Michael Cowen:

This is Michael Cowen and welcome to Trial Lawyer Nation.

Voiceover:

You are the leader in the courtroom and you want the jury to be looking to you for the answers.

When you figure out your theory, never deviate. You want the facts to be consistent, complete, and credible.

The defense has no problem running out the clock delay is the friend of the defense.

It's tough to grow 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:

Welcome to today's Trial Lawyer Nation. I am joined by my partner, Malorie Peacock. Malorie, how are you doing today?

Malorie Peacock:

I'm good. I'm glad to be back. It's been a while since we've had a podcast together.

Michael Cowen:

Yeah, it's been too long. I've talked to our internal people. That's part of what we're going to talk about today is managing people, what we've been learning about how to better manage people. One of the things I had to do is we were supposed to be doing this more often and we've had a bunch of good guests but not enough of you. I ran into some people at the Trial Lawyers University and they specifically said, "I love your podcast but I love it more when Malorie is on."

Malorie Peacock:

That's so sweet. I appreciate those.

Michael Cowen:

That was one way of putting like, hey, I'd rather hear from her than you, which is fine.

Malorie Peacock:

I don't think so.

Michael Cowen:

Before we dive in though, I want to thank our friends at LawPods. LawPods produces our podcasts. They make it really easy for us because you and I just need to show up and talk and they do all the rest, the

editing, the production, the making little clips for us to put out on social media. So, if you're thinking about doing your own podcasts, which is a lot of fun, I highly recommend LawPods. So, Malorie, why is it even an issue to manage and maybe motivate employees? You pay them. Isn't that enough?

Malorie Peacock:

I used to think that, that people show up to work to get a paycheck. I think what I've learned over the years is that people don't just show up to work to get a paycheck. I know I don't just show up to work to get a paycheck. There's a lot of value that I place in my work. A lot of pride I place in my work and enjoyment I get out of it. When you look at all of the reasons that people work, the very smallest piece is a paycheck.

Now, a paycheck is important. They're not going to come for free. This isn't a volunteer organization. But one thing that I find when I talk to clients about what their job means to them in the personal injury world, paycheck is never something that they say. They talk about the value that they get out of working. They talk about their friendships that they've gained. They talk about how important it's to be responsible for something, how they like to be in charge, if that's what their job is, how they have freedom to get out of the house. There's a lot of things that people think about with their work that isn't just a paycheck. So, no, to answer your question, a paycheck is not enough to motivate people to work.

Michael Cowen:

I think one big problem from... And we're talking from the employer's point of view. And those of you that some of y'all own law firms, some of you all, maybe you don't own your own firm, but you definitely are supervising, are working with other employees and really looking at why do people come to work because sometimes it's something great. For you, you talk about the pride and doing great and it's part of your identity. Sometimes it is about the relationships, sometimes it's about the little power base. Sometimes it's about being able to get ahead of someone else and things that aren't necessarily good for the organization and good for the supervisor. Different people have different psychological needs, so how do we deal with some of that?

Malorie Peacock:

I think it is a real challenge. I know we're going to be talking about this today from the employer's perspective but if you're a lawyer listening to this podcast and you manage anybody, I think you can find some value in some of the stuff that we're going to talk about, if you manage a paralegal or a legal assistant or have any kind of interoffice relationships where you're managing someone. I think we've learned some valuable things and we've been exploring some ways to try to make our place of work better for everybody. That's something that we always try to do. It's not because we necessarily had a bad place to work but how do we keep improving?

Michael Cowen:

I'm actually going to disagree with you on a little bit of what you just said. You said we're trying to make our place of work better for everybody, and that's not true. We're trying to make our place of work better for high-performing people that want to be team players and care about their jobs and care about their clients. We do not want to be a good place for someone who's just coming in to get a paycheck, for someone who wants to have a lot of drama, a lot of fights, a lot of politics. We want to be a very unsatisfying place for such people to work.

Malorie Peacock:

That's true.

Michael Cowen:

If your emotional need is you need to have some place to be dramatic, for your manager to be your therapist, to have an excuse factory going on and nothing ever be your fault and everything be outside your control, we do not want this to be a place that brings you joy. We want this a place where you don't want to be anywhere close to it.

Malorie Peacock:

You find joy going somewhere else.

Michael Cowen:

Yeah. People can either make you happier by staying or happier by leaving. That sounds mean but it's really the truth because some people, unfortunately, they are not good team players. If you let them fester... It's like if you get cancer and you don't cut it out, it spreads. Some people then they have this negative energy if you don't do something about it. And sometimes you could turn them around and sometimes you can't. But if you just let it fester, and I've been guilty of this because I don't like confronting people, believe it or not. I don't mind confronting the other side. I don't like confronting people I like. You've seen it, I've let things fester and then they become a huge mess and it spreads and you get this negative energy in the office and then eventually, it all comes to head anyway.

Malorie Peacock:

Right. Michael, you've been doing some reading on this, trying to figure out how do we make sure that we have the right people for the environment that we want to foster here at the firm. There's tons of books that you can read on this subject. There's tons of management books but have you found any that you really like?

Michael Cowen:

I did. We've talked a lot before, in the past about Patrick Lencioni and his books, especially The Five Dysfunctions of a Team. And we started there and I think we really, on creating teams, really did a lot of growth through that. But our next one is just how do you find the right people and how you motivate individuals. There's a couple books by a woman named Cy Wakeman. One is called No Ego, one is called Reality-Based Leadership, and there's some others. But Cy has got a really neat background. She was a therapist that went into business consulting. So, she comes at it from a therapy mindset, which is a little different. But what she's looking for is that you're looking for people that are going to be accountable, people that are going to be resilient.

