Michael Cowen:

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Voiceover:

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Welcome to the award-winning podcast, Trial Lawyer Nation, your source to win bigger verdicts, get more cases, and manage your law firm.

Now, here's your host, noteworthy author, sought-after speaker, and renowned Trial Lawyer Michael Cowen.

Michael Cowen:

Today on Trial Lawyer Nation, I am joined by Attorneys Drew Gilliland, and Teana Overton out of Georgia. They got a fantastic $1.8 million verdict on a tough trip and fall case with only $7,100 in medical bills. They're nice enough to come on. And talk to us about how they did it. How are y'all doing today?

Teana Overton:

Good, how are you?

Michael Cowen:

I'm wonderful. Drew?

Drew Gilliland:

Great. Thanks for having us on, Michael.

Michael Cowen:

Oh, thanks for coming on. Those are such tough cases. Again, a result like that, I really, really want to learn.

Before we get started though, as always, I want to thank our sponsor, LawPods. LawPods, you've met them getting ready for this. They make it so easy, because they do all the recording, editing, make sure that we sound good, and look as good as I'm capable of looking.

Jerry is out on how good that is. But LawPods is really great to work with. If you consider doing your own podcast, I highly recommend LawPods.

Drew Gilliland:

And, they've been great to work with by the way.

Michael Cowen:

Yeah. Thank you. Drew, and Teana, I'd like each of you just tell me a little bit about yourselves.

Drew Gilliland:

Ladies first.

Teana Overton:

Okay, good afternoon. I'm Teana Overton from Atlanta, Georgia, born and raised. I went to law school here. I'm pretty young. I've been licensed almost three going, on four years. I've been doing some trial work with Drew.

Drew Gilliland:

And, she's doing a phenomenal job. She's my new trial partner. My name is Drew. I was actually born and raised in Orlando. I came up here to Georgia because I went to law school at Emory. I work as a prosecutor, then did insurance defense, and I've been doing personal injury since 2017.

Michael Cowen:

Drew, first of all, I want to give you kudos for insisting on bringing Teana on, because I heard about the verdict, and talked to you. I think this would be a great thing to talk about, because those are tough, tough cases. You said, "Teana trialed it with me. I need to bring her on." Many people don't do that. They go, and they take all the credit for themselves. Maybe that's appropriate when you're an older lawyer, and you're a senior. I'm not sure. But I really do admire the fact that you're sharing the credit, and sharing the glory with the woman who worked the case with you.

Drew Gilliland:

Oh, thank you for saying that. The verdict would not have been possible without her help, so she definitely deserves credit for it.

Michael Cowen:

Give me a little bit of background on the case.

Drew Gilliland:

Yeah. I'll take this part because Teana, she came on about three weeks before the trial?

Teana Overton:

Yeah, about three weeks.

Drew Gilliland:

I had been living with the case since 2017. This happened in 2015, but we signed the case up in 2017 right before the statute ran. Of course, the court shut down because of COVID. That took two years out.

By the time we took this case to trial, it had been nine years since she was injured. She is a just phenomenal woman. She worked in the grocery store business, and for 40 years, she worked at Kroger.

She put two kids through college on a grocery store salary, which I don't know how you do that. But she found a way. She's a church going lady, and just her friends and family came and testified for, and one of her friends even borrowed money against her 401k to help our client, which I've never heard of before. But that's the kind of person she was.

Michael Cowen:

Tell me about the liability facts.

Drew Gilliland:

The liability facts were tough. She tripped on a sidewalk that was located in front of QuikTrip. She went there early in the morning. She was working an overtime shift at Kroger. It started at 4:30 in the morning. She got to QuikTrip at 4:00 AM. As she was walking in the store, they sell her favorite tea.

She was walking in to get the tea, but the tea machine was down. As she was walking back out to her car, she tripped, and fell on the uneven sidewalk. She tried to break her fall, and she did. Unfortunately, she broke her pinky finger, but it was a bad break that required surgery. She had a comminuted fracture on a joint that's located right where the wrist is.

Michael Cowen:

What does comminuted mean?

Drew Gilliland:

It means the bone, basically, the way I described it at trial was the bone exploded.

Michael Cowen:

Breaks in lots of little pieces.

Drew Gilliland:

Yeah, exactly.

Michael Cowen:

That's a timely one for me. As you know, I tripped on some uneven sidewalk while walking a week and a half ago, and braced myself for fall. Mine was luckily not comminuted, but I got a little fracture of my radius right by the elbow. Luckily, I don't need surgery, but I have a lot of sympathy for your client, and how easy it is to trip on uneven things because you're focused on running.

I'm having a conversation with somebody, not looking exactly where my feet are, because I'm looking at the sidewalk ahead of me. I don't know what happened. I just hit it wrong, fell down, and tried to catch myself, and boom.

Drew Gilliland:

You still presented at the ATAA Conference, too?

