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.

When you figure out your theory, never deviate.

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

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

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:

Welcome to today's Trial Lawyer Nation. I'm joined today by a great lawyer and a great friend out of the state of Michigan, Bruce Inosencio/ he just got a record setting verdict in Michigan and he's nice enough to come on and talk to us about it. How are you doing today?

Bruce Inosencio:

Fantastic, Michael, thanks for having me. I really appreciate the opportunity.

Michael Cowen:

Well, thanks for coming on board. And before we get started, I always want to thank LawPods. LawPods is nice enough... You've got to meet Rob from LawPods. Right now, we're getting ready. They make life so easy for us. You and I just have to talk. They do all the rest of the work, all the technical stuff, the editing, the putting it out there. So if you're thinking about doing a podcast, I highly recommend LawPods. So Bruce, let's just jump right in and talk a little bit about you and your practice.

Bruce Inosencio:

Okay.

Michael Cowen:

Give me a little bit of background of who you are and what you do.

Bruce Inosencio:

Yeah, so I've been practicing since 1998 here in Michigan. I'm admitted also in Florida, in Texas, and most of my practice is developed here in Michigan. We also have an office up in Sheboygan up north. But I was born and raised in Jackson, my hometown here, where our office is located. And we handle truck crash cases, nursing home abuse and neglect cases, which is the verdict that you were referring to. That's a

nursing home case. And then we handle business disputes and construction claims on large residential and commercial projects as well.

So I've been with my partner, Kristina, here at the firm since 2003. She came in as an associate and then she became a partner in 2009. And we have a great team here. I'm blessed to be able to say we have a fantastic work culture, we work hard together, we play hard together. We have a lot of fun. All of our spouses get along. We really enjoy the team that we have built here. It makes it fun to come to work every day. And quite honestly, I don't even feel like it's work because I enjoy getting up every day, getting after it with these people and working hard to do great work for our clients.

Michael Cowen:

That's awesome. You mentioned a number of different practice areas. And that intrigues me. How do you stay up and do high level work on multiple practice areas at a firm?

Bruce Inosencio:

Yeah, so I have been involved in the construction industry from a legal perspective since about 1999, 2000, somewhere in there. And I've been an advisor to our local Home Builders Association and then also legal counsel for the Jackson Commercial Contractors Association. I also do some outside counsel work for another large entity when they get into large construction disputes. And so we have been doing construction work for about 20 years here. And so I am intimately familiar with all the processes go along with it just from a legal perspective. And so we advise clients that are developers and contractors and builders that go through the whole process, subcontractors, suppliers. So I have a lot of experience in that area and I also really enjoy the work that we do for individuals. And so when we are involved in those other cases, it's more contract nature and so it is not the human touch necessarily.

That's what I like about the personal injury work that we do in brain injury cases, truck crash cases, nursing home abuse and neglect cases. So it takes a lot of work to stand on top of all that. And interestingly, even though Florida and Texas do have CLE requirements, the state of Michigan does not. And so even though the state of Michigan does not, I'm a firm believer in continuing legal education, going to seminars, going to events across the country like your Big Rig Bootcamp that I attended this year and in 2022. Hats off to you, another fantastic-

Michael Cowen:

Oh, thank you.

Bruce Inosencio:

I'm looking forward to next year already. And those type of events that give you an opportunity to meet and network with people that are in the same arenas, doing the same type of work, have the same questions, face the same problems. That's what I really look forward to doing. And I would consider myself to be a full-blown lifelong learner and I'm always looking to learn more about the various practice areas that we handle. So I really enjoy that and I love to read and I love... I'm always reading something. I'm sure it drives my family crazy, but I'm always looking forward to reading new materials.

Michael Cowen:

Well great. And of course you don't have to wait till next year to do Big Rig stuff. We actually have a Big Rig masterclass as part of the Trial Lawyers University in Las Vegas. It's coming up. My masterclass is going to be October 16th, but the whole event is going to be October 16th through 19th. And not only

am I speaking and putting on class and lots of other wonderful speakers, many of whom have been on this podcast, Joe Fried, [inaudible 00:05:28]. I don't know who all is going to be there, but a lot of great lawyers going to be there. And we're actually... Trial Lawyer Nation is getting allowance so people can come if you want to get a drink or a snack. But also, we're going to be recording live podcasts. So if you want to come and check out podcasts getting recorded... We don't have the schedule yet, it's still on the works, but it should be a really cool event.

