

Intro:

This is Michael Cowen and welcome to Trial Lawyer Nation. You need to show people the worst possible harm that that negligence could have caused, because that's what the case is about- What I'm asking you to do is to focus on what you can control because that's where the power lies- The Dali Lama has a saying that in the face in anger, justice evaporates- If you can't focus group it, you will have to be very, very critical of your process- If the facts aren't good, you can't create a miracle- We can agree to disagree and be zealous advocates for our client- Quit worrying about looking perfect. You're not going to. That'll come in time but you can still be an effective litigator. Welcome to the award-winning podcast, Trial Lawyer Nation, your source to win bigger verdicts, get more cases and manage your law firm. And now, here's your host, noteworthy author, sought after speaker and renowned trial lawyer, Michael Cowen.

Michael Cowen:

Today on Trial Lawyer Nation, we have attorney Marc Whitehead from Houston, Texas. Marc, how are you doing today?

Marc Whitehead:

Good, good. How you doing?

Michael Cowen:

I'm doing well. Marc, you have a unique area. First of all, you practice law in a different area than what a lot of us are practicing in and on top of that, you also coach lawyers. So tell me a little bit about what you do.

Marc Whitehead:

Well, in terms of our law practice, we're a five lawyer firm. We specialize in representing disabled workers and veterans on disability benefit claims, basically disability insurance, veterans disability, social security disability. My other business is that I coach lawyers on practice management and marketing areas.

Michael Cowen:

Well, let's talk a little bit about your background. First of all, how did you get into the disability side?

Marc Whitehead:

Well, it's a long story. I'll try to keep it short. Basically, I was approached by a disbarred lawyer who was looking to handle social security, disability claims so he started shopping himself to PI lawyers, which in a former lifetime, I was a straight up PI lawyer. One of the unique things about social security disability is you don't have to be a licensed attorney to practice it so he came shopping around looking for referrals, and for a while, I used him and then all of a sudden I said, "Why can't I just do this myself?" We started a Social Security disability section and I learned that I actually enjoyed that area of law, and from there it expanded into disability insurance and veteran's disability, and I think probably in about 2008, after a bunch of battles with tort reform and just wanting to make a shift in my life, we just went strictly disability law and gave up the personal injury part of our practice.

Michael Cowen:

So, what if your five-star, golden case in a disability practice?

Marc Whitehead:

The best case usually are doctors or dentists on disability insurance claims. You'll have a doctor or a dentist, they perform procedures, surgery, dental exercises and all of a sudden they'll have something wrong, a neurological problem ... It could be something as simple as a blown disc in their neck and all of a sudden they can't practice what they used to do. Would you want a surgeon that his hands shook or would you want a dentist who tried to fill a tooth who couldn't hold a drill steady? What we have found is that those types of doctors frequently have disability insurance policies, things like Unum and Hartford and Cigna and companies like that. And, of course, insurance companies are notorious for not wanting to pay.

Marc Whitehead:

Those are our most lucrative clients, but we represent veterans on veteran's disability cases. You can see veterans that have disability claims that go back years and have retroactive benefits that may go back 20 years. Those can be fairly lucrative as well. Then, we have our bread-and-butter Social Security disability claims, which not lucrative on an individual basis but it is more of a volume practice and you can really get some economy of scale in that type of practice.

Michael Cowen:

We actually looked at, my firm, maybe 10 years ago at doing Social Security disability and determined it wasn't right for us, and part of it is that economy of scale. Your fee is capped out at a certain level, not super high. I guess it's probably not that much less than what someone doing a lot of soft tissue auto crash cases would be making, and it seems like there was some real lessons to be learned on case selection. We would have had to learn the hard way.

Marc Whitehead:

Yeah, you really have to be selective about the cases you take, and yeah, you're capped at \$6000 on a fee. The reality is that is if you're doing your job correctly and winning cases quickly, actually your average fee is more in the \$2000 to \$3000 range. So, you really do have to get some good economies of scale working on a practice like that. But I will say it's an enjoyable practice and anybody who really wants to look at it, I've coached people up on how to start disability practices. I tell my lawyers if you haven't been hugged by your client this week, then you're not doing your job because when you walk out of hearing and an old lady gets her benefits and you get her on Medicare, it's really a life changing event. Some of our most loyal clients are our Social Security cases because we really change their lives.

Michael Cowen:

I've had people tell me that I'm really missing out on the income stream or service stream for my PI clients because a lot of them, after their PI case is over, probably could apply. What do you think about that? Should PI lawyers be looking for these, if they're not going to do them themselves, at least send them out?

Marc Whitehead:

Well, yeah. You should always be looking for the disability cases within your PI world because ultimately what happens is if you get them on Social Security disability, they're going to qualify for Medicare at

some point in the future. And, a lot of people have continuing medical issues into the future. Great, you got them a PI settlement now but what about five years from now, what about 10 years from now. Most of our referrals come from other PI lawyers and we give referral fees on them when we can. They're never going to be big cases, but if you really want to do a good job for your client, always be on the lookout for that because it's not just about the check you get them now. It's about what's happening 5 or 10 years from now.

Michael Cowen:

What is it we should be looking for then when we're ... We have a client where we're working on their case or we're resolving their case. What is it we need to be looking for to see, "Hey, maybe this person also has a disability case."?

Marc Whitehead:

Well, generally speaking on most disability programs, it really means you can't go back to work. For Social Security disability purposes, there's a 12 month minimum requirement, so in other words, somebody that's going to be out of work for at least 12 months or longer. That's the minimum you're looking at. There's no short term disability program within the government. It has to be longterm, and that's going to be defined as out of work for 12 months or more. Basically, you're looking for somebody that has a permanent disability, a permanent injury that they're not going to be able to go back to work on.

Michael Cowen:

One thing, it seems to me if you're going to do ... Let's say you call the Social Security practice your bread-and-butter practice. You want to make enough money to pay your people and then still have money left for you, and you're not going to do all the work yourself. You have to learn how to run a business that will be efficient in running those cases and still give clients good service throughout so they will hug you at the end instead of cursing you at the end and get good results. What did you do to learn to do that?