Michael Cowen:

Yeah, I didn't even know it was broke. I knew it hurt, and I didn't have full range of motion. But I was able to hide it. I don't think anyone but people that were really close to me that I told, knew that I was hurt. I went to the party that night. I was singing karaoke that night.

It's really, when you have all these people saying, "How could you have been hurt? You didn't go to the hospital. You didn't go to the doctor that day." There's video of me doing all kinds of stuff that day at that conference, and yet I had a broken bone. It's objective. There's no question that I don't have a broken bone.

It really, one, the fact that you do have that initial adrenaline ... The biggest thing I had is I was embarrassed, and then I finished my run. I'd run five miles. I only had another quarter mile to get back to the hotel. What am I going to do? I finished my run, and then I had to speak. I had stuff to do, and I just powered through it.

I also found out tequila is a very effective pain reliever, temporarily, that evening for anyone that was at karaoke with me. But the fact is, you can get hurt. The last thing I was thinking about was documenting a scene or seeing a doctor. I just thought, "This is going to get better. It's just got to be a sprain."

I wouldn't even gone to the doctor the next day if my partner, Malorie Peacock, hadn't on the flight home like, "Michael, you need to go to the doctor. Promise me you're going to go to the doctor." Like, "All right. It's going to be a sprain, but just so you feel better, Malorie, I'll go to the doctor." And, then they did x-rays.

Drew Gilliland:

Teana and I met with your friend, and our friend, Joe Fried, before the trial because, and I'll show you a picture of the sidewalk. But the sidewalk, it looked perfect. You could not see an elevation change. The elevation change there was just 0.44 inches. It was under half an inch.

But in Georgia, we had the Life Safety Code, and I think it's pretty much the law in every state. But an elevation change of more than a quarter of an inch has to be beveled. This one obviously wasn't. But fortunately, the QuikTrip employee put a magazine down over the elevation change, and the only way you could see the elevation change was from the slope of the magazine.

But we met with Joe because like I said, the sidewalk looked perfect, and Joe's advice was really powerful. He said, "Just lean in, own that fact." How do you still win if that's true? What he recommended is, "Look, it's a hidden hazard." That's how we kind of flipped this, what looks like not a hazard into a serious hazard. That's what makes it so dangerous is that it is so small. If it's a major hazard, you should see it. That advice really helped us. I want to thank Joe, too, while I'm at it.

Michael Cowen:

Yeah, he's awesome. He's so giving and sharing. But I think that is also so powerful, is embracing that what some people would see as a bad fact is that the defect, the hazard is not visible in a photograph.

When you first show it to a jury, they might think, "I don't see anything there." But then saying, "Yeah, that's why it's so dangerous. That's why we have these rolls, because you don't see it, and you can't see it, but it can still trip you." I think that's so important. How did you prove to the jury that that was dangerous?

Drew Gilliland:

We had an expert that I had used when I was on the defense. When I was doing defense work, we represented Fortune 500 companies in these kinds of disputes. I had used him when I was on the

defense, and so I figured if he can give me a favorable opinion, then the defense probably won't even bother hiring an expert because I hired basically their expert.

It took a lot of work. The QuikTrip actually repaired the sidewalk, so we had to use photogrammetry analysis to figure out what the elevation change was. It came back at 0.44 inches. Our expert could safely say that violated the Life Safety Code. The defense didn't dispute that.

Michael Cowen:

Okay. I think that's such a huge difference, that you had a code. It wasn't just, "You should have done this," an argument about that. It definitely followed the code. Then the question is, is that really dangerous or is it just kind of like a regulatory violation without any real meat to it?

Drew Gilliland:

Right, right. One of the things, and I actually thought this was pretty creative, one of the defense attorney was phenomenal. He's a very good attorney, sharp, and a straight shooter. He doesn't play games.

But when he deposed our expert, what he did is he had somebody go out to the courthouse where we were trying the case, and he went to one of our offices. We have four offices. But he went to one of our offices, photographed the sidewalk and front of our office. Of course, the sidewalk in front of our office looked way worse than the sidewalk at QuikTrip. Same with the courthouse sidewalks, they looked way worse than the sidewalk at QuikTrip.

He kind of put our expert in a position to say that, "The person who hired you, they should probably fix their sidewalks, too." Our expert, to his credit, he said, "Yeah, they should correct their sidewalks." But it was uncomfortable for our expert, because he's basically having to say that our sidewalks are violating the same law that QuikTrip did.

But that was something, again, talking about Judo Law, flipping that on the defense is that in the case of our sidewalk, and the courthouse sidewalk, you could see those hazards. They were pretty visible. You at least had the opportunity to see that the sidewalk was messed up, and avoid it. Here, you didn't have that opportunity.

Michael Cowen:

Teana, when you first got involved in the case, how long before trial was it?

Teana Overton:

Maybe three weeks before trial.

Michael Cowen:

Was this an obvious slam dunk case that you all are excited about when you first saw it?

Teana Overton:

Drew was excited. I saw it. He sent me the video. I said, "Yeah, I don't think this is going to go well, but I'm going to try it with you, of course."