Bruce Inosencio:

If I can make it, I'll be there. We have a trial around that time, but if that doesn't go that week, I'm going to do my best to be there because I know many of the speakers that are attending. Phil Miller is planning to be there, for example. And his book, Advanced Depositions, fantastic book. Much like your book, Big Rig Justice, another great book. If you don't have that already... I know you do, but if your listeners have not yet picked that up, they need to. Fantastic book.

Michael Cowen:

No, Phil's great. Absolutely. I want to go turn though now to a little bit about you. I want to go a little bit of your background before we go into... We talked a little bit about your practice, but I want to see how you got there. And obviously, by the fact that you've mastered so many different things and you're obviously a lifelong learner, but you didn't start off as a lawyer. You weren't born one. Tell me a little bit about you before you went to school.

Bruce Inosencio:

Sure. So I was born and raised here in Jackson and I had a great upbringing. I was an Evans scholar. I caddied for a number of years at the local country club and there was a program that I learned about that allowed students that were caddies that had financial need but good grades to apply for this scholarship, the Evans Scholarship. And so I applied, I was a recipient, I was very fortunate and had the opportunity to go to the University of Michigan on that scholarship for free. And that scholarship was started by a golfer who wanted to maintain his amateur status. So he donated his winnings so caddies could go to college at Northwestern for free, and then they donated and he got other people to donate. This has been going on now for several decades.

Michael Cowen:

Wow.

Bruce Inosencio:

So across the country. Every year there's about a thousand Evan Scholars in school at major universities, not just here in Big Tens schools, but across the country, and they're going for four years for free. Many of my friends and I would never have been able to have that opportunity without that scholarship. It's life changing. And so I'm always a big believer in paying it forward because if someone had not paid it forward for me, I wouldn't be talking with you today. I wouldn't have the opportunity to help our clients and do the work that we do. So I went to the University of Michigan for four years. Initially, I was thinking I was going to go into Wall Street and work there. I love numbers, I really enjoy working with numbers. And then I realized Econ 201 just bored me to death and I gave 202 a chance, that also bored me. And I said, "Hey, this is not for me. I need to do something different." And so I eventually realized that I love the challenge of law, what I thought that I could provide.

I love to compete. And so I decided to go to law school and I went to Pepperdine University out in California for law school. I had a great education there. And I've been practicing back here in Michigan since 1996. And I started out doing a lot of what you started out doing. I've listened to every podcast episode that you have. So I have a general sense of your background and many other people that you've had on your podcast. I sense this common theme, none of us started out with it being easy. We have been putting in all the hard work for years. There's sacrifice, there's family sacrifice. Your discussion with Michael Watts about winning an $80 million verdict, yet still driving the same truck because he was investing the money from that case and the other bigger and better things to build this practice. And that's not lost on me. And that's what we did here. For a long time, I was doing work in the courts with juvenile criminal defense. That is very hard work. I remember one day I had 30 cases all to be heard at 1:00 PM.

Michael Cowen:

Oh my gosh.

Bruce Inosencio:

And so you learn to manage expectations and to work with people and get into court. So I think so many people think, "Well, I'm going to get out of law school. It's going to be easy. I'm going to hit the ground running." You have to put in the time. You have to be willing to put the time in on weekends, at nights and to... Addition to getting all your work done, find a way to learn to get better. And that's on you. And you have to make that commitment. And if you don't make that commitment, you will not get great success. At least that's my impression of how this should go. And that's how it has gone for me for almost 30 years.

Michael Cowen:

And you've had a lot of success over your 30 years. I don't want to talk about... Before, again, we get to the trial, what are some of the things you've done to develop yourself as a person and as a lawyer so that you can get record setting verdicts?

Bruce Inosencio:

Well, there's a lot that goes into that. That's a really full question. First thing is, I have a fantastic life. And if you do not have support at home with a family that realizes, "Hey, dad's going to be a little bit late for dinner," or, "He's going to have to work on the weekends," I've never missed, except for one event that I can think of, any of our four sons events. And they were in sports all through school. They've all since graduated. But to make that happen, that means maybe I'm leaving work early to go to those things, but I'm working until midnight to get all my work done and other people are having to help do other things. And my wife's a teacher, she's very busy, but she's extremely supportive. If you don't have that support, you're going to have some difficulties. And you could ask any one of my sons, I've always said, "Most important decision you'll ever make in your life is who you spend the rest of your life with." If you don't have that, you can't get stuff done.