Marc Whitehead:

It's funny. I've been in practice for 27 years now, and probably for the first 15 years or so of my practice, I think I did what a lot of lawyers do. At the time, I was trying a lot of PI cases. You would get some verdicts and you would have a lot of money, and then three months down the road, you'd be broke again. It went up and down in that boom or bust type of cycle that I think a lot of PI lawyers are familiar with. I never really applied good solid, business principles to the practice of law. It was more out of ignorance than anything else. I just honestly didn't have time to think about it. And then, I had an epiphany, or as I call it a midlife crisis. I had a midlife crisis back in the early 2000s and a lot of stuff was going on ... tort reform was going on, and I was thinking that there had to be a better way to do this.

Marc Whitehead:

That's when I got involved with a coaching organization called Atticus. I've been a student of Atticus now for 12, 15 years to the point now that I've now been trained up to be a coach with Atticus. What Atticus does is it really trains lawyers on business fundamentals and applying business fundamentals to the practice of law. Skills like time management, leadership, hiring and staffing, money, cash flow, financial planning and of course, marketing. Lawyers always have to be marketing. But, once I started applying a

lot of these concepts into my practice, I started stepping back and trying to figure out the practice should serve me as the owner of the practice. I shouldn't be serving the practice.

Michael Cowen:

That is the hardest mindset adjustment to make as a lawyer, by the way.

Marc Whitehead:

It really is. You need to build a practice that serves you and your lifestyle, and you and your family. The first thing you have to understand is that you have a duty to be profitable. Not only do you have a duty to be profitable to yourself and your family, you have a duty to your client. Think about this, profitable firms, they hire the best staff. They hire the best experts. They're able to put the time into individual cases to do the best work. They don't settle cases short of true value because they're in a cashflow crunch. Profitability is not just about yourself. It's about actually putting your client first, and if you're profitable, you can be the best lawyer for your client. I think once you start thinking about it in that mindset and say, "I've really got to run a profitable business first so I can do a good job for my client," I think it changes your whole perspective.

Michael Cowen:

Absolutely. Working with Atticus, what are some of the concrete things you did within your own firm to make it run more like an efficient business?

Marc Whitehead:

Well, the first thing you have to do is you have to get off the wheel and you have to get a grasp of your time, and how you actually spend your time versus how you think you spend your time. There's an oxymoron out there, time management. You can't manage time. You can only manage yourself. So you have to learn to manage yourself in the way you focus and the way you spend your time so you can be productive. A lot of lawyers come in and just sit down at their computer in the morning and open up their inbox, and they let their inbox control their day. Their email. Really, all you're doing is you're just putting out fires every day and you're just responding to other people. There's lots of books that have been written on the subject but really it's about focus management.

Marc Whitehead:

It's about instead of living in your inbox, you should live in your calendar. You should figure out what your priorities are, what you need to be doing, what's the highest and best use of your time, and then literally block out ... I block out hours on my calendar throughout the week. On my personal calendar, not my firm calendar but on my personal calendar. I block out chunks throughout the week, "I'm going to spend an hour with my door closed doing this, and tomorrow I'm going to spend an hour doing just this." And, really being able to focus your productivity. That's really the first thing that every lawyer needs to learn how to do. As a matter of fact, I wrote an article on that topic for Trial Magazine for AAJ a couple of years ago. If anybody want a copy, let me know and I'll be happy to email it to you.

Michael Cowen:

Great. I found one of the biggest struggles in that is that I would find that I would know that I need to work on something that's the better use of my time, but it would be a comfort in a time of stress to work on something that someone else could do, like responding to emails, drafting discovery, reviewing

documents, even taking a deposition someone else could take as well as me. Because, I was comfortable doing that. It is uncomfortable sometimes to stretch and work on new things, and it takes more focus and more effort, so it's easy ... And, I've actually found myself falling back into this during this COVID-19 thing. It's easier to go back to being reactive as a psychological comfort than it is to push yourself and go into things you need to be doing and learning to trust others to do those things that they can do just as well.

Michael Cowen:

What have you done to get past ... One, have you ever experienced that?

Marc Whitehead:

Oh, every day. Friday, I did it. I backslide all the time. What you said is the key. You need to learn to delegate and you need to develop systems and processes and procedures within your firm and train your staff so you can delegate these things, because you can't do everything. I used to insist that I did all the initial consultations in our firm. That would just take up a tremendous amount of time. Once I sat down, I simply made a checklist. I said, "This is a checklist of everything that I want to see happen in an initial consultation." And, I sat and just trained one of my newer attorneys on how to do it, and quite frankly, she did it better than I did because for her, it was new and exciting and she did a better job at it than I did. That was just a thing, I had to let that go. Then, I started looking at other things in my practice. What are the other things that I'm doing that I could train somebody else to do?

Marc Whitehead:

You just start knocking off these things, and once you start getting rid of the things that you really don't need to do, therefore you can spend your time on the highest priority things within your firm, things that really do require your attention. I think that's a big problem with a lot of lawyers. We, by our nature because we're all highly trained individuals, we're control freaks and we have to get past that control issue that we all have and realize that there are other people that can do this just as well as you can.

Michael Cowen:

I think the patience and the commitment to training is another big issue because one thing where I've done backsliding is I'll think that I've trained a new lawyer to go do an initial client meeting. We're 99% attorney referrals, so we'll do an initial client meeting. Someone new will come in, and then I'll get a phone call from a referring lawyer, "So-and-so said this or said that and why would they say that?" Sometimes, the temptation is rather than saying, "Okay, let me fix my process, let me fix my training, let me go retrain my lawyers on this issue," I just say, "Well, I'll just do it myself just so I can calm down the referring lawyer like, "Well, please do these yourself from now on." You're just taking the time and letting me fix it and convincing the referrer that you really don't want me spending all my time doing initial client meetings. You want me spending my time doing big strategic think deep dives into cases, and also making sure the firm's running right, because that's where I'm going to add value to your cases.