Michael Cowen:

Okay. Was there a process where you came to believe in the case?

Teana Overton:

Yeah, meeting the client. We met with the client one weekend, I think early on a Saturday morning, and spent the day with her. After just spending time with her, I understood how he was viewing the case based on who she was.

Michael Cowen:

Tell me about that.

Teana Overton:

She gives you the traditional grandmother vibes. She's very homey, very nurturing. I spent time with her. We just talked. We didn't talk about the case. I just wanted to know who she was, what hobbies that she had, things of that nature. I'm local, so I'm from here, and she's also from here. We were just talking about different things that happened in Atlanta, to see if we knew the same people, things of that nature.

I actually knew one of her sons. She has two sons. I knew one of them around the same age as her children. We just really hung out with her for the day. I was like, "Wow. I understand."

Michael Cowen:

Where did you meet with her?

Teana Overton:

At one of our offices.

Michael Cowen:

Okay. Okay, you knew you liked her. You knew you believed her. But how did that make a difference about whether the sidewalk was dangerous?

Teana Overton:

She didn't come across as someone who would lie about her injuries at all. I did talk to her about how her injuries halted, some of the things that she likes to do. She liked to cook. She really liked children. I have a toddler. I think one time we met with her, I think I had my toddler with me, and just seeing the interaction between them, and the ways that she was limited in playing, and doing the things that she wanted to do.

Michael Cowen:

How was she limited? I know it's a badly broken pinky, but it's a pinky. How is a pinky worth $1.8 million?

Teana Overton:

Oh, you have to ask the jury. But I think it's more than just the pinky. Sure, it was to the pinky, but the bone actually shattered to where she had to have surgery. We're talking about a woman who worked for 44 years, single mom, who never missed work except for giving birth to her children. She missed work because of this. She tried. She even had side jobs that she was putting her sons through college. She tried to work through it, and just couldn't. She didn't run up an extreme amount of medical bills. She wasn't trying to oversell an injury. Originally, she just wanted her bills paid for.

Michael Cowen:

How did this affect her permanently?

Teana Overton:

She has trouble doing her hair. She used to cook these big elaborate meals for, she worked at Kroger, so the night shift, she would come in, and feed them all.

Michael Cowen:

Oh, wow.

Teana Overton:

At church events, she would bring food, and cater to all of them. It limited her home-cooked meals for her sons. She also was a really avid bowler. I don't know too much about bowling, but apparently people were pretty impressed with her score. But I know she was in a league, and won some championships. She was no longer able to do that.

There was an incident where she almost threw up a child because she wasn't able to hold and grip the child the way she wanted to. Just limited in those things.

Michael Cowen:

Absolutely. How did you present the damages?

Drew Gilliland:

In the closing, we did a per diem argument. Some states allow those, some states don't. Georgia allows them. We did a per diem argument. To be honest, I was kind of ... Let me back up. The defense admitted liability on the day of trial. Literally, in their opening statement, they admitted liability. They praised our client. They were very complimentary to her.

But in their closing, they requested that the jury return $21,000. That amount of money would've triggered their offer of settlement. Maybe Texas has this, where you send an offer to the other side, if they don't accept it, and you don't beat that offer, you're on the hook for their attorney fees.

Michael Cowen:

Yeah.

Drew Gilliland:

Yeah. Okay. They did that. The number they gave to the jury would've triggered that offer of settlement. That would've bankrupted our client. That's one of the things before the trial, Teana and I talked to Ms. Robinson about.

We said, "Look, they sent this offer of settlement." I volunteered to waive our fee. We just had to get our expenses back, but I volunteered to waive our fee if she wanted to take it, so she wouldn't have to file for bankruptcy.

But when they did that, it made me really mad because I felt like ... I'm not saying the defense attorney was being hypocritical, two-faced or anything, but I understand he was doing his job. But it made me angry that he requested that that amount of money be returned so that he could collect attorney fees on our client.

When I got up, I asked for 8.8 million. I did a damages board, and there's 11 factors under the pain and suffering jury charge in Georgia. I put a number in for each amount. There were a few categories I put zero for, but it ended up totaling 8.8 million. Obviously, the jury didn't agree with that. They returned 1.8 million, which we were still-

Michael Cowen:

Yeah, absolutely.

Drew Gilliland:

... happy about. But I was a little frustrated when I got up there, so I wasn't as thorough as I normally am.

Michael Cowen:

Yeah. I want to back up a little bit. How did y'all split the trial?

Drew Gilliland:

Teana took the witnesses, and the plaintiff with Ms. Robinson.

Teana Overton:

I did a direct of plaintiff, and then all the pain and suffering witnesses. You did open, close, and ...

Drew Gilliland:

The corporate rep.

Teana Overton:

Corporate rep.

Drew Gilliland:

Yeah. The doctor testified by video.

Michael Cowen:

You did jury selection, open, closing.

Drew Gilliland:

Correct.