Michael Cowen:

Yep. So you've got a good wife. But as far as practice... That's really development as a person. Practice development, what have you done to get better as a trial lawyer?

Bruce Inosencio:

You have to read. You have to find a way to understand the court rules and apply them better than others. You have to go to seminars and find out, "Okay, what is the latest and greatest? What are the new technologies in brain injury assessment?" Going to the AHA event this past weekend in Nashville, I didn't really have time for that, but I made time. I sacrificed other things so that I could go learn and understand, "Hey, what is everyone talking about? What should we be doing for our clients? How do we make that happen?" So whether it's getting involved in AHA or the Academy of Truck Accident Attorneys, I know you're involved in both of those groups, and whether it's going to TLU, you have to understand that this is a lifelong process. The law is not just stagnant and you have to stay on top of case law development. You have to stay on top of technology development, practice management, all of those things. And that requires an investment of time and money.

Michael Cowen:

Any teachers or consultants or anyone you've worked with that have been really good?

Bruce Inosencio:

Yeah. So I'm a... And kudos to you again, I would not have heard of Sari de la Motte, in all likelihood, had I not heard of her on one of your earlier podcasts, and I listened intently to that episode and I've listened to it a couple of times since then. And so I thought, "That's a really interesting concept." And I heard you mentioning the inclusionary of voir dire in your discussion with Joe Fried as well. And so I went out and bought her book, Hostage to Hero. I've applied it in a couple cases. I applied it in this case that we're here to talk about. And just the whole idea about developing this tribe, it's been transformational for my practice. So I would say that's a big key. Another one is Mark Kosieradzki's book about 30(b)(6) depositions.

Michael Cowen:

Oh yeah.

Bruce Inosencio:

That's fantastic. And then attending the Advanced Depositions College at the AHA hosts in New Orleans every January. I went to that in 2022. Wish I had gone to that 20 years before. And I'm going back again in 2025.

Michael Cowen:

Yeah. I send every new lawyer at my firm to that.

Bruce Inosencio:

And I want him to take everyone in my firm there because we had a small group with... My leader was Steve Laird. He did a fantastic job. Tom Grillo was on my four person squad. He just had a fantastic settlement that was a result of a... It was near the end of a six-day trial. And I asked him, I said, "How important was that Advanced Depositions college?" And he said, "It meant everything." So going to those type of events, it costs money. It takes time away from your practice, it takes time away from your family, but it is a long-term investment and that is how you get better.

Michael Cowen:

Yeah. I've spent more money with Sari de la Motte than I paid to my law school and law school was a lot cheaper back in the '90s. But I will tell you that it has been transformational for my trial work. And even if someone has seen me speak before Sari and after Sari. I mean, I had people come like, "Hey, there's something different about you. What's happening?" And like I said, it's an investment. There's no doubt. She is not cheap. But for me, she's been worth it. I mean, if you want to actually go out there and... Both try cases... There's no guarantee, there's no magic sauce. It's not like, "Okay, you work with Sari, you're never going to lose again."

Bruce Inosencio:

Right.

Michael Cowen:

I went to the Trial Lawyers College back in 1998 and they said, "You're never going to lose a trial again," and then I went back and I proved them wrong.

Bruce Inosencio:

Well, I lost a case in May and still used her approach. But I look back on that and I think there's some things that I did that I didn't do as well as I could have. Like you've said many times, ultimately it's up to the jury. You have to give them the case. You have to tell the story. And so I agree with you, it's not a secret sauce. You're not going to win every case, but if you're not losing cases, you're just not trying enough of them.

Michael Cowen:

Exactly. It's like being a race car driver that never goes off the road [inaudible 00:14:58]. I mean, you have to find your limits. But also, you can try a perfect case and still not get a great verdict. Or you can totally flub up a case and still the jury likes your client or beliefs IN the facts, and you can still win. So there's a little bit of randomness to it, but when you do do it right, you increase the odds of winning. And I think the other thing with Sari is that working with her, I've learned mindset stuff just where it's now fun for me.

