficiently for a long time. I think Joe cut it down even more than the way I was doing it. And I give nothing but love and credit for Joe. I'm not trying to take anything away from him. But I just wanted to mention just because I think some people were getting the wrong message, and he said that too, that it's... I found if you go too fast then you don't make your point or it doesn't look important enough, but obviously you don't want to drag it out or get caught on the rabbit trails of things that aren't part of your story.

Sach Oliver:

Well slow as I talk, it's hard to go too fast.

Michael Cowen:

Yep. I've had the opposite problem. I had a rear end collision trial, 18-wheeler rear ended a vehicle stopped at a red light, in the best venue in Texas. And we were waiting for the jury and everyone thought, I thought it was going to be my first real big verdict. And everyone thought I was going to win. The defense counsel took my hand, he thought I was going to win. And then the court reporter said, "You're going to lose this trial." I'm like, "What?" "You're going to lose this trial." "I can't lose this trial. My client was right." He goes, "Nope, you talk so fast, the jury did not understand what you said. They're confused. You're going to lose the trial."

And guess what? They had written yes on negligence, yes on course and scope, and then put the damages in, but they felt bad for the driver. And so since they put yes on course and scope, they went and scratched out the yes on negligence and changed it to a no, because they felt bad for the poor driver, thinking the course and scope would still get my client the money. We got a new trial because it was an inconsistent verdict with a scratch off and stuff like that, but it was, I learned to slow down after that. That's the kind of humbling lessons you learn when you try cases, is you lose the unlosable cases. People talk about how they won the unwinnable case, but I've actually lost the unlosable case.

But I'm still here. So I want to go with some of the stuff in your book. I mean, like I said, it's a fantastic book. If you're going to try cases or you want to learn to try cases, I really recommend getting the book. And then frankly, if you've not tried a lot of cases, I really recommend, try some of those cases with \$1,500 offers. Your client's not got nothing to lose. Go have fun. It doesn't matter whether you win or lose. That's how you get practice, that's how you get experience and that's how you're going to get to try the big cases.

But one thing I've seen in your book, one of the chapters that really got me was one called The Cowboy Way. Tell us about the Cowboy Way.

Sach Oliver:

It's twofold. One, it's about never giving up, and two, it's about using training principles that we use on the ranch with horses, and how those same training principles work in a deposition. And so never giving up. The first thing when you're working with a horse or you're working with a deponent and you're running into an obstacle, you got to be patient. But at the end of the day you have to use a set of tools and techniques and patiently use those tools and techniques over and over and over repetitiously until the horse or the deponent recognizes, "This guy Michael, this guy Sach, they're not going to give up. I'm going to have to tell the truth. I'm going to have to get in the horse trailer." That's the metaphors we talk about.

Now, the thing is that you don't have to use force, you don't have to beat anything. There are tools and training techniques. With a horse, for example, we can put grain and hay inside the trailer. We can put one foot on the back step of the trailer and then pet the horse and give them a bite of grain. If the horse wants to move away from the trailer, we go over here and we jog the horse, trot the horse away from the trailer, bring him back to the trailer to give them rest. And it doesn't take very long, but the horse has to recognize, "This cowboy will not fold. At some point I'm going to have to get in this trailer."

Well, the same thing is true with a deponent. If you have a witness who's not willing to tell the truth, doesn't want to answer the question, using evasive tools, or a defense lawyer who's obstructing the truth through improper objections, there are tools and techniques that are in this book and that are also taught by other instructors, lawyers, and deposition colleges across the country, that we can utilize those tools and techniques and apply them with patience and kindness and do it to a point where the witness realizes, "I have to tell the truth today. I can't get away with this. This lawyer's not going to give up."

And so that foundation has to be established early on. And by the way, I teach it has to be done early on about simple stuff. For example, one of the first questions we ask in almost every deposition is, "What motivates you to tell the truth? You specifically, what's your motivation?" 90% plus of witnesses just tell us, and it's easy for them, and they love to talk about it. It's, "My grandfather taught me how to tell the truth." "I used to garden with my mother every morning and she talked about the truth as we were picking green beans." "The 10 Commandments." There's all things we hear.

However, for some reason, one out of 10 witnesses don't want to answer that question. Well, we're not going to move forward until we figure out why. And, "What's the truth? What motivates you to tell the truth or, are you the kind of person who's not motivated to tell the truth?" And on that one out of 10 witness, I've spent 30, 45 minutes on that one question, because we're going to have to peel back the onion now as to why you either won't tell us what motivates you to tell the truth or why you're the kind of person who's not motivated to tell the truth.