Michael Cowen:

When did you first mention a dollar amount?

Drew Gilliland:

I think we mentioned that in opening, but we said we basically asked if anybody would have an issue returning a verdict for millions of dollars if the evidence supported it.

Michael Cowen:

In jury selection.

Drew Gilliland:

In jury selection, yeah. We can't mention a specific dollar. It's kind of judge dependent in Georgia, but for the most part, you really can't mention a specific dollar amount. But you can say millions of millions or a very large amount of money.

Michael Cowen:

Okay. Yeah. Different people have different opinions in that. I've found there's been a theme. More people who are getting big verdicts seem to talk about money in voir dire than don't.

Drew Gilliland:

Yeah, I don't mention it in opening statement. I know a lot of attorneys, including Joe, and his partner, Michael, they'll actually give the dollar amount in opening statement. I have never felt comfortable doing that for some reason. I wish I could, but I am always concerned that I'm going to mention this dollar amount, and then the defense is going to bring out some smoking gun. Because in Georgia, at least impeachment evidence, you don't have to disclose in the pre-trial order.

Michael Cowen:

Oh, wow.

Drew Gilliland:

Yeah. If they had some smoking gun that you don't know about, and you've mentioned this large amount of money, and then in closing, you have to say, "Yeah, those millions of dollars, we're really just looking for 20,000."

Michael Cowen:

Yeah, it's interesting. I'm a believer in doing it, but I'm also a big believer of, you have to do what fits you. The worst thing you can do is just go up there, and try to be Joe Fried or Michael Leizerman, or whoever, Nick Riley, whoever else it is, who's a great trial lawyer.

They're great because they're themselves. If you're doing something you're not comfortable with, because that's what someone else does, it's not going to work for you.

Drew Gilliland:

Did you learn that right away or how many jury trials did it take for you to learn how to be yourself?

Michael Cowen:

About a hundred, honestly.

Drew Gilliland:

Awesome. Yeah. I started off as a prosecutor. I had the good fortune of ... I had probably a jury trial every week. It was like low-level felonies. But in my first year, I had 50 jury trials. It is impossible to get that kind of experience in the civil world.

I always tell lawyers coming out of law school, "If you can get a job with the public defender or the DA, you're not going to make a lot of money, but you'll be more than compensated with the trial experience you get."

Michael Cowen:

Yeah, there's something about getting there. I had to do a lot of personal growth. Just, I had to become happy about who I was in order to be who I was, if that makes any sense.

Drew Gilliland:

Yeah, yeah.

Michael Cowen:

I may have needed a little more work than most people on that front. But I will tell you that when I let go of having to follow a certain ... It's not like I don't read the great books, listen to the great lawyers, and try to take what works for me that they do. But once I got off script, and said, "I'm just going to be me instead of me trying to imitate someone else, or give someone else's argument," I started doing a lot better. It also became a lot more fun.

Drew Gilliland:

Yeah, yeah, definitely, definitely. I'm still working on that myself. Even though I have a lot of jury trial experience, it's still always a struggle. Because you see, like you mentioned, the greats do it, and then you want to try to do what they do, but it never works for me.

Michael Cowen:

Yeah, me neither. There are some things that they do that fit with me, and it's comfortable. But other things, I try to do, and it just doesn't feel right. When you're not comfortable, that you don't have that exchange of energy with the jury.

Drew Gilliland:

Yeah. Yeah, exactly. I think credibility, and being authentic in front of a jury is probably the most important thing.

Michael Cowen:

So much more important than what words you use or what your structure is. I think you're absolutely right.

Drew Gilliland:

Yeah, 100%.

Michael Cowen:

What have you done over the years to develop your trial skills so that you can try these kinds of cases?

Drew Gilliland:

For me, and then Teana can speak. Teana, she's doing phenomenal. She's only been practicing for three years. She's trying cases with me. She always does great work, very far advanced for the years she's been practicing.

For me, like I mentioned, I was very fortunate. I had a good first job where I got a lot of jury trial experience, and then I did insurance defense in-house for Geico. That was my first foray into civil, personal injury work. We obviously had a lot of jury trials there. Then when I got onto the personal injury side, which is what I always wanted to do, my first job was with Morgan and Morgan. I got some from Keith Mitnik, Rick Block, and those guys.

I would just watch every single trial I could watch, and then read all the trial guidebooks.

By the way, I need to tell you, anybody who's listening, if you do trucking cases, please buy Michael Cowen's book. It is phenomenal. It will save you so much time, and expense if you read that book. It's phenomenal.

Michael Cowen:

Thank you.

Drew Gilliland:

Yeah, absolutely. I don't know with Teana. I'm interested in your account.

Michael Cowen:

Yeah. Teana, what have you done? You are doing light years ahead of where I was at your level of experience. What have you done to develop the skills to try cases?

