

## **PRAISE FOR *RUNNING WITH THE BULLS***

“Finally, someone has written a book for plaintiffs’ lawyers with clear advice regarding settlement negotiations. Plaintiffs’ lawyers are involved in settlement discussions in virtually every one of their cases. This book provides invaluable guidance on how to do it right. From sample demand letters to information about insurance companies’ duty of good faith, this is a resource that all plaintiffs’ lawyers will find invaluable.”

—Paul Luvera, past president of the Inner Circle of Advocates and the Washington State Association for Justice

“I have read dozens of books on how to try cases, but this is the first one I have ever read about settling cases, even though that is how most cases are resolved. This is a particularly useful resource for all lawyers, new or old, and whatever your area of litigation. It tells you what to do and how to do it, when, and why. Filled with examples and samples, it comes from the unique perspective of two people who have successfully handled cases all across the country, both with eight-figure verdicts and settlements by the dozens. I did not know what I did not know. Now I do. It is wonderful that they are willing to share their secrets with the rest of us.”

—Roxanne Barton Conlin, past president of the American Association for Justice and member of the Inner Circle of Advocates

“Every generation has a handful of trial lawyers who reach star status. Nick and Courtney Rowley are their generation’s first superstars. This book by Nick and Courtney does something remarkable—it lays out how to get the peace of settlement for your clients without sacrificing the value that justice requires.”

—Keith Mitnik, author of *Don’t Eat the Bruises* and senior trial counsel at Morgan & Morgan, the largest personal injury firm in the country

“With high energy and creativity, Nick and Courtney map out how to get those astronomically high settlements they have made a regular part of their world.”

—Carney Shegerian, named 2013 Trial Lawyer of the Year by the  
Consumer Attorneys Association of Los Angeles

“Nick Rowley is a phenomenal trial lawyer—establishing himself at a relatively early stage in his career as one of the best in America. *Trial by Human* has become part of my personal library. Now, with *Running with the Bulls*, Nick and Courtney Rowley have created a work that should be required reading for anyone who advocates for people in the civil justice system. This book conveys the value of self-examination, creative thinking, and early case framing. It’s a fast read—teaching so much more than how to try our cases better.”

—Elizabeth Quick, graduate of the Trial Lawyer’s College and member of the  
Washington State Association for Justice board of governors

“This is the book you’ve been waiting for. A play-by-play guide to the time-tested methods the Rowleys use to get big settlements, along with all the insights you need to make these methods work for you. This book does everything but settle your cases for you. This is a must-read.”

—Theresa Bowen Hatch, coauthor of *Trial by Woman*

“*Running with the Bulls* is THE blueprint for putting pressure on the defense that results in the surrender of top-dollar settlements. Settling cases is a separate form of art and combat that calls for a separate methodology. *Running with the Bulls* teaches that methodology.”

—Keith Bruno, named 2018 Trial Lawyer of the Year by the  
Orange County Trial Lawyers Association

“Time and again, Nick and Courtney Rowley have proven themselves masters at getting the absolute best results for their clients inside the courtroom with record-setting verdicts nationwide. Now, learn their cutting-edge, proven approach to settlement negotiations and how they get the best results for clients outside the courtroom as well. With this book, you will rethink your approach to settlement.”

—Brian P. Galligan, past president of the Iowa Association for Justice

“This is a game changer. The strategies and techniques taught in *Running with the Bulls* really work, I’ve seen Nick and Courtney’s strategies implemented in real-time on a case we did together that went from the defendants offering nothing to paying over \$10 million. The leverage exerted and chaos resulting from their strategies are a joy to watch. After forty years in practice, I have learned how to do better for my clients.”

—Carol Hepburn, graduate of the Trial Lawyer’s College and one of a handful of attorneys in the country actively representing survivors of child pornography in civil and criminal matters

“Once again, Nick Rowley brings his Trial by Human approach to help all of us more effectively represent our clients. This book is a tremendous source of information on settlements, and it also provides a few great trial tips along the way. It’s a great book for lawyers of all experience levels and has everything from a basic step-by-step guide to effective settlement demand letters, all the way to first-hand stories about fascinating behind-the-scenes negotiations on multimillion-dollar settlements. This is a great opportunity to learn how to achieve the highest possible settlements for your clients.”

—Gary Dordick, emeritus member of the Consumer Attorneys Association of Los Angeles Board of Governors and obtained the highest jury verdict in Ventura County (\$125 million) in 2016



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# RUNNING

# 3 WITH THE BULLS

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## HOW TO WIN TOP-DOLLAR SETTLEMENTS

By Nicholas Rowley & Courtney Rowley

With Contributions from:

Brian Brandt  
John Carpenter  
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*In this country, civil rights matter greatly and are worth much more than the paper they are written on or the sound of their spoken words.*

*The price for taking away a civil right (such as your right to life, your liberties, your right to pursue happiness, and your right to be free of pain and suffering) is 100 percent civil justice, the importance of which is at the very core of our fundamental rights guaranteed by the Bill of Rights and the Constitution.*

*With these fundamental rights in mind, we dedicate this book to the countless injury and wrongful death victims (and their family members) of civil injustice in America. You deserve full justice, not cheap or partial justice. We share our discoveries and methods in your honor.*





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Tina Ricks from Trial Guides is amazing. We smile when we think of or talk about her and the great commitment she has not only as an editor but as a human who cares deeply about what we are trying to do, changing the justice system. Thanks, Tina, for all your hard work.

Aaron DeShaw put together a small publishing company years ago that has trained and turned small-time solo practitioners, lawyers young and old, into Davids who have become Goliath slayers. The list and thousands of cases that have been won for deserving victims and families (that would have been lost or never pursued) because of Aaron's Trial Guides is too long to mention. Aaron sought to change the justice system and he has. His belief in this project and commitment to it is something we greatly appreciate.

Rick Friedman has been a friend and mentor for many years. We practice law differently and much better and more professionally because of the many hours he has given to us. The work he has done has taken us all to a new level. Thank you, Rick.

Many people who have been running with the bulls for many years (more than 200 years of combined experience) have worked hard and contributed to this book. If we stick together and share our experience and knowledge, just about anything is possible. Certainly, increasing the value of civil justice and noneconomic damages for injury victims and families can, and will be, increased greatly because of the work everybody has put into this.

Our gratitude pours out to those who have written chapters, reviewed and given commentary, and helped us put together what we believe will prove to be a revolutionary manuscript.

# PUBLISHER'S NOTE

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This book is intended for practicing attorneys and for people who are looking to better understand the process of litigation and understand the value of their own case. This book does not offer legal, medical, or psychological advice and does not take the place of consultation with an attorney or other professional with appropriate expertise and experience.

Attorneys, clients, and persons representing themselves are strongly cautioned to evaluate the information, ideas, and opinions set forth in this book in light of their own research, experience, and judgment; to consult applicable rules, regulations, procedures, cases, and statutes (including those issued after the publication date of this book); and to make independent decisions about whether and how to apply such information, ideas, and opinions to a particular case.

