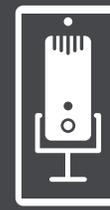


Trent Cotney



Mike Merrill:

Hello, and welcome to the Mobile Workforce Podcast. I am your host, Mike Merrill. And today we are sitting down with Trent Cotney, the CEO of Cotney Attorneys & Consultants, and also the author of a great book on OSHA Defense for the Construction Industry. Today, we're talking about safety regulations and how to make sure that your job sites are safe and ready for those OSHA inspections. Trent's a highly regarded expert, and I'm also looking forward to digging into not only his background and experience, but also some of the stories that he has to share from the industry with us. Hello, Trent, and thanks for joining us on the podcast today.

Trent Cotney:

Hey, thanks so much for having me. I'm looking forward to today's talk.

Mike Merrill:

Awesome. Well before we get into the conversation, if you could just share a little bit of your background with our listeners, that would be awesome.

Trent Cotney:

Sure. So I come from a background where my family did construction. I grew up in that. I've been practicing for about 22 years now solely and representing the construction industry. I started down in South Florida and then moved up to the Tampa area in the late 90s. And I started this from my company about 10 years ago where we, focused solely on representing the construction industry, primarily contractors and trades.

Mike Merrill:

Wow. So you've been around the block a few times and literally written the book on how to pre-prepared for OSHA.

Trent Cotney:

Right.

Mike Merrill:

So getting into that a little bit what should a company do to be prepared for an OSHA inspection if somebody was aware that that was about to go down?

Trent Cotney:

Yes, that's a really good question and what I always tell contractors out there and if you're like me, I'd much rather hang out with contractors and lawyers. So I spend most of my time around them, it's about having a good game plan in advance of an inspection occurring. So you want to understand what the process is. You want to know what your rights are, you want to make sure that the people out in the field understand that, and that you're communicating that effectively. Because that's where I see the majority of the problems happen is just not understanding how an inspection goes, right?

By the time you actually get a citation, yes, we can work some magic, there's a lot of different defenses into the things that you've got at your fingertips. But the best word that you can do is at the start of the inspection, by making sure that you understand what exactly is that OSHA is looking for, that you're putting your best foot forward. Obviously you're always telling the truth and being cooperative, but understanding where those boundaries are, right? Being civil and professional, but knowing your rights and that's what we preach.

Mike Merrill:

That's a great point. I think, a great advice for the listeners. So obviously your inspiration came from somewhere to write this book. What was it that spurred you to do that?

Trent Cotney:

Sure. So we represent a lot of trades, specifically roofing contractors, HPAC, et cetera. And they were getting cited a bunch by OSHA. So on a granular level, we were defending them, on a daily basis and multiple states, fighting OSHA and seeing what their tactics and techniques were. And oftentimes, what we see is, if it's a failure from a legal standpoint, it's usually a business failure, it's a process failure. And that's what a few years ago, I started thinking about this and I was like, you know what? I need to write a very simple book that you can read in four or five hours that summarizes what your rights are. There's no case sites, it's not written for lawyers. It's a very easy digestible book that anybody can pick up and understand this is what I can do and what I can't do, because what I've seen is unlike a criminal case where the police come on to your home or your office, or it might be, they've got to read your rights to you, OSHA doesn't have to do that.

Okay. Even though you could potentially have some criminal ramifications depending on what's happening. So, that's what I want to do is I really wanted to educate, and I wanted to write a down to earth message that resonated with the contractor base so that they understood what that line was.

Mike Merrill:

Interesting. So it's making me think back to, For Dummies books that they used to come out. It's kind of like OSHA regulations for dummies.

Trent Cotney:

Yeah. I mean, it's designed, look, it's the kind of book I would want to read. You know what I mean?

Mike Merrill:

Yeah.

Trent Cotney:

I want something that's just going to get to the point. I don't need a lot of puffery, and case sites and other stuff. Just tell me what I got to do. And if you're like me, I'm assuming, most of our listeners are the same way. Just get to the point. That's what this book does. It's from start to finish. It just tells you, "Hey, this is

how to go about doing it. It talks about things like the walk around inspection." When OSHA comes out, you want to make sure that you are asking them, "Why are you here?" Normally they will show you their credentials. They'll say, "Hey, I was just driving by I saw four people on a roof without fall protection, or I saw the scaffolding issue." But that puts that inspection in a box.