Michael Cowen:

I don't add value in my meeting people. I add value in strategic ideas and trials and things like that.

Marc Whitehead:

Yeah, exactly. And, in marketing the firm. You're the face of the firm. Just by way of example, an attorney will refer me a case. I will send it off to my person to do the screener, and the screener will come back to me and say, "Yes, we accepted that case because it met the criteria." Or, she'll come back and say, "Eh, it's an iffy case but it's your call because it's your referral source. What do you want to do?" I'll tell her what to do. But then because I've managed my time correctly and I have some free time, then I get to take the opportunity to call that referral source back and say, "Hey, yes, we took your case. Thank you so much. Hey, let's go have lunch. Let's go play golf", and I build that relationship because that's really a better use of my time.

Marc Whitehead:

Or, the flip is if we can't take the case, I need to be the one calling that referral source and saying, "Hey, I appreciate the referral but we really couldn't take it because of these reasons." Just to make sure that the referral source is still happy with our service even though we didn't take the referral. That's a better use of my time than sitting there for an hour, hour and a half, screening that client. That's what I mean by what is the highest and best use of your time versus what you can delegate to someone else.

Michael Cowen:

Now, how do you learn to ... I've went back and forth over the years between trying to do it all myself and then what they called delegation by abdication where I just tell somebody to do it and don't give them enough guidance and don't give them enough instruction, and they're getting frustrated and then either micromanaging or probably take it on myself, and it's been real hard to find that balance. What's some things that have worked for you in that area to get it done by other people, but then also done right?

Marc Whitehead:

So, there's a great book out there called The Checklist Manifesto. I forget the name of the doctor who wrote it, but people who when lives on are the line, doctors, airline pilots and so forth, they all live by checklists. We have created a checklist for almost everything that we do, even the most simple processes that our people do, and we live by these checklists because what a checklist allows you to do, it makes sure that you have consistency throughout your firm regardless of who's performing the task. That's what you want. You want consistency and you want quality. We have these checklists and we have these flowcharts, sort of "if then" scenarios. If the client says this, you need to ask this series of questions. If a client says that, then you need to ask this series of questions. It's all set up by flowcharts and checklists. That way, I know that number one, my people have the authority to take the case without my approval because I just slow the process down. Why do you need my approval on everything?

Marc Whitehead:

You only need me to make the tough calls, the calls where it's not clear. When they do bring the tough calls to me, I know that they've asked all the questions that I want because I've given them a checklist and they know to follow that checklist.

Michael Cowen:

This is a real in the weeds question, but how do you do your flowcharts? Do you have a software program you use or ...

Marc Whitehead:

Well, so I use a yellow pad and a pen.

Michael Cowen:

Okay.

Marc Whitehead:

Now, I have some really smart people that work for me that then take what I draft out and they convert it. We used to do it on PowerPoint. There's now a new program out that integrates with our CRM, and I'm blanking on what the name of that program is, but we've now started using a specific flow charting process program out there, which I've never actually seen how it works. I just see the results. I have smarter people that figure this out for me.

Michael Cowen:

That's awesome.

Marc Whitehead:

But when I initially start it, I simply have my old yellow legal pad and a pen and just start writing it out.

Michael Cowen:

You said CRM. Is that Customer Relationship Management software?

Marc Whitehead:

Yes. We use a system called Litify, which is based off a Salesforce platform. Salesforce is probably one of the largest CRM platforms in the world. It hasn't been used much in the legal field, but it's used by industries across the world quite frankly. Litify is just a company that's taken the Salesforce platform and converted it to the legal field. That's the system that we've used for about two years.

Michael Cowen:

That's the one that Morgan & Morgan uses, right?

Marc Whitehead:

Yes, that's Morgan & Morgan's brainchild. John Morgan is an owner. They use it in their firm, or at least ... He buys up so many firms that I remember him telling the story that that's the backbone but a lot of these branch offices that he's bought in different towns, they haven't converted over yet. Probably a little bit far field from what we're here to talk about today. It's an interesting conversation.

Michael Cowen:

Yeah, I like John Morgan.

Marc Whitehead:

Yeah, smart guy.

Michael Cowen:

If it runs a multi-hundred lawyer law firm, it's got to be pretty stout.

Marc Whitehead:

Yes.

Michael Cowen:

I was wondering what case management ... We've been struggling. I've had the same case management system for 20 years, and they developed a Cloud product that we were going to convert to a couple weeks ago, and they couldn't get it to work right, so we're not converting. We're looking around in the case management software field right now. We may or may not stick with who we've had the last 20 years so I always like to hear what other people have to say about what they're using. Are you happy with Litify?

Marc Whitehead:

Yeah, I'm very happy with it. The amount of detail that you can dive down into in your workflows and your work process is pretty amazing, and the dashboards that you can create so you can actually see what's going on in your firm. It may not be for everybody because quite frankly, you need to have a certain volume of cases to make the features worthwhile to you, but we have several thousand cases going on at any one time, so I got to stay on top of it. I need help to do it. If you're working in a small practice where you maybe have 50 cases or less, then it's probably a little bit overkill given the cost of the program but if you have a volume practice, you need something that will really give you some deep dive data.

Michael Cowen:

We have eight lawyers with less than 200 cases so the things I'm tracking ... It's funny what I've tracked over the years. How many times are lawyers spending three or more hours doing focus work on one case is the kind of thing I'm tracking now, which is different. And, answering discovery or responding to things doesn't count. It's three or four hours extensively thinking about your case, not responding responding to what the other side does. Different practices need different types of metrics.