Quotations from cases, pleadings, discovery, and other sources are for illustrative purposes only and may not be suitable for use in litigation in any particular case.

Many of the cases described in this book are actual cases, and the names and other identifying details of participants, litigants, witnesses, and counsel have been fictionalized except where otherwise expressly stated.

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# INTRODUCTION

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By Nicholas Rowley

I am thirty-seven years old. It's July 9, 2015, 7:00 a.m. The morning is crisp, the brick and stone streets are ancient, narrow, and scarred with the blood and sweat of the humans and beasts. The air reeks of urine, alcohol, cigarettes, and quiet fear. Thousands of people surround me dressed in white pants, white shirts, and red sashes. My friends and brothers, Gary Dordick and Mauro Fiore, are with me, but after a few steps and a turn of my head, I lose them as the crowd thickens. Everyone stands in quiet anticipation, the anxiety is palpable. We are from all over the world, young and old, big and small. The odd few appear excited, while the rest of us wait, clearly out of place, fear etched across our brows, our hearts pounding.

As time passes, the crowd grows, and tension continues to mount. As 8:00 a.m. nears, people shift from one side of the street to the other. As the minutes count down, rushing toward the start, I wonder whether I'm in the right place or if there even is such a thing. My ultimate goal: to reach the end, unscathed. I've promised to meet my wife and youngest son, Odan, for breakfast in a mere hour's time. While my hope is to reach my family unharmed, I'll settle for survival.

As I look around, I see I am surrounded by thousands. There is one man beside me I can't ignore: he's wearing a blue shirt, contrary to the white-on-white and red sashes the rest of us are wearing. I'm not sure why he would choose to stick out like this, but I assume it's for some purpose.

In this moment, I'm comforted knowing that my family is safe, together, and watching from a balcony a few blocks away.

Nothing I have read, seen, or heard has prepared me for the feelings I have percolating inside. The only thing that compares are experiences I had during my military service. Fear, and anxiousness, but also

simmering excitement and anticipation fueled by adrenaline. One thing is for sure; I am alive in this moment.

I breathe in the cool air, and I feel it coming in through my nostrils, flowing down the back of my throat and into my lungs. My heart is beating in my chest, pounding.

Suddenly—everything stops. Thousands freeze, and the world becomes silent. Time stops, and in unison our heads bow as we join in prayer. Amen! One more deep breath and the pounding heartbeat is back. This time it's stronger than before as I hear thundering shouts, "*Viva San Fermín! Gora San Fermín!*" ("Long live Saint Fermin!" in Spanish and Basque.) One rocket fires. Then a second. The ground begins to tremble, rising to a quake. Although I've never been here before, I somehow know, I can feel them coming.

The human herd breaks into absolute chaos. Hundreds sprint forward, others dash to one side of the small barricaded street, and some start trying to climb up high walls in panic. I start to run forward, but faces are flying by me, etched with terror, looking back over their shoulders. I see true fear on their countless faces. Before I have time to react, two 1,200-pound bulls stampede by, inches from my left side, at a pace three times faster than anyone who is running. They take no notice of the surrounding humans. I realize in this moment: if I had been struck by either of those animals, I could have been killed in an instant. Facing death (and surviving) is something I have always enjoyed, but in this moment I feel less in control than any other experience I have had. There are more thousand-pound, long-horned beasts coming up behind me that I cannot see. The continued imminent threat of serious harm or death that I cannot see incites something primal within me that I had never felt before. In that moment I feel energy, strength, heightened alertness, and it seems as if everything has become slow motion.

Another giant bull approaches behind on my right, veering toward a crowd huddled toward a high wall. I go hard left, and so does the bull. I have nowhere to escape. The bull is so close I can reach back and touch him, which means he is about to touch me. Before I have a



chance to react or let alone blink twice, he brushes past me, turns with purpose, and gores the man who was running beside me. Yes, he gores the man in the blue shirt and catapults the poor soul into the air like a rag doll. The man lands hard on the ancient stone street and looks lifeless from my brief glance back as I sprint forward behind the bull. I realize now that I am part of the herd of humans dressed in white with red sashes. We continue to do the only thing we can do—run!

As more bulls turn the corner behind us, we continue to rush forward, trying to blend in with one another. A few runners break off and reach their arms out as another bull passes, trying to touch its horns. One man gets trampled, and as I look back, I see him motionless in the fetal position. Lesson learned; I will not be trying that move. Within a few more seconds, the last of the bulls pass me by. The ground continues to shake as their hooves beat the stones. Even though it's only been minutes, it feels much longer. I continue running all the way into the ring and find my lost companions, Gary and Mauro.

I stop, breathe, hug my brothers, and think to myself: we are alive and, today, we will make it to breakfast.

If you are reading this book, chances are you are a person who represents humans who need you. Or maybe you are reading this book for yourself as you stand your ground against an insurance company, large corporation, or government entity. If this is so, you are running with the bulls. We all are.

Sometimes, I imagine that big organizations, the government, and large, powerful corporations can be a lot like the bulls I ran with in Pamplona. The difference is that the bulls we deal with aren't something we do for tradition, thrill, or have on our bucket lists. We face these bulls day in and day out, oftentimes for many years before we see the justice that they hoard and withhold from those who deserve it. It takes immense strength and courage to get through, survive, and win the long runs our clients have to endure, and it is our job to protect them from getting gored and trampled on. The insurance, corporate, and government bulls rarely, if ever, care about our clients.



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# **PART ONE**

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*GRABBING THE BULLS  
BY THEIR HORNS*





# A REMINDER BEFORE THE SETTLEMENT

*REVERSING ROLES WITH A HUMAN*

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By Steven Halteman

In your hands is a book packed with advice on how to best settle your case. Advice that is coming up. But before all that enlightenment, a reminder is in order. Settlement is not just a battle between you and the enemies aligned against you on the defense side. It's a contest of wits and three-dimensional chess, and it's true that it makes your life difficult and stressful enough. But the process of settlement is further complicated by a tagalong—your client.

Your client. As in *your* client. The one who hired you. And nine out of ten times, this is your client's first rodeo. Which means, whether you are a first-time trial lawyer newbie or a seasoned veteran, you know a helluva lot more about this than your client does. So, step back. Step out of your shoes. Wipe away law school. Drop your cynicism about

defense lawyers and the insurance industry. Step into your client's shoes. Stand next to her. And look down the long length of a trial's journey from her perspective.

Now you're the client. How does it look? Pretty dark and scary, right? Full of traps, mumbo jumbo, life disruptions, and attacks on every decision you've ever made. Now reach over and take your lawyer's hand. And take the first step together. Then the second. Feel the flood of mysterious input coming at you. Overwhelming, right? You have questions. You want to understand what the hell is going on. But mostly, you just answer questions from others and follow commands. And so it goes. Day after day, month after month. Go there. Do this. Don't say that. But do say this. Wear this. Don't wear that. Always marching toward a jury verdict that's more than a couple of horizons away. A verdict shadowed by cryptic negatives, such as *appeals* and *collectibility*. No wonder the vast majority of human beings start looking for a way out of the trial journey early on. Wouldn't you?