And that's what you want to do is you want to start it off by understanding why they are here, because, if they say, "Hey, look, I want to go inside and inspect your electrical outlets." That's not part of their inspection. So it's very important that you set the tone and you start off with that box so you know where things are going.

Mike Merrill:

Yeah. I love that. I know in researching a little bit about your background on my own, I have noticed that we have a lot of common connections in the industry, a lot of roofing contractors, some of the larger roofers. Obviously, you're doing something right, because it's resonating with these folks and they're very connected to what you're doing in the industry.

Trent Cotney:

Mike, I've been blessed, I have a little bit of a background in roofing. My grandfather was a roofer, but it's something that has really kind of always, they always say, once it gets in your blood, you can never get rid of it. So I am very fortunate and I work with a lot of great contractors, I serve as general counsel for the national association. So it's something I take a lot of pride in and obviously advocacy is part of that.

Mike Merrill:

Yeah, that's great. Yeah. We love the roofing industry and all the trades that we serve as well, so great people and they need some help, there's no question about it.

Trent Cotney:

Absolutely.

Mike Merrill:

So tell me this. I know obviously with the new White House the Biden administration, we've got some different regulations and rules and different changes that typically happen when there's a change out in The White House. What types of things should people expect to come down the pipe because of that?

Trent Cotney:

Interesting question, Mike. And it's something that I was just talking to a general contractor last week about the Biden administration, from my perspective, it's going to bring a lot of change. We, as an industry, benefited a lot from the Trump administration, and the approach that Secretary Scalia took with regard to OSHA, the Biden administration is going to change things up. So what I've told contractors and trades, I said, "Look, you need to expect that there's going to be more rulemaking, there's going to be more inspections, there's going to be more citations. It's absolutely going to happen. The department of labor is going to be very aggressive under the Biden administration. And here are some things that I would watch out for just briefly, if I'm a contractor or trade I can almost guarantee within the next month or so, there's going to be some emergency temporary standard for COVID 19 and infectious diseases."

So we have a lot of contractors. We were just talking to a mechanical contractor on California that had a Cal/OSHA violation for COVID-19. A lot of these state plans are already very aggressive. This is going to be the federal standard. So they are going to apply to any state that does not actively have a state plan. There's a due, it's going to trickle down to that. Something else to look out for Mike is the heat injury and illness standards I anticipated they're going to redo those probably towards the end of the summer. I expect that they're going to see some changes to the silica standard. I would absolutely anticipate there are going to be a lot more inspections once the hierarchy within OSHA becomes solidified, okay? And it tends to take a little bit of time, but by this time, fourth quarter or next year, you're going to start seeing a big uptick in OSHA inspections and citations.

Mike Merrill:

Yeah. And I, as a former contractor myself, I'm grateful for OSHA and that organization. I'm grateful to make sure that employees are safe, but as a contractor, I definitely don't want the regulations coming down on my project, right? And I think most people feel the same way they want to operate safely, but they don't necessarily like the idea of somebody breathing down their neck so to speak. That sounds like there might be a bit more of that coming down the pike.

Trent Cotney:

Yeah. I think that's a great point. I firmly believe that every penny you spend on safety is a penny will spend and OSHA does a great job with training, it's not to say I'm not trying to paint OSHA in a bad light, but my concern is, is that you always have to balance regulation with the reality of doing construction, right? There's a happy medium. And oftentimes I feel like some of these regulations come out without a lot of thought or foresight into what actual job site hazards there are. They're written on a desk somewhere without a true understanding of what contractors and trades experience on a daily basis. So I would love OSHA to focus on safety, less on citations. I love to see retraining, I would love to see a lot more invested in that because I do think that it serves a great role. I do think there's an opportunity for education out there. But it's just finding that correct balance.

Mike Merrill:

Yeah. That's a great point, I guess, as you're talking through this, I'm also starting to wonder what role does technology play in this process from your perspective?

Trent Cotney:

Yeah. Technology, I mean, look how we're communicating now, this has become how the world exists now. I was telling somebody the other day I rarely do I have a conference call anymore. It's Zoom or go to webinar Teams or whatever it might be. There are a lot of technology based apps out there that can assist with safety that can make data collection easier for you, okay? So for example, your safety director, let's say you're an electrical contractor and you've got a safety director and you send them out to a job site.