You want to get away from people who, what she calls are emotionally expensive, which are, there's always something wrong. There's always a lot of drama. She says ditch the drama. The more you feed the drama, the more drama you're going to get. She has a lot of different ways of thinking about it and a lot of techniques for trying to get high-performing people to become resilient and accountable and frankly, how do you part ways with those who aren't willing to do that?

Malorie Peacock:

It's interesting that she comes from a therapy background. I actually didn't know that, that she's a therapist telling you that we're not going to be your therapist. That's one of her things. Even though I'm a therapist, that's not what this is. Your workplace is not your therapist's office.

Michael Cowen:

If you want to get therapy, we've got insurance. I think it covers it on our health insurance plan, go get it. But don't expect your manager or your co-worker to be your therapist and don't expect me to pay you large amounts of money to spend hours a week venting about all your problems.

Malorie Peacock:

Does she offer any guidance that we can learn from about how do we... I think one of the problems a lot of people have is they feel like, okay, well, wouldn't that be nice? Wouldn't it be nice if I could find all of these super happy people that don't complain? But how do you do that? How do you find those people?

Michael Cowen:

That's a great question. I think part of it is you have to set what the ground walls are. You get what you reinforce. I'm going to be really honest, one of my biggest revelations, I don't know if I told you this before, but involved you. I had other people that were not performing but they always had things going on in their life, so I always made excuses for them. They had personal things going on, they had family things going on, and then everyone else would have to pick up the slack around them. And then I remember I was having a conversation with you and you were going through something with your mother that was... I didn't even know about it. I'm not going to go into your personal details but you were dealing with a lot of personal stuff and yet you were performing at a high level.

And what I realized is everybody is dealing with something. It's just some people let it consume them, and some people choose to say, okay, well that's going on and it sucks, but that doesn't mean my work has to suck. I'm going to let the rest. I'm not going to let it control me. And it's hard. But realizing that we all have circumstances in our lives, there's always extenuating circumstances but do people choose to overcome them or do they choose to make that an excuse? It's really a mindset now you can coach people to try to improve them but a lot of it really comes to do with finding the people with that mindset.

Malorie Peacock:

Maybe I'm just too optimistic but I think a lot of people do want to be happy. There's some people that you can tell just with meeting them that they just like being miserable. That's just part of their personality. They want to be miserable. They find ways to make themselves miserable. But I don't think that's most people, I think most people want to be happy and they want to be happy where they work and they want to enjoy it. You mentioned that you can coach people. Say someone isn't one of those people that's just always down. They want to be coached and they want to do better. How do we get from point A to point B?

Michael Cowen:

I think part of it is just coaching someone on... First of all, when someone is feeling bad, we all have what we call... Cy Wakeman says we all have a story in our mind. And it really is true. There is a situation, there's a set of facts. I'm going to use a lawyer example. Let's say you go to a hearing and you don't get the result you wanted. We have a story as to in our mind about what motivated the judge to do that. If we told ourselves the story of this judge hates me and they're unfair, and the whole system's rigged and I

can never win, and what's the point? And then you just really despondent. Do we know that to be true? Do we know the fact that the judge doesn't like us and that's why the judge made the ruling?

Could the judge have been doing what she thought was right and she just disagreed with us? Could the judge have just been having a bad day and is not always going to rule against us? How we approach it has a lot to do. Or can we just say, okay, I've got a case with a challenging judge. I'm going to find a way to overcome this and it's going to energize me. I'm going to find ways to overcome these bad rulings and still win my case, and I'm going to view it as a challenge instead of being down about it. The two things is realize that the happiness is not dependent on what the situation is. It really is dependent on how we choose to think about and then respond to the situation.

An event happens like a bad ruling, a workplace incident, a missed deadline, whatever it is, then we think about it. How we think about it creates a feeling or emotion within us. Our feelings and emotions then create actions. Actions are driven by emotion, they're not driven by logical thought. That's why we have to use emotion in trial. And then our action creates the results, which then lead to the other events that lead to new thoughts. The only thing we really have control, we don't control what events are going to happen. We really don't control our feelings except that we control the thoughts that create the feelings.

But how we talk to ourselves about things, how we approach things, that self-talk and the way we think then leads to everything else. If we sit there and we have a bad ruling, well that sucks. There's nothing we can do. This judge is going to rule against us anyway. Then we feel bad, then we don't really push the case and then we get a bad result. Whereas if we think about it differently, like I'm going to try twice as hard, I'm going to be more creative, I'm going to find a way around it, I'm going to hire an appellate lawyer, whatever it needs to be, then you can be energized and positive and then take actions that are going to lead to a positive result or be more likely. There's never guarantees in life but it'd be more likely to lead to a positive result. How you get people to do that, that's a whole nother discussion.

Malorie Peacock:

I think talking people through it is important. I am not going to go into too many details, but yesterday I was feeling just very overwhelmed by what I perceived as a mediator not listening to me. That he wasn't listening to me, that I'd had multiple conversations with him about an issue over the course of multiple days. He had called me yesterday and it was like he never heard anything that I said, a case. I was very upset about it because we have our mediation coming up. It's a big case. I want to make sure that my clients have the best opportunity to resolve the case. And I felt like what has all this work been for? I was so mad and so frustrated. In my mind at first, my mind went to, he's just not listening to me. He just doesn't care about what I think. He's not even listening to me. He's just checking the box, yes, I talked to her. That's how I felt.