And that magic ticket out is a settlement. Take it and be done with all this shit. It's a shortcut back into the light. Back into normal life. Your client is thinking, "Since my claim is legitimate, there is no reason to expect that the insurance company won't see it as such. And that their offer will reflect that legitimacy. And, therefore, will be fair."

So you look at your client. She looks back at you. Maybe there is a squeeze of each other's hand. Then you both step into the mediation room. Without cynicism. For this is your first rodeo. And your cynicism hasn't developed yet. No, you step into that room full of hope. Because you are exiting the journey toward unattainable horizons. You are one of the lucky ones. Until you're not, and hopes are dashed by a no or low offer. Which is a blow. Back to the journey.

Now please step back into your own shoes. Now you know just a few of your client's early steps. Now you are more aware of how lost your client is. Look into the mirror and see yourself, a human and a guide. A guide who, by definition, leads another by explaining the way to her, as you travel through unknown locations.

You are your client's guide on her legal journey. Live up to your definition. Be patient with her. Be kind to her. Explain everything. Ask for questions. Reassure her over and over again. Ask how she is doing along the way and figure out what she needs. Make the journey seem doable. Whether it's to settlement or beyond. Remember her perspective. And never, never let go of her hand. Always keep her informed, and communicate, as there will be so much less fear this way.

What follows is a recounting of an actual human's legal journey from start to finish. The client shared it with me not long after her trial concluded. It seems appropriate to begin a book about settling cases with a case itself, to remind us about the human at the center of the whirlwind and the legal journey she took. We need to remember the human who is hurt, lost, and comes to us for help. These humans and what they are going through should always be in the center of our thoughts and decisions.

## A CASE THAT TRIED TO SETTLE

### *A Client's Story*

In the beginning, I was in a car crash. In the end, a jury said the other side had to pay me over a million dollars. I didn't want a trial; I was left with no choice. As always, the story lies between beginning and end. It's my story, one I am proud of, but I wish I could forget the stress and turmoil of it. My hope is that by sharing what I went through, others going through the same will feel less alone and the lawyers representing them will know how hard it really is. Maybe it will help people understand what they will face as they go through the litigation process. Who knows? One thing I hope for is to feel better; sometimes telling the story gets the story out of your head. I would like that.

The beginning was mundane. Shouldn't there have been an omen or sign? "Things are about to change! Brace yourself in every way you know how!" Instead, I was sitting at the stoplight, waiting to turn left. The green arrow came on. I went.

The red light is supposed to stop oncoming traffic. There are consequences when it doesn't. I was introduced to those consequences.

Another driver ran the red light and T-boned me mid-intersection. My car spun. I spun. My head spun in the same direction. The airbags came out. I drifted off; it is all a blur. Then I was back, and a man was with me telling me it was all going to be okay. Years later, I will be told that he saw it all happen. The police shut down the busy road, and I was embarrassed even though none of it was my fault.

The ambulance arrived, and before I knew what was happening, they had me strapped down. I said, "Let me up. I don't want to go to the hospital." They didn't listen to me, and it made me very upset. I was not in control. I didn't have time for this. I still had to go to the store, and my kids needed to be picked up from school. These ambulance people were nice and doing their jobs, but it was all unnecessary and I didn't have the money for an ambulance ride! The only reason they took me to the hospital, according to what they wrote down, was "neck pain." That was the only thing that was wrong with me. The medics wrote down that my Glasgow Coma Scale was 15, I had no signs of head injury, didn't lose consciousness, and they were sure to document that I was "combative" and refusing treatment.

I was "combative." I was screaming at them to let me up and leave me alone! The only thing wrong with me was a sore neck. All I wanted during that ambulance ride was to go back to my kids. I probably knew that I had to get ready for a date that night after I made supper for my kids. My car insurance was up-to-date, but I knew that my health insurance was not. The vision of a large hospital bill was scary. I had barely got back on my feet after the divorce, and I couldn't afford a bunch of medical bills.

I have a vague memory of getting to the hospital and telling the doctor the same thing I told the medics. I don't remember many specifics.



It's very fuzzy, and my head hurt from deep inside my skull. I had definitely never experienced a headache like this one. I remember the fear and wanting to do whatever was necessary to avoid high medical bills. After they unstrapped me from the gurney and the doctor turned his back, I zeroed in on an exit sign and walked out. The emergency room record I read years later stated, "Patient eloped, said she felt fine, no signs of distress or neurological abnormality."

The hospital was near my home. I had no idea that I wasn't fine. I didn't know that I would have problems getting home, despite having lived in the same neighborhood for many years, because I was disoriented and didn't know left from right.

I had no clue that my refusal to be evaluated would cause big problems. It served as the basis for the insurance company's refusal to pay my medical bills. They were willing to pay a maximum of only \$25,000—even though I ended up being diagnosed with a concussed brain and post-concussion syndrome weeks later by a neurologist. I told the neurologist I didn't lose consciousness, and the insurance company really liked that.

The truth is, I didn't know if I did or didn't lose consciousness; and I am not a person who is going to say something happened to me if I am unsure about it. I didn't believe I'd been unconscious because I had never lost consciousness before. Maybe I had blacked out for a second or two before, but that isn't losing consciousness as far as I am concerned. But the man who was with me for the first five minutes after I was hit before the police arrived told us years later that I was knocked out cold. In fact, he thought I was dead after he saw the impact and came to my car window. I was completely unresponsive for about five minutes. It turned out that I did lose consciousness, big time, but no medical record documented it and I didn't believe it to be the truth. But how was I supposed to know that? All I remember is being at the intersection, the air bags deploying, and then the medics strapping me down. Most everything else in between is still a blank for me.

The walk home from the hospital was scary. It made sense to start walking in a general direction, a direction that should take me home,

which ended up being the wrong direction. It made sense not to call a taxi. A lot of things made sense which, looking back, were decisions I would have never made. Hours later, I made it home, and my brain congratulated itself on having made the right decision. It had taken me almost two hours to walk one mile.

I cancelled my date. My mom picked up my kids. I told her I was fine. My daughter helped with dinner and still tells the story about how I was completely “out of it” that night. The next morning, I awoke and lay there for a minute relieved that I was alive and okay. Then I tried to get up and move. The pain in my neck and head was worse than I had ever felt. Tylenol didn’t fix it. Later that morning, there was a knock at the door. It was a police officer asking if I wanted to press charges. I was in my bathrobe.

“It was an accident, right? I just need the other driver’s information, so no I don’t.”

“Ma’am, you made our day. So few people are nice and don’t go after the other driver. And that means we don’t have to write a report. Thank you so much.”

Back to bed with the worst headache of my life, a seriously aching body, and my thoughts: “I am nice, I am not going after the other driver, I just need my car fixed.” I didn’t know my car was totaled at this point.

I figured I would take care of myself and rest. The pain in my neck, head, and body got worse and worse. Enough of the pain. A friend gave me a doctor’s name. I brought cash.