They can assess the job site, take photos, whatever it might be, get it back to the home office. And that way you've done an audit and you can notify all the people that need to be notified and then turn around and make sure that you're correcting whatever it needs to be corrected.

Along those lines though, you also want to make sure someone's monitoring stuff because a lot of times what we'll see is, that safety director, that safety person that's taking photos via the app may be showing an unsafe condition. And if somebody doesn't catch that and correct that OSHA can get that, right? And that could potentially be a no-no because you've got a supervisory level employee not properly identifying and correcting a safety violation. So you want to balance technology with the potential for liability, but I do think that there is a heightened role for technology. Not just from an app standpoint, but from cameras out in the field, from all the different technologies from drone technology, other things that we're starting to see pop up with regard to safety and safety planning.

Mike Merrill:

Yeah. So you mentioned safety trainings and some areas there that maybe OSHA can focus more on what types of technologies are acceptable for safety training? Are there options to do some of that remotely or digitally?

Trent Cotney:

Yeah, absolutely. There are a variety of ways you can obtain safety training digitally. I have an OSHA 10 and OSHA 30, I've taken the OSHA 24. All of that was over a laptop. You can have toolbox talks and engage in weekly or monthly safety trainings on a variety of topics, everything from signs of impairment, to opioid abuse, to heat illness, and injury, to whatever the issues of the day might be, you know COVID-19 training. So there are certain things that can be done that way. There are other things in my opinion, may require some, at least in-person access or the possibility of using VR or augmented reality to maybe supplement that or change to that so that you have the capability of being immersed in a real world situation. There is some necessity for that, but I do see technology playing a bigger and bigger role within safety train, just

because of ease of access and just efficiency ability to access it whenever you want.

Mike Merrill:

Yeah. That's a great point. I know you're mentioning apps quite a bit, obviously the technologies and the cloud systems that are now available, are a far cry better than anything I ever had 15, 20 years ago when I was heavy in the industry, it was a whole different world, everything had to be in person, so.

Trent Cotney:

Oh, yes.

Mike Merrill:

So with the issues that contractors are facing related to COVID and some of these other, just more recent developments, have you witnessed companies, number one, being successful with those and being able to refute challenges that maybe came from OSHA and maybe when did somebody get stuck as well? You have a couple of different examples that you could share?

Trent Cotney:

Sure, absolutely. I mean, this is something that we deal with on a daily basis and the companies that are most successful during informal conferences, which is the conference that you have after the citations issued, it's an opportunity for you to potentially resolve your case, possibly gain some additional facts before you go on to contesting it, if that's what you want to do. The companies that come prepared, the companies that show that they have a culture of safety and oftentimes, technology or paper or whatever it might be, that's going to make the difference. If you show up to a conference and you've got a nice binder or an app that's organized with thousands of audits and pages in there, that's a big difference than you've shown up with a folder with a bunch of random stuff in it.

You got to be able to convey that message properly. So I can give you a couple of examples. We had one where we were representing a contractor that engaged in historical restoration work. In particular, this was some storm damage that they come in to fix, and they were

cited for a lift violation. We were able to show that this was unpreventable employee misconduct because of a variety of toolbox talks and training that this person had, the job site plan, there was just three inches worth of documentation that I could present on this job. And the investigating officer had to look at it and be like, "What can we do?" Now on the other hand we had one where a new contractor carpenter just getting started, didn't have much anything, by the time he got to us, we're helping them after the fact we're getting him the safety manual, we're getting him, all those things that he needs.

But it's a lot of, well, I said this, I didn't say this. So you got to go in there with a little bit different game plan. And we were able to help him, but at the end of the day, we could have helped him a lot more had he had better paper to back it up, the party with the best paper always wins the day that's really. And whether it's electronic or physical, that tends to be the case in almost every aspect of construction.

Mike Merrill:

Yeah. We always say, "He who has the most data typically wins." And that sounds like you're you're on the same track there.

Trent Cotney:

Right on. That's it.

Mike Merrill:

So how often should contractors expect to see other changes? Is it quarterly? Is it someone annually? Is it a yearly thing? How often do big changes usually come down the pike?