Wow. Everybody's like, "Oh my gosh, you'll spend 30, 45 minutes on one issue at the beginning of a deposition like that?" Yes. Because if you have a witness who's not motivated to tell the truth or not willing to tell you why they tell the truth, how are we going to get anything from this point forward accomplished? So usually early on, on what a lot of folks think is maybe not as important, and I call it the

you got a dog, I got a dog section of the deposition, the early on. And so that's kind of what I'm talking about establishing this, never give up.

However, we apply these tools and techniques in a way that we can train witnesses. And here's another just brief example. It's very simple and it's a well-known technique called exhaustion. So we want to exhaust a witness on a certain topic. What does that mean? Pull out all the information they know. Let's say if it's an expert witness, how many depositions have they given? And they say, "I've given three." "Well, how many more?" "Maybe I've given five." "Well, what else?" "Well, maybe it's more like 10." "Well, how many more?" "Maybe it's 15." And so that's just one example. We could use anything, but it's exhausting the witness on a topic.

Well, so many witnesses, they just don't want to be pinned down or they want to leave the door open. And Michael, you know why that's a problem at trial. So at deposition, we want to close that door so that we know and understand the true facts. So exhaustion can be a great example where we want to exhaust a witness on a topic early on, and we will exhaust the witness until the witness has said, "That's all." So right there is a training opportunity.

So what I found is, is, "What have you reviewed to form the basis of your opinions?" "Oh, I've read a lot of stuff." "Please tell me everything you've reviewed and then..." "Well, I talked to the defense lawyer." You know the drill, Michael, you have to exhaust on that topic until you've closed the door on everything that the expert has reviewed, and then we follow it up with, "So it's my understanding we've now covered, you reviewed this, this, this, and this." True?

And so early on in the deposition, that's an opportunity to train this witness because two hours from now, when they give you their conclusion that, "The truck driver, I believe he was sober at the time of the collision. I understand he'd been drinking that morning, but I think the alcohol had worn off and at the time of the collision, I think he was sober." "Well, we now have to tell me all the reasons why you're going to testify to the jury the truck driver was sober, when everybody knows he was drunk four hours prior." And we have to exhaust them on that. Well, because we trained him on that, this guy knows, "This lawyer won't give up. I'm going to have to tell him all my reasons," because we trained him. And so that's what we're talking about when we talk about never give up and the cowboy way.

Michael Cowen:

That's so great. Now, I love the title Depositions are Trial. Why did you come up with that particular title?

Sach Oliver:

Yeah. Many years ago, basically I developed that philosophy. Early on, I started talking about how in today's world... And I say today's world, this has been over a decade ago that I started talking about this and teaching it across the country, that the deposition itself is the trial. Not it's a deposition and six months later, a year later is the trial. That this moment when we are taking the deposition, we are in trial as if the judge and the jury are in the conference room with us, and your clients or whomever else would be there. And that is our attitude, because we are capturing the truth and everything's on video now. So we have our exhibits, our visual aids that you see all ready to go at the deposition itself, and so that when we visit and we pull the truth out of witnesses, we can do so in a way that it's captured, already ready for trial, and it's done. That trial preparation is done. It's a great thing.

Michael Cowen:

Yeah, that's so important, and it means you have to work a lot harder preparing for the deposition though. You just can't go grab someone's outline from another case. You have to actually think about

your case and think about your trial strategy and create your visuals. It's a much better way to practice. You get much better results, but it's a lot more work.

I remember a number of years ago, sometime 6, 7, 8 years ago, before COVID, Joe Fried was doing a depo in San Antonio and he was nice enough to have dinner with me. So I went and picked him up at the hotel and I said, "What are you doing in San Antonio, Joe?" He goes, "Well, I got a depo tomorrow." And I asked him, "Well, is it a discovery depo or trial depo?" And he goes, "All my depositions are trial depositions." And it just, from that moment on, I got that mind shift of like, "Okay, I get it. You should not waste a deposition. You should always be trying to get your trial sound bites, prove your case, prepare and go all in and not just..."

I think that's as I was making my transition from a higher volume to a lower volume, being able to put the time in that needs to make every deposition a trial deposition. I can't take credit for the idea, but I always try to give credit where credit's due. I love it. You've got another chapter called A New Way of Thinking. Can you tell us about that?