“You have whiplash,” said the doctor. My mind went straight to the *Brady Bunch* episode that exposed neck braces and whiplash for what they were, silliness and fraud. But the pain in my neck and head was really bad. My head felt squeezed by a heavy clamp.

“Physical therapy is what you need,” said the doctor.

I followed the suggestion and set it up. More cash. Throughout all this, my brain wasn’t doing very well. I felt lost, a few steps behind everything compared to the usual me. My friends noticed. My kids noticed. And eventually, the physical therapist noticed and told me I

had a concussion. My thought from the beginning was to take it easy, give it a week, and I'd be okay. I was very wrong. Thank God for the physical therapist. She was sharp, asked the right questions, and cared about me. Her words were, "you need to see a neurologist."

I looked up *concussion*, which is defined as a form of mild traumatic brain injury (TBI). "Mild is good," I thought. Anything other than mild I wouldn't be able to deal with. I had just gone through an ugly divorce and was pulling my life together. I saw the neurologist, and he told me I had a TBI. He ordered an MRI, and it was fine. As the weeks and months passed by, my head was still foggy and I still remained steps behind my usual self. My neck pain got better with the physical therapy; my head pain did not.

A friend told me, "You need to push this." He gave me the name of a lawyer. Eventually I listened and set up an initial meeting. I dumped the facts on him. He seemed to know the ropes. This is what I heard.

"Don't worry, this is a piece of cake. The process is easy. It won't go to trial. The insurance company will want to settle. We'll get you money because you were hurt. We will get your medical bills paid and your car replaced. You deserve compensation under the law; this wasn't your fault."

I still felt shady hiring a lawyer. I thought to myself, "This isn't me. This is ambulance chasing I'm getting sucked into. Do I really want to do this? Because I'm better than this. It's beneath me. Face it, I look fine. Why should the insurance company give me money?"

The lawyer was nice when I told him I didn't want to sue and I just wanted what was fair. He explained that most things settle before a case is even filed or, worst-case scenario, at a mediation. That sounded okay, and I agreed to be a "personal injury client." I never wanted to go as far as mediation. I thought back to my divorce mediation and the unpleasantness of it all. But I trusted the lawyer and let him move things forward for me. I figured he would explain to the insurance people what had happened, and they would be fair because insurance companies are reasonable. I've seen the commercials; insurance companies are supposed to be "like a good neighbor," and so on. My bills

would get paid, the case would settle, and then it would all be over. I'd get on with my life.

It didn't end up that way. Turns out that my lawyer had to file the lawsuit. The insurance company wouldn't pay my medical bills and said I didn't have a concussion or any real injury. My lawyer told me the defense attorney said I delayed getting medical care and only decided later on to pursue a case because I had financial troubles from my divorce. This was really embarrassing because the divorce was tough on me financially, but it didn't have anything to do with my car accident or what happened to my body. I was afraid that maybe other people would think this about me. My lawyer spent a lot of time reassuring me.

Finally, we had a mediation date. It had been well over a year of answering questions under oath, going through physical therapy, and seeing my own doctors. My neck pain had improved a lot, and my head pain somewhat, but I still had not got back to the same me I was before I was hit. Fortunately, with mediation, there was an end in sight.

Mediation got continued to a different date, and then I was told I had to give a deposition and be evaluated by the insurance company's doctors. There were two doctors I had to see. I actually thought this was a good thing because they would surely listen to me and then the case would be over. I had no idea it would be as ugly as it was. Going through the process of being medically prodded and tested was creepy and gross. The one defense doctor spent only a few minutes with me and asked me to move my neck in a few different directions, touch my fingers to my nose, touch my toes, and said he was done. The other doctor took hours and looked like a person whose profile would be found on a state sex offender website. He asked about my dating history, my sexual history, my motherhood qualifications, whether I have a tendency to lie, my divorce, when I first became sexually active and then about my masturbation frequency. I had to do a bunch of written tests including a test on my psychological profile, "the MMPI."

After the doctors were done, the defense lawyer got his shot at me in a deposition. I was actually okay with doing the deposition because it would bring everything to an end. I had thought that, after really

meeting me and hearing my story, the insurance company would see that I was a good person who was really hurt. I was told what to wear and how to act, but my thought was, “If I just explain everything honestly and in the right way, they will understand.” That is what I really wanted, for the insurance company and its lawyers to understand. I just wanted to be treated fairly and get my medical bills paid.

The hours crawled by. The insurance company’s in-house lawyer was rude, and an absolute jerk. Question after question after question accompanied with sneers, rolling eyes, and unkind facial expressions. The only empathy came from the court reporter. I kept thinking, “This is the first time I have met this man. How can he treat me like this?”

I kept trying to be kind. “No, I’m not just forgetful. I’m driving in my car and can’t figure out where I’m going. My memory is not the same as it used to be; it’s like living in a fog.” His eyes rolled some more. I left the deposition still unable to comprehend why I was being treated so unfairly. It made me doubt myself. No matter how positive I tried to be about it all, I felt covered in filth by the time mediation came around. Yet, I was still optimistic because *mediation* meant *resolution* to me. I kept telling myself that it will all be over at mediation because everything will have been put together and they will know I am not one of those people that makes stuff up or exaggerates for money.

Waking up on mediation day, I felt relieved, “Finally, it will all be over.” My lawyer told me that mediation would be simple and quick. In a phone call a few days before the mediation, my lawyer told me he had good news, that the insurance company had finally admitted liability for the collision. This was such a relief because there was no police report. I knew I had had the right of way and that the man who hit me had blown through a red light, but I didn’t remember it. So I had to rely on a reconstruction of the collision and property damage photographs.

I envisioned the actual insurance company claims representative being there in the room with me. I figured she would be a woman, and I thought that maybe she and I would meet, shake hands, and she would see I am a nice, honest person who deserves fair compensation for what happened to me. In the end, everything I went through would

prove necessary because there are a lot of fraudulent people out there and the people against me were just doing their job. Sure, there might be some back-and-forth negotiation, but we would get to a final number. Then I would be done with this part of my life, the life of being a personal injury plaintiff. The insurance company would be surprised that I am not a greedy person.

But no matter what, the case would settle. My medical bills would be taken care of, my lawyer paid, and I would get back to being a mom and living my life. Even though he was rude and the defense expert examinations were horrible experiences, I would look back and realize that my honesty in deposition and willingness to go through the process would carry the day.

My naïveté didn't live much longer.

It began with the mediator saying hello and leaving us alone in a room with a small window. We had immediately been put in different rooms. The insurance company got the much bigger, nicer room with a city view. I knew because I saw the lawyer who had taken my deposition in there when I went to use the restroom. They were all leaning back, happy, and not stressed at all.

After more than an hour, the mediator came back in. I had been told to dress down. Not to wear makeup. To reduce my attractiveness in any way possible. Which made me feel like a fraud. The mediator turned out to be a fine man, very kind. He was optimistic that the case would get settled. I was relieved. He seemed to believe us. His optimism was contagious. My lawyer told me he believed the case would settle. The mediator told us "You have a good shot at getting the case settled today."