Trent Cotney:

So for our listeners in California, while we were talking, they probably just had another major change. But generally speaking, what I suggest is take a look at your safety manual and your toolbox talks every six months. And the reason I say that is that you may have a local or state legislation that's come out, has changed things, there may be significant changes that have been caused by the pandemic. So you just want to take it and then at least once a year, you want to do an

audit of it and just make sure that everything that you have in there is up to date that you've got the current regulations.

Every time OSHA comes out with a new regulation, you want to make sure there's another toolbox talk on it, that you have it in your manual, if it is applicable to the type of work that you do. So obviously if they come out with, something that deals with electrical and you don't touch electrical, you don't need to worry about it. But if it's something that's right in your wheelhouse that you touch every single day, definitely update your employees, show that training and update your manual.

Mike Merrill:

And I would imagine these manuals, are they most commonly digital or are they printed or are they both? Is there a requirement?

Trent Cotney:

We see both, digital tends to be an easier way to convey it because a lot of times these manuals are thick. There's a lot of stuff in there. And the key is, is that a couple of things about this mike that I want to hit home to the listeners is you want to get sign-off. You want to make sure your employees have signed off on it, okay? You want to make sure that they've got access, have whether it's digitally or hard, copy one should be in every single work truck. And the reason I say that is a lot of times, OSHA will come up to a job site and the last superintendent say, "Okay, well, what's the swing radius here." If you don't know the answer, it's very easy to say, "Look, I can't tell you, I have it in my head, but I keep my manual in my truck. I look at that. And then I call the home office to get whatever the answer is." Okay?

Another thing that you want to do, Mike, is you want to make sure that if you've got a Spanish crew or a crew that doesn't speak English, you want to have that translator in whatever language that is because OSHA's, they're going to look to see that you have provided that message in a way that they can understand it, right? So you might have the most beautiful four-color, spiral-bound safety manual in English, but all of your labor only speaks Spanish and reads in Spanish. You're not doing them a favor, right? So spend the extra money to

get that translation it'll come in handy and OSHA will definitely ask for it.

Mike Merrill:

Yeah, that's a great point. And I think that's not what I've heard commonly. So I really like that. What kind of contractor do to expand their current safety program? Obviously there's a range of people that have little to nothing in place and they really need to get on the stick. And then there's other companies that probably do a pretty good job of this, but how do they expand it and improve from wherever they're at best?

Trent Cotney:

So we always like to approach everything in a phase by phase approach. So let's start from nothing, if you have absolutely nothing. The first thing that you need to do is create the base of your safety program. The base of your safety program is the safety manual. So your safety manual wants to account for certain things that all contractors experience like signs of impairment or heat exhaustion, that kind of stuff, but also wants to really hone in on the type of stuff that you do on a daily basis, okay? From that safety manual, you then branch out and create the system with toolbox talks that really hits that home, right? The key thing is you want to make sure that, well, I always said, you do it when that paycheck is coming, right? So they're sitting there waiting for that paycheck, you do a toolbox talk, you get the sign off that way you know they're paying attention.

So that's a great way to do it. You want to engage in safety audits, okay? You want to do unannounced job site audits where you can go out, you can see where the problems are. A lot of times I get asked Mike, it's like, "Well, Trent, why would I want to go out to a job site and identify problems in writing? Isn't that going to be bad for me?" It's not, if you correct them, right? If you go out and not only punish those that didn't do what they were supposed to do but retrain, that shows OSHA that you care about those employees, okay? And the last point I really want to make Mike is, is the biggest thing that I see contractors failing to do is they have a great safety manual, great toolbox talks, they do these audits, they engage in outside consultants, all the kind of stuff that we like to see, but they don't follow their disciplinary program.

So I'll give you a classic contractor example. You've got your number one superintendent or foreman producer. He makes money for you left and right, right? But not a big fan of safety. So are you going to fire that guy? Probably not, right? So you need to make sure that whatever disciplinary program you have in place, you can enforce it because disparate treatment, meaning that you're treating your number one producer different than the guy you just heard off the street, that is going to eliminate any, a lot of the defenses that you would have to an OSHA citation. So be consistent it doesn't matter whether it's your Uncle Larry, your best producer, or the guy you just hired from work release at the end of the day, it's got to be the same treatment throughout.

Mike Merrill:

Yeah. That's great advice as well. I think why there's been a lot of great nuggets here. You started off the conversation talking about some of the don'ts from a do's and don'ts perspective. Let's say, I know that I have an OSHA inspection coming up. What can I do to best prepare my crews or that job site for that inspector to show up?

