

Intro:

This is Michael Cowen and welcome to Trial Lawyer Nation. You are the leader in the courtroom and you want the jury to be looking to you for the answers. When you figure out your theory, never deviate. You want the facts to be consistent, complete, incredible. The defense has no problem running out the clock. Delay is the friend of the defense. It's tough to grow a firm by trying to hold on and micromanage. You've got to front load a simple structure for jurors to be able to hold onto. What types of creative things can we do as lawyers, even though we don't have a trial setting? Whatever you've got to do to make it real, you've got to do to make it real. But the person who needs convincing is you. Welcome to the award-winning podcast, Trial Lawyer Nation, your source to win bigger verdicts, get more cases and manage your law firm. And now, here's your host, noteworthy author, sought after speaker and renowned trial lawyer, Michael Cowen.

Michael Cowen:

Today on Trial Lawyer Nation I've got my partner, Malorie Peacock. How are you doing today, Mallory?

Malorie Peacock:

Doing good, happy to be back as always.

Michael Cowen:

So we decided, we're going to talk about something that we've been putting a lot of work into and frankly, I probably pulled some hairs out over these issues and you had written it nicely. I think you had written procedures and implementation. I say, how to get people you pay money to do what you want, the way you want them to do it.

Malorie Peacock:

Right.

Michael Cowen:

Why is that so hard?

Malorie Peacock:

I don't know, but we've been dealing with this Michael, for years. I think we've put effort, thought, time, energy into it, because it is hard and sometimes it feels like it shouldn't be as hard as it is, but I think you made some interesting points to me this week, over coffee about it. And I think the podcast audience might be interested to hear what your thoughts were.

Michael Cowen:

Yeah. And I think part of it's been, my journey over the years and you've been here through a lot of that journey is, I read a book called The E-Myth Revisited by Michael Gerber. And it basically talks about how you make every business a little bit like McDonald's. I mean, how does McDonald's serve, it might not be the best burger in the world, but it's an okay burger and it's the same burger from coast to coast, from continent to continent. And they have low skilled, low paid, a lot of them teenagers and they're able to take a bun, this much ketchup, this much mustard, pickles, onions, whatever they're going to put on there, because they have very detailed step-by-step instructions for how to do it. And his idea from E-Myth is that you create systems for everything in your business. And I used to spend a lot of time

creating very detailed systems and then I'd send them to everybody and I'd have it in training and show them step-by-step, how to do it and three months later, nobody would be paying any attention to what I wrote down.

Malorie Peacock:

Right. As I say, people are just doing whatever.

Michael Cowen:

Yeah and that's a real problem. And I think part of it is just because you tell someone something once doesn't mean that they'll remember it a week or a month from then. And if you tell someone something once, even if they do remember it, if you haven't talked about it again and again, they don't think that you really still want them to do that. Well, we tried that and maybe we're not doing anymore and no one has said anything, he must know what I'm doing. So I'm not doing it that way and no one said anything, I guess it's okay not to do it that way.

Malorie Peacock:

Right. And I think too, people are constantly trying to find what they think is an easier way to do things, but it might not be complete.

Michael Cowen:

Yeah and I think that clarity is super important. So I mean, I think the one good thing about it and I think everyone, if you're going to run your own firm or run your own business, one of the 10 books you should buy and read is E-Myth Revisited. It has some good ideas, but it's incomplete. So it is a good idea for all the important things to have systems, preferably in writing, so that it is clear to someone what you want them to do and how you want them to do it. And if they get hit by a bus tomorrow or they decide to quit and take another job tomorrow, you can bring someone else in and then they have instructions and a way to look up, step-by-step how to do it. Now screenshots are so easy to do, ours actually shows step-by-step where to put your cursor, where to type things in. I think that's important, but it's not enough.

Malorie Peacock:

Well, what do you think would be required beyond that, because it seems like if you give people step-by-step instructions, why can't people follow them?

Michael Cowen:

Well, there's a few things. One, I think people need to have some understanding of the why. So why is this important? Because if you're just doing it for the sake of doing it and most people resist that, well a lot of people that, some people are rule followers and that's fine. I'm one of those type of people. If I don't see a reason for it, I can't do it, not long term. And so, I think that's part of it. Part of it is, people have to be reminded and then you have to check. If you don't check as to whether they're doing it or not, then again, they assume you know everything they're doing or that you don't really care if you're not checking. And so if you don't go check and double check and remind and remind again, it doesn't sink in and then things start drifting away. Even if you do it well for three months, six months, once you stop checking, once you stop reminding, then it starts drifting away.

Malorie Peacock:

So I want to back up a little bit, Michael, because you mentioned this E-Myth and that procedures are important, but what kinds of things would you have procedures on? Do you have procedures on everything from how to answer the phone, to how to type an email or how much leeway would you suggest people give, I guess?

Michael Cowen:

That's a great question. I think you have to be realistic. In an ideal world or I had unlimited resources, money time, yes, I would have a procedure for almost everything from how to answer the phone to... I mean, I read some emails like, oh my gosh. How to word things in email. Although some of it's our educational system failing, but that's a whole other story, but how to word things in an email. Yes, I would in an ideal world, but the fact is you don't have unlimited time. And those of us who are lawyers have to spend some of our time practicing laws, some of our time getting and speaking to clients and referral partners, so we can't do everything. So I think what you do is, you find out what is the most bang for the buck.