Commercial:

Each year, the Law Firm of Cowen, Rodriguez, Peacock pays millions of dollars in co-counsel fees to attorneys nationwide on trucking and company vehicle cases. If you have a case involving death or catastrophic injuries and would like to partner with our firm, please contact us. We have experience finding potential defendants that other firms miss, and we've added millions of dollars to cases by finding these sources of recovery. If you have a catastrophic injury or death case where the policy limits appear to be insufficient, give us a call. If we can find another defendant, we can partner on the case and if we can't, then we won't ask for any of the fees. You can reach Delisi Friday by calling 210-941-1301 or send an email to podcast@triallawyernation.com. She will coordinate a time for Michael Cowen to speak with you in person, or by phone, to discuss the case in detail. And now, back to the show.

Michael Cowen:

So, you have an awesome newsletter. Can you tell us a little bit about that?

Marc Whitehead:

This is a brainchild that we rolled around in our head for three years before we actually kicked it off. I guess it's about two and half a years old. It's called The Successful Barrister, and one of our marketing strategies, our chief marketing strategy is basically working our lawyer list. We have a list of about 4000 lawyers that I've one work with over the years, whether they were defense counsel or within the trial lawyer organization or people I went to law school with. I've always collected names over the years, and over 27 years, we're now up to about 4000 lawyers that I actually have some contact with.

Marc Whitehead:

The byline for The Successful Barrister are management, marketing and life skills that probably won't get you disbarred, which gives you a sense of what the newsletter's about. It's meant to be snarky. It's meant to be funny. We use caricatures throughout it. What we do is we basically write articles about marketing and management and life skills within a law firm. If I did a newsletter about disability law to other lawyers, it'd get trashed. Nobody would want to read it. It would bore people to death. Our goal is to have actually people pay attention to it, so we put in cartoons. We have pithy little quotes. We summarize a lot of books that we read that we think other lawyers should be reading so you don't have to read the whole thing, you can just read our summary.

Marc Whitehead:

That's the whole goal behind it is to give something that lawyers would actually find useful as opposed to, "Gee, this is the latest summary of the latest disability case that came out from the 5th Circuit," which unless you do what I do, nobody would give a crap about that. I don't want to bore people. I want something that people find interesting. So we really don't talk about anything we do, other than on the very back page, we have a little display ad about what we do and then I have about six books that I've published, so we'll feature one of our books on the front page as well. But other than that, it's not about us. It's about things that can help other lawyers and that's the goal line.

Michael Cowen:

Does it convert?

Marc Whitehead:

What we have found is that about 35% of our business comes directly from other lawyers. What we do, you're not going to send me 10 or 20 cases a year. You might send me one case every year, maybe once every other year. If you're lucky, you might send me two cases a year, so I know that there's not a lot of frequency out there so what we have to do is we have to have a lot of breadth. That's why we mail to 400 attorneys.

Marc Whitehead:

Establishing what's your return on investment, you have to look at it in the big picture. You can't look at it in one month and say, "Hey, we got X number of cases of this newsletter." I can tell you over the last year, we've gotten about 300 to 400 cases from other lawyers. So, how do I get these cases from these other lawyers? Well, there has to be some way to connect with them. When you look at the big macro picture and look at your numbers at the end of the year, we think it's very successful.

Marc Whitehead:

It's also funny, I go to an AAJ convention and everybody, people that I can barely remember, walk up to me like, "Hey, you're the newsletter guy." So, we know it works. How to put an ROI to it, it's sometimes a little difficult and sometimes you just have to live with the fact that you're going by anecdotal evidence, but we think it works pretty well. Obviously, 300 or 400 cases a year that we're signing up from other lawyers, they got to get to us somehow.

Michael Cowen:

I love your newsletter. I actually read it and then I pass it around the office as opposed to most other things, people are just sending things around bragging or giving something technical on their own line of practice, I just trash them. But, I'm wondering if yours works better because most of the people you send to don't know as many people that are in your field and are not practicing in your field. We had 1600 people on our list, lawyers, and we did a beautiful little magazine ... I don't know if you ever got it ... called Off the Record.

Marc Whitehead:

Yeah, I did.

Michael Cowen:

I did it for a couple of years and we couldn't show that it led to any new referrals. The way we did it is we were spending a lot of money on it. We were spending a lot of money on different things, and the firm was doing great. We were getting great cases in, but most of our cases came from a small number of lawyers and when I called the new ones just to check, most of the new ones were not on our magazine list before they came in, and what we found is at least in the area of large personal injury claims, prepping death case, even pay for the back surgery, it was really personal contact and recommendations from other lawyers that it worked with us. Almost all of it was, "I talked to so-and-so that you had done a case with."

Michael Cowen:

So, we switched to even more ... We have the podcast, which keeps our name out there. I speak a lot. I'm working on getting a trial guides book finished, but the bigger thing is we said, "Okay, 80% of our income comes from these seven law firms. What are we doing to make them feel super special?" We re-budgeted that money from ... I don't know if that was a mistake or not, but we just couldn't show ... with the amount of work we were putting into it for our practice.

Michael Cowen:

So, I'm wondering what the difference was between our experiences.

Marc Whitehead:

Well, I think I can point to it pretty quickly is that we are volume practice. Our average fee on a Social Security case is maybe a couple thousand. Maybe on an insurance case, maybe \$7000 to \$10,000 depending. We're shooting for volume and we're shooting at a really, really, wide, wide target because the frequency for any one individual attorney is really not there. It makes sense from that perspective. For us, it's almost strictly a numbers game. I have to shoot at a very wide target.

Marc Whitehead:

You, on the other hand, you have much more of a specialty niche practice, at least in terms of it's not a volume practice. It's more high end. So you have to approach that from a different perspective because you're not looking so much at a broad numbers game. You're looking for quality. That's a different marketing vehicle right there, and I think you've nailed it on the head. Yours is more about one-on-one relationships. This is, again, back to time management. You need to manage your time because your highest and best use of your time is going to be establishing those personal one-on-one relationships with these key people and these key firms.

Marc Whitehead:

You've got to have time to do it. You can't, say, blow off a lunch because, "Oh, I got a deposition next week and I have to cancel this lunch with this referral source." No, you need to send that deposition out to some associate and you need to make that lunch because that's the highest and best use of your time.