Trent Cotney:

So the one thing I'll give you. So this was in 2001 I'm dating myself a little bit. I represented a underground utility contractor on an OSHA violation. And what happened is OSHA came out, they did the inspection, there was a trench box violation, there was sloping violation, standard stuff you see in underground. And as the inspector was giving the closing conference, one of the crew wearing tennis shoes and no hardhat jumped into the ditch to get his lunch pail and then skirt and climb back out, that cost that contractor, another \$5,000. So one piece of common sense advice is so do you really want your crew continuing to work while OSHA is on a job site? It's a lot like inviting a cop out to a meth lab at the end of the day, it doesn't matter how good your safety program is, I've had inspectors and area directors pull me aside and said, "Trent, you put me on any job site long enough, I'm going to find a violation." Right?

So the idea behind it is you want to make sure that you are doing what you can to control the situation. If OSHA asked to come out, have them come to your office or

better yet go to the area office, don't invite them back out to the job site, because at the end of the day, you can't necessarily control a hundred percent of what's going on all the time. And obviously everyone wants a safe workplace that's the goal, but you want to be very careful and cautious about how you go about doing that. So I would say that's something to watch out for. Another nugget that I can throw out there is don't forget that if you are a supervisor and officer or director, you do not need to talk to OSHA, unless you are welcome to have counsel present and a member of management, okay? You are free to talk to them, but you can also request having counsel present.

And there is a big difference there because it gives you the opportunity to really think about your training. Obviously, always tell the truth, always be cooperative. But at the end of the day, it's about having that clear mindset and making sure that you are remembering your training, remembering what you did, how you did it and not being scared and anxious about the process.

Mike Merrill:

More great tips. You mentioned some do's and don'ts, what are some common mistakes you see people make out there in the field?

Trent Cotney:

So one of the biggest things is when OSHA comes out, oftentimes they have the ability to talk to crew without management or council present, okay? And we see this a lot in Florida and Texas and Arizona, Mexico, California, if your crew only speaks Spanish and they only read or write in Spanish, oftentimes the inspector that has come out knows broken Spanish or isn't fluent, okay? I like to insist on having someone that is capable of translating. And the reason I say that is I witnessed this firsthand, okay? We had an OSHA, OSHA said, "Hey, I want to come out to your job site." We said, "No, why don't you come to our office?" So they came to our office, they sat down, I had management present and they were interviewing a superintendent. Superintendent was from Mexico, okay?

The OSHA investigator was Puerto Rico and they were discussing a tile, okay? And I know enough Spanish to get around, and the manager was fluent. So as the superintendent was providing testimony, it became

apparent that the inspector was misinterpreting what this individual said, and it would have been catastrophic had I not caught it and the manager caught it. That is a great example, the terms of art change. So you can be in Guatemala, Mexico, Honduras, Puerto Rico, wherever. And the same term is, there's 20 different terms for it. So you want to make sure that if they are asking to speak to someone that does not speak English, make sure that they are capable of accurately translating that information to get that statement.

Mike Merrill:

Yeah. That's very interesting as an example, I never would have imagined, but yeah, the Spanish side of this is probably a great takeaway for a lot of the companies that are listening right now.

Trent Cotney:

Yeah, absolutely. It's one of the things, we have a lot of situations where there are crew members that are illiterate in Spanish and English, and they're asked OSHA normally what they do federal OSHA is they write out a written witness statement and they ask you to sign it, okay? And there's never anything great on there that I've seen. It's never, hey, you got the best safety policies ever. It's always, all the things that you should have done. And most of the crew, when they get that, they see that and they just sign it without even really looking at it. And obviously you don't ever want to tell your crew members what to do, what not to do, it's their choice, okay? Always tell the truth. That's what you want to tell them. But from a supervisor standpoint, if I'm involved representing a supervisor, a manager, a director, I don't want them to sign a written witness statement.

I really don't see a lot of value in that because you can provide your testimony without doing that. And rarely does it tell the whole story. So that's one of the things, when I say, knowing your rights, if you understand what the context is, you're going to be in so much better position to be able to put your best foot forward. Again, everybody wants to be safe. You want, I want, we all want our employees to go home safe and sound every single night. That's not what this is about. What it's about is understanding what those

rules, boundaries, and limitations are when it comes to a government inspection.