Michael Cowen:

I would start with what is the one to three things, that if we can change these one to three things, that will make either the most improvement in our business or relieve the biggest frustrations in our business and start there and wait until you get those going. And until you've got the systems, they're documented, you've trained on them, people are doing them, then you're having someone way to measure it. You're reminding people, you're checking it. You're finding ways for public praise and accountability, praise for people who do get accountability, for people who don't, you have a time to explain the why and get that going and then add more. And so you have to have what Tim McKey from Vista calls the parking lot. You have a hundred great ideas and that used to be my mistake-

Malorie Peacock:

That sounds like you.

Michael Cowen:

Yes. You have a hundred great ideas, but then you have to sit there and use some discernment and sometimes the person that comes up with the ideas is not the right person to choose which ones to do, which in our team, I need help on the discernment end of which of the ideas is most important, which ones are feasible and which aren't and then leave the rest in parking. We'll go back in three months and see if we want to do any of these if we have this other stuff. So that's what I would do, is just pick the one to three, most bang for your buck and then go on from there.

Malorie Peacock:

So, I have the benefit of knowing you and know that you actually do spend time practicing law. When you described what you had to do to make sure these procedures are implemented, I bet some of our listeners, because I was thinking, God, that's a lot of things you got to do. How do I do all those things, but also run my business in other ways? I mean, that's not the only piece of the business, but also do lawyer stuff. Because you're saying you have to write the procedure, you have to train on it, then you have to retell people and you have to tell people again and you can't ignore it and you have to do all these other things. It sounds like a lot. How do you manage it?

Michael Cowen:

Well, it is a lot and I think one thing is, somebody has to do all those things, I don't have to do all those things and that took me a long time to figure out. You remember, I used to work all my own procedures step-by-step. And I wasn't always the best person to write the procedure because some of it, I'd never done the job. I'd never been the file clerk, I'd never been the mail clerk. I've done filing in a law office decades ago, but that's before we had scanners and computer networks and stuff like that. So you don't have to do it all yourself. I think you have to come up with the ideas so that the result you want, if it's something really important, you need to come up with some of those steps, but you can find someone else in your office to do it.

Michael Cowen:

You can find someone from the outside. We had a meeting today and we're trying to get Filevine or case management system to talk to QuickBooks, our bookkeeping system and we've been trying to do this for a long time in-house. And I said, okay, it's been long enough, we haven't gotten it done, we're going to hire somebody. It's just, that's what it is. Again, I've got a smaller office where you have fewer people, you may not need as many of these systems so pick one or two. And I would say at the first do one yourself, just so you get a feel for it but at some point, you want to find other people that you trust that have buy-in, that can do it and then they can always bring you the draft.

Malorie Peacock:

I think you also have to remember what the purpose of having these systems is. It's not just for the sake of having procedures or for the sake of having systems, it's so that you can step back and you don't have to micromanage every aspect of every single thing that gets done at your law firm. So that you can have a system, people know the way that Michael Cowen wants it done, they have it written down. They know and then they know how to do it so that Michael Cowen doesn't have to send every email that goes out, or Michael Cowen doesn't have to answer every phone call that comes into the office, because whoever's doing that will do it his way.

Michael Cowen:

Right.

Malorie Peacock:

So if you have a smaller office and you're going to be the one doing it, you don't need procedures for that. But if you want to have someone else do it the way you want, that's when the procedures are helpful. You don't want them just for the sake of having them, because I think people get fatigue from that too.

Michael Cowen:

And you can't have too many at once and you can't focus on them. Some things are like, if you don't know how to do this, here's a place to go look and then eventually you get to a cadence and this is to habit of, X happens now I want to do Y and just automatically, but you do have to pick and choose. And I think one big counterargument against procedures and I think it's not a valid one, but one that I hear is that, well, we're not making McDonald's cheeseburgers, we're practicing law. And what about creativity and what about doing it our own way and stuff? And I get that, but I think that one, if your procedure leaves no room at all for creativity in lawyering, I think you've got an issue.

Michael Cowen:

Let's say you have form interrogatories using car wreck cases. If you're only allowed to use those form interrogatories and none other, yeah, that's a problem. But if you say, look, there's some basic things we need to know in every case, you don't need to reinvent that wheel every time. So let's say you have 25 interrogatories, we're going to have 15, form interrogatories we're going to send in every single case. And then another 10, if you need all 10, use your creativity, use your discretion. The other thing is just remembering, and I actually had to talk to someone publicly, I felt a little bad doing it at a meeting recently, because procedures can almost always be improved upon. And so what the procedure is, this is the way we're going to do it until we all agree that there's a better way to do it and then we all decide we're going to do it this better way.

Michael Cowen:

So we have a procedure in letters I wrote personally that were not ideal, which is, when we get an answer from a defendant, we send a series of letters asking for deposition dates and trucking cases of a corporate representative on a list of topics and the truck driver. And we send out four letters and then if after four weeks, they haven't given us a date, we just notice a deposition with a nice letter saying we've been trying, however, you've not giving us a date. So I already noticed it, but if you give us a date and time, we'll let you do it.