Sach Oliver:

That is this new way of thinking. The old way or the old methodology is to take a discovery deposition and find out what's going on and then go try the case. This new way of thinking is the philosophy and the methodology that everything that you would do for a trial, you do for this deposition, or you don't take the deposition.

Jury instructions is a great example. That's all done ahead of time so that we know the language that needs to be used to apply the jury instructions to the facts, so we can interweave the jury instruction language into our deposition outline and into our questions. Our exhibits and visual aids are another examples. I mean here's... I just happen to have an example. Our cell phone expert in this case, Breck McDaniel, this board, which is simply a summary board. There's nothing fancy about this conclusion. There's nothing fancy about this board at all. I mean, anybody in the world can do this. And it's simple.

The fact is, this was done when the defense took Breck McDaniel's deposition, our expert. And so even though it wasn't even our deposition, we still take the depositions are trial philosophy when the defense is deposing our witnesses. And so we had the visual aids and these boards all done and ready to go at the deposition itself.

And here's one we had ready for when our clients gave their deposition that says, Meet David, and here he is with his wife and his son. And so it's just examples. Nothing fancy about that. Anybody can do it. What is the point is, it was done at deposition, and it became the culture of the case, which is the next chapter. We're using these visual aids with the defense witnesses, with the corporate reps, with the experts, with the plaintiffs, with the lay damage witnesses, with the eyewitnesses. And so the exhibits and the visual aids, they become the culture of the case. They get interwoven into pleadings. They get put up in front of the judge at pre-trial hearings so that it just becomes, hey, this is the way we communicate now.

Michael Cowen:

That is so great. It kind of rolls into The Visual Culture of the Case, is another chapter you have. You want to elaborate on that a little bit more?

Sach Oliver:

I would. Here's what I hear. People see a lot of our visuals and they say, "Oh my gosh, I could never do that." Or, "Our local judge would never let us do that." It's interesting because, and then I roll in and do

it. Well, here's why. It's because we are introducing this methodology for the first time in the courtroom. We've been using these visuals. We make the visuals the culture of the case. Our complaint has visual aids in it. Matter of fact, we've been getting some motions to exclude or dismiss our visual aids from the complaint by defense lawyers here lately. It's very interesting. We had a hearing in a tractor trailer case in Portland where we did our normal culture of the case. We do our complaint, it's got all the visual aids in it. Defense lawyer files a motion to dismiss or exclude or omit our visual aids.

And we had this big hearing and the judge said, "Well, let's look at it." I thought, "Man, this is the best thing in the world, because the defense lawyer is making us," at a time period when the judges usually don't even know anything about your case, because the complaint gets filed. From the beginning of this case, the judge is educated about this case. They're looking at these visual aids and determining whether or not they should be in a complaint. And so it became this great discussion where the judge was saying, "Well, I mean there's nothing wrong with that visual aid. I'm not sure you need it in the complaint, but I don't see why I would exclude it from the complaint." And we went through each visual aid, and the judge actually made rulings about our visual aids that were in the complaint. That's what I call a win-win triple win, even if they get excluded from the complaint but the judge says you can use them in the case, the judge has all seen them. It has now become the culture of the case. And that's where I'm wanting lawyers to not wait. I'm not saying there aren't some things that you can wait for trial, but visual aids probably aren't one of them.

And another thing, read your scheduling order closely. This particular trial, they're not all this way. The judge has a requirement in the scheduling order that not just exhibits, but visual aids must be disclosed to the court and the other side ahead of time. Well, that's another thing that what we've seen is, when we're doing our disclosures, we say, "See the exhibits from deposition of the corporate representative. See the deposition of the truck driver, see the deposition of the police officer, see the deposition of the construction zone manager." All of those exhibits we used we're going to use at trial. We've shown it to them. So that's where I just want to really encourage to be thinking ahead. If your mentality for this deposition is trial, it's going to solve a lot of problems over the next six months, year, year and a half of that case.

Michael Cowen:

Absolutely. And the other thing I've learned is, we're not all visual. I am not a visual thinker. I'm a word thinker, and I have to practice with people who are. Now, I'll come up with an idea for a visual sometimes, but if I didn't have people like Sonia Rodriguez, Mallorie Peacock that practice with me that were better at it than I am, I would not be as effective. And so it's different people think in different ways. I think when you get a team of different types of thinkers, then you can reach jurors who are going to be different types of thinkers.