Bruce Inosencio:

You have to take that approach. I remember in this case we had back in March with the nursing home case, I remember writing down the legal pad in all caps and underlining the word breathe. And I kind of slid that over to my associate next to me and he said, "Is that for you or for me?" I said, "Well, it's kind of for both of us."

Michael Cowen:

Exactly. So tell me a little bit about this case then.

Bruce Inosencio:

Yeah, so it's really unfortunate circumstances. Our client was a family of four grown adult daughters. They're in their, I would say mid 60s to maybe 70 years old. And their mom at the time was 87 years old. She had been a stroke victim, and she went to a facility in Lenoir County about 30 miles south of here that was going to help her with speech therapy, occupational therapy, physical therapy, and try to get her out of that facility and then returned her home. And even though she was 87, before the stroke, she was

very independent. She mowed her own lawn. She took care of her large two-story home and the farm, and everyone expected her to return home after this stay. She had a tracheostomy. And so as a result of that, she was unable to communicate with speech to the people that were providing care for her. And so she was 100% relying on them.

Michael Cowen:

And what's a tracheostomy?

Bruce Inosencio:

So she had a tube basically in her throat that allowed her to... Well, what it was doing, it was allowing her to breathe properly. And then she also had a peg tube. So this peg tube is where she received her food. And so between the tracheostomy and the peg tube, she had a number of different issues. But what was problematic was that she was at high risk for dehydration, and everyone that was there working with her knew that she was at high risk for dehydration based on her circumstances and her medication. And so she went into this facility and the first 10 days she was there, she didn't have a bowel movement. And they kept checking the box saying that she was not constipated.

Michael Cowen:

What?

Bruce Inosencio:

Well, that's a problem when you go for 10 days without a bowel movement. And then she did. And then after a couple more days, she then started another long period of time and she was 17 days without a bowel movement. And at the end of the 17 days, they ended up realizing that she was non-responsive, and she was taken across the street to the hospital and she was found to be severely dehydrated. And she had fecal impaction. So she had a 10-inch wide stool and her system was shutting down, and the doctors at that hospital told the daughters that the damage was so severe that it was unlikely that she would make it. And so they made the very hard decision of putting her into hospice. And then she died about 17 days later. It was a tragic outcome.

Michael Cowen:

Awful.

Bruce Inosencio:

Completely avoidable and preventable.

Michael Cowen:

But still an 87-year-old. I mean, the jury allowed, I think, 6 million in damages.

Bruce Inosencio:

Correct.

Michael Cowen:

And it was a small rural county, never had a verdict anywhere close to that high in any case before.

Bruce Inosencio:

Right. So what they did is they awarded 2 million for her pain and suffering, and then $4 million, which is a million dollars to each of the daughters for the loss of those relationships.

Michael Cowen:

And how did you persuade a jury to allow multiple seven figures on a case of an 87-year-old? I mean, and with no economic loss, just-

Bruce Inosencio:

So I knew that would be a challenge. And as a result of that being a challenge, what we did early on was a focus group. And your most recent podcast guest, Sean Claggett, talked a little bit about his work with John Campbell. In light of my knowledge of John Campbell from before, I reached out to him a couple years ago. And I'm also a big believer in big data and getting a large set of information to allow us to understand what the positives and negatives are in the case and where damages might fall. And so we engaged John and he did a 425 person focus group for us.

Michael Cowen:

That's awesome.

Bruce Inosencio:

Yeah. And it was super helpful because it really gave us a sense of what the jurors would potentially like about the case, what they wouldn't like about the case and where the ask should be for damages. And I remember thinking that the morning of the closing arguments, I've been thinking about asking for $5 million and possibly 3. And I thought, "You know what? The research that we received and the money we spent on this, and the data says that it's probably somewhere in the 5 to 10 range, possibly out as far as 12 million." And so one of the things that was happening was the other side brought in an expert to talk about the life expectancy. And they said, "At most she would've lived three months." And so I talked about my relationship with my grandma and how important that was. And even though I didn't say, "All of you have grandparents, people were getting it."