He left and came back a little later and said, "Your lack of a nine-to-five job hurts your case. The insurance company thinks you are milking this case to get money you didn't get in your divorce. And courts and juries don't value stay-at-home mothers, housewives, and small children." Still, the mediator thought our number of \$75,000 was fair for the mild traumatic brain injury I had been diagnosed with. To me, I was shocked that my lawyer was asking for that much. My medical bills

were only \$45,000. But my lawyer was adamant that we were asking for a reasonable amount. The mediator shuttled back and forth between our room and the insurance company's room for hours. The stupidity of this wasted travel time becoming more apparent as the hours passed.

As lunchtime arrived, we ate in a common area. I was sick to my stomach. I decided that if the insurance company came anywhere near \$40,000 that I would take it. I'd already paid a lot of my medical bills out of my own pocket.

Hours more passed with back-and-forth after lunch. The day drew to a close. The top offer the insurance company made was \$18,000. I told the mediator that the court and a jury would be very upset to hear that the insurance company wouldn't even pay half of my medical bills. The mediator told me that "the jury will never even know there is an insurance company in the case if you go to trial, and judges don't get involved with what the settlement negotiations were." I was in disbelief.

With the court costs and attorneys' fees, I would only end up with around \$8,000 in my pocket to pay my outstanding medical bills.

That was the offer, it was low, and I had to take it. What I couldn't believe was the defense lawyer hadn't responded more positively to my honesty.

And then I had a conversation with my lawyer. "Let's keep going," he said. "It will scare them into a better offer. It won't go to trial, although that possibility does exist. But the chances are slim." Trial scared the shit out of me. I wanted nothing to do with it. I had seen enough TV to know it wasn't for me. I've been judged plenty in my life. Even if it wasn't going to trial, I wanted no more of the same hoops. I told my lawyer I didn't want to go forward. But he kept talking. And I kept listening.

Before mediation, I heard a lot of talk about the remoteness of trial. If I had to assign a value, I would say there was a 2 percent chance of my case making it to the trial level. After mediation, I felt it was a 40 percent chance. I had to take this into account. Also, the knowledge that by rejecting the mediation offer I was marching toward trial. Still,

to me, it seemed there was a 60 percent chance I wouldn't make it to trial. This swayed me. Maybe a few more hoops.

More tests. Digging deeper. Lawyers need to prepare their clients for these tests. I wanted Cliff's Notes for how to respond to the doctors. Instead I had no idea what to expect. Tests scheduled for two hours stretched to four. Being a pleaser worked against me. You can't please the doctors on the other side. They will never accept you. The same if you're used to being successful. You can't be successful in the eyes of defense doctors. I wasn't advised about keeping my skeletons in their closet. So I explained them because the doctors asked. Surely a professional wouldn't use my personal life against me just for a car crash. *Au contraire*. My best efforts failed, and the defense began storing ammunition.

With experience I say this. Testing sucks. Every single thing you say will come back and hurt you. More than that, everything you do: how you sit, talk, listen, and react. All of it will come back to smack you. Sit tight and say as little as possible. This gives them as little as possible to use. Refrain from being forthcoming. Hold back the honesty. Don't feed the snake.

The trial date approached. I was warned about *sub rosa*. A pretty word that isn't pretty. There were people following me. I saw them following me. There were people waiting in cars near my home. Anxiety hovered. Maybe paranoia. On top of this, I was now aware that I had a mild TBI. Or at least my side said so. I began to mistrust my brain. My senses. Even my instinct. So much waiting. For something that had taken over my life but I didn't want to arrive.

I approached friends about testifying. "Hey do you mind showing up to talk about the old and new me?"

They were reluctant. "We don't want to get dragged into it. The time commitment alone is too much to ask."

The sting of rejection from my friends was sharp and deep. The word *lawsuit* had such a negative, ugly connotation. My family kept asking, "Are you sure you want to do this?"

Even my kids began to doubt me. "Why are you doing this? Take the money." This naturally led me to doubt myself and my symptoms.



Am I doing the right thing? Am I a fraud? And the umbrella thought over the whole thing: “This entire shit-show is from a simple car crash.”

The trial date kept coming toward me. What was I thinking? That any moment they’ll see we’re serious and offer \$40,000. At the same time, I was thinking, “Well, the insurance company is invested in the process. Look how much effort they’re putting into everything. They’ll come around to wrapping it up.” I prayed the trial wouldn’t happen. And it didn’t. The trial date was postponed. Pushed back to the point that the chances increased to only a 50 percent likelihood of trial. At least in my mind. I exhaled. The insurance company now had enough time to make a proper offer.

A bubble has to burst sometime. My lawyer sat me down. “This is going to trial,” he told me. This was not what I wanted to hear. My lawyer was very organized and detail-oriented. But I wondered how he would do in trial. Then he mentioned bringing in a trial lawyer with a reputation. A trial lawyer who relished a fight. I couldn’t find the harm in meeting him. If he was good, maybe his reputation would frighten the insurance company into settling. Because I had begun to doubt their sincerity in wanting to voluntarily settle my case. Too many of their experts had attacked me to the point of feeling unsafe in their presence. Maybe a little fear would go a long way in getting to the end.

A trial lawyer named Nick Rowley was brought on board. Along with him came a team. There was a new energy. We waited to tell the insurance company about this change until the day of trial. This was strategic and for once I felt like we had an advantage. Now, I accepted there would be a trial. A member of the new legal team spent hours with me learning my history. Not just about the crash but my life in general. This information was compiled into a story. The trial date drew closer. My trial lawyer met with me often. He told me, “I believe you, and I believe in you because I know your story. And one more thing—we will win.” These were things I needed to hear. It was an affirmation to me that my injuries were real. That I wasn’t a fraud. And the legal team’s belief in me was contagious. My family came around to seeing why I was going through this. Why I had to go through this. And I

felt a confidence begin to grow. Maybe we can win. Maybe I'll get that \$40,000 after all. Until the trial lawyer told me we were going to ask for \$2.5 million. I laughed out loud. "You must be joking." He just smiled.



## FROM STEVE: TO THE LAWYERS

A word to the lawyers out there. Most likely this is your clients' first time going through all this. Not just trial, but the whole process leading up to trial. They know nothing. You are their guide. Slow down. Tell them some important things. Tell them, "I see you and I hear you. You are important and you matter. I believe your injuries and distress are real. You're going to get through this. It won't be easy, but you will get through it."

Then help them through the process with explanations: "Here are the steps leading up to trial. Here is how to prepare for what is next. Here's what the other side will try to do. Here's what to avoid. Here's how to dress. Here's how to testify."

Take the time to learn your client's story. How can the jury know your client if you don't? And then support that story. Reinforce it. Because the other side is doing nothing but creating doubt about that same story. And they are damn good at it. Your support is your client's crutch.

Tell your clients about mediation. Let them know that it is a joke because insurance companies are a joke. That they don't care about your client or their injuries. They care only for dollars and keeping them. For this reason, they are *never* sincere about settling the case. Their commercials are only for marketing. Their substance stops there. Your client needs to know this from the beginning.