Mike Merrill:

Yeah. That's great. From a technology perspective, are there things that can help somebody in that situation? Are there technology tools they can rely on when they're put on the spot like that?

Trent Cotney:

Yeah. Having an SOP in place, a standard operating procedure that dictates what you should do and how you should do it. There should absolutely be one for if you have an OSHA inspection. So your a superintendent of OSHA gets to the job, they should know they need to immediately call management, call the safety director, see if the inspector will wait for that in that member of management or safety director to get out there in the field with them. And then go through the process. They need a similar one for if there's a serious injury, and then they need another one if there's a fatality, it's a different set of rules for each one, right? So you want to understand what the rules and the guidelines are for that. There's a variety of technology management, software tools, that it can be useful to do that.

Here in the office and for a lot of our consulting customers, we utilize Smartsheet, which is a publicly traded company that acts as an operating system and provides I'm not an Excel spreadsheet kind of guy. I'm a show me pretty colors on a graph and I get it. It does that, but it also allows you to go in deeper in, if you are an Excel spreadsheet guy, you can look at, I'm looking if I can count on my finger. It's a collaborative software tool that acts as an operating system for your business. And it integrates with almost every single app out there.

So it's been very useful as a management tool to drill down SOP is it's sort of like a playbook that you would go to. So that's one that I know that I'm aware of. There's a variety of other tools out there that people can use, but the key is make sure, you know that gameplay, it's here's the SOP, let's get rid of the anxiety. Let's go to page five. This is what I have to do, follow the checklist. That's the key because when people get nervous and they get anxious, that's when

mistakes are made, they're not understanding what they should be doing.

Mike Merrill:

Yeah. So you mentioned some technology options, which sound great. What about even basic email, phone calls, voicemails, what roles do those play in? How to companies make sure they're using those properly?

Trent Cotney:

So a good rule of thumb is if it's good for you, put it in writing, if it's bad for you pick up the phone. And that includes text messages, instant messages, Facebook groups, whatever it might be. So I can't tell you how many times I've had, a social media post of, hey, another great job finished by ABC contractor. And it shows, 10 people on a roof without fall protection. I'm going, "Hopefully these are actors, it's hard to refute that. So there's often a disconnect between marketing and safety. That's one thing, if you recognize that anything that you put down OSHA logs is a great example. So you've got to report, as a contractor, you know this you report your safety, injury and illness on a variety of OSHA, 300 logs put just enough detail, I've looked at plenty of OSHA logs that go way too much into detail. I fell off scaffolding because I didn't build it right.

Why would you put that? I mean, I get it, but you don't need to say that much. Be very careful when you're communicating with your insurers. All of that is discoverable. If you have a fatality or a serious injury and you talk to the Sheriff's department, that's exhibit A, in any OSHA inspection. So make sure that you recognize that you must always tell the truth, I didn't hit that home. That's the key thing is, is it's not worth a investigation because you told one investigating authority one thing, and I know there's something else. So consistency and just always having that awareness of liability hat on is going to pay dividends, not just in OSHA, but in all aspects of construction.

Mike Merrill:

Yeah. And it's, I mean, there's a lot to keep track of here and obviously companies are standing out, I'm just trying to put this roof on, or I just wanted to frame

this wall up, or I'm just trying to pour concrete. Maybe these things aren't second nature to them, but what I'm hearing is consistent training, regular training, regimented training is the key to help make sure that you're taking care of these things in the best light so that you don't get stuck in a mess.

Trent Cotney:

Absolutely. Yeah. You're a hundred percent spot on, that's exactly what it is. And one of the things I should mention is for the listeners that are doing commercial jobs, if you're doing a daily report, that's a great opportunity for you to put your best foot forward safety wise, did job site audit, checked all the equipment, everything looked great, took this harness out because the rope was frayed. All of those self-serving statements, you can use to show that you are actively checking your job site for safety. Why not use it?

Mike Merrill:

Yeah. I love that point. So what you're saying document every correction or improvement or every step taken to be safer so that you're showing that you're putting forth that effort?

Trent Cotney:

Absolutely. Yeah. That's key and party with the best paper once a day. That's always the truth.

Mike Merrill:

Yeah. And they say photos don't lie, and I guess that can go both ways, right?

