Ep #2: The Honest Reckoning with Capacity

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I hear a lot of advice in lawyer focused podcasts and other marketing about things you have to do in order to scale up your practice and grow, grow, grow. And don't get me wrong, I am all about growth and I'm especially all about creating opportunities to scale. But there's a huge difference between growth for growth's sake and a thoughtful intelligent assessment of your practice's capacity to deliver work to your clients.

When you slow down a bit and try to really understand how your delivery systems work, that's where you'll find your best opportunities to, number one, use your existing capacity better. And then once you're pretty confident that you're making the best use of your current resources, then you can be really targeted about things to try and experiments to run to help you grow in a profitable and sustainable way.

In today's episode, I introduce you to some better ways of thinking about capacity and give you some tools to start the process of striking a better balance between your real current capacity and the commitments that you make. Ready to become a more agile attorney? Let's go.

Welcome to *The Agile Attorney* podcast powered by Agile Attorney Consulting. I'm John Grant and I've spent the last decade helping lawyers and legal teams harness the tools of modern entrepreneurship to build practices that are profitable, scalable, and sustainable for themselves and their communities. Each episode I offer principles, practices, and other ideas to help legal professionals of all kinds be more agile in your legal practice.

Hey everybody, welcome back. This week I am going to talk about capacity. And specifically I'm going to talk about the relationship between capacity, priority and overwhelm. And if you listened to last week's episode, you'll know that overwhelm is often the defining feature of a team when they reach out to me or a lawyer, an individual when they reach out to me. They've just gotten more work than they know what to do with or I

sometimes joke that they've reached that Ron Popeil infomercial moment where they throw up their hands and say, "There has to be a better way."

And they're right, there is a better way. But it's going to require changing how you approach taking on new work and how you think about balancing the demands on your time and attention with your actual capacity to pay attention to and deliver good work. So when I think about capacity and I look out at sort of the conventional wisdom around growing a law practice, managing a law practice. Most of the things I see are around growing capacity or adding capacity, scaling work, being able to ultimately make more money.

And if you're a law firm owner, by hiring people to do the work that you do. And that's not wrong, but it's a really hard place to start. I think scaling when you're small, number one, the incremental cost is high. But number two, the problem with that approach is that the leaders are trying to grow capacity or scale capacity without having a really good sense of what their current capacity truly is.

They know that they're over capacity, that's kind of easy to tell. But they don't often make an effort to try to quantify or assess what is my actual current capacity and are there things that I can do to better utilize that capacity more effectively within my practice? It's one of the principles of the Kanban method, which is the version of agile that probably is the most common one that I use. And you've probably heard me or seen me talk about Kanban boards.

I'm not going to do that in this episode, except to say that a Kanban board can be a visual tool that helps you see what your capacity is within your law practice. So the phrase that I use when I'm working with my new clients all the time is you have to have an honest reckoning with your capacity. And I think that is just essential. We need to, first off, take a step back and recognize that we can't do it all. We do have a finite capacity.

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And whether that is me as an individual, whether that is my team or my firm more broadly, we all can only do so much with the time that we have. So that's number one is to just be really clear that I am going to be honest with myself. And I'm going to work with my team to be honest with this idea that our capacity is finite. And not all capacity is created equal. Capacity has multiple directions. Probably the one that is easiest to wrap your head around is time, but there's other components as well.

There's skill or ability. There's the knowledge and experience that you have around a particular type of work. There's the energy that you have throughout the day. Some people can do the sort of heavy lifting, deep dive, legal work more easily first thing in the morning. Other people get their energy in the afternoon. And I think allocating your capacity to the time of the day, where it's going to be most effective relative to the type of work that you're trying to accomplish is really important. So I think that's key.

The other thing about the honest reckoning with capacity is that you can take it to an extreme. I don't want this to be a Frederick Taylor scientific management exercise. And again, I'm not going to do the deep dive. You can look up his Wikipedia account, but Frederick Taylor was really, some people call him sort of the godfather of modern management in business and industry.