Also let your client know from the start that everything they consider personal will be dragged through mud. Is that worth the possibility of money to them? Know that it is not always about money to your client.

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Early on in my case, we were not talking about earth-shattering sums of money. It wasn't about a payday. It was about validating myself and my injuries, proving that what had happened to me was real. While on the subject of money, please have your client's best interest in mind. Perhaps your client would be happy with less money just to be done with the process. Try not to put your own bank account first. As in, "We can't stop here and accept this offer because it wouldn't cover my costs." Greed is visible. Off my soapbox.

The days passed. My trial date was waiting for me on a calendar. I felt well prepared. The trial team had taken their time getting to know me. I'd been told how to dress. How to wear my hair. How to act. How to testify. I was confident in their ability to represent me. But just like no one can prepare you for the pain of childbirth, no one can truly prepare you for the pain of trial.

My day arrived. As did a miserable anxiety that stayed with me for the duration of the trial. My heart started racing and my mouth went dry as I parked my car on the first day. Walking toward the courthouse, I felt watched. This feeling continued as I went through the front door and passed through the metal detector. I wondered if the people riding in the elevators would become my jurors. By the time I entered the courtroom, I wanted to throw up.

Jury selection began. It was the second worst part of the trial. I felt exposed. Worse, I knew I was being judged. Soon I avoided looking at them at all. I took the people who didn't want to be on the jury as a rejection of me. I figured they thought I was bullshitting. And that they resented me for wasting their time. Throughout jury selection, my

urge was to get up and leave. I wanted to shout as I was leaving the courtroom, "I made a mistake. I shouldn't be here!"

What held me back? All the hours my legal team had put into the case. I couldn't let them down. So I stayed rooted to my chair, staring straight ahead. But listening, I was always listening.

I could hear the resentment at having to be there in their voices. They were being made to take time from their lives to listen to a stranger's problems. But as the selection went on, I felt a change in the courtroom. It started with the simple act of my trial lawyer remembering the jurors' names. He listened to their answers in a way that showed their efforts mattered. They began to join the process and develop a bond with our side. "So this is how it's done," I thought.

I saw the guy who hit me for the first time, as I didn't remember him from the accident. I didn't feel any hostility. I just wanted an apology. That never came. In fact, not even a hello. Just staring and a few smirks. It was easy after that to classify him as the enemy.

Two years after my crash, the jury entered the courtroom. Once they were in place, it was time for opening statements. I stood as I had been taught. I hated this because it reminded me that they didn't want to be here. My trial lawyer, Nick Rowley, who had been brought in to try the case, got up and gave my opening statement.

Hearing my story out loud for the first time was magic. I got swept away in the advocacy. Now I could really believe in my cause. And I wasn't the only one. I was sneaking peeks at the jurors. Their demeanor also changed. It was clear by the end that they too were invested in the case.

Then the defense lawyer got up and said his piece. I heard my case was worth \$26,000, at best. On and on it went. His message was that this was a waste of time and I was a bad person, a liar, and a faker of injuries. It was horrible to be publicly humiliated without being able to respond. Hearing it as I was, dressed down, intentionally looking plain, mute, and vacant, it was a day not to remember.

My hope was that it would be over quickly. This was not to be. Each day fed on the one before it. The trial took on a life of its own. I couldn't

sleep. I couldn't eat. I was expected to be there every day. I didn't know this ahead of time. I felt bad for the judge who had to listen to my baggage every day. It was the same for the jurors, knowing they all would prefer to be anywhere else.

Every day, I wore the same pants and shoes. I only changed my tops. I pulled my hair back in the same way. I tried not to draw attention to myself, looked only at the judge or the witness stand, and avoided the jurors. I kept my face devoid of expression so the jurors couldn't read anything from my reactions. Anxious, nervous, each day I wanted a mistrial that never came. Just like a second offer never came. But oh, to hear the judge say *mistrial* just so I could go home.

Then one day my trial lawyer came back to my seat. I didn't sit at the lawyers' table. When I did sit there, I felt empowered. Which didn't seem like a good thing to show to the jury. Nor did I sit in the audience. I sat in a chair off by myself in no-man's-land. Completely alone. I felt discarded. Instinctively, I believed this appealed to the jurors.

Anyway, my lawyer asked me if I wanted to come to his house for dinner and to bring my kids too. This meant so much. It was a validation of me and my cause. I mattered. My family mattered. My case must be important if I was invited to the man's house. And so we went. The whole legal team was there. We broke bread around a huge table. War stories were trotted out. Then personal stories. Laughter was rampant. My family and I felt included, part of a larger family. We were the good guys. And just for a while, I was able to forget that chair in the courtroom.

Then it was my daughter's day to testify. She was not told what to say, just how to say it. To have her on the stand was sickening. I couldn't be in the courtroom: lawyer's orders. To me, it was obvious that a good mother would never let her daughter testify. I felt like a failed mother. I sat outside and waited. And I waited. It became so heavy. Finally, I just slid to the floor and cried. What were they doing to her?

As the trial went on, I began to recognize a bond developing between the jury and me. We were on a journey together. They showed up for me every day. They were taking hours and days from their lives

to sit and listen about me. They arrived on time. I believed they saw everything and that they wanted to be fair. This humbled me.

I wanted to show them my respect for their effort. Dressing down by wearing the same dumpy clothes every day was one way I could do that because it was one less thing to distract them. I hid any trace of hostility when the defense was up. Outside the courtroom, I gave jurors their space. I never laughed in the hallways. Basically, I tried not to distract jurors in any way. They needed to focus on the testimony. Non-distraction was my way of showing respect. That and telling the truth when I got on the witness stand. This bond had a strange side effect. I felt that if I abandoned the process I would be letting my jurors down. I wanted to stick it out for them. To please them.



## FROM STEVE: TO THE LAWYERS

What should you be doing through all this? Reassurance, reassurance, and more reassurance. Every day, tell the client that things are going well. Not false hope, just, “We’re doing everything we can to win this.” A client wants confidence from her lawyer. Lean over to your client when she is getting bombarded with negativity and calmly say, “This is so much bullshit. I’m sorry you have to hear it.” Then get up and correct the negativity in front of your client’s eyes. Validate her to judge and jury.

Also, lawyers shouldn’t try to draw attention to themselves. Super expensive suits and watches detract from the client and the case. It says to the jury, “I’m in this for the money. And this getup proves it.” At least that’s my perception.

Finally, know that your client believes that if things are going badly or you lose, that it’s *her* fault. Somehow, *she*

screwed things up. Correct this. Tell her that whatever the outcome, you will be there for her.

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My day came calling. If jury selection is the second worst day of trial, testifying is the worst. At least back in my little chair in no-man's-land, the focus was deflected away from me. Now on the stand, the focus was a laser.

At first, I was calm. I accepted that I would be judged. I'd been extensively prepped. This was critical to my calmness. It wasn't like I knew what to say. That would have been over-prepping. It was more like I knew how to *be*.