Teana Overton:

I think people skills. I'm really good with people, and making people feel safe to open up, and tell me what's going on. But really, my background, I grew up in Atlanta, in the city. But my grandparents, they're small town country folks. They have a farm in Southwest Virginia. I kind of got the best of both of those worlds. I'm really good at talking to people, relating to people, and just really studying people, like how they move, how they think.

Michael Cowen:

What are your next plans for continuing to develop your trial skills?

Teana Overton:

Yeah, continuing to go to trial?

Michael Cowen:

That's good.

Teana Overton:

Yeah. I think something that works really well for Drew and I is we get along really well. We have a great working relationship. Even outside of work, we're friends. I think in the courtroom, when the jury see our interaction, for me being so young, it's really respectable to Drew, and how it's not like, "Oh, I'm just

the young associate," brushing me off. I really have the input in the trial, and they notice that he respects me, so it's more collaborative. I think that comes across in front of the jury.

Drew Gilliland:

Yeah, I agree with that.

Michael Cowen:

Do you think there's anything to the male-female team in trial?

Teana Overton:

Yes.

Drew Gilliland:

Yeah.

Teana Overton:

Drew and I come from different backgrounds, so I think he has maybe a different worldview than I do. Sometimes, it's the same. But we have pretty good opinions. We are comfortable enough to each other to discuss them. I don't think that that happens in a lot of spaces that we're in. But for us, it works. We talk about very complex or maybe touchy situations. We just have an open dialogue, and open communication about those things.

Drew Gilliland:

Yeah. I think especially like not to be too political here, but I think because I'm a white male, I think that the world is obviously changing. That's probably for the better. But there is a dynamic that as a white male, you kind of have to realize it's probably not going to look good if you're over here telling people what to do, where to go, and things like that. Fortunately, I'm not good at that anyway. That's just not my personality. It never would happen.

But I think Teana's absolutely right. We just get along well as friends. If I ever try to boss her around, which she would probably tell me to go jump in a lake or something.

Teana Overton:

It would be some choice words.

Drew Gilliland:

Yeah, it would be very different words than that. It helps when you're just trying a case with a friend. But definitely being the lead attorney, I'm sure you've tried cases with younger attorneys, and you probably don't want to look like the guy who's barking orders. It just isn't a good look.

Michael Cowen:

You don't. I really believe if you're going to try a case with, especially with a woman, you need to make sure she speaks. Then that she plays a meaningful role in trial, because you're going to have women jurors. If you become that guy that holds them back, that doesn't treat them well, that you can very much put yourself in a bad place in the jurors' minds.

Plus, I think because we're all different, I think that different people connect to different members of the jury differently. Malorie Peacock and I, we've been trying cases for 11 years now. It's very collaborative for us. We actually split the opening. We split the jury selection. I can't do that with everybody. We've developed a level of trust and a rhythm that lets us do that. But I think it's been ultra effective because Malorie and I are so different, we connect with different people differently. That the whole is greater than some of the parts.

Whereas when I have other lawyers, if a lawyer's going to try a case with me, they're going to do work, they're going to speak in front of the jury, going to, "I want the jury to see that I respect the other lawyer enough," unless it's truly just like a one-year associate, they might just get one witness. But generally, they're going to be doing a major part of the trial. But I don't have necessarily the rhythm to split an opening or split a jury selection with them until we've tried enough cases together to develop that.

The client comes first, too. If someone's never picked a jury before, and we're trying a big case, I want to pick the jury. But once someone's been there with me, then they can do part of it, and then more and more, until eventually where I'll sit back and watch someone else pick a jury. But you have to develop that relationship with somebody.

Drew Gilliland:

Yeah. I think one of the things that Teana's really good at is like she said, she's good with people, and she does have a diverse background. I think her mom is white, and her dad is African American. She can just talk to anyone.

Michael Cowen:

Robustly.

Drew Gilliland:

And, for me, honestly, I think once you get good at it, like cross-examining an expert witness sounds, it seems like it's supposed to be the most difficult part of trial. Once you kind of get good at it, I think it's much easier.

I think direct exam of fact witnesses can actually be surprisingly difficult, because they're not professional witnesses. They can kind of go off the rails, and Teana has always been very good at making people feel comfortable when they're being questioned. That's a skill set that I think can be taught, but I think she was just born with that. Because when you have a witness, it's one thing to talk to them on the phone or practice with them in your office, it's totally different when they're in front of a jury, and 12 people are staring at them, a judge in black robes is above them, and staring down at them. It can be really nerve wracking.

Of course, the damage witnesses are some of the most important witnesses in the trial. Teana just always does a really fantastic job questioning them, and making them feel comfortable.

Michael Cowen:

Yeah. I think the direct of lay witnesses is so much harder than anything else we do. Cross is easy. We get to ask the questions. We control things. They're leading questions, and typically they're professional witnesses. We've got prior depos. We know what they're going to say. We know how they're going to react.

Whereas when you're putting up some person who's never testified before, who's not super sophisticated, you don't know what's going to happen. Having the patience, which I don't have, there's a

whole skill set of having the patience to sit down with somebody, and take them through the process that they need to be an effective witness.