I went to pick up my son from daycare. He is two and a half and he remembers a lot of little jingles and little songs that they learn at daycare. And one of the ones that they've been learning is when you're mad, you say, breathe in, breathe out. I'm not going to scream and shout. Last night I kept saying that in my head, breathe in, breathe out. I'm not going to scream and shout. Doing that little silly mantra made me get in a better headspace about it and feel like, okay, well, it's probably not true that this mediator just hates me and is ignoring me for no reason. I don't think that's true. I actually have a very long relationship with him. I don't think that that's the case, right? That's actually probably not what's happening. I don't know what's happening. I don't know but what can I do to fix the problem that I have? So, I came in this morning energized to fix the problem, and I fix it.

I fixed it within 20 minutes of being in the office this morning. It just required me to get out of that negative headspace. Once you get there, Michael, I don't know if you find this, it's so hard to get out

sometimes. Once you're there, it just feels, I don't know, it's like an echo chamber. It just was so hard to get out. Having those conversations in the workplace and having those conversations in the office help get people there. It helps develop that everybody goes through this. Even though it is a mindset and it's... But it's something you have to practice. It's not so easy all of the time to be positive.

Michael Cowen:

No. I want to make it clear. It's not that you have to be chipper and positive 100% of the time and happy 100% of the time because that's also not real. We are talking about reality. Sometimes reality sucks. Sometimes you get a judge that just does not plaintiffs to get money, and it sucks and you have to deal with it but you still can't let it destroy you. But you can't just go pretend like, oh... There are certain judges, we know who they are. We're just, the judge is just having a bad day. No, bitch, the judge is having a bad life. You just have to say, okay, I'm going to make my record. If we don't get a resolution, we just appeal it. You'll find some other way but you can't just pretend. That's also false. It's as false to make a false positive thing as it is to make a false negative thing. But this whole thing is just to not let it just consume you and just bring you down all the time.

You know me, I'm guilty of falling into that trap. And something so minor. I broke my arm a month ago. It is really a minor injury. I didn't need surgery. I didn't need a cast but I had some limitations. I couldn't type for a few weeks. I just got released to start running again. And then I stopped eating. My energy went down. Just one little thing led to all these other things and it's totally the way I chose to react to my circumstances, which is wrong of me. I'm better than that. Now, I got to go get back on board. But how I choose to react to it is like, okay, I had something minor happen to me. My clients go through. Much worse. It's going to make me a better lawyer because now I know what they're going through a little bit more but now it's time to get back on.

Malorie Peacock:

Yeah. One of the things that happens sometimes too is that if someone around me is really upset, it's just easy for me to fall into it too. They're mad about something that has nothing to do with me. It's not related to me. It's not related to my work but when they're down, I'm down. How do you avoid that seeping into the workplace? Because we all get down sometimes. I think that's the reality of it, is we get down about something and we can pull ourselves out of it but how do you keep it from bleeding into other people? And then we're all just one big grumpy echo chamber.

Michael Cowen:

There's people that are occasionally down and there's people that are always down. Cy Wakeman calls it a BMW. B is bitching, M is moaning, W is whining. So, people that are always, moaning and whining. They're always complaining about everything. Oh, there's no way we can get all this done. This is unreasonable. You just can't tolerate that. And the more you feed the BMW, the bigger it gets and the more it... It gets contagious. What you want to make sure you don't do is you don't reward the behavior. When someone comes into you complaining about, well, so-and-so got a better office than me, or so-and-so gets treated better than I do, or so-and-so got a promotion and didn't. First of all, you just ask, how do you know that that's true? Can you think of any other explanation for that? What could you do to change that? What could you do to add value here? You turn around on them and don't give credence to the story in their head.

And the story in their head is so-and-so likes, so-and-so better and they're not fair to me. That's almost never true, that we're basing things purely in favoritism. But you got to go through and challenge that story that that person has in their head. How can you get on board with this? What can you do to add

value here? What would great look like? If someone else got a raise, you think you deserve one, what could you do to earn one? Why do you think that they would get a raise? What do you think they did that would merit a raise? What is it you're not doing that you could do to earn one too? Just turn around them where they have to start owning it and they have to start taking responsibility for their own actions and stop worrying about everybody else's actions.

What you get is people, instead of wanting to take any accountability for themselves, they want to talk about how unfair everything else is. End of the day, Cy Wakeman has this great saying, "Stay in joy or leave in peace." So, you really have to be like, "This is who we are here and this is what we're going to be. We'd love for you to be part of it. So, what are you going to do to come on board to become part of this?" If the answer is, "I'm not." And then it's like, "Well, okay, well what can we do to help you find another job?" But just be straight up about it. It's hard but you can do it in a kind and loving way but you got to be straight up about it.

Malorie Peacock:

I think what's important about this process, when people come to you and they have a complaint, especially about someone else in the office, I mean, this happens in every office. I can't imagine it only happens in our office. Someone comes with a complaint about someone else and turning that back to the person complaining and making them figure out, what do you think is going on here? As opposed to you giving the answer about what is going on because if they already have a story in their head, you giving an answer isn't verifying any information for them. They already think whatever they think.

Them walking through the steps of, well, what else could be going on? Or what do you think is going on with them? Or why do you think that happened? Or is there any other reason that could have happened besides what you just told me? So, turning it back on them to find the solution helps them build that better mindset. If you just tell them the answer or you just tell them what already to be true, that doesn't change the story in their head. They have to change it themselves.