I can still remember some of the rules. Be humble. Keep your answers short. Know that it's okay to cry but know how to stop ahead of time. Look at the jury now and again. Treat each side's lawyer the same. Don't get angry. And tell the truth. I'm sure there were more. These rules gave me a framework to work within. From that, I mined confidence. But I had a fear of being blindsided. The defense bringing in something from left field that destroyed my credibility.

In the end my testimony was just something I had to struggle through, one question at a time. But there is no way to underestimate the embarrassment of testifying about your personal life. To me it was comparable to childbirth.

It was just as bad outside the courtroom during breaks in my testimony. The jurors were sizing me up. And the defense was doing the same. Your vulnerability feels like being naked in public. Fleeing was such an attractive idea.

Then we were back in for the defense and their shot. Hearing so many horrible things from their lawyer shamed me. Maybe I was a fraud. Creating self-doubt was part of their strategy. Warn your clients about this shaming process. It really is one of the worst things that can happen to a person. I still shudder when I remember that day. Give your clients the tools to ignore it, please.

Then the witness who saw it all came in. He took time from his life to explain how the crash played out, as well as its aftermath. He made it clear to the jury the other driver was at fault. His testimony was a ray of sunshine. My great regret was that I couldn't hug him as he left the courtroom. Stay in the chair, look ahead, and no expression. This was so contrary to human nature.

Nine days of trial came down to closing arguments. My lawyer got up, and the courtroom went quiet. Which was significant because it was packed. I wished so many people had not shown up to watch the performance. I felt it distracted the jurors. But the courtroom's doors were open to the public. My lawyer lived up to the crowd's expectations. He was tremendous and spoke with passion and compassion. More than the words though, he brought a life-force to closing. It energized the entire courtroom. An energy the place desperately needed after nine days of drudgery. I believe the jurors connected with that energy. Personally, listening to my lawyer in closing made me whole again. He said I was an honorable woman. Honestly, if I had won nothing in the verdict, I still felt my worth sitting in the courtroom at that moment.

Still I worried. Were some of my lawyer's analogies too long-winded for the jurors? Did they pay attention throughout? Did they hear the honesty of it? Why did we ask for so much money? Wouldn't it turn the jurors off? And what would the defense have to say? Luckily, not that much. Their closing was dull, petty, and generally demeaning.

I felt the seed of optimism as I settled in for the wait as the jurors left for their deliberations. My thinking was, whatever the outcome, I made it through the labyrinth. I was very anxious about the outcome and relieved that my part was over. I could get on with the life I was supposed to be living. Not the life that this trial had consumed like a blackhole.

The jury was out for two days. Two days while I felt an ulcer growing. Various people stopped by to stare at the walls with me. Questions from the jury created havoc or relief. We waited. And then a verdict arrived. It was a unanimous one for more than a million dollars. The



jurors poured forth to hug me. They all took their turn. Again and again, the jurors repeated my lawyers' refrain. "You're an honorable woman and a great mother." It was so powerful. My shame lifted.

Even the defense lawyer reached out. "I'm sorry you had to go through this. I know you're a nice person."

Please tell your clients this after a verdict win or lose. "You're an honorable person." It is the first step to rebuilding their pummeled self-esteem.

That was my trial: a medical journey, a legal journey, and above all it was an emotional journey. Would I go through it all again? Knowing the experience and result, would I stand up again for myself and put my family through that wringer? Would I again expose my physical and mental self to my peers for judging? Sit through the attacks? Present myself with injuries no one could see, that aren't respected? All for the percentage of the verdict I received?

Knowing all this the answer is an unhesitant "No!" It was the single worst experience of my life, and I would never repeat it. It was worse than my divorce. And it simply wasn't worth the money. But that's me.

I'm very grateful for my legal team. I'm very grateful for the jury and judge. I'm very grateful for the money. But I would *never* go through it again. I would have settled if I could have. Settlement would have been much easier. Going through this was war, a war on me.



# 2

## WE MUST BE ALL IN

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By Nicholas Rowley & Courtney Rowley

**W**e are all running with the bulls. Without our strength in numbers, many people will get trampled. We need to stick together and stand strong if we want to be more powerful than our opponents. Helping one another—sharing what we have to give, and being willing to receive and appreciate what others have to give to help us and our clients—is the way for all of us to not only survive, but learn to continuously succeed and win.

When you run with the bulls, you'll be at a distinct advantage if you know the lay of the land ahead of time. This book is meant to prepare you for whatever runs you will face. Whether you're a veteran attorney who wants to increase the settlements you achieve for your clients or if you're a fairly new lawyer who wants to learn the ins and outs of what top-dollar settlements look like, it doesn't matter. This book is for all of you. In the end, you are going to learn to be confident, stand strong, and face the bulls head on. You will learn to grab them by their horns the way we do and achieve amazing results that you could have never imagined.

We will detail the way we work up and settle cases, including talking with insurance defense attorneys, bypassing them, and getting to the real decision-makers behind the curtains who control everything. We'll teach you how we write demand letters and have the courage to say no to mediation. When there is a mediation that is court-ordered, we will teach you how to deal with that and even get out of it if it will be a waste of time. When mediation is appropriate, you will know when and how to set it up to make it effective. And if it's time to walk out of mediation, you will know when that moment has arrived and you'll know how to have the courage to walk out without hesitation.

You will see part of our strategy involves emphasizing past experiences and results on other cases that we and others have achieved. We will teach you how to use both history and the fear of uncertainty and new precedent as leverage to get the top-dollar settlements that your clients deserve. We will continue to remind you again and again: *you can do this, too.*

There is a lot out there—books, classes, videos, and other resources—on how to do discovery, how to master the rules of civil procedure and evidence, how to pick a jury, and how to try a case. There is next to nothing about how to maximize settlements on cases and really get our clients paid. That is why we wrote this book. We believe it's much easier for lawyers to learn how to try cases than it is to become masters at getting full-money justice in a settlement or to get paid after a verdict.

This book is written not only for lawyers who have achieved impressive results, and want to learn how to use those results to get other cases settled, but also for lawyers who have yet to reach a high-value settlement or verdict. Perhaps you're fairly new to the practice of law or you've struggled with getting the kinds of results that amount to full justice for your clients. Don't worry. This book and our methods will still work for you!

In fact, being a novice can be a big strength. Think about it: You're an unknown force—a wild card! The bulls don't even see you coming and have no idea what you are capable of. Being an outlier like this might be something the defense attorneys think puts you at a disadvantage, but

you are not allowed to think that way. You are a powerful, unstoppable force who can fly under the bulls' radar.

This book is going to teach you how to represent your clients and get them what they truly deserve—full justice and top-dollar settlements—and you have us backing you all the way. You are so much more powerful with truth and justice on your side than they will ever be. Know that, remember it, and use that as a mantra of power and confidence that you can use to approach and handle cases from here on out.

The vast amount of our experience is in medical malpractice, personal injury, wrongful death, and employment cases. Yes, we occasionally do other things like criminal defense and pro bono civil defense in select cases, but civil cases for the plaintiff or petitioner make up the bulk of our practice. Therefore, the focus of the work-up and settlement techniques we teach are on those types of cases.