One of the things I've learned is just I'm capable of doing it, but it doesn't spark joy for me. There's other people like Teana, some of the men and women I practice with, that are really good at it, and they love it. That's one of the great things about finding a team is you find who does what well, and you do it all together.

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.

Now, back to the show.

Drew Gilliland:

Yeah. That really helped. I think that came through with the jury. That it didn't appear to be like I'm the experienced one, she's the inexperienced one. If you asked the jury after the trial like, "Who has more experience?" I don't think they could have told you.

Michael Cowen:

Oh, wow. I'm old enough where people figure it's me, when you start getting the gray on the sides. How many what I call late witnesses or before and after witnesses did you have? And, how did you find them?

Teana Overton:

We had three. We had her best friend, and her two sons. But we actually had a list to choose from, probably of 10 folks. I called them all, and talked to them all. I knew I wanted the sons there for obvious reasons. But as far as her friend list, it was about availability. Who could actually be there during trial? What week? All of them had fantastic stories about her. There wasn't one person who I called, and talked to that I was afraid to put up.

Michael Cowen:

You talk about stories, I think that's so important. I want you to elaborate on that. I know a lot of times, they think they just should go up there, and say, "She was fine before, now she's hurt, and now she can't do anything," which isn't very persuasive. How did you discover the stories, and what stories to bring out through these witnesses?

Teana Overton:

Actually, some of them told me new stories while they were all there. But she's just such a genuine person that every story that anyone tells about her is so authentic and pure, that you just like her. She's a jokester. She likes to play pranks. She pretended to win the lottery one time.

Michael Cowen:

Oh, wow.

Teana Overton:

Yeah, she does a lot of different things. It's like a class clown in a way, but also very strict with her sons. She would show up to the school when they were doing wrong things.

I know spanking is controversy. She has spanked them in front of their class when they were in grade school. She has embarrassed them. But her sons really respect her. On the stand, the first time I had heard this story is her oldest son got a second job, and saved for at least a year, it might've been more than a year, to take her to Hawaii.

He flew her, the younger brother, and I think someone else. They all took a family vacation to Hawaii, that he had got a second job just to pay for, because that was a dream of hers. She's just very respected in her community, and life.

Michael Cowen:

I like that it's so off code, too. If the code is they fall down on purpose, or they fall down through their own negligence, and they're trying to just cash in, that is so the opposite of what you're talking about. It's really that humanization, and showing that this is a good person, part of our community, and not someone else. That's so important.

Drew Gilliland:

Teana had one of the friend, and she had the jury. The jury was laughing. She was telling stories that you could just hear all the jurors were laughing at these stories. I forgot what all she talked about.

Teana Overton:

She was fantastic.

Drew Gilliland:

Yeah, she was phenomenal.

Michael Cowen:

That is so brave. I want to talk to you a little bit more about that. Because some people would be scared of having the jury laughing, because this is serious, someone's hurt. We can just talk about how sad everything is. It sounds like you're telling stories of joy. Why is that?

Teana Overton:

Because I think the stories demonstrate who she was prior to the fall. We're saying basically, she was this joyous person, and she got pleasure out of serving others. Showing up for other people in various ways, playing jokes, things like that, and how she kind of changed after the incident. She was no longer able to do some of those things or maybe not as joyous as she was prior.

Michael Cowen:

Go ahead.

Drew Gilliland:

Oh, sorry. Yeah, one of the things I was going to say is that one of the things that Teana and I always work on, is developing witness testimony that is lighthearted, and funny, if they can be funny. If they're not funny, we don't ask them to be funny. But also, focusing on the positive things in life.

I would much rather have a happy jury than an angry jury or a sad jury. We moved the case fast. We started Tuesday morning, we closed Thursday morning. But for me, and I know Teana as well, we really want to bring lightheartedness to the trial, and have the witnesses focus on not so much all the tragedy that's happened, but on all the hopefulness that remains.

Teana Overton:

I also want to chime off of that. I also think it makes our client relatable. When you have someone who's relatable or when I think of Ms. Robinson, I think about my grandmother. That's who I vision her as based on the stories that I've heard about her. I think for the jury, perhaps they have someone in their family or a friend that they know who has those characteristics, the one who shows up for everybody.

Michael Cowen:

I think that's so important. I'm glad you're brave enough to do it. When you're telling the stories of the happy times, there has to be joy, there has to be laughter, there has to be energy, and you have to have that contrast with the after. Even the after can still have some happiness. You want to show that someone's struggling, doing their best, and they're still a good person that's worthy of help from the jury.

If you think about watching a movie, if it's a tragedy, they show the happy times before the bad thing happens. They don't just show like, "Oh, life was great before. Now, it's awful." They show the laughing, the fun, and then they show the horrible thing happened. Then they show the person trying to battle back.

I think having that full emotional range is so important. I'm so proud of you for doing that. It just made me smile when I heard that.

Drew Gilliland:

Thank you.