Trent Cotney:

Oh yeah. You don't want to be taking a photo of, a guy with a frayed electrical cord, using it as a harness or a tie off that's not what you want. You want to be smart about what you're doing, you want to be able to know exactly the stuff that you're going through and make sure that your safety directors are actively auditing these images. If you are engaging in that it's great, it's a great way for you to gain that information, get it, and figure out what's going on. But at the end of the day, yeah it all depends on that follow-up. It doesn't matter

how good your technology is, if you don't have that follow-up, if you're not tracking what's out there in the field, that's what's going to get you.

Mike Merrill:

So from a workflow standpoint, how often are companies required to have toolbox talks or to have safety trainings? Is there a general rule of thumb that people can take away from the conversation?

Trent Cotney:

Yeah. So unless it's a brand new rule or an emergency or a retraining, I like to see at least every month I would prefer probably every other week, if I can do it. And there's nothing wrong with doing it every week. And at some point you run out of topics, do you have 52 topics you could talk about? I don't know, okay? But at a minimum you want to make sure that people are taking a knee and you're talking about potential issues on job sites. If you've got a hairy job site that you know that there's some potential safety issues, you want to talk to the crew about that, identify that in advance, you can have what I call informal toolbox talks. And then it's as simple as documenting that as a memo to file.

I'll have phone calls all the time where I just pull up an email said to talk someone so did this and send myself an email, that way it's a current understanding recollection of what that conversation was. So that's something that's potentially useful, anything that you can do to engage your crew and a mentality in that culture of safety is paramount.

Mike Merrill:

Love that. So is there a recommended duration of time to hold those trainings for 10 minutes, 15 at a certain point? Is it too long and you're actually diluting what they need to know?

Trent Cotney:

Yeah. We live in a Twitter world now, so Facebook or Instagram or whatever. So, people's attention spans are very short lengthy training sessions, unless it's like an OSHA 10 or something where you're going to get an actual certification afterwards, it's hard for your crew to pay attention. You want to keep them short, sweet

to the point. I would say most effective is 30 minutes or less. You've got to be able if it requires demos where you've got to actually physically show things, I can understand a little bit more, but at the end of the day, less tends to be more. You convey your point, you get the point across and you move on.

Mike Merrill:

Great. Lots of great tips and rules of thumb, for sure. Let's say on a given day there's an injury or an accident or some type of a problem, is there a hierarchy of how that reporting needs to be documented? I mean what's the first step somebody should take when something occurs, they have an incident?

Trent Cotney:

Sure. So here's normally what happens. And unfortunately we handle a lot of fatalities and that's when you have, you got the press involved, you got the Sheriff's office, there's all these different things that you have to navigate, not dimension, customer concerns, and family concerns and all this other stuff. So really what you want to do is the people on that job site, ultimately, it needs to get in the hands of the crew leader, the superintendent, the foreman, whoever is manning that job, right? That person needs to understand that they need to call the home office. And there needs to be a go-to person that if you don't have a safety director, then it's a member of management. That member manager that needs to understand that if they can't get up to the job site, they need to provide that superintendent with strict instructions if they haven't already been trained.

Mike I want to tell you a brief story, because I think this will hit it home to our listeners. My dad was a very patient man. I'll just put it that way. And I grew up on the Westside of Jacksonville, Florida. For those of you that have been there, you know what I'm talking about. My dad taught me how to drive. Like most fathers have, and he took me out to a lot and he taught me how to three-point turn. And he taught me how to parallel park. And the last thing that he told me, and he always called me their son or boy. And he said, "Son, what I want to do is I want to pretend I'm a police officer and I'm going to pull you over. And when I pull you over what I want to do is see how you're going to react."

Okay. And he did this because he knew I was a punk kid and he knew that, at some point I am going to speed and take it or something else. And he didn't want me to do something stupid, right? So we sat there, we went through the process, I showed him my insurance, my driver's license, my registration. And sure enough, six months later, I got a speeding ticket and he whooped me, you know what. But the moral of that story is it's not the listeners that are problematic, okay? It's those people out there in the field, it's the superintendent, it's the crew.

If you train them on the inspection process itself on what to expect, that takes that anxiety away that's what training does, right? It doesn't matter what kind of training you get, if you learn how to do something, then you're not scared to do it, right? So if you understand what the process is, if you train in advance of that process, then just like my dad did with me, you're not going to do something stupid, right? And that's the key thing is you want to have that game face on, you want to make sure that you are doing whatever you can to stay active and involved so that you're focused on the mission at hand.