He was the guy that basically said what managers should be doing is walking all over their factory floors with stopwatches and timing how long it takes people to do things. And then trying to make that shorter, trying to make them do things faster. And that that was the key to building capacity within a system. And on the one hand, that's not wrong. On the other hand, I think it is kind of inherently anti-agile in a way.

The thing that I know is that it's not so much that the people on your team or you yourself is doing the work inefficiently. It's that you're not always choosing the right things to allocate your time and capacity to, number one. Number two, it's that you are often letting so many things into your finite

capacity that you're spending as much time on the gaps between those things as you are delivering the actual work.

I sometimes talk about this with my clients. If you use a juggling metaphor, if you're, you're juggling just one ball, you're not really juggling. You can spend all of your time and attention on that ball. Once you have two balls, assuming one in each hand, you can still be in contact with each of the work items that you're supposed to be working on. But if you talk about your actual sort of active attention, it's now switching back and forth between those two balls. And there's a little gap in between them where it's not doing any work at all. It is merely just a switching cost.

And when you only have two balls, that's not a big deal. But once you start adding more and more balls into your system that you're trying to juggle, you are spending more time on the gaps between the balls and less time on any one individual piece of work itself. And that is really where a lot of capacity allocation goes on a team that is overburdened, it's not though, doing the work itself, it's the tracking the work that is the problem.

The other thing that comes up when you're juggling so many balls is this agile notion, and I love this term. I learned this only sort of recently. The term that people use is failure demand. And failure demand is anything that is taking up your finite time and capacity` that is because of some failure that happened in your system, usually upstream of where you are.

The classic example of failure demand in a legal workflow is a client or a customer or some stakeholder sending you an email or calling you up and saying, "Hey, where's my work? Where's my thing? I ordered this weeks ago, months ago." I have seen practices where it's years ago. Where is it? I don't know. I don't have visibility into the thing.

And when you, as the delivery person, have to take your finite time and capacity away from delivering somebody's piece of work to responding to somebody else about the status of their work, that's failure demand. And that is not beneficial use. You'd be far better off if you didn't have those

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interruptions and if you could just carry forward doing that work. And that's a function of too many balls in the air. It's a function of putting yourself over capacity.

So the flipside to the honest reckoning with capacity is what I refer to as the brutal assessment of priorities. And I played with a lot of different adjectives before I settled on brutal as being the right one. Because when you set something as a high priority, you also are automatically saying everything else is a lower priority. The act of prioritization is primarily the act of de-prioritization. It's getting things off of your plate that you're not going to do that frees up that finite capacity to do the work that you need to do. And that can be brutal. It's hard to do.

Most people are people pleasers. Most people want to do good work. Here's the problem. If you have finite capacity and you've got lots of balls in the air already, you've made lots of promises to customers, to clients, to other people about the work you're going to do and the things you're going to deliver. And you put one more ball into the air that you're trying to juggle, what you're really doing, what you're risking, is that you are reneging on the commitments that you've already made to the people that already have balls in the air in your system.

If you think about the freeway metaphor, and you'll hear me talk about this a lot. There's an interesting relationship between the use of your finite capacity and the rate at which work can flow through your systems and you see it in the freeways all the time. If a freeway is operating at 40 or 50% capacity, traffic's flowing pretty good, 50% capacity, a freeway can handle that really easily.

Once you get to maybe 70/75% capacity then traffic is going to start to slow down, you might, instead of going 60 miles an hour, you might be going 45 or 30. The work is still moving, but it's moving more slowly. Any one car isn't going to get to their destination as smoothly or as quickly as they hoped to when they got on the freeway.

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Once you get to maybe 80% capacity, things start to slow down a lot. That's when traffic is at a crawl. Maybe you're going 5/10 miles an hour and people are starting to get really frustrated, maybe horns are honking, people are changing lanes, etc., etc.

And if you get to