And I talked about a gift that my grandma had given me that really was worthless to anybody else, but to me it was priceless. And I made that... I brought that point home with the jury and I said, "Just like this old green picture that's worthless to all of you is priceless to me. That's how this mom was. This is how Gwen was to her four daughters, regardless of her age, regardless of their age." And so I broke it down and I explained, "If you had an hour of life to live, if someone would loan you a thousand dollars, would you go find a thousand dollars?" And I got choked up in the closing and it was real. And they understood that. And like Joe Fried often says, "Whatever you have to do to make it real, make it real." We made it real. And that was real emotion. And the jurors understood that, and they were along for the ride. And even though we didn't say, "Please send a message," they sent the message.

Michael Cowen:

Yep. So what did the nursing home do wrong? I mean, the woman was dehydrated, but how's that their fault?

Bruce Inosencio:

Yeah. So you're supposed to check at least every three days to see if someone's actually having a bowel movement because they're feeding her. She's completely dependent upon them to say, "Hey, you're feeding me and you're filling my system." If I'm not having a bowel movement, I'm backing up, I'm going to have some problems. And so they're checking the box saying that she's not constipated, that she's having some type of a bowel movement. Not to get too gross about it, but they weren't doing that. And so she's just lying there for the first instance, 10 days, and then the second instance, 17 days, she's being fed and nothing's happening for her. So that is a sign of dehydration. So after three days, the doctors to be notified, that's what their expert said. Their internal people said, "That's not how we do it." But after three days, someone's supposed to be notified that something is happening.

She's had some type of a change in status. And if you don't contact the doctor or the family or both... You're really required to do both under the federal regulations, that's when you have a problem. Because at three days, we could have done something. Let's change her food, let's change her input. And maybe that's the problem. Do we need to change your medication? Well, when you wait 10 days, okay, now you're on notice that there's a problem. They didn't change anything at all for her going forward, so you know it's going to happen again. And the second time was even worse. And so this is why she became dehydrated and they missed the signs completely. They did nothing for her to address it.

Michael Cowen:

What do you think the reason for that was?

Bruce Inosencio:

Well, I can tell you the reason for it was the people at the top had really outdated policies and procedures. And in Michigan, we are not allowed to talk about policies and procedures establishing the standard of care. I know that's the same in many jurisdictions across the country, but what we did talk about was the federal regulations. And because those are a national standard, we were allowed to talk a little bit about the regulations and how they apply. So even though this wasn't a truck crash case and you can't use the Federal Motor Carrier Safety Regulations, we applied a similar approach like rules of the road. Just like you talk about in your book, Big Rig Justice. We applied a very similar approach. These are the rules. The rules were not followed. There's a consequence, there's damages. And if you don't do it like that, you run the risk of confusing people.

So we tried to make it very simple. In fact, I remember we brought our expert in to testify about the federal regulations, and he had them all handwritten out... Or not handwritten, but typed out in a folder he wanted to go through. And he was painstakingly wanting to talk about each one of them when we were at lunch. And I said... We were back at the courthouse, and I took the folder from him, I said, "Do you trust me?" And he said, "Yes." I said, "Give me the folder. You're not going to do that. You're just going to sit up there and talk to the jury about what you know. If you're standing there reciting rules, you're not going to be looking at the jury, connecting with them, establishing that you are the authority."

And he said, "Okay." He handed me the folder and he went in and he just talked about why these regulations are important. Why do we have these? Oh, makes people safer. Okay, how was the rule broken? Well, here's the reason. Well, was this outcome expected? Yes. And it's very similar to why do we have the Federal Motor Carrier Safety Regulations because we want to keep the rest of the public safe when they're driving on the highway around major trucks. So that's the similar approach that we applied, but we really worked hard on keeping it simple.

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 think that's so important. If it's too complex for an expert to explain without talking about 10 or 15 different regulations, then how is a nursing assistant at a nursing home supposed to know?

Bruce Inosencio:

Right. Agreed. We also used a lot of visuals to make it simple. We used some foam boards. We used a large electronic board. It's called a Vibe Board. It's a 55-inch touchscreen television that we would use to show video deposition clips on. But we'd also use the various... I shouldn't say various, but the pertinent regulations that applied in this case. And we just put that up there and I'd walk the jury through it one at a time, and with our expert and with opposing experts, and it's hard to deny that when it's staring at the jury right in front of them.

Michael Cowen:

What kind of stuff did you do with the phone boards?