Michael Cowen:

No. And you don't want to reward tattletaling. You want people focusing on their work. Now that being said, if someone's actually committing fraud or something... But usually, it's not. Usually, it's stupid stuff and they get all worked up about it. In the past, we've rewarded it. We've said, okay, let me go talk to them and let me go do something about it for you. Okay, now I'm empowering. I'm reinforcing that behavior of you're sitting here instead of doing your work. It's almost always the people that are underperforming that are coming in complaining about the other people. It's never our top performers coming in and complaining about their coworkers. It's the people at the bottom. Just don't put up with it. I think that's the biggest thing. Just like you need to be accountable for your work, we're going to hold this other person accountable for their work.

Malorie Peacock:

Yeah. There's something that, I think it comes from Cy, but I've heard you say it before, is that some people are just emotionally expensive. And I love that phrase because it says everything, right?

Michael Cowen:

Yeah.

Malorie Peacock:

They're emotionally expensive that they're hard to work with because they're just too much. It's just too much emotion, too much drama. It's not really emotion. It's drama. They build drama. They like drama. Those are hard people to work with.

Michael Cowen:

They're emotional drains on us. That's why they're emotionally expensive because dealing with their drama, it takes away emotion and energy that we would otherwise be able to spend on a positive thing. And it's draining to be around them. And it takes a lot of time by emotionally expensive, our time is money. Our time has value. The more people they have drawn into their little dramas, and they get off on it, these people get off on it, that's how they feel important. Maybe they had a bad childhood or something and that's the way they get love and affirmation is by being emotionally expensive. But you don't want that in your workplace. So, you just have to try to coach it out of somebody. And if they're not willing to have it coached out of them, then you just can't tolerate it because it will spread and it will keep you from being productive.

Through Chris, we had a trainer come in and put us through a program. We started with the people that were in the training, it was more management level people, calculating their own emotional expense because I think it has to start with us. I can be a little bit emotionally expensive. I'm not that bad but I can be a little... I come to you with some of my personal dramas [inaudible 00:23:17] stuff and that's not always a good thing. I think we start by being good examples. We start by trying not to be emotionally expensive ourselves. I need to not yell and lash out at people. I need to not be overly... If I need to be sad about something, well then, I have friends outside of work I can vent to. I don't need to be venting to other people that I supervise or that work with me as much.

We start by not being emotionally expensive ourselves, and then we don't tolerate emotional expense. And if someone who is emotionally expensive, what I find is once you stop feeding it and stop tolerating it, the people will leave because most workplaces put up with it. We used to feed it. We would give these people so much attention and try to solve all their imaginary problems instead of just telling them, how do you know this is even true? What can you do to improve the situation? Instead of let's go talk to her and see if we can make it right and let's go get a big meeting with everybody. No.

Malorie Peacock:

Right. It's not just that. Especially small offices, I think this happens a lot. I don't know. It still happens at a big corporations and stuff like that but I think it's more likely to happen in a small office like a law office, is that you, especially a manager, thinks, okay, this person is good at their job. You think, okay, they're good at their job. So, maybe if I just isolate them from everyone else. Nobody likes them and they're mean to everybody and they're dramatic. But if I just isolate them, I'll isolate the problem and then I'll still have this employee that's really good at their job. But what you're not looking at is how that person, maybe they're really good at their job, but they're not doing everybody's job and they're making everybody else not as good at their job. If you got rid of that person, how much better could these other people be when they don't have to deal with an emotionally expensive person?

It's easy to do that, especially in a small business because you think, well, this person has all of the institutional knowledge, or this person is just really great at this task that they do for me. What if I can't find someone that good? And the truth is, maybe you can't find someone that's that good but getting rid of the emotional expense is actually going to be very liberating.

Michael Cowen:

Actually, high-performing, accountable people don't like to deal with the emotional expense. If you allow the BMWs to thrive, they will drive out your high-performing people because high-performing people hold themselves accountable and they want to be around other people that hold themselves accountable.

Malorie Peacock:

Accountability is a really interesting thing and a difficult thing, I think, for everybody. I think everybody thinks that they're personally accountable, and we are sometimes and we aren't sometimes, it depends on what it is. I think that Cy has some factors that she considers in accountability. What is it? What is accountability?

Michael Cowen:

Yeah. What she has in her book, No Ego, is that there's four factors. There's commitment, resilience, ownership, and continuous learning. Commitment is the willingness to do whatever it takes to get the results you desire. For us lawyers, if I have to work all weekend, if I have to go fly somewhere, if I have to go do a ton of research, I'm going to do it because I want to win this case, or I want to win this motion, or I want to get this case signed up, so I'm going to go on a Saturday afternoon and drive four hours to go meet with the client and get it signed up. Resilience is the ability to stay the course in the face of obstacles and setbacks. Things are going to go wrong in life, both within your case, within your office, and in your personal life. But are you going to be able to overcome those obstacles, overcome those setbacks and keep going?

Ownership is unwavering acceptance of the consequences of your action with zero blame or argument. If I don't get something done, I didn't get it done, that's on me. I'm not going to go say, well, but you didn't help me enough, or the standard really wasn't fair. It has to be, no, this was a standard. I didn't meet it. And then the last one is continuous learning, seeing both success and failure as fuel for future success. On the times when we don't meet our goals, we had to say, okay, why did that happen? What can I do differently so I can... Again, don't make excuses but you also want to learn like, okay, I didn't do what I needed to do to get this done. What can I do to make sure that doesn't happen again? Or this went great. What can we do to replicate this in the future? Those are the kind of things you want to build and encourage in people.