Sach Oliver:

Well, I'm glad you brought that up, Michael, because I agree and that's one reason, there's two things there. We try to bring the case in in what I call the five senses, and then in positive repetition. You got to combine both of those, the five senses and positive repetition. The five senses, I think we all know, touch, taste, hearing, sight, et cetera. So what we want to do is bring evidence to where there's something to pass around for the jury to touch. They're obviously going to get to do a lot of hearing. They're going to get a lot of visual here. But what about smell? And then what about screeching noises or brake noises or things of that nature, or what about the smell of the oil and the gasoline was pouring out of the vehicle, and they were doing the jaws of life and they were telling the husband, "I don't think

we're going to get her out. We're worried about getting her out in time. Diesel's running everywhere. We're running this equipment. If there's a single spark, this thing's going to blow."

So do we have a can of diesel in there? So we have the smell of diesel, which is an odor we all never will forget. So I just want to think about that. And then when you combine that with positive repetition, if I'm a juror and you're a juror, and you're not as visual as I am, and I'm very visual, and there's nothing wrong with either one of us. My mother is not as visual. She wants to read it. So for me, all I need is this picture, right. For maybe you or my mother, which comparing you to my mother is the ultimate compliment, Michael. She wants to read it. And so what I'm trying to say is that that's called positive repetition, where we can deliver maybe the same or similar evidence, but it's typed out on one visual aid used with one witness, and it's simply a photograph with the next witness. So now we're bringing it in a way that both you can digest it and then I can digest it.

Michael Cowen:

And I think that all goes into the, you started off with the humble abiding and truth. I think that part of that humility is just growing up enough to realize that the way we think isn't the way that everyone thinks, and we're good at some things, but we're not good at everything. And building that team and respecting the jury enough to communicate in a way that's going to reach each one of them, even though they're all different.

Sach Oliver:

And to apply that to real life. When I was 25, I knew everything. The older I get, the less I know. Isn't that weird?

Michael Cowen:

It is. It is. It's a lot less stressful not to have the pressure of having to know everything.

Sach Oliver:

That's right.

Michael Cowen:

I want to talk a little bit about the trial of the case. You talk about the concept of a journey with the jury. I love that metaphor. Can you tell us, elaborate on that a little bit?

Sach Oliver:

Sure. It's interesting to view the case this way, but when we talk about the journey with the jury, is it, are we thinking about the jury, our visualizing our jury when we file the lawsuit? I know it's weird to think about, but there are 12 people who will sit in that box and hear this case, let's say hypothetically a year and a half from now. So if we worked this case, metaphorically speaking, as if we were walking on a journey with the jury to the trial, what would we do differently? What would our tone be like when we're on the phone? What would our tone be like as we're visiting with somebody who killed somebody else? What would our tone be like? And so I always talk about, if you view it that way, as in you're holding hands and walking down the road as you litigate this case with the jury, you're on a journey together.

Now, how does that apply? You understand the philosophy now, I hope. How does that apply? That applies with focus groups, mock trials, jury simulations, and ultimately a full-blown dress rehearsal, mock

trial before we walk into the courtroom. And so even though it's not the same people, it is a mixture of people in a same or similar community that help us understand how and why we think about certain issues that we're holding hands with when we do those initial focus groups. And in our first focus group, I like to just sit down and talk with a group of people, six, 12 people and just talk about this case. "Hey, here's what we're learning happened. What do you think? How do you feel? What questions do you have? What do you want to see? Who do you want to hear from? What are you going to have to learn about in this case?"

Then you move forward, and you might do a mini mock trial where you test out different versions of the facts, because you now have got an answer. Maybe you've taken the truck driver's deposition and the plaintiff's given a deposition and you got one eyewitness that says this and a different eyewitness. And so now you put that together and test it in a mini mock trial, and jurors go to talking about it. And they start telling you, "Well, here's why I believe this person. It's because of where they were standing." Where they standing, I didn't think it was a big issue. Now I know I've got to create a visual aid and really drive home, "Well, the reason why you can believe this eyewitness, ladies and gentlemen, is because look where they're standing. The defense's witness, they're not standing in that same spot. They couldn't see." And that all was learned by a journey with the jury.

And then we get into what I call full-blown jury simulations, which we just finished some last week, which are very intense. A lot of times we even bring in outside defense counsel, hire outside defense counsel to represent the corporate defendants, and do full-blown jury simulations where there's openings, presentations of video clips of witnesses and closing arguments, et cetera, jury instructions and jurors. And usually we use third parties like Philip Miller, somebody like that to do that.