Bruce Inosencio:

So the phone boards, what we did is... Of course, she has hundreds of pages of medical records. And so what we did is we picked out the ones that we felt would be most impactful, and we just would do one record to a board. So for example, one of the boards that we had was her bowel illumination chart. And you can see that none of these boxes are checked off and they're supposed to be, and when you walk the jury through and say, "Day one, day two, day three," and you're standing up there in front of the jury and they're seeing it, it's really hard to the other side to get past that obvious fact that she had 10 days and then 17 days.

And then we left that up there while the other side was doing their opening. We talked about it again in closing. We talked about it with multiple witnesses. It's really hard to get past something like that when you can show that this is the document that everyone was aware of. And then we also talked about her mission chart that talked about her being at risk for dehydration based on the medications that she had and the fact that she had a tracheostomy.

Michael Cowen:

What was the defense?

Bruce Inosencio:

Wow. It's interesting that you asked that question because I was trying to figure out what the defense was, but what it really came down to was the standard defense in a nursing home case is that she was already old, sick and done. They wanted to talk about all these comorbidities. And so we kind of flipped that on its head, did a little bit of a judo move and said, "Guess what? When she came in there, they knew that she was old, that she was recently sick, and that there was a potential that she would die, but

they took her in any way and they took the money to provide this care for her. And so if you can't provide the care for her, why did you take her?"

It just became obvious, I think, to the jury that you're taking in all this money. And we didn't get into the exact amount of money, but people understand that nursing homes are expensive and that when you go there for rehabilitation for a stroke or you go there for long-term care, you're getting paid to provide a service and just allowing someone to sit there and not get that level of care. It was truly sad. And the jury... It was interesting. I think every single person on the jury either knew someone in their immediate family or knew a friend or a family member that had had a stroke, but yet we recovered from it and was able to continue enjoying life. And so I focused on that in voir dire and again, in closing and said... I remember looking at one juror in particular, I'd never heard of this happening before, but her son had a stroke when he was four.

Michael Cowen:

What?

Bruce Inosencio:

And I said... I remember saying in closing, "Even if someone's four years old, they can have a stroke and live a productive life for many, many years beyond. So just because she had a stroke doesn't mean that you can stop giving her care because you think she's already going to die." And people in jury were nodding, and they understood that their other family members went on to have long, lengthy lives after a stroke, and so they got it.

Michael Cowen:

So tell me about jury selection. What was your approach to jury selection of this trial?

Bruce Inosencio:

So we really tried hard not to get rid of anybody if we felt that they could be a good member of the team. And so the one person that we got rid of, only because she had a family member down in Texas that was near death, and we knew that. And so we said, "Listen, we're not going to keep you here. We want you to be able to be with your family." And so we let her go. And then I think there was a couple people that the other side let go, but my whole approach was inclusionary. We really wanted the jury to understand that they were going to be a team. They were going to write the last chapter in this story. And I was here just to be their guide and help them understand the facts. And the facts were actually quite simple.

And so when we were at the close of jury selection and the entire jury was impaneled, our client stood up and she had been introduced during jury selection to see if any of the other potential jurors knew her or had a conflict or anything of that nature. And the judge looked at the galley and said, "Okay, those of you that are not chosen, you're free to go." And they all stood up and many of them walked past her and said, "Go get them. Don't back down."

Michael Cowen:

Wow.

Bruce Inosencio:

And so we used the approach that Sari recommends in from Hostage to Hero in her book and her podcast and the H2H Playground that she does. And we conveyed what we needed to convey to that jury before the other side even had a chance to listen to me give openings, and they didn't give their opening. And so we really hammered home some points in the voir dire and it was impactful. And we felt really good when we stepped out in the hallway and she told us those jurors that were not selected had said that to her, we thought, "Okay, people understood how important this is, and I think we're in a good spot here."

Michael Cowen:

Can you give some more detail? First of all, what do you mean by inclusionary?

Bruce Inosencio:

Yeah. So the whole idea is to understand that the jurors that you're looking for are willing to be there. They're willing to participate, that they have an opportunity here to not be a hostage. But as Sari says, and you've said before, "To be a hero." Like Billy Carl [inaudible 00:31:26] book. Right?

Michael Cowen:

Yeah.