Michael Cowen:

I've always been scared to take these kinds of cases. You've been on both sides. What are some things that you look for in deciding whether or not to take a trip and fall, or a slip and fall case?

Drew Gilliland:

The first thing is the client. At least as far as my decision on whether to take the case, the distance, it's always, is the client going to present well in front of a jury? If they're not, I don't care how strong their case is, liability wise, it is probably one that would need to settle if there's a fair offer.

But the other thing is that, at least with premises cases, there's the trip and fall, and the slip and fall. The slip and fall is typically like a liquid on the floor or something like that. With trip and fall cases, I think those were great cases because at least in Georgia, if there's a code violation, the owner of the property is presumed to have knowledge of it. It's really challenging for the defense to win on summary judgment.

At trial, you can make arguments about, "Look, the [inaudible 00:36:41] didn't just appear overnight. It's been there for a while." One of the things that QuikTrip did is in some of their defenses, one was that nobody had ever tripped and fell on the sidewalk before. They said, I forgot how many, it was like 16,000 people a week-

Teana Overton:

A week, yeah.

Drew Gilliland:

That go on that sidewalk, and nobody tripped and fell. Again, we kind of flipped that on them to say, "Okay, nobody tripped and fell, but you also endangered 16,000 people every week." That was a way we flipped that on them. But it was a defect that didn't just happen overnight. It helps when you can say, "Look, the defendant should have known about this. This took years to develop."

It helps because, "What were you doing in the past five years? Did anybody check the sidewalk? Does anybody at your company know what the Life Safety Code is?" Of course, nobody knew it at QuikTrip. We got to use that evidence against them.

Michael Cowen:

That's great. You also spent the money, and hired a decent expert.

Drew Gilliland:

Yeah. Yeah, that's a problem. That's the downside of these cases. It does require expert testimony to establish code violations. But if you can get that, and what a great code, by the way. It's called the Life Safety Code. I can't think of a better description for a rule than Life Safety.

Michael Cowen:

Absolutely.

Drew Gilliland:

Yeah. We kept hammering that home. We got to use it. We're like, "Look, the code is literally called the Life Safety Code. It is there to save people's lives." I personally like the static defect trip and fall cases more than the slip and fall cases. The slip and fall, it's like the liquid had been there for 15 minutes, 20 minutes. It's typically not there for five years.

Michael Cowen:

Yeah. Then you got who spilled it, how visible was it, and what is reasonable. Yeah, I agree that an architectural defect or something that's been there for a long time is a much better case.

Drew Gilliland:

Yeah, yeah, absolutely. Absolutely. Yeah. But the plaintiff is typically the most important factor. I don't know. What do you think, Teana?

Teana Overton:

There were some things in this case that I don't think we've talked about yet, particularly this one that helped. As Ms. Robinson fell, she sat in her car for a few minutes, and then she went back in and told the clerk, "Hey, I fell outside. I'm injured." I'm not sure what all she told her, but she did not tell her where she fell. She just told her that she fell.

The clerk called the manager, and then went outside directly to the spot that Ms. Robinson fell without Ms. Robinson telling her where she fell. I think that was something that stuck out to me, anyway. There was an incident with the video footage. The fall happened at, was it 3:50 AM?

Drew Gilliland:

3:55, yeah, yeah.

Teana Overton:

3:55 AM. It's QuikTrip's procedure to record 15 minutes prior to the fall, and 15 minutes after the fall. Automatically pulled that footage. It was like a self-report, incident report. It got written at maybe 3:45. We didn't have a significant amount of footage after the fall. Then in the footage that we did have, which wasn't helpful when you first saw it, because I scared this case. But it glitches when she falls.

The way QuikTrip explained that glitch is that, "Oh, when something fast happens, it just glitches," but that doesn't really make sense if your cameras are for security purposes. It's not watchable.

Drew Gilliland:

Yeah. Kind of dovetailing off of what Teana said, the client, when she went inside, reported the fall, and they did the incident report, apparently our client said she fell at 3:45 AM. All that information is sent to corporate headquarters at QuikTrip. They then pulled footage from 3:30 AM to 4:00 AM. But what happened is after she fell, and kind of gathered herself, because she hit her head on the sidewalk, too. She went back in the store, and the store actually had audio.

When she went back in to report the fall, the video had already shut off, because they stopped it at 4:00 AM. She went in shortly after 4:00 AM. Her telling the clerk what happened, the clerk going outside, and putting a magazine on the sidewalk, and taking photographs, all that was erased. That was an issue.

The video, it's hard to describe, but basically it looks totally normal. Then when she is falling down, the video just glitches. It's like her body just kind of turns into multiple colors.

Michael Cowen:

Weird.

Drew Gilliland:

Yeah. It was really weird. We had 16 different cameras. There were no glitches on any of the other footage, just right when she fell. Fortunately the corporate rep, they had two corporate reps. One of them, first he kind of fought me, and then I had his deposition transcript, and I impeached him. Then after that, he just started saying yes to all my questions. He was off the stand in two minutes.