Marc Whitehead:

So yeah, but it's just different strategies. There's a totally different mindset between a volume type practice like I have and more of what I call a high end, lower volume practice like what you've got.

Michael Cowen:

I started off as a volume practice. I made the switch over the years, and it's a scary switch to make, I'll be honest with you, and it's not a switch that ... It won't work for everybody. I've known a lot of people that say, "Well, I'm only going to do four or five cases and they're just going to be really good cases," and then they're not in position to do it. They lose one, or one gets continued and they go broke. So, it's finding that balance and getting in a cash situation where you can afford to do the switch.

Marc Whitehead:

Right. The advantage of a volume practice is that your cashflow is pretty steady, and I don't lose sleep when I lose a case. I don't like losing a case and I feel bad for the client when we lose a case, but it doesn't hurt me financially whereas if you're in a situation like yours, yeah, if you lose three in a row, that's a problem. But, you have a higher upside, quite frankly. You have a higher upside than I do, but that's okay. It goes back to you need to build the practice that serves your lifestyle and what makes you feel comfortable.

Michael Cowen:

And we have eight lawyers so we're in the middle where I'm still trying to apply some of the volume things as far as getting other people to do work and me only working the highest and best uses. When you're blessed with the ability to have these great cases that bring you bring fees, it's really hard to work on the other stuff. And then also, you don't want to be seen as competing with your referrers.

Marc Whitehead:

Yeah, absolutely.

Michael Cowen:

Let's say I started putting TV ads on, for example, for car wrecks. Some of my advertising clients just wouldn't send me business anymore because why are they going to help a competitor.

Marc Whitehead:

Exactly.

Michael Cowen:

It's all about your particular market. What are some other things you've done? You said you've done some talks. You gave a good talk, I think, at AAJ on marketing. Besides the newsletter, what are some other things you've done that seem to work?

Marc Whitehead:

I've written three different books, one for each practice area. And, we give those away freely. We give them away to other lawyers. We give them away to our clients. We'll give them to veteran's organizations, our VA book. We send a case out to these veteran organizations. We distribute these things far and wide and they're also available for free download from our website if people just want to download the PDF version of it. That's worked well for years.

Marc Whitehead:

Then, one thing, a brainstorm I really had goes back to what's our best client? Our best clients are doctors and dentists quite frankly, so we started thinking about that. What I did is I took my disability insurance book and I repurposed it and a lot of it has examples. What I did is changed the examples out in the case and I changed them out from regular worker, I changed them out to doctors and another one for dentists and I basically wrote a specialty book, a disabled doctor's guide and a disabled dentist's guide. We created those specialty books, which were really the same book. We just switched the examples out and changed some of the wording.

Marc Whitehead:

We had started distributing those at doctors conventions and at dental conventions, and pushing them into that industry. Like I said, those are what we call our high end cases. They're not as high end as probably some of yours are, but for us, that's what our high end market is.

Michael Cowen:

Well, I've seen some 7-figure results on some of those cases, though. I've heard they can be ...

Marc Whitehead:

Yeah, they're probably not going to generate a seven-figure fee, but you might be able to generate a good solid six-figure fee on a case like that.

Michael Cowen:

That's still not bad.

Marc Whitehead:

No, it's not bad. It's not bad. But that's been one of the things that we have moved into is that specialty marketing to doctors and dentists, just because we know those are our highest end clients. Our biggest marketing effort has always been our website. That's one of the nice things about having a niche. We

have a very specialized niche, so our website is hyper-focused just on disability. It generates a ton of leads for us. Obviously, when you generate a ton of leads, you have to have a good screening process.

Marc Whitehead:

I think my number one thing that we have done that really worked for us is that we've established a separate intake team. We have removed the lawyers and the paralegals. We removed them from our intake process, intake system. We've hired a separate intake team and they're trained and they're specialized and that's all they do is they're on the phone every day talking to in our case, we might have about 1500 leads that come through our system in a month. That's a lot of people to talk to. So, number one, you don't want to bog your lawyers and your paralegals down with having to look at that much information. Secondly, what I found is that when they get busy, when they used to be the final decision makers on whether we accepted a case or not, when they got busy, they started turning down good cases because they were just busy.

Marc Whitehead:

We removed them from that process and let them focus on what they do best, which is process cases and win cases. We have an eight person intake team. That's all they do is screen those cases every day, and they have the authority to accept cases that meet criteria and then cases that don't meet criteria, what we call the no-go bucket, they have the authority to reject those. Of course, there's a manager that reviews that. And only those cases that are in the middle move up the chain to probably ... And, usually it's the marketing manager that makes that decision on the tough calls. And on the ones she really can't make a decision on, then she comes to me on.

Marc Whitehead:

We might sift through 1200 to 1500 leads a month, and from that we might sign up about 100 of those a month as actual cases, which means we're rejecting a lot of cases. But, that's our goal is we want to accept only the best cases of the type of cases that we do. There's an old saying, you've got to mine a lot of coal to find some diamonds but there's no way that that would work if we had our attorneys and our paralegals involved in that process. There's no way they would have the time.

Michael Cowen:

I've learned the same lesson, and part of it is the frustration on our... The more information you gather on the front end, one, the better decision you make on the take or no take, but two, the better the case develops. One of the reasons, even though we have less volume than you do, that I went to people just doing intakes and nothing else is that the paralegal and the lawyer are always worried about the next deadline. If they're supposed to get all this stuff from the client, and supposed to have this big long, initial meeting with a client, but they have three deadlines that week, they tend to get what they can from the client and, "Well, I'll go get it later. I'll go get it later."

Michael Cowen:

And, they won't get it until there's an actual deadline and you end up one, creating additional stress but two, not making the kind of decisions you would make had you had all the information. A lot of times, "Well, had I know this, I would have decided differently on something." So, we switched to that, and then we've had to do a stricter go, no-go without my involvement because what I would find is a tough case would come in, and I would be like, "Oh, I can find a way to do that case. I can do that." It's not the best use of my time.