You want to get rid of the, we didn't get it done for this reason. Well, we had too much work. Well, my client wasn't answering the phone, so I didn't do my client contact because we have the rule that you have to contact the client at least once every 30 days, and I hear every excuse in the world. And then you find out, well, you always call the client at three o'clock on a Tuesday. The clients that work at three o'clock on Tuesdays. Have you thought about, is there anything else you could do? Best thing is not to tell them. Hopefully, they would say, why don't you text the client and set up a time to call and then text them before, hey, reminder, I'm going to call you at this time. Does it still work for you? You're a lot more likely... And don't keep calling at the time that they're not available. That's accountability.

Voiceover:

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

Malorie Peacock:

I think each of those things is important. One thing I think that people don't appreciate enough, and I think that it can lead to a culture of emotionally expensive people or having emotionally expensive people, is when you focus too much on failures. I say that you can learn equally from your successes and your failures. And I think people always think you learn best from your failures because you hear that a lot, and that's true. You do learn from your failures but you also have to learn stuff from when you succeed. Do that again. Don't do this, do that. But if you focus too much on, well, here's all the 25 reasons that this went wrong, and here's another 25 that this went wrong. Again, it's focusing too much on all the things that went wrong instead of how do we improve it in the future? How do we make it better in the future? Where you're putting your focus is really important, I think.

Michael Cowen:

I think it's a mindset difference. I think here's all the reasons that they went wrong, and these are excuses for why it went wrong, and so it's not really my fault. That's being accountable, that's creating excuses. Whereas these things went wrong, here is my plan for making sure that doesn't happen again. Now that's being accountable. And these things went wrong. Here was my part and why they went wrong, and here's what I could have done to overcome them, and here's what I'm going to do next time to make sure it doesn't happen again. That's accountability. It's a big difference. You will find people that they will come up with 1,000 reasons why they couldn't get things done. Whereas someone else, you're going to find, if you went and really interviewed your highest performers, you don't know this because they're not complaining, but your highest performers were dealing with as many or more things in their own lives but they did not let that stop them.

Malorie Peacock:

From a really minor, really technical thing in our office the other day, I was so proud of one of my paralegals, Reyna. I've had two amazing paralegals. They're really high performers. They've been with me a really long time but we were all in a group management meeting and we were talking about sending information to medical providers. If something is coming up or we need records or we need bills, whatever, we need to send information to them. Michael said, "Well, is there anything that we could do to do this faster?"

She raised her hand and she said, part of the delay is that I have to hear from Malorie about X, Y, and Z before I can do it. And I said, "Well, thanks, Reyna, just throwing me under the bus." She said, "No, no, no. That wasn't the end of it," She said, "no, what I was going to say is that maybe what I can do is print it out for her and put it on her desk so that she can respond to me faster." That's what we're talking about here. What happened in the chain, that it didn't happen quickly enough but what can she do to help it happen quicker? Instead of blaming me for not getting back to her, she was saying, here's some things that I can do to make it happen. That's what we're talking about when we talk about accountability.

Michael Cowen:

If someone came into my office saying, well, can't get my job done because Malorie won't get back to me and Malorie won't get back to me because she doesn't care about this. Well, how do you know that to be true? What do you know to be true? What are some legitimate reasons why she might not be getting back to you? What could you do to overcome this? What could you do to make it better? What would great look like? You ask those questions and make them think and make, find ways to solve the problem. Don't solve it for them, which is so hard for me. I'm really working on this with lawyers and

stuff. But when I start solving everyone's problems for them, then I become a bottleneck. And then people stop trying to solve problems. They just wait until they talk to me and then throw it on me. It's always a challenge working with other people.

Malorie Peacock:

It is. That's why I was saying at the beginning of the podcast, this isn't just necessarily for managers. It's for anybody that has to manage people. Even if you indirectly, even if you're just helping people, it's figuring out what's the best way to make your work relationship the best that it can be. When someone becomes a bottleneck, that's not the best work relationship that you can have. If everything is on one person and that one person has to make all the decisions and that one person has to do everything, that's not a healthy organization.

Michael Cowen:

Well, Cy has some great little sayings. She's got a list of mantras you can get on her website. So, I want to go through a few of them. I guess I'll go through all 10 and I just want to get your thought on what they say. We can take turns bringing them up. I'll do the first one. Accountability is a mindset, not a skill set.

Malorie Peacock:

Yeah, I think what I mentioned earlier is that I think all of us think we're accountable unless you have some mental health disorder and that part's turned off in your brain. But most of us think that we are being accountable to the other people that depend on us, but sometimes we don't always know what accountability sounds like or should be like. That's what I was talking about when I said the commitment, resilience, ownership, continuous learning. These are things that people kind of naturally do. It's not something you have to learn how to do. You don't have to learn how to learn. You don't have to learn how to be resilient. People are naturally pretty resilient. You just have to think about doing those things. You have to consciously be telling yourself, this is how I'm going to maintain accountability. Keep it in your mind as opposed to let's go take a class on how to be accountable, right?

Michael Cowen:

Oh, exactly.

Malorie Peacock:

Accountability isn't checklists. I think checklist can help you be accountable, but the accountability itself isn't a checklist. Accountability is within your own person and your own mind. The next one is that happiness is a choice. This is interesting.

Michael Cowen:

But it's so true. I used to not be a super happy person at all. For long periods of time, I would go up and down but a lot of my life, I was not happy. And I think now I'm about 85% of the time. I am happy. It has been a lot of work for me, but it is a choice because circumstances are not within our control. But how we react to those circumstances really is because we control how we talk to ourselves about things and how we think about things. Trials as an example. And trials can be stressful but you've been with me in trial. I'm happy in trial.