And so the whole point there is, and then it even goes into the courtroom with our trial observers. Some people would maybe call that a shadow jury. I don't really see it that way at all, because they're trial observers that assist our jury consultant, but they're sitting in the crowd in the gallery, and they're meeting with the jury consultant before the trial, at lunch, and then after the trial to make sure that I'm keeping the train on the tracks, right? And so this journey with the jury, of course at that time, you've got the real jury there, but it's this mentality that we're developing this case and everything we're doing is in mind for the fact that 12 people, they need to be able to understand this in a way that they can process it and make decisions based upon their core values of right and wrong.

Michael Cowen:

Beautiful. One last thing I want to talk to you about your book. A lot of people talk about trial, trial. "I'm so great at trial." But you actually have a chapter called Prepping for the Truths. So you don't just talk about going to war, because not all cases go to trial. Tell us about why you talked about that and what we're going to learn from your book on preparing for the truths.

Sach Oliver:

Well, you have to combine your question. It's going to combine two chapters, Prepping for the Truth, and Navigating the Negotiation Battleship. Prepping for the Truth, that's our philosophy. When we are doing the deposition outlines and developing the deposition questions and the developing the strategy we're going to take with exhibits and visual aids, I want to say that our only goal is to prepare to receive the truth. That's all we want.

Everybody's, "Well, all these techniques, look at all this stuff you're doing." There's no tricks here. All we're doing is preparing for the truth. That's all we're doing. And at the end of the day, when you think about it, that's simple. And that's as simple as it is, is we want to be able to pull the truth out, share that

truth with the jury in the way that they can remember it and resonate on it and tell our client's story in deliberations.

How do we do that? This is our way of doing it, Michael. And that's it. Now on the Navigating the Negotiation Ship, we actually have a chapter in there about where we have two responsibilities. One responsibility is the trial battleship, and that's what you and I have been talking about for the last 45 minutes to an hour. But another responsibility is to share the truth with the insurance companies so the insurance companies can digest it, set a monetary reserve, and have an opportunity to voluntarily pay our clients fair and full justice and avoid a trial for everyone. Avoid a trial for, so that those 12 jurors don't have to leave their homes for two weeks or their jobs, so the judge is able to handle justice in other areas, so that we can go ahead and help other people. There's lots of reasons behind it.

But I used to have the mentality of hate the insurance company, just go to trial. It's all I used to do. Don't share information. It was like in this world. And so now what we've learned is that we can equally get ready for trial and share the truth with the insurance company, and if they want to do the right thing and pay a fair voluntary resolution, they can. If they don't, we go to trial. It's really a version of personal abandonment and absolute trust. We trust the system. If they want to pay fair and reasonable, great, we'll resolve the case for the clients. If not, we're ready to go, because we've been preparing for trial on a journey with the jury for the entire time.

Michael Cowen:

That is so awesome. That is such a great way to practice.

Sach Oliver:

Thanks, Michael.

Michael Cowen:

So your book's coming out June 24th. Where can you get it, and then when are pre-orders open? Because I know that I'm going to get it for all the lawyers at my firm.

Sach Oliver:

Sure. Thanks for asking. Well, pre-orders are going to open up May 1st. It comes out June 24th, and you can get the book on www.depositionsaretrial.com Also, AAJ is the publisher. I have a lot of respect for AAJ and I'm so thankful they're coming along with me on this project. And so you can also buy the book through AAJ Press on their website. So two ways, depositionsaretrial.com or AAJ Press to buy the book.

Michael Cowen:

If someone wants to follow up with you more, either they got a case they want to talk about or just trial ideas, how can people find you?

Sach Oliver:

Well, I'm about the easiest guy in the world to get in touch with. My phone number is (479) 202-5200. Oliverlawfirm.com is our website. My cell phone is (870) 404-4444, text me. And when you come to Northwest Arkansas, let's ride horses. Let's go fishing. Let's talk about it.

Michael Cowen:

That sounds like a great idea to me. Well, thank you so much for coming on board and just selfishly, I'm going to do a little self-promotion. You love sharing. I love sharing too. And my biggest thing for sharing every year is my Cowen's Big Rig Boot Camp. We're having that on July 12th in San Antonio. It's cheap. It's fun, it's informative, so I really encourage people to come to that. It's bigrigbootcamp.com. Hope to see you there, and look forward to you all joining us next time on Trial Lawyer Nation.

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