Michael Cowen:

Yes, I can do a bunch of briefing and a bunch of legal work and get some kind of recovery for the client, but one, it's not a good use of my time and two, what I learned is when you take on a really tough case and you do all this work and you get a recovery that for the case is really good but for the injury is not, the client's still not happy. The client compares their recovery to a recovery on a good case. And, the referring lawyer remembers the check they got and the size of the check, so if they refer a slam dunk rear-end collision, 18 wheeler case to one lawyer and then a really, really tough case where let's say maybe their client rear-ended the 18 wheeler and you're trying to put some fault ... you got contributing issues to another lawyer, they'll say, "Well, lawyer one got me a bigger fee. They must be the better lawyer."

Michael Cowen:

Even though, you can rationalize all that with them, when it comes down to the next case ... In fact, they even might say, "Well, lawyer two must be desperate and must not be a great lawyer because he took the case." I found when I get myself out of it ... I always want to help everybody, too, so if I do the initial client meetings, I end up taking cases that aren't the best uses of our time because I want to help somebody. So I found that getting written criteria and giving other people the authority to stick to them and then making that their only job has been a huge game changer for our practice.

Marc Whitehead:

Right. I have a similar take on that. I used to have the criteria that if a client had a worthy case, we should take it. It was the hero mindset that I needed to be the hero for these people. What I've learned over time is that for every person out there that has a legitimate cases, there's a perfect lawyer for that client but I may not be the perfect lawyer for that specific client. So, we stopped taking certain types of cases that we knew were winnable but they just didn't fit our system, they didn't fit our criteria and I had to get past the ego of, "Hey, I could win this case."

Marc Whitehead:

Well yeah, I could win this case but there's another lawyer right down the street that's a good friend of mine. For us, what might be a case that doesn't meet our criteria, that fits exactly into his criteria, so what I've learned and what I told my people because they're like, "Why are we not taking these cases?", I'm like, "Jim down the street with do a hell of a job with this case. Let's get this case to Jim and let him do a hell of a job. He will appreciate the referral. The client will love him and it just fits." The case fits with Jim. Just because we can win it doesn't mean we should take it.

Michael Cowen:

Yeah, and one thing I did, I started tracking my time a little bit and I realized I was spending a really disproportionate amount of time in expenses on cases that I was, again, trying to be the hero and trying to make something out of a tough case and I'd usually end up having to cut my fee at the end because of the fact that to be a hero, you got to get some money in your client's pocket and those tough cases you can get a recovery but you're still not usually getting full value because there were problems with the case to start with.

Michael Cowen:

And, working with Rodney Jew, who's a litigation consultant out in NAPA, he really turned my mind around when he was like, "Okay, all the time you're working on that case, you're not working on someone else's case where you could have really, really made a difference in someone's life. If you have the opportunity to have cases where you can spend your time and make a huge difference, then when you take on that one that takes you away from those, that's not fair to those clients." It took away some of the feelings of guilt and selfishness that I felt like I have to say yes to cases because I'm not worthy of saying no to them, or I owe people or I'm a bad person if I say no.

Michael Cowen:

Also, the realization there's lots of lawyers out there. There's a lot of cases I'll tell my referring lawyer, 10 years ago I would have loved that case but for me in the position where I am right now, if I take this case, then these other five cases I'm working on with you, I'm not going to have time to work right. So, I think this is a better case for someone else who's coming up the ranks, a great experience for them. They'll do a better job than I will so it's just time to pass on that.

Marc Whitehead:

Yeah, absolutely. Absolutely.

Michael Cowen:

How do you manage time, then, between your coaching, I guess, which must be fun and your managing the practice?

Marc Whitehead:

Well, honestly, and this is pre-COVID-19 pandemic, I have gotten to the point where I only work about I don't know maybe 5 to 10 cases at a time. Maybe the higher end cases, or the cases that I just find interesting, and I spend pretty much 90% of my time either managing or marketing the firm, or doing the coaching part of it. Basically, we built a system and we built a great team. That's the other part of this. Unless you hire the right people to run your systems, no system is going to run itself, so we've hired a great team. I have probably right now I think somewhere in the area of about 35 employees. We've actually even during the COVID pandemic, we've hired two more people in the last week.

Marc Whitehead:

We have plans and we're expanding regardless of what the short term looks like. But, you have to have good people to run your systems. Given the fact that I think I really have an outstanding team, that allows me to pick and choose where I want to spend my time. I'm not forced to spend my time in any one particular area unless I choose to do so, and if I choose to do this week to go out on my sailboat, I have the flexibility to do that because I've built a great team and a great system that allows me to do that.

Marc Whitehead:

There will be times where I ... At the end of last year, I spent two solid months doing nothing but working to revamp our intake processes, our intake systems. But I had that luxury of making that choice because everything else on the other side of the firm was running smoothly and didn't really require my time. I think that's the key to when I say building a lifestyle law firm. People ask me when am I going to retire? Why would I ever retire? I'm having too much fun. I like building a law firm. I like running a law

firm but there are times when I don't want to build my law firm or run my law firm and I want to go do something else.

Marc Whitehead:

Or, there are times I want to focus in particular areas. That's the key is you have to have your time management set and you have to have your systems down and you have to have the right people in the right seats on the right bus to run your systems. Once you have all that in place, then your time becomes your own. You can focus on areas where you want to focus at any given point in the day or any given point in the week or month.

Michael Cowen:

How do you find the right people?

Marc Whitehead:

I tell you what, that's not easy and I will tell you right now is the time to find the right people. There are a lot of good quality people that have lost their jobs because of the pandemic. As a matter of fact, we just hired two. We had two positions that had been open for six months and we could not find the right person to fit into those positions, and all of a sudden ... And that's the problem when you have full employment, at 3% or 4% unemployment, that's full employment and it's hard to find people. It is very hard to get hired by our law firm.