I'm very happy 90% of the time. I'm not saying that there's not frustrations, this expert is being a pain or we have a scheduling problem. You get little things but by and large, I just tell myself I'm going to trust

the judge. I'm going to trust the jury. I'm going to enjoy myself. I want to leave the outcome of the jury. I'm not going to worry about it while I'm trying it. I'm just going to enjoy it. And it's become a very happy thing for me because I'm choosing to be happy. I'm choosing to look at things positively. I'm choosing to see things as challenges rather than obstacles. Nothing can't be overcome.

This probably more than I should be sharing, but I went through a little personal one because I had some really good tax deductions from things about the last couple years, so I haven't had to put money away for taxes. And now I'm looking at a tax bill. I'm like, oh my gosh, how am I going to come up with the money. And I realized I put away a lot money. If worse comes to worse, I just take some of the money out of the account and pay the taxes. I was all stressed out about something and I realized, that's so stupid. I have a solution. I don't like the solution but it's there and life will go on. Nothing bad will happen, so why am I being unhappy?

Malorie Peacock:

I think it also goes to people do what they want to do and they don't do what they don't want to do. If you think about it in that way, if I'm doing something, it's because subconsciously for some reason, I want to do it. So, am I doing it because I want to be unhappy? Well, no. Then why am I doing it? So, kind of stepping back and thinking about the things that you're doing that are making you unhappy and thinking about, why am I doing this? Why am I doing this? I don't have to, nobody is forcing me to do this. There could be really good reasons but if you reframe the reasons that you're doing it, you could be happy about doing it or content with doing it. Sometimes we can be content with something. We don't necessarily say we're happy with it, a bad outcome or something. You're not happy with it but you can accept it and move forward.

Michael Cowen:

Exactly. And I think some of us, we don't know it but we do have... If you don't believe you deserve to be happy deep down, then you're going to make yourself unhappy. If you have to first convince yourself, and this is a thinking thing that you deserve to be happy, that you deserve a good life, and if you don't believe it's not going to happen. And that was my biggest thing, is I had to decide and convince myself that I deserved happiness, and then I started getting it. If not, no matter how much success I had in life, I would always find a way to mess it up.

Malorie Peacock:

That's hard. That takes a lot of self-reflection to get there.

Michael Cowen:

What are the options? We can either do the hard work or we can go suffer through. You don't necessarily get a do-over in life. Maybe there is reincarnation. I don't know. I'm a believer in life after death but I don't know exactly what it's going to be. But I do know that right now, in this particular life, I've got one shot, and so I can spend it being positive or I can spend it making excuses and being unhappy. Okay, I want to go to the next one. This is another one I love and it's one that I want to really reinforce with our people. It's step into the power you already have.

Malorie Peacock:

Interesting. What do you think that means?

Michael Cowen:

It means instead of saying, oh, we've got this thing, what can you do about it? What power do you have right now to make this better? To improve the situation? You gave the example of a paralegal saying, "Well, Malorie is not getting back to me." Well, what power do you have to get her to get back to you? How can you get her attention? It's one example. You don't like a ruling, well, then appeal it if it's appealable. Move to reconsider, find another argument, find another claim, whatever it is. What power do you have already to affect the situation instead of asking someone else to solve the problem for you.

Malorie Peacock:

Being the person that looks for the solutions that you can manage, right?

Michael Cowen:

Yep.

Malorie Peacock:

The next one is stop judging and start helping.

Michael Cowen:

Yeah.

Malorie Peacock:

I think this is what we talked about before is when you're looking at a situation, you come at it with the idea of, well, what can I do to make this situation better? You're not looking at, okay, what bad things happened, or what did that person do to really screw this up? How can I help make it better and how can I make all of us succeed together?

Michael Cowen:

Instead of saying, oh, here we go again. My boss was telling me I have to do all these things. They're so unreasonable and they just want to ruin my life. Say, hey, we've got something new. How can I help make this happen? It's a mindset thing, but it really makes a difference. Okay, the next one, I love this one, live with great expectancy, not great expectations, which is I don't just expect life to be perfect. I don't expect everyone to do everything around me perfectly but what I do is I am expecting to do my part to make things better. It's a weird kind of wording, but I think it's just a really good attitude to have is I don't expect life to be perfect, but I am excited about what I can do to try to make it better.

Malorie Peacock:

Yeah. You're living with excitement and ambition and intention but you know that not everything's going to go perfect.

Michael Cowen:

Yeah. The next one is one, I've learned a lot from you on, so I want you to talk to us about life is messy, live happy. That's number six.

Malorie Peacock:

Life doesn't always go the way that you want it but one of the things that, and I've always kind of been this way, this is just the... I think it's partially the way that I was raised but things don't always go exactly

how you plan, but there's happiness all around us. If you're living optimistically and you're living to find the good in whatever the situation is, you will find it.

If that's your goal, goal is to find a way to be happy in your circumstances or a way to enjoy what you're doing, then you will. But if that's not your goal, if you're just focusing on the mess, focusing on what's bad, then that's how you're going to live. You're going to live in the bad. You're going to live in the mess. And I'm naturally an optimistic person. This about me. That's just my way of being but I think that it's also intentional. Everybody has bad things that happen in their lives and how do you move forward? Part of it is living in the bad for a little bit too. You can accept it. You have to live through it, you have to experience it. You don't have to find something good that happened out of every experience either.