Michael Cowen:

Because we want to look like good people before the judge and then when they try to quash that deposition notice, we set that for a hearing. And then we look like, judge, we've been trying and we get our deposition set early instead of letting time go by and things slip. And one of our senior lawyers had an idea, because there's a problem that we send those out and they start offering us dates and then we can't do those dates and there's a bunch of back and forth. So she said, wouldn't it be better if we changed the form to say, we want to take these depositions, we are available on these dates. Do any of these work for you? Great idea. But then at a meeting with all the lawyers, that person just announces it, that we're going to start doing it. No.

Michael Cowen:

And I felt a little bad, but I had to like, "No, stop. That's a great idea, but we have forms in our Filevine system that don't have that wording that haven't been updated. We have paralegals that have been trained and are being monitored on doing it in a different way that haven't been updated. So you can't just go in here and change my system. What we have to do is, you and I and whoever else needs to be in there, have to agree on how to change it. And that's your assignment, is to draft it for me. And it's a great idea, but we have to do it right."

Michael Cowen:

I said we have to do it, we have to agree on what the new form's going to be and then we have to program it into the system and then we have to have a new training and update the procedure and tell everybody, so that we're all following the same thing we've all agreed. We just can't have one person changing it. Is that a little dictatorial? Yes, but that's the only way you can run a firm with 10 lawyers and have any kind of consistency.

Malorie Peacock:

That's true too, because you know what you always want to be able to do, especially if you're the owner of the law firm is if a lawyer leaves, for whatever reason, you need to be able to go into that case and

figure out what the hell happened in that case. And if you don't have a system or a procedure for it, even with how to save things into the file, you're going to be scrambling. You're not going to know what to do, you're not going to know what's going on, there's going to be huge issues with what's happening in the case.

Malorie Peacock:

And it could set you up for some bad stuff and that's why procedures are important so that you can look at a case and you can know what's going on. I think one thing that's great about Michael's firm is that you could pick up any case in this law firm and you know where to look for whatever it is you're looking for. I mean, we have systems on how to do it, so I could go to a case I've never worked on and figure out what's going on in the case with very little effort, because I know what the procedures are and I know how to look for things.

Michael Cowen:

And that's super important for me. Now that you're back and now that we're fully staffed again and I'm getting back into my ideal role of working on the four or five biggest cases plus jumping in on big things, plus jumping in on trials, knowing that things are done a certain way, knowing that things are stored in a certain place with certain names, makes it a lot easier for me to just jump in and get ready for a trial or get ready for a huge deposition and to do it well. Whereas if we don't do that or when we have cases of people that no longer work here, that we find out stopped following the procedures before they left, then it's a lot more stressful. I can still do it, but I have to go read through the whole thing and almost make my little checklist of what should have been done, what actually got done. It's just a lot more difficult.

Malorie Peacock:

So when we were talking over coffee earlier this week, you told me a statistic that I think people would be interested to hear.

Michael Cowen:

So here's one issue we have, I know that you were not trained in any great detail because I trained you and that's not what Tony would call working genius areas. I'm really good with ideas, I'm really coming up with solutions, I'm not really good with sticking with it and reminding people over and over again, but you just got it and I just got it. I didn't have a whole lot of training, heck, my boss quit my second year into plaintiff's practice and I ended up with my own firm, but I figured out myself. And what happens is about 5% of the people out there, they can figure it out themselves. It just makes sense to them, they get told once and they remember it or it's intuitive or they look it up themselves and figure it out and those are great employees.

Michael Cowen:

And what happens is, those are such great people that they end up getting promoted or they end up like me with their own business. And then they don't understand why the other 95% of the world's not that way. And the fact is 95% of the people, aren't going to figure it out themselves, 95% of the people, you can't just tell them once and then they're going to keep doing that for the next five years. So you have to design your business in your systems that can thrive with the 95% of the people out there rather than you have to only hire superstar top 5% people. I mean, it would be nice, but two things, one, there's

only so many of those people out there and two, a lot of those people end up leaving and doing their own thing because they're the top 5%.

Malorie Peacock:

And I think it's an interesting perspective to have, because I think one of my frustrations is, okay, I've told you how to do this. I've shown you how to do it and then two weeks later, we're back to where we were before, where it seems like you don't know how to do this even though we've talked about it 10 times. But the reality is that's most people, they need to be reminded, they need to talk about it again and again, to make sure that we remember how to do it and to make sure that they know that it's still important to you.

Michael Cowen:

And the thing is, to you and me, that may be our most important thing in the day. We're frustrated that, for me, it's like depositions aren't getting noticed quickly enough, because I don't like all the deadlines that start coming up. And then we have all the stress because we're trying to compress all the depositions into a shortened time period between my schedule and the other lawyer schedule and the deadlines that we sometimes have to end up getting continuance, which I hate. So to me, that's my most important thing of the day. A lot of our employees, if they have a list of top 100 things a day, 99 of them are not going to have anything to do with our business. It's going to be what their spouse said the night before, their kids' problems in school, where they're going to go eat or meet for drinks afterwards, what they're going to do that weekend, do they have enough money to go on vacation where they want to go.