Bruce Inosencio:

You want to give these people an opportunity to help. And they come in, they're nervous, they're scared, they don't know what to do. And so you make it easy for them and you kind of lead them along and say, "Listen, maybe you're not perfect for this case. Maybe you're good for another case. Let's find that out." How important would it be for you to understand X and Y? And you kind of walk them through the process and you can see them nodding their heads. And you're using body language and pauses and hand gestures to get them to look at each other. And it works. You can tell when people are forming a group and you can tell when they're not.

Michael Cowen:

Yeah. My last trial, we had to... The judge still did COVID... We had to have masks in the courtroom and we did jury selection in a huge room where everybody was at least six feet apart and you had to wait between each answer for someone to come up to them and pass them a microphone. And it really-

Bruce Inosencio:

That's hard.

Michael Cowen:

I think it really... We couldn't form a group. I mean, it really made it more challenging. You just find another way. I mean, I did exclusionary voir dire for decades before I got the guts to do an inclusionary. Even though I learned how to do it in 1998, I still didn't have the-

Bruce Inosencio:

Marity?

Michael Cowen:

... the guts. Yeah, I had another word, but I'm not going to use it.

Bruce Inosencio:

Yeah, I understand.

Michael Cowen:

Another part of my body, but the guts to actually do it until six, seven years ago.

Bruce Inosencio:

Yeah, it's-

Michael Cowen:

But yeah.

Bruce Inosencio:

... weird the first time you do it because it's not what you were taught. Right? That's not what law school teaches us. Law school teaches us to do it a completely opposite way. And so I have embraced this. My partner, Kristina, has tried a case using it. I wrote out her voir dire and she was reluctant at first, but she's all in now. We see how effective it is, and it gives you an entirely new grasp. Behavioral science. I read a lot of books about brain science and behavioral science and getting people... Not necessarily trying to persuade them, but trying to understand how they make decisions. One of the books I read recently by Chip Heath and Dan Heath, they're brothers, is Made to Stick.

Michael Cowen:

Yeah.

Bruce Inosencio:

Fantastic book. And I would boil that down to four words. Statistics suck, stories stick. And so we really worked hard in the nursing home case to tell the story. I could have sat there all day long and given all these markers about why her blood level was this, why her [inaudible 00:33:53] was this, why her creatinine was this, and that proves that she has laboratory evidence of dehydration, but guess what? That's going to get lost on most jurors.

Michael Cowen:

Yeah.

Bruce Inosencio:

Tell the story and the story and sequencing that and who was where. All of that stuff matters. And so really trying to make sure that the jury understood the story, that was [inaudible 00:34:15] what was important to us. And that worked.

Michael Cowen:

It just seems to me too, I don't know the details of your case, but trying to say, "When this one marker is above this, then you need to do that," is a lot harder to sell than if someone hasn't poop in three or four days, you need to call the doctor and figure it out.

Bruce Inosencio:

Right. Yeah. We-

Michael Cowen:

That's pretty simple.

Bruce Inosencio:

We really simplified it. And that's why it was so important for our expert to also make it simple. We had another expert out in California, and I'll never forget his deposition. He wanted to take it the entirely different approach. He wanted to talk about every single statistic and every single marker and all those details. And I just thought, "There is no way this is going to work." And it did, but it's not the way I would've necessarily wanted it to go.

Michael Cowen:

It's interesting. Reminds me of the first time I worked with Sari in person. I had worked with Rodney Jew on a few cases. So in one case I had all these boards and I wanted to learn how can I give an opening statement using all these phone boards and still connect with the jury. And she just said, after about 30 minutes, "If you tell the jury this is a simple story, but you use 50 boards, your actions are inconsistent with your words. So put the boards up, get out a big pad and a marker, and tell your story and teach them what they need to know." And it worked. We got a decent verdict in that trial. So that's-

Bruce Inosencio:

I agree.

Michael Cowen:

... the start of my love affair was Sari. So Kevin, it's not a real love affair, I just love her as a person. Kevin's her husband, so I want to watch how I word that.

Bruce Inosencio:

Well, I'm sure my wife thinks the same thing, because sometimes I'll be cleaning up after dinner or something like that and I'll have your podcast on or hers and my wife will just look at me and Kelly will just shake her head just like, "What is this? How many times can you listen to this?" That's what you do, right? That's how you get better.

Michael Cowen:

Yep. What else about the trial helps us?