A bad experience can be a bad experience. Being optimistic doesn't mean looking at every experience and saying, what did I learn from this? Or how was that actually good? That's not what it is. It's living through it and then moving forward, it's just constantly looking forward and with the goal of, I'm going to find happiness wherever I can, and I'm not going to do stuff that makes me unhappy for a long period of time. I can do things that make me a little unhappy for a short period of time if they're part of the bigger goal but I'm not going to stay and live to be unhappy.

Michael Cowen:

I'm having my 25th wedding anniversary coming up, but it's over Thanksgiving weekend. It's a hard time to go take a trip. So, we did a couple's trip a few weekends ago. One of the couples, one of my oldest and dearest friends, as he was flying back from Las Vegas, his father had a horrible stroke.

Malorie Peacock:

Oh, God.

Michael Cowen:

So, Leslie said, "Maybe he shouldn't have come. Maybe it's bad that we did this." And I'm like, "Look, that was going to happen no matter what. This is why we need to go do these things and have the joy in our life." There's not some good message. Something horrible happened to someone he loves, someone I care about too. There's no lesson to be learned. Honestly, there's probably no great outcome coming out of this, but to me, it is just the lesson I get out of it is that we don't know when that's going to happen to us. There's a doctor that tells me We all have an expiration date. None of us knows where it is, so why don't we try to be as happy as we can and get all the joy. My friend is glad he was there with us that weekend. There's nothing he could have done anyway, and he still got back. He got back and he's seen his dad. His dad is still alive. But it's just showing exactly why we need to spend this time together and have this joy both in and outside of work.

Malorie Peacock:

And not living with regret. You can't change the past. You just have to keep moving forward and you can't live with regret or it will eat you up if so. The next one is, there will always be extenuating circumstances, succeed anyways. That's what we're talking about.

Michael Cowen:

Yeah. Sometimes you just have to roll up your sleeves and do it. And I'll give an example. I normally don't respond to motions but there was one big summary judgment on an issue that I literally have written the book on the issue. It was on a trucking case on a complex issue involving punitive damages, so there was

no one better than me to respond to that particular motion, so I decided to respond to that motion. At the same time, unbeknownst to me, I have a thirteen-year-old son who just started at public school and he was failing a class. It was the end of the six-week marking period. So, he could do make up work up to that night and turn it in the next morning but any time after that. I'm the math guy at home. My wife, she's got a degree in art and she has a lot of wonderful things that she does very well. Math is not one of them. And he needed help.

I've got a summary judgment response due and I've got a kid who if he's going to pass math, he needs a couple hours of dad's help. I could sit there, say, this is impossible. I can't get it all done. Or I could work for a while, stop, spend two and a half hours doing math, and then work till four in the morning to get the response due, and I got my draft done by four in the morning, gave it to our other partner so she could correct all the typos and stuff I made working until four in the morning and it got filed. It was due by midnight the next day, we got filed by three. Instead of making excuses, I just said, okay, well, I've worked till four in the morning before. I don't like it, but that's what it's going to take. I don't have to choose between being a good dad and a good lawyer. I can do both. It just means I'm going to go without sleep for one night and I did.

I think that's what it is. There's always going to be something going on. There's always a reason to continue the case because there's something else you could do or there's something... Just roll up your sleeves and get it done.

Malorie Peacock:

Yeah. I actually think that that's something that there's a lot of fear when you go to trial that maybe there was something else that I could have done, or maybe there's something really specific you could have done. Sometimes when you're preparing for trial, you're like, "Oh my God, I should have done this really great idea that I have right now." You always could have done something else, and it always could have been something really great.

Michael Cowen:

Yeah, always.

Malorie Peacock:

Just always the case. Sometimes you just have to play with the hand that you have right then and that's actually the best thing that you can do for the case. Thinking about it from that perspective, if I got the continuance next time around, would I come up with another great idea? Probably, I'm full of great ideas probably but I'm going to have the same problem next year when the case is ready for trial, so we just got to push forward. The next one is work with the willing.

Michael Cowen:

That's been a big one for me is that we'd have somebody that didn't want to follow our standards, didn't want to be held accountable, and we would just bend over backwards and bend over backwards and try and try and try. No. The question Cy has, okay, if someone doesn't want to do something, let's say we have a rule that you have to contact the client, you have to document something and they don't want to, or you changing our processes and they want to do it the old way, and you say, no, you got to put all your notes in Needles or Filevine and you can't just keep a handwritten journal somewhere. You're just like, "This is what we're doing. What's your plan to get on board with this?" If at the end of the day, their real answer is, I'm not willing to get on board with this.

Okay, this is what we're doing. We want you to do this. If you've got a plan to get on board with this, that's great. If not, how can we help you find another job? Just flat out, this is what we're doing. It's nothing personal. But if you don't want to do it, that's fine. You don't have to, just can't work here. If you're not willing to do this. And not only are you willing to do it, but you have to buy in, you have to give it all you got. And that's not something you want to do? We respect that. You just can't work here, so what's going to be a transition plan? And it doesn't mean you fire them. We can give you some time, we can give you some recommendations. We can maybe find some law firms that we don't like. We can recommend that you go work there and take your BMW, non-performing butt in fact our competitors. I don't know.

Malorie Peacock:

No, I think it is important and it is easy, like I said before in especially small businesses like a law firm to make accommodations for someone that you think is really good. But what you'll find is when you stop tolerating that the really good people are the people that can get on board. It might take a minute for them to figure out how they're going to get on board. And you can give people that time. This is different. That's okay. It is different. We're doing something different. But how do you go about getting on board with it and giving them that space to do that? And then they'll get on board. You're really good. People will. And so, if they're not getting on board, they're not actually your really good people. That's just the reality of it. The next one is suffering is completely optional.