Michael Cowen:

And then setting depositions is, if it's even on their list, just 100 on the top 100. And so that's not necessarily the top thing on their mind. And so it's one of Lencioni books, I can't remember if it's Five Temptations of a CEO or one of them. It just talks about a business, a CEO is really a CRO, the chief reminding officer. And you have to remind people over and over again, or they don't believe that you really meant it or they don't remember it. But even when they do remember, they don't believe that you really meant it unless you say it over and over and over again.

Malorie Peacock:

And I think that's the point you're making about training and then saying it again and again, unfortunately it's just part of it. I think it's something that we've learned throughout the years that there's never going to be a time where you don't have to remind people to do things that you've reminded them to do 20 times before. And once you accept that and you accept that's just part of it, then it's not so stressful, it's not so frustrating. It's not so irritating to you as management or as a business owner.

Michael Cowen:

Well, it reminds me a story I heard about, I think it was a joke about a marriage. One spouse tells the other, "Why don't you ever say you love me?" And he says, "Well, I told you five years ago. I loved you. I mean, if it changes, I'll let you know." Maybe that's true, but that's not a way to have a healthy marriage and have good communication. Well, same in a business. You want to have a healthy business, you need to remind people. You need to say it over and over again and it's annoying. I mean, we start every meeting with a mantra.

Michael Cowen:

We talk about why we exist, what our three core values are, what our three strategies for success are and it feels silly sometimes, let's say the same thing over and over again. Everyone can repeat it with me at this point. Although it felt so good to hear someone else do it this morning, because I had to be in a meeting. I was in the car and so I did not have a video on, so I had let Sonia, one of our newer lawyers lead the meeting and it was really cool to hear her say it.

Malorie Peacock:

Good.

Michael Cowen:

But that being said, yes, it does feel silly, but we do it anyway because that's how people know we really mean it.

Malorie Peacock:

Right. So if someone is, let's say they're either starting their firm or they're listening to this and they're like, "You know what? I need to get me some procedures. Michael has convinced me, I need some procedures." How detailed do you think that they need to be and does it depend on what the job is?

Michael Cowen:

It depends on what the job is. Let's say you have someone doing filing for you and scanning and they're going to have to scan in documents and they have to name them and they have to put them in the right folder in your system and they have to make sure that the right people get alerted that this came in. Usually your mail clerk, your scanning people, unless you have a small enough volume where you have an experience paralegal doing that, usually it's a lower paid, lower scope employee. So that person needs very detailed step-by-step, if something comes in with this name on the title of it, you name it this, you save it here.

Michael Cowen:

Then you look here to find out who's on the case and you send a message or however you do it, whether you do it through your case management system, whether you do it through email, whether you print a copy and put it on their desk like we did in the old days, this is who it needs to get to make sure that person has it. That stuff, you need detail. For me with the lawyers, setting depositions, I like the form letters just because the paralegal can do what I've been thinking, but it's like, get your depositions in.

Malorie Peacock:

Right.

Michael Cowen:

Go look at these. We'll tell people if it's a trucking case, look at these areas. I mean, when you're reviewing the documents, how am I going to step-by-step, pull up the bill of lading and right up here, you should have where it's like, okay, look to see if you have a negligent hiring case. So look at the application. The application for a trucking case should have the prior three years of employers, it should have the three years of traffic violations, should have three years of crashes. Now find every source of information to see, did they have any tickets they didn't talk about, did they have any crashes they

didn't talk about, see what they did have, would a reasonable employer have hired them? Did the company check the driving record? Did they actually check the full driving record or did they get something like an insurance company that doesn't have everything?

Michael Cowen:

Did they actually check with the prior employers? If they didn't, then we need to take a step further and look, had they checked with the prior employers, would there have been anything to find. Well, I can give you that broad stuff, but I'm not going to go through and circle this part of the application has this and this is what you look for. No, because they're lawyers and a dedicated lawyer doesn't need that level. And frankly, a lot of times you look at it real quick like, no. The driving record's clear and so even if they didn't check it, you're not going to get approximate calls, let's move on. And so those kind of procedures are going to be a lot less detailed.

Cowen Rodriguez Peacock promo:

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

Malorie Peacock:

I think at least since the time I've been with you, which is about 10 years now, we've gone from one extreme to the other to now, we're kind of in the middle of super detailed procedures that are incredibly specific to very general procedures. And now we're back towards more specific procedures. We actually fluctuate sometimes. And a lot of it depends on one, what's most important to us at that time and what's really either causing us a lot of stress or causing us to spend a lot of time or effort on something that we feel like this is not the best use of my time. How do we stop spending our time on these things that shouldn't require my attention? And then two, we want people to be able to understand the procedures and know what to do, but we don't want them to be so over the top detailed that people feel like you're treating them like children.

Michael Cowen:

Right. And I think also, it was different when it was you and me and one other lawyer on our team. And it was the three of us working up all the personal injury cases, then we had another lawyer working up a different kind of cases at the firm, then we were always meeting, it was the three of us together, we knew each other. Would it have been better to have more detailed procedures at that point? I guess if someone quit, I guess it would've been nicer to have, but other than that, we didn't need them as much, frankly. I mean, we just needed more general outlines.