## **USE WHAT YOU HAVE**

We mention throughout this book how we use our past experiences and successes to encourage settlement in our current cases. If you don't have this background, don't worry, use ours. Threaten to bring us or another lawyer who is well known in your area into the case, and follow through. If the bulls think you are bluffing, show them you aren't. What is most important in the end is the result you get for your client. It may take time to get to a point where you have big enough results to establish a precedent for the settlement demands you make and justify the expectations you set on cases. It is important that you are confident until then. Know that whether you are a new, intermediate, or long-time lawyer, it only takes one case and one lawyer to set a new record. You are capable of being that lawyer. You have to believe in yourself as much as we believe in you.

## COMMIT TO CONTINUOUS EDUCATION

Even though you may not have a ton of experience trying and settling cases for top dollar, you can become just as, and even more, knowledgeable than most experienced attorneys if you are willing to put in the time to learn the law and jury instructions that match up to your cases. Become part of local and national Listservs (such as [trialbyhuman.com](http://trialbyhuman.com)). Subscribe to newsfeeds that give updates on record verdicts and settlements. Follow Courtroom View Network and see what is happening with trials across the country and watch how lawyers are winning cases.<sup>1</sup> Network with your colleagues and pick their brains about any questions you have. Find a mentor.

Read whatever journal articles you can get your hands on. Become a master of the medical condition that your client has. Read medical textbooks. Go online and research medical journals and articles. Write up your own understanding of the medical issues that are at play and figure out how they fit into the jury instructions on causation and damages.

Know the rules of court in your venue, and the local rules of the specific courts your cases are filed in. Read as many Trial Guides books as you can. Get on Paul Luvera's blog.

Read, watch, and listen to anything you can get ahold of by:

- Rick Friedman
- Keith Mitnik
- Sari de la Motte
- David Ball
- Randi McGinn
- Don Keenan
- Gerry Spence

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<sup>1</sup> [www.cvn.com](http://www.cvn.com)

Fill your toolbox with as much as you can and then develop your own techniques. Learn how to do focus groups and do them on every case. Join Toastmasters International and get comfortable with public speaking and storytelling. Attend psychodrama workshops and join a local group to learn how to connect, slow down, and feel what is going on within other human beings. Work on discovering more and more about yourself.

We must never stop putting more tools in our toolboxes and sharpening and cleaning the tools we already have. Commit to never stopping learning. It's good for your brain and mental health, but most importantly it will translate to helping your clients get the money they deserve.

## GET TO KNOW YOUR CLIENTS

While knowing the law, filling our toolboxes, and perfecting our craft are all important, nothing is more powerful and necessary to evaluating our cases and winning top-dollar settlements or verdicts than knowing our clients and their stories.<sup>2</sup> Knowing and connecting with the humans we represent makes a monumental difference in the results we achieve. You must never forget or minimize the value of this important part of what we do as trial lawyers.

The bulls know only what they can see or read in a deposition. It is up to us to understand and translate our clients' human stories of damages and explain, ask for, and insist on nothing but full compensation for all their past and future harms and losses. When we truly get to know our clients' fears and suffering, we can use this to show the bulls and their masters exactly what our clients' cases are worth. Each and every one of our clients is human with immeasurable value. The bulls do not understand this or care, so we must grab them by

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<sup>2</sup> Nick and Steven Halteman also write about this in their previous book, *Trial by Human* (Portland, OR: Trial Guides, 2013).

the horns and show them what the consequences will be if we end up in the arena together on each case.

Think about it this way. If you were to stand up in front of a jury to try your client's case, you would explain in great detail who your client is and tell their story. You would explain the evidence you have and go through every day, week, month, and year of damages. You would thoroughly explain how it is that you calculated the dollar value of each item of damages that is recoverable in the jury instructions and how that has added up to present day and then do the same with your client's future damages using the life expectancy instruction.

We must do the same thing in our settlement demands. And we must do it early in the case so that reserves are set accordingly. It really doesn't take an experienced lawyer to do this work. Rather, it takes a good, caring human being—you!

Once you have spent time with your clients, asked them caring and thorough questions, and truly listened to the answers they gave, you will begin to understand the true value of each human's case. Sharing meals, going on long walks, and caring about your clients the way you would hope somebody would care about you if the tables were turned are what is necessary. You can certainly do this. And it will drastically change the way you place value on the cases you have been trusted with. When you get to know and truly care about and even love your clients, you will be able to make their pain, suffering, and loss of enjoyment of life something that the bulls hear—and even fear—the value of. This will increase the settlement values of your clients' cases exponentially.



## **DON'T BE AFRAID TO ASK FOR HELP**

Even after having had great success, we often find that we still need outside help. We always make a mistake when we are too proud to ask for it. Don't be shy about asking questions, even lots of them. Attend seminars and courses, such as those put on by plaintiffs' groups like Reptile or Gerry Spence's Trial Lawyers College. The Trial Guides seminars have been really amazing, and Trial by Human should be having regular seminars by the time this book is published. Hold us to that and remind and motivate us to keep it going; it's exhausting sometimes.

Doing work and attending seminars has helped us learn. It's given us space to try out new stuff and, most importantly, make connections that have helped us help the humans we represent. Most of the lawyers we know want to help all plaintiffs, not just their own clients. And more often than not, they are more than willing to answer questions and help out. Don't be shy!

Additionally, there may be some cases that you feel are just outside of your comfort zone. Perhaps you have a client with an injury you're not familiar with or the case that feels outside of your current capabilities. If so, you are not alone. We ask for help from our friends all the time. Sometimes cases involve such high damages or complex issues that we need to add members to our team to make a dream team for the specific case we are handling. No one climbs Mt. Everest alone, and sometimes cases feel like that. The moment we feel we need someone more experienced on our side or even just more resources to achieve the best outcome on a specific case, we owe it to our client to ask for help.

If you are going to ask for help, do the research before asking another lawyer to associate into the case. When you reach a tentative agreement, make sure you talk to your client and get their okay. This new person will also be the client's attorney, and the client will need

to approve. In most cases, the attorneys' fees charged to the client will stay the same. Who doesn't want more attorney expertise and resources for the same price?

Be clear about who is going to do what and how the association is going to work.<sup>3</sup> Put your ego aside if necessary, but don't just sit on the sidelines. Stay involved and learn and be in a position to help the lawyer you have associated into the case at every stage, and it might turn out that they ask you to help on their next case. Be ready to pick up the ball and run with it if the need arises.

Keep close to your client and maintain the relationship. Involving others does not mean it's time to go back to the office and ignore the case. It means you now have the ability to do more and be more involved on the human part of the case. There is nothing more satisfying than working together, forming new friendships, and winning as a team.

No matter what, know that even if you don't have the record of high-value settlements and jury verdicts that others have, you can still use our methods to get the results your clients deserve. Now, let's dig into the process!

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<sup>3</sup> See chapter 16, "Associating with Trial Counsel."