Michael Cowen:

That's a big Buddhist thing. The pain is part of life but how we react, how we choose to react to it has to do with how much we suffer. That is a little callous. If we have a loved one die, we are going to suffer some. It is going to hurt but how much? You see people that they let it consume and a year later they're still... Whereas other people it's like, yeah, that really sucked but this was a wonderful person. I'm glad I had that time with them and now let me move on and not waste the rest of my life because something bad happened. But workplace suffering especially, I think a lot of the suffering is completely optional. Like, okay, we're changing case management systems. It's a pain in the butt to learn. When we went from Needles to Filevine, that was a pain in the butt. Now I'm having, because of my other firm, my own half of has gone to Litify and I have to learn Litify and it's a pain.

I can sit around complaining about it and creating my own suffering, or I can just say, okay, it's a new system, what am I going to do to learn it? I got to learn it either way but whether it's going to be a suffering or whether it's going to be, hey, this is kind of cool is my attitude. And same for, let's say, one of the more catastrophic things in law, like losing a trial. I unfortunately have lost plenty of trials and it's not fun. It hurts, but I don't suffer for a long time about it. It's like, okay, it's done. Let's go to the next one.

Malorie Peacock:

I do think that there is something healthy though, maybe I disagree to Cy a little bit about this, especially with losing a trial or something big. There is something healthy about mourning the loss. You can't just lose and then the next day you walk in like nothing happened. I don't think that's healthy either.

Michael Cowen:

No, I don't think that's what it means. I think she's more talking about when there's business change, when people go and complain about it and complain about and complain about it. There's a difference between losing a trial and then going on about it for months. We worked with a lawyer once and we actually ended up getting out of the case because we lost an early hearing and two years later, he just

would go on and on and on about that hearing and how in fact the judge was. It's like, get over it, dude, it's done. We had a hearing. We did our best, we lost. It sucked. You mourn it. You go on to the next day.

It's about reality. The reality is that it does hurt to lose things. It is annoying and painful to change the rules in the workplace or to change expectations. It is stressful when... Like our New Mexico firm, we did some new marketing initiatives and they were wildly successful beyond our expectations, which created stress because now we're stressing the system. We're having to hire new people. We're having to hold on and overload people while we're hiring and onboarding the new people.

We had to go talk to the people about it. While the pain is not optional, I mean you had to tell somebody you have more work than you can do and we're going to have to change the standard temporarily because we have to acknowledge that you have more work than you can do. But I don't have someone else to do it. I don't have someone else to take it yet. The pain is not optional, but the suffering, the going on about how unfair it is and how they don't think about us. They go and do all this advertising. They just want to put us in and they don't care. No, that's not true. And that would create unnecessary suffering. And luckily, we have a really good employee with a really good attitude who came and told me, this is unbearable. I'm trying my best. I like working for you but this is more than I can do. And I said, "Thank you for telling me that and not just quitting. Let's find a solution."

And then we got a team of people together and we found the solutions for her. Until we get all the other people on boarded, it is still going to be painful for her and for some other people around her because there is more work to be done that could be done in even a 10-hour day and we just have to all pitch in together and get it done.

Malorie Peacock:

Yeah, I think that goes back to the stop judging and start helping thing too is-

Michael Cowen:

Exactly.

Malorie Peacock:

How can everybody help and how can everybody pitch in?

Michael Cowen:

But while you're pitching in, it's not like, this is so unfair, I'm having to pitch in. I didn't tell them to take all these cases, they're just being greedy and they don't care about us. They just want to make money for themselves rather than, hey, this is a great problem to have. Our business is really succeeding. This is going to be a bigger and better place to work. How can I pitch in to get us through this transition? It's a mindset thing.

Malorie Peacock:

Then the last one of her mantras that are on her website were our ditch the drama. That's the BMWs and the emotionally expensive people. There's just dramatic people and all of us can be a little bit dramatic too. You got to check yourself too. It's not just about other people, it's about leading by example too.

Michael Cowen:

I think all accountability starts with ourselves. If we're not accountable, it is so hypocritical for us to say everyone that works for us has to be accountable and can't have any drama, but we on the other hand, are going to go in there whining and complaining to them all the time, and we're not going to do what we say we're going to do. That doesn't work either. Our actions have to be consistent with our words.

Malorie Peacock:

Right. All right.

Michael Cowen:

I hope some of this stuff was helpful. I know we're meandering a little bit but this stuff is so much harder than practicing law, in my opinion. And I'm glad that we've been able to find a good COO that's much better at it than I am. But I found it really helpful on my mindset. And listeners, I hope it's helping you too.

I guess one last thing. Personally, I was at Trial Lawyers University in Vegas, and a number of people came up to me and talked to me about the podcast, same for I was in Arizona at another event. I just want to say thank you. Everyone that comes up and tells me that you listen, it just makes me feel so good because Malorie and I are here. We're talking to each other, and I love talking to you, but it's always weird to be... Unlike a live event, you're talking in a background. Is anyone really listening? Is it really doing any good for them? So, for those people that have sent emails or notes or come up and said, hi, I really appreciate it, please keep doing it. It brings joy to my life.

Malorie Peacock:

Well, till next time.

Michael Cowen:

Till next time, thank you all for joining us on Trial Lawyer Nation.

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