Michael Cowen:

Now that we're 10 lawyers, it's a little different because I can't be meeting with every lawyer on every case. I tried to do that for a while, to sit in on all the file reviews and that's all I was doing, was sitting in the file reviews. So now, we have specific things that have to be covered in the file review, which means we had to create a form and I just have file reviews. Now they're very general things, but there's still certain topics that have to be discussed every month. And then the lawyer meets with me to go over what they'd ask me. So, I look at the forms, I meet with a lawyer, I talk about things that I see that are

missing, they talk about things where they have questions to me. Instead of me sitting through for a four hour meeting, I have a 20 minute meeting.

Malorie Peacock:

Right.

Michael Cowen:

Which is how we have to do it, because I don't have time to sit through with 10 different lawyers, 40 hours a month.

Malorie Peacock:

Yeah. But also, it allows you to at a higher level, know what's going on, direct people as needed without having to get into the nitty gritty. That's not the best use of your time. And just to give people an example, in our file reviews on the micro level, we have an attorney, an associate attorney, a paralegal, a medical coordinator. So we have a bunch of people that are in there so that we can gather the information, put it in a format that Michael can read really fast. So we're finding out about where the litigation is, where the medical is, what is our plan for the next month. There's more specific questions, but those are the basic categories and that we're we doing what needs to get done. And then that way Michael can read it quickly and give his input where he needs to without having to sit and find out, have we received the medical records from valley Baptist Medical Center. I mean, that's the detail that we get in on the file review, but Michael doesn't need that detail.

Michael Cowen:

I don't. And I don't have the patience or the attention span for that. Yeah. And their file review started and I got it from Tim Mckey from Vista, with one question, what can we do in the next 30 days to bring this case closer to resolution? And then we found we needed to add some more in there because we had the danger of things slipping through the cracks, because we're trying to get the cases worked up. Say we filed a lawsuit and then someone hadn't been served and if we weren't checking quickly, it could slip for months. So, have we filed a lawsuit yet? Once we say yes and then it's yes, we served everybody. Once we served, have they answered it? Because if they haven't answered, there might not be insurance coverage, there may be a problem, we might need to jump in quickly before we spend a much more money on this case.

Michael Cowen:

If they've answered, are we following the roles and setting depositions? Are the depos set? Have we sent discovery? Has anyone actually read what they sent us? They're not questions that have to be re-answered every month, once they've been answered once and it's done, then you just copy from the prior month. And then there's that, what can we do in the next 30 days? And then there's, do you need to talk to Michael about anything? And how's the client doing? Have they talked to the client? How are they doing? Do you need help with medical, that kind of stuff. Experts, I think is another thing on there. We need hiring experts.

Malorie Peacock:

But I think that what's important about us going through that procedure for the audience is that, the point is that Michael wanted to take himself out of the nitty gritty four hour meetings to find out what's

going on in a case, but get himself the information he needed to use his time wisely. That was the point of making that procedure, is so that Michael didn't have to have 10, four hour meetings every month to figure out what's going on in cases. He could have a one page sheet of paper that had all the information he needed to know if he needs to jump in, give some direction, answer some questions without having to sit through that meeting. So that was the point of the procedure, is to get the owner of the firm out of those little details, but make sure the cases are still being worked up the way he wants them worked up.

Michael Cowen:

Yeah and it works and especially when you get the right people. Now, you can't just have those though, someone has to actually see that they're actually getting done and that they're actually doing what they say they're doing. And so sometimes you have to look at the month before and make sure they didn't just cut and paste the whole thing, which has happened. No one who's at the firm anymore, but it has happened before.

Malorie Peacock:

And we do check every month to make sure those are being done. We have a report that we can run through our system that says, did this file review happen. And we still do have to check every month. I mean, it is true that every month we have to check and make sure that everybody did their file reviews like they were supposed to. I mean just the way that it is.

Michael Cowen:

But now we're trying to get to the point where we're reminding people, I mean they have the computer reminders, but you can get so many of these case manager systems that are just like, "Oh, by the way you got a file review coming up in a few days, you're going to have time to get that done." Most of our lawyers now are being a lot more since we've been measuring it. I think we should talk about cadence of accountability next, but actually having public accountability because every Friday, we go over who has and hasn't complied with those key procedures, like file reviews. People now, they schedule. When you have a file review, the first thing you do is schedule the next one and so you never go more than 30 days without having it scheduled or on the calendar, unless some-

Malorie Peacock:

There's a medical emergency or something.

Michael Cowen:

Or you got called to federal court or something.

Malorie Peacock:

Right.

Michael Cowen:

But in those things, well excused, we're not totally unreasonable. But I think one other thing, you have to get buy-in and you need to eventually get where other people hold themselves accountable. We had a long management meeting today, but one of the things that really makes me feel good is that I see you, Sonia and Teresa being so passionate about wanting to do things right, about wanting to improve

this place, giving high quality legal representation to people. So I don't have to own all of it, I have other people that are owning it. All three of you are the Five Percenters. Other people, they need what they call cadence accountability.

Michael Cowen:

So one thing we do is, we have a meeting every Friday and we don't go over everything, but our most important key performance indicators, I used to call them non-negotiables, we said minimum standards litigation now we call them the 10 commandments. But we go through and if someone hasn't done something, we do it nicely, but we say, "Hey, you didn't turn in a 90 day report," or, "you're behind a file view. Why?" And we do in front of everybody. Yeah. And we don't it mean, we don't put people down. And if there was a medical issue or something, then I wouldn't do that in front of everybody, I wouldn't embarrass somebody. But in general, it's usually because someone got busy and they didn't do it and that peer pressure helps. I also know that tomorrow when you all have that meeting, I'm going to be in California playing golf.