Marc Whitehead:

We do multiple personalities tests. We do multiple interviews. We do skills testing. We do background checks. My marketing director before I hired her, she jokes, she was interviewed six times before we finally hired her. So, it is really hard to get hired onto Marc Whitehead and Associates. We are very, very picky and I would much rather let a position go vacant and maybe hire a temp from a temp agency to cover that desk for a while than to hire a permanent employee that just didn't fit all of our quality criteria, everything that we're looking for. Hire slow, fire fast. You've heard that a million times.

Michael Cowen:

I have trouble doing it.

Marc Whitehead:

Yeah, it's a mindset and you've got to have the mindset that ... It's probably the best thing I've ever heard. The quality of your life is directly related to the quality of the people you let in your front door, which means you have to have quality employees accepting quality clients. If you start skimping on either one of those two areas, the quality of your life is going to decrease drastically, at least in the short run. So you just have to be very picky about it. Honestly, I'm a big believer in using temp agencies as a stop gap because when you get a temp agency, and I know you're going to pay them twice the normal hourly rate on an employee and they're not going to be that great probably, but at least is somewhat productive and it relieves you of the temptation to cut corners in your hiring process.

Marc Whitehead:

So, that's how we do it. My temp agency bill last year was pretty high, but it allows me to take the time to fill the seats on the bus with the right people.

Michael Cowen:

And, you said you do personality tests?

Marc Whitehead:

Yes. We do two personality tests. One is called the DISC assessment, that's D-I-S-C. There's different companies out there that will do that for you. Atticus does that for clients. It really grades people on four different axes of their personality. It's more of a management tool than "Should I hire or should I not hire this person?" But, it gives you a sense of how they are on a day-to-day basis in terms of how to communicate with them, how to motivate them. We do that with every member in our firm and that's kept in a central location where everybody can see everybody else's scores. And, we talk about that frequently when we have our staff meetings.

Marc Whitehead:

The other test we use is called the Hiring MRI. Jay Henderson's firm is the one who does that testing. Now, that is more of a bit of a pass/fail. You can do poorly on that test or you can do really well on that test. It's not cheap. It's about a little over \$200 to administer that test.

Michael Cowen:

Hiring them is a lot more than that, though.

Marc Whitehead:

Yeah, exactly but we will burn through four or five of those in any one position, so I'm spending about \$1000 in testing to hire any one position. I will tell you that when I hired against that test, I've always paid for it. When the test said, "Don't hire this person" and I hired them anyway, I've always lived to regret it. Now occasionally, there are people that the test said that they were hire-able and I hired them, and they still turned out to be not so great. Nothing's perfect. It just improves your percentages, but I do believe in that test and we spend a lot of money on that.

Michael Cowen:

Would that be something you could give us a link to we could put in the show notes so that if people wanted to use that or-

Marc Whitehead:

Absolutely, I can send you the link to that.

Michael Cowen:

So, this is a challenging time to practice. I don't know about you, we're all working remotely. So how have you adapted to the stay-in-place pandemic situation that we're all facing?

Marc Whitehead:

Well fortunately, we had already developed our systems to where we could work remotely. Now primarily it was so the lawyers could work remotely because they're traveling around going to hearings and such, so we put a lot of our CRMs in the Cloud. The lawyers were used to working remotely. Now, we've had to adapt and get everybody else working remotely as well, so yes, I've had to go out and buy

a bunch of laptops and get everybody working on that, but I actually view it as a good pressure test. If your firm can work under these types of constraints and these types of pressures, then you know you've got your systems down, and then where you don't have your systems, they're going to really be exposed at a time like this.

Marc Whitehead:

So yeah, we're all working remotely. Fortunately, our CRM is up in the Cloud. I had never used Zoom before quite frankly, and now we're Zooming every day. We have morning huddles where we kick off the day where we're all together, the different sections are together on Zoom just to get everybody a sense of normalcy that you can see everybody and get everybody assigned on their tasks every day. For us, nothing has changed business wise. The business is not going away. There are still disabled people out there. We're actually hiring. We've hired two people in the last week, so like I said, there are good people that are out there available now that probably weren't out there two or three months ago so if you have the opportunity to scoop up some good people right now, now's the time to do it.

Marc Whitehead:

What I learned honestly is what we learned in 2008. In 2008, we went through a financial crisis and what we learned is that the business didn't go away. It just got deferred a little bit. Yeah, our revenues went down a little bit for the first quarter after everything went to hell, but it came back the next year, and that's what I'm anticipating here as well. The business is not going to go away. Your money, your revenue may get deferred slightly for the next three or four months and hopefully, you can weather that storm, whether through your own money or through the CARES Act.

Marc Whitehead:

But, I think there's a lot of opportunity out there, as well. Where there's chaos, there's opportunity so you need to be looking for the opportunity. You need to be adaptable and you just need to have a good mindset that we'll get through it and we'll come out better on the other side.

Michael Cowen:

You're adding new employees. We're actually looking at possibly adding one or two people in the next few weeks, or at least starting the process of looking for one or two people in the next few weeks and one of the things we're struggling with is how do you train and onboard somebody remotely?

Marc Whitehead:

Well, that goes back to the checklist. Fortunately, we have a series of checklists we've developed for training and onboarding new hires based on that particular position. Generally when we hire somebody, there's about two weeks worth of stuff that they need to read through or videos that they need to watch, or one-on-one training sessions that they need to go through before we release them anyway. For some positions, it's even longer than that. So we're having to adapt those checklists of doing things online. Obviously, doing a lot of Zoom training, getting these people up and productive, and you just have to temper your expectations a little bit.

Marc Whitehead:

For somebody that I might expect to get trained up in two, three or four weeks, I'm probably now going to take four to six weeks to get them moving in the right direction, and you just have to understand that

and you have to be patient with that process. But, where there's a will, there's a way. Honestly, there's nothing you can't do remotely that you couldn't do in person. It's just your mindset. You think you can't do it, but you really can if you really put your mind to it.