The other corporate rep was I guess more of an advocate for QuikTrip or more litigious. He wanted to fight me on everything. I don't even know if he really believed this, but he's like, "It'll probably glitched because she moved fast." Then I was able to say, "So if somebody robs the store, do you think they're going to move quick or slow?"

You could tell the jury, I don't know if you're in trial when you can kind of feel the jury.

Michael Cowen:

Yeah.

Drew Gilliland:

They sort of sense that you're making a good point. I could kind of feel the jury is with us at that point. Yeah.

Teana Overton:

And, the sidewalk being repaired.

Drew Gilliland:

Oh yeah, yeah, that's right. It was repaired like a month after.

Teana Overton:

And QuikTrip said that it was already scheduled to be repaired.

Michael Cowen:

Oh, so it's not a remedial measure then.

Teana Overton:

Right. But I think that fact that it was already scheduled is still helpful, because it just shows that you all were aware that there was something wrong with this area.

Drew Gilliland:

Yeah.

Michael Cowen:

Out of curiosity, did you do anything with a name QuikTrip on a trip and fall case?

Drew Gilliland:

We thought about it. Yeah, we wanted to change our logo to somebody falling. We didn't, we didn't want to.

Michael Cowen:

Yeah, I think it'd be tempting, but maybe too cute. I'm just wondering. It's like QuikTrip, someone trips, it just ... I don't know.

Drew Gilliland:

Yeah. QuikTrip, surprisingly, they actually have a pretty good reputation, at least here in Georgia. It's a Canadian company. From what I could tell, a lot of their employees, they hire internally, and they work up to management positions. But yeah, it wasn't like having a corporate defendant on the other side who was not well liked.

Michael Cowen:

Yeah. Tell me the story of how the verdict came in.

Drew Gilliland:

That was a new experience for me. During jury deliberations, the first question was ... I had a damages board that I hand wrote the numbers into. They asked if they could have the damages board back there with them during deliberations. We all agreed that no, they couldn't do that.

They second question came back, and they said they were deadlocks at 1.5 to 2.5 million. Then the judge said, "We have to keep deliberating." Then we got the verdict. The way they wrote it on the amount, they put 1.8K. And then for liability, they put a 100% on our client.

Michael Cowen:

Oh, my gosh.

Drew Gilliland:

QuikTrip move for a mistrial based on an inconsistent verdict. To be perfectly honest, that was a first for me. We started researching case law on what's supposed to happen in that situation. Unfortunately, there's good case law that you're supposed to tell the jury to keep deliberating, and then if they can't come to a solution, you can then question the jurors. But yeah, that was a scary moment.

Michael Cowen:

They thought the K was a billion instead of a thousand?

Drew Gilliland:

I don't know what.

Michael Cowen:

Oh, my gosh.

Drew Gilliland:

I was trying to pretend like I didn't know what the K meant. Like 1.8K, that must mean a million. But it went back to the jury, and they came back with the 1.8 million written in, and then they put a 100% fault on QuikTrip.

The verdict form is pretty tough. It's not an easy verdict form because there's multiple sections, and if you've never done it before, it's confusing. But yeah, fortunately they got it right, and it wasn't 1,800. But it was fortunate that they let us know they were deadlocked in the million range, so we knew that the K wasn't a thousand.

Teana Overton:

I think the judge handled that very well. She didn't make any quick, fast decisions. She was really like, "Okay, we're going to go look this up." She went, from my understanding, I don't know for sure, I'm going to assume here. She went and spoke with other judges about how to handle this.

Once we got the second question, 1.5 to 2.5 million, I was like, "Oh, we're fine." Then we got that verdict form back, and I was like, "Oh, we're not fine." But I think kudos to her. She handled that very well. Judge Spencer down in Clayton County, Georgia, she handled that well.

Drew Gilliland:

Yeah, she actually went off the bench with her staff attorney. We submitted the law to her, and she said, "I need to research this now." Yeah, to her credit, she listened to both sides rather than making a ruling just off the top of her head. She would actually research the law before making any rulings, so that was nice that she was careful about how to approach that situation.

Michael Cowen:

Absolutely. If somebody wants to find you all to learn more about these kinds of cases, maybe talk to you all about a case, how does someone find you in the world?

Drew Gilliland:

You can Google me. I'm at Nick Schnyder's law firm, and I'm with Bear Legal Solutions in Florida. I practice in both states. But I'm happy to give out my cell phone number too. It's 407 718 2128. If I don't answer, just shoot me a text. I'll be happy to share all my material, and whatnot from this case if anybody is dealing with a similar issue.

Michael Cowen:

Thank you both for coming on. I really look forward to hearing about your next trials. Teana, I look forward to hearing more and more news of your growth, and your future success. Thank you, you two, for coming on. Thanks to our audience for listening to Trial Lawyer Nation.

Drew Gilliland:

Thank you, Michael.

Teana Overton:

Thank you.

Michael Cowen:

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