Michael Cowen:

And I know that you and Sonia will hold people account for me, I don't have to do it all by myself. And they'll hold each other accountable And we looked at the numbers today, most of them got it done anyway. But having that public accountability and having people hold each other accountable, which you have to have a lot of buy-in for that to happen.

Malorie Peacock:

So how do you get buy-in?

Michael Cowen:

That's a great question. One, you don't always get by it. I mean, not everybody is going to have your agenda, but I think part of the reason we share what I call our mantra is to have that vision. The purpose of our law firm is to provide a special forces for level of representation, which means we don't want to be an average law firm. We don't want to just do what it takes to not commit my practice or to get some settlement for people. We want to do an incredible job, high end, turn over every stone, get every penny out of the case that we can.

Michael Cowen:

And if that's who you want to be, this is the place for you. And that's not who you want to be, this is not the place for you. And make that real clear. And then our core values, we constantly seek to learn and improve. So we're always going to be trying to get better. We're going to be going into CLEs, we're going to share what we learn, we share with each other when we learn things. We actually share outside the firm. And then we fight hard, but without being assholes. So we're going to fight on our cases but we're not going to be jerks to the other side.

Michael Cowen:

And again, we say that every week and part of that's for the buy-in, this is who we are. If this is who you want to be, I've got your back, I will defend you publicly if anyone attacks you. I will spend my time with you to develop you, I will spend my money to send you places and to hire people to develop you. I will do everything I can to get you there if you want to do this. And if you don't want to do this, it doesn't

mean you're going to be a bad lawyer. I mean, there are lots of firms, a lot of people make a lot more money than I do on a totally different vision and model. And that's fine, but it's not this firm. And so I think, by doing that and by being willing to not try to bend and accommodate the people that don't have that vision.

Michael Cowen:

Because I think in the past we were too much like, "Well, we don't want to lose anybody. We don't want to feel like we're objected, we don't want to lose people." No, I think some people need to go. Not that they're bad people. It's just, they're not the right fit for this particular firm. And a lot of them have been wildly successful at other firms, but they would not have been successful at our firm because we have a very specific way that we want to do things, a very specific thing we want to be. And I think you need to figure that out for your firm. When you verbalize it and you're consistent with it, you start attracting the people that want that and frankly repelling the people that don't.

Malorie Peacock:

I think that's how to get buy-in on a macro level, but you also have to get buy-in on a micro level for individual procedures. And I think we've found that the best way to do that is to solicit input. But we solicit input in a healthy way, which is we will listen to what you have to say. And if we think it's a good idea, we'll do it. But we're not always going to accept what you want to do. Because we may have a reason that we want to do it a different way, but everybody gets to say their piece, if they want to say something and then we accept people's ideas. If they're good ideas, we're not always the smartest when it comes to how to run the file room or how to write a letter to a medical provider because Michael and Mallory don't do that every day. So we take input from everybody. We listen and if they have a good idea, we implement it. But we tell them also, "Just because you have an idea, doesn't mean we're going to implement it."

Michael Cowen:

Yeah. And I think that's a big thing is that, if you have time and if it's not something that's just an absolute mandatory, you absolutely 100%, no negotiation, have to do it this way. The getting buy-in, brainstorming with the team before you write the procedure. Or at least, "Here's the draft procedure. Before we go try and implement this, can y'all read through this and let me know if you have any ideas on how to make it better." And sometimes they've got some really good ideas on how to make it better. I think the other thing is explaining the reasons why is so important.

Michael Cowen:

"Because five times I've had to either get a continuance or go through all kinds of stress, trying to get a depo scheduled so that we could get the deposition done. And the transcript in that our expert's going to need to write their report. Because this is creating stress in my life and in your life, our continuances, and we know what happens. What happens when you have a continuance? Your client's going to get another wreck, they're going to die, they're going to get tired of the lawsuit and stop communicating with you. They're going to get arrested, they're going to get deported, they're going to get another crash. Something bad is going to happen, nothing good happens from continuances."

Michael Cowen:

And so, "That's the reason why we have this, so we will be ready and if you do it this way, your life's going to be less stressful. Because you're not going to be scrambling the last minute." If you get people

to really believe that you're doing it, because you want to make the place better and you want to make their lives a little better, you're not just trying to micromanage them.

Malorie Peacock:

Right. I think that's important. Understanding the why behind why we do stuff and don't have procedures that don't have a reason. Also if there, if there is truly a procedure that you have in your firm that doesn't do anything, it's just a level of micromanagement, that's unnecessary. Don't have it, that's fine. You don't have to have a procedure just for the sake of having a procedure. It needs to make the firm better or at least have it operate the way that you want it and to cause you less stress.

Michael Cowen:

Absolutely.

Malorie Peacock:

If it's not doing those things then it's not helping you and get rid of it. We've gotten rid of procedures over the years because they became obsolete or because we figured out that they were actually causing more work for people. Because people came to us and said, because we've created that culture, "Okay, we have this procedure that requires these four steps, but why are we doing these four steps?" And then you look at it and you say, "Why are we doing those? That was from a long time ago, we don't need to do that anymore. Take them out." We don't need to do that, we don't need to make extra work for the sake of making extra work.