Michael Cowen:

Okay. Well, that was my thought. One position that I'm going to have my manager take me through tomorrow and show me how to do it, and then compare what she had written to make sure that's fully showing how to do it, and then coming up with a training plan of day one, we'll do this, day two, we'll do this-

Marc Whitehead:

Right, just a good checklist and a good timeline, and this is how we're going to cover it and this is how we're going to do it, and this is our process and just put it down on a piece of paper and follow it.

Michael Cowen:

Speaking of checklists and templates and stuff, you've actually put together a marketing template. Can you tell me about that?

Marc Whitehead:

Yeah. As part of a presentation that I give in the numerous groups, AAJ and I think the last one before that was the El Paso Trial Lawyers and I've given it to PILMMA on multiple times, and I was supposed to do it again this summer if we can actually get together. But, I put together a marketing plan and marketing template basically going over the six basics strategies that we use to market our firm and putting that into a written marketing plan with ROIs and the primary goal, the sub-goals, the timelines and so forth. I put that together in a template form and what I do with people is I just share it with them in a Word format because my template is not going to work specifically for your ... Or, my plan is not going to work in your firm just like your plan is not going to work in my firm.

Marc Whitehead:

But, if I give you the template in a Word document, you can take that and you can borrow the parts that work for you, you can edit out the parts that don't work for you or you can make suggestions. I frequently have that when I give it out to people, they'll come back to me with suggestions, "Hey, Marc, you didn't think about this." "Hey, that's a good idea. Let me add that to the template." So anyway, this is the document that's been floating around in my world for about five years, and every year we add onto it. I share it freely. All I ask is send me an email and say, "Hey, Marc. Can you send me the Word version of your template?" And, I'll be happy to do so.

Marc Whitehead:

If you want to get on my mailing list to get The Successful Barrister newsletter, I'd be happy to do so. I also, if I can think about it, I have an article on time management that I wrote for Trial Magazine that I'm happy to forward around to people as well. My goal is to share freely everything that I've come up with over the years. I can tell you there's not one original thought in that template. Everything in there I've stolen freely from other people who have been generous with me, so my theory is I want to be generous with everybody else. A rising tide floats all boats so if we can all do better, if we can all run a better practice, then you're going to get more referrals, you're going to get more leads, you're going to send

some of those leads on my way. I can send some of those leads on your way and we can all run better businesses quite frankly.

Marc Whitehead:

We all need to run better businesses because quite frankly the back of the Bar Journal with all of the disbarred lawyers, those are all the lawyers that didn't know how to run a business. Nobody went to law school saying, "Hey, I'm going to get my law degree and then I'm going to go cheat my client and defraud my client and do bad things and get disbarred." Nobody ever said that. What happened is life happened to them, and they didn't know how to deal with it. They didn't know how to run a good business. So, what I want to do is to help people avoid that and establish a practice that serves your life.

Michael Cowen:

I do want to encourage everyone to at least get your newsletter. Like I said, if nothing else, it's entertaining but there have been just great things that I've read in your newsletter and we've implemented at my firm to our process because you have some good ideas in there, and you don't charge anything for it. So, if anyone else wants to join me and get on your newsletter list, where do they email you?

Marc Whitehead:

Okay, so the trick is that my mother spelled Marc with a C. She's cursed me with that my entire life. So, it's Marc@MarcWhitehead.com. Marc with a C. C on both sides of the @. Believe it or not, I've had to tell lawyers, "It's C on both sides of the @." Defense lawyers. Only defense lawyers I've had to tell that to. But anyway, Marc@MarcWhitehead.com. Marc with a C. Just send me an email and say, "Hey, Marc. Heard you, loved to have a Word version of your marketing template, be on the newsletter." We'll get you on the list.

Michael Cowen:

Marc, thank you so much. I've really enjoyed this. I could talk to you for hours because I'm really getting a lot out of this, but we have a one hour limit on our podcast interviews. So, thank you so much for joining us today.

Marc Whitehead:

All right, thanks for having me.

Outro:

Thank you for joining us on Trial Lawyer Nation. I hope you enjoyed our show. If you're listening to this episode on a mobile device, please click on ratings review and leave our show a five-star rating and write a review. And if you're listening to this episode from our website, please leave a five-star rating on the episode page. We'd love to reach more listeners, and doing this will help more attorneys find this podcast. You can also visit our website at www.TrialLawyerNation.com to opt into our mailing list so you can stay updated on our new episodes. I promise we won't spam you. And thanks to your feedback, we've improved our podcast website. There's now a resources tab that you can click that shows you all the books we've mentioned on our podcast. If you have a Facebook account, please send us a request to join our private group called Trial Lawyer Nation Insider Circle. This exclusive group will allow you to hear about our guests before an episode airs, interact with the show and get a sneak peek at some of

This transcript was exported on Oct 28, 2020 - view latest version [here](#).

the behind the scenes moments. I love to hear from all of you, and our table talk episodes are based solely on questions from our fans so please continue to send us emails at podcast@triallawyernation.com. Thanks for tuning in and I look forward to having you with us next time on Trial Lawyer Nation.

Commercial:

Each year, the Law Firm of Cowen, Rodriguez, Peacock pays millions of dollars in co-counsel fees to attorneys nationwide on trucking and company vehicle cases. If you have a case involving death or catastrophic injuries and would like to partner with our firm, please contact us. We have experience finding potential defendants that other firms miss, and we've added millions of dollars to cases by finding these sources of recovery. If you have a catastrophic injury or death case where the policy limits appear to be insufficient, give us a call. If we can find another defendant, we can partner on the case and if we can't, then we won't ask for any of the fees. You can reach Delisi Friday by calling 210-941-1301 or send an email to podcast@triallawyernation.com. She will coordinate a time for Michael Cowen to speak with you in person, or by phone, to discuss the case in detail.

Disclaimer:

This podcast has been hosted by Michael Cowen and is not intended to, nor does it create the attorney-client privilege between our host, guests or contributors and any listener for any reason. Content from the podcast is not to be interpreted as legal advice. All thoughts and opinions expressed herein are only those from which they came.