Mike Merrill:

That's great. What a great story to end the main part of the conversation on, I think that definitely paints a picture and preparation, right? You got to practice ahead of time so that when you're in the real game, you're you're in the real game your ready

Trent Cotney:

Right? Absolutely failure to prepare is preparing to fail, so.

Mike Merrill:

Yeah, love it. So just to wrap things up here in the conversation, what's one business process or a skill that you've developed over the years that have really made the most impact on your success?

Trent Cotney:

So I think the key thing is top down organization, right? It's oftentimes, the business owners that are listening to this, you've got the vision, it's all on your back, I get it.

I'm the same way, I'm a business owner. But at the end of the day, you got to be able to drill down your vision, your mission, your process, to the lowest common denominator. So that is done through great technology and through great process and through great people. And it takes a while to accomplish all of that. So as you continue to grow and if you're scaling your business, you'll see oftentimes we've been blessed with growth and we'll start off one year with a great game plan. By the end of the year, we're already trying to up our technology, up our admin, up our everything, because we've outgrown the previous system. So that's part of the process is as a business owner, especially in construction, you always have to be able to improvise, adapt and overcome. It is the key to being able to be successful.

So the other thing that I do is I listen, I remain humble if you remain humble, it was beaten into me to remain humble. If you remain humble, you remain hungry and I don't ever, rest on any laurels to the extent that I've got any, I always say, "Okay, what's next? What can I do next?" And if you check that ego, that's always going to keep you razor sharp.

Mike Merrill:

I love that, yeah that's great. I guess one other question I've got, what's something that you have learned over the years that you wish you would've known at the very beginning when you first started practicing law?

Trent Cotney:

So my role has changed a lot over the years. I went from being a typical lawyer, to use contractor terms I was in production, okay? I was in production and that's what I did. Over the years, I've switched operations, and obviously there's a business development component to that. I have learned more about myself through operating this business than I ever did by not doing it. In the last 10 years your business is a reflection of you, and that is a painful experience, it is a humbling experience. So if there is a failure in your business, it is your failure and you have to own that. So learning those lessons, that any business owners had to learn it makes you tougher, and I know I'm very thankful for all the different, not necessarily legal things I've learned, which I'm very appreciative of I

consider myself an expert in various things, and I'm proud to do that.

But from a business perspective, learning those lessons and improving upon them, that's what makes you a better business owner and in construction, that's the key. Construction is a fabulous industry, I have made lifelong friends through this industry and feel very grateful and give back routinely because of it. But I can tell you that those that continue to thrive are the ones that take those lessons and use them as learning opportunities. Again I'm just very blessed and fortunate that the good Lord has found plenty of things for me to overcome, so.

Mike Merrill:

That's awesome. Absolutely love it. So, very last thing. So what is the key takeaway that you want listeners to have today? Once they get done listening to this they're to remember one thing, what would that be?

Trent Cotney:

Be proactive and not reactive. Okay. Now's the time take some of the nuggets that we talked about, look at your safety program, nobody wants to look at their safety program because it's like a will, right? By the time you look at your will, it's too late. So, if OSHA shows up to your job site, you're stuck with what you got. So take the time now to really buttress and fortify your safety program, think about some of the things that we talked about. And hopefully my goal is to never have you call a lawyer, I'd prefer that your success ultimately is as success for the industry. So that's the goal, but definitely take the time to be proactive, get those SOPs in place. Make sure you've got some top-down command that drills all the way down to the crew.

Mike Merrill:

That's awesome. Very insightful Trent, thank you so much for joining us today. I'm sure the listeners gained a whole lot that they can put into practice.

Trent Cotney:

Thank you. It's my pleasure.

Mike Merrill:

All right. Thank you to the listeners. And again, if you enjoyed this conversation with Trent Cotney and I, I encourage you strongly to follow Trent or reach out to him on LinkedIn and also check out his book, OSHA Defense for the Construction Industry. Also, if you enjoyed the podcast, please give us a rating and review. We love the five star ones the most. So encourage you to rate us well and continue to listen and share this podcast with your friends and associates in the industry. We want to continue to bring these valuable guests and conversations to you to help you improve your business and your life.