Michael Cowen:

But when you're going to take it out, you revise the procedure, bring everybody together. Say, "This is how we want to revise the procedure. Does anyone think there's a better way? Can anyone further improve it?" Then, "Okay so, from now on this is way we're going to do it." And meet and train and then check, "Are we doing it that way?" Because people will get confused and they'll fall back to it the old way, it's natural, it's human. So you have to just keep going back and another thing I found is you can't do too many once.

Malorie Peacock:

Right?

Michael Cowen:

One of my problems that I've learned over the years is that I want to do everything once, I want to do a hundred different things. I love doing new things, that's what brings one of the things that brings me joy. But, one, it stresses everyone out and two, you can just only focus on so much at once. And so just pick your battles on this stuff.

Malorie Peacock:

Yeah, I think that's important. You can only change so many things because if people have too many things to change they just can't remember it all. I mean, you remember it because you wrote the procedure and you know what the purpose of it is, you know why you wanted it, it's easy for you to remember. But when you're implementing it top down, the people that are further down the totem

pole that didn't participate in writing the procedure, they're going to have to learn it from scratch. And you need to give people time to do that.

Michael Cowen:

Yeah. But I think the writing is so important though, because I remember conversations I've had with you. I'll be frustrated because some lawyer didn't do something. I said, "Malorie, didn't I just didn't I have a meeting. I told her about this." And you said, "Michael, that was six years ago."

Malorie Peacock:

Yeah.

Michael Cowen:

"And most of those people weren't even there at the firm six years ago." And I'm like, "Oh, okay."

Malorie Peacock:

Right

Michael Cowen:

"You're right." But it all blends together for me and my life is just a blur and I don't remember when I said what or who was there. And so, having something where people go back, training. But again, you have to train on the key procedures because you can't sit there and give people a month of training before they start working at our firms.

Malorie Peacock:

Right, you've got to get stuff moving. I mean, it's the same issue with, for example, this Friday we are implementing a new way of handling expert disclosures. Because some of the rules changed in Texas, there's been, for a while, we're doing it two ways because the rules changed on one date but we had cases from before the date. Anyways, now most of our cases are from after that date. So, we can finally implement a true procedure for how to now do it this one way. There's still going to be some exceptions, but we have those written into the procedure and all that. But we're going to implement it this week.

Malorie Peacock:

But the thing is there's pieces of it that aren't totally complete. And the problem is we need to do it now because it's an issue that's now and we have to just do it the best that we can, even if it's a little incomplete. I mean, we can't stop litigating till we can complete this. I mean, you have to balance that, you want to get it as the best you can with the information that you have and then if it needs to change later, just know that you can change these things.

Michael Cowen:

Yeah. I think they say don't let the perfect become the enemy of the good.

Malorie Peacock:

Exactly.

Michael Cowen:

It's better to do something than to wait another year to get it perfect. And that's been another thing why I've been guilty of in the past is either telling somebody once expecting to remember six years later or working on it till I think it's perfect and then I never get it finished.

Malorie Peacock:

And then in the meantime, know that while you're working on it to try to get it perfect, people are struggling with what to do in that situation. So they're coming up with their own solutions, which may not may or may not be what you want them to be doing.

Michael Cowen:

I think the final thing I want to talk about on the implementation of procedures is that you need different skill sets to do this. Patrick Lencioni has a book coming out, he's got a podcast on it called The Working Genius Model and we've done the assessment and it's pretty darn accurate.

Malorie Peacock:

It is.

Michael Cowen:

It's scary actually. See, it's really simple, it's not a pass fail, you're a good person or you're a bad person. But his theory is that there are six competencies you need to have, he calls them working geniuses, for a team or an organization to succeed at. Let me see if I can remember. It's widget, I know it's what they spell. So, wonder is coming up with idea. Where could we improve? How can we do things better? Invention is actually coming up with the way to do the better things. So, wondering, you're trying to figure out what the problems are, invention is figuring out how we're going to do it. Discernment is figuring out, "Is it a good idea to do this or not?" Because like I said, I come up with a hundred ideas and probably at least 50 of them are bad. When we really looked through them they would end up creating more problems.

Michael Cowen:

I've had a lot of things where I've come in with an idea and I've been all excited about it and then... It's usually Sonia because she's the one that's best at discernment. Sometimes she just invents stories, but will come in and explain to me why that's not a good idea. And luckily we've got enough trust where I can listen to that and know that they're saying that not to put me down, but saying that because they want to make this a better place. And about half the time I'm like, "Yeah, you're right." Every now and then I say, "Well, I don't care. I'm going to do it anyway." But most of the time they're right and so you have discernment.

Michael Cowen:

And then G is galvanizing, what galvanizing is, okay. So wonder, we've found the problem, invention, we found a potential solution. Discernment, we figured out whether it's a good idea or not to implement that solution and that's a problem that we really need to solve. So galvanizing is firing up the troops. It's getting other people to get the buy-in, to get excited about it, to actually want to do it and it doesn't do any good. We've had that problem in the past. We've come up with good ideas and good solutions, but if people don't want to do it, they're not going to do it. At least not for very long.