Bruce Inosencio:

Yeah, so one of the things that I really wanted to do was to make sure that the jury understood that this wasn't just me trying this case, that we had a team of people. And so we really worked hard moving the people around besides me at the table. So we started with Ryan upfront, and then we brought Kristina

up upfront and so on and so forth. And anytime we had a decision to make, the four of us would get together. So it'd be me, my partner, Kristina Fisk, Ryan O'Dowd, our associate attorney here, and then Val Shooty, who's taking the bar next week. She's a paralegal at the time. And we put our heads together to make decisions because I can't see everything. I can't hear everything. There's way too much. I know you and Mallory try cases together. Kristina and I try to try cases together as well and take that team approach because two heads are better than one.

And I think as long as you're sharing the information early enough in the case, it makes it effective. I will say on the other side of the case, they had two people as well, but the person that came in toward the end, there were so many details that he hadn't picked up on yet because he came in so late. I think that hurt them. That wasn't the only thing. And I think he did a nice job with the story he had to tell. I think they both did, frankly, but they didn't have a great story to tell. Their client obviously did a lot wrong and didn't do a lot that they should have. And so we really worked hard on making it a team approach. And I don't want it to be just men at the table. I don't want it to be just the older attorneys at the table. We move that around so that people understand that we're coming at... This is a team effort. Why? Because we truly care.

Michael Cowen:

Absolutely. And then of course, you have to think about the effect of your conduct on the jury too. So if you have a woman lawyer trying the case with you and you just have her kind of carrying your notes, you could really trigger a juror that was not treated so well in life and you're the same A-hole hold that treated her bad.

Bruce Inosencio:

That's right.

Michael Cowen:

And so plus, not only are there great woman lawyers that do a perfectly fine job in the courtroom, but also if you're going to try a case with a woman lawyer, you better let her speak and contribute in a real way because if not, you can really... And Mallory and I just have such a rhythm. I do so much better when I try a case with her than when I do it by myself.

Bruce Inosencio:

Yeah. It's a great approach.

Michael Cowen:

So what are some of your takeaways from the trial?

Bruce Inosencio:

Well, I think first of all, you have to be engaging with the jury and you have to take into consideration the words that they're giving back to you and continue to use their words throughout the trial. One of the last people to get on the jury was this kid who was 22 years old, and I remember him well talking about his job in a nearby factory and he worked for an auto parts supplier. They make brakes. And he talked about not just checking the box. He has to do a certain thing and he can't check the box until that's done. And so I asked him about the importance of that because I knew our case was about checking the box

even though something wasn't done. And so we continued that theme through and we had a couple other jurors that gave us pieces of information that I thought we could meld into the discussion.

And so I think you have to have your approach laid out in advance. You have to practice. You can't just write your closing out on Sunday night if trial starts Monday morning. You have to practice this. But then you have to be flexible and you have to be willing to derail your perceived story a little bit to kind of bring in some of the elements from the jury. And so if someone on the jury talks about the importance of their faith, well, I might ask my client about that. If someone on the jury talks about the importance of not just checking boxes but actually doing the work, I'm absolutely going to talk about that. If someone else talks about the importance of following rules because they're a leader at work, they're a boss, we're going to talk about that. And so if you can connect the jury and their stories to how this impacts their life, even though they don't know this family, that rings true. And so we really tried to do that, especially in closing in voir dire.

Michael Cowen:

That's brilliant. That is really... I love that. And that is so important because they're the ones who sign the case, and so the more you're kind of agreeing with them instead of trying to persuade them.

Bruce Inosencio:

Right. As soon as you start telling the jury that they're wrong, you've lost them.

Michael Cowen:

Absolutely. Any other advice for listeners?

Bruce Inosencio:

I'll give the same advice that my wife has given our kids every day for the last 28 years. Be kind, work hard, and listen.

Michael Cowen:

Bruce, thank you so much for joining us. I've appreciated your friendship over the years and getting to know you, and I really appreciate you coming on and sharing some of what allowed you to have this great success so that all of us can have similar success.

Bruce Inosencio:

Thank you, Michael.

Michael Cowen:

Thank you all for listening. Again, I hope to see people there in Las Vegas in October. It should be fun. If you're there, come by the booth, say hi, and join us next time on Trial Law Nation.

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