Michael Cowen:

Then you have enablement. Enablement is the coaching part, the getting people to be able to do it on their own. So, you have to sit down with people, you have to check in with people. Double check, let them struggle on their own and then coach them up and help them correct their mistakes so they can learn and get better. And then tenacity is just the sticking with something until it's done and having the joy of, you have that, actually finishing something.

Malorie Peacock:

Yeah, I do.

Michael Cowen:

And you need all six to get something done. Someone needs to figure out what where you have room to improve or where you have problems. Someone has to figure out solutions, someone has to figure out whether those are good ideas or not. Someone has to get the other people on your team enrolled and wanting to do it, someone needs to coach them up and someone needs to make sure you actually finish it. And I don't think there's really anybody that has all six of those as what they call their working genius, where they love doing it. And so, you and I are the opposites, I've got wonder and invention, you've got enablement and tenacity. And so, I come up with ideas and you actually finish them. And you actually get other people, coached up on doing them, because I'm not a good coach.

Malorie Peacock:

And the reality is that our team is actually, for those of you don't know, more than me and Michael. Because even with me and Michael, we don't have all six.

Michael Cowen:

No, we don't have the discernment and the galvanizing.

Malorie Peacock:

Yeah, exactly. And so, other people on our team have those things, so that's what makes the team complete. And it helps us finish the project all the way through. From the idea to the completion, we have every piece in between and then our stuff gets done.

Michael Cowen:

Yeah. And before, when I didn't have discernment and not only discernment, but someone that would trust me enough to tell me when something's not a good idea when I came up with it, instead of just humoring me because they didn't want to hurt my feelings, or they wanted to kiss my butt. Then I would have too many ideas and I would never finish any of them. And it was hard to work here because everything would be changing all the time, constantly. One idea and then another. And then people knew, "We'll just ignore it because 30 days later he's going to have something new." So just let it flow through you and so it's that complete team. And it's not that we can't do any of it. Obviously, I finished law school, I've got some tenacity in me. I didn't just quit.

Malorie Peacock:

And I have ideas mean it's not that I don't have any ideas of my own.

Michael Cowen:

And you do wonder, and you do find. The training we're doing tomorrow, you found the issue, you came up with a solution. It's not that you can't do it. It's just, "What is your zone of genius? What is it that brings you energy and joy?" And you know, to the extent that we can get a team of people that at least one person has energy and joy in each of those six areas. Because, typically most people in two level six is what Lencioni says. And that seems to be true with me.

Malorie Peacock:

What I find interesting is, we took this little test that Lencioni had on his website to find out what our working geniuses were and it's not scientific, I'm sure. But what's funny is once we got the results, all of us looked at each other and said, "Yep, that's you." But what I found even more interesting is I thought going in that I would be a mixture of all of them. But then when I really thought about it and was honest with myself, I thought, "Well, I am definitely more one than another." And for me and you, it was very clearly more one than another.

Michael Cowen:

Yeah. And for me, I always knew tenacity wasn't one of mine. I'm really good at starting things, not really good at finishing them that's why I need help. I think it took a bit of humility for me to learn that discernment, it's a working competency I have the ability to do it, but it wasn't one of my areas of genius. I really do need other people on my team that will help me figure out whether something's a good idea or not. Or maybe it's a good idea, we've had too many good ideas this month and it needs to go to the parking lot and wait another month or sometimes another year before we actually try to do it. And I think that developing that humility, that trust, has been really a linchpin to our success.

Michael Cowen:

I mean, yes, our legal work has been important, the marketing to getting the cases in and the work we've done to turn the cases in into money or verdicts has all been important. But the sustainability of it and frankly, the joy I find in my work and my joy I find in my work family, you and Theresa and Sonia and everybody else at the firm. I really do feel love here and I think it's because we put together the right people that have the right mix of working geniuses with investing the time to develop what they call the vulnerability based trust. That we could tell each other hard things.

Michael Cowen:

We could tell each other that's not a good idea. I had someone senior come in and took me aside and said, "Look, you said something in front of other people that made it look like you were putting me down and that really hurt." And I had to say, "Wow, I was wrong. I'm very sorry." And I really did. And I didn't take it as she's attacking me or putting me down, I took it as, "We're trying to make this place a better place. We're trying to make he a better team and thank God that instead of just holding it in and becoming resentful that she would come and talk to me about it. And trust that I would take it from her as coming from a good place. It's taking a lot of work and it's taken some, some nutrition, frankly.

Michael Cowen:

But it really has made it a lot better. So I really encourage our listeners. I hope you're getting something out of this, if you're going to build a law firm, once you get more than two or three people, really try to look for not just talent and not just work ethic. But really look for people to give you the variety of areas

of working genius so that you can have your complete team. And then also just look for the kind of people that are going to have the buy-in the people that you can trust that you can say what needs to be said, even if it's an uncomfortable conversation. And that they will be able to trust you enough to know that you're doing it because you want to make them better and you want to the team better. Not just that you're putting people down or trying to be controlling.

Michael Cowen:

When you do that, not only will you, will you practice law at a better, at a higher level, not only when you make more money, but you'll have more joy in your life and hopefully more joy in the lives of the people around you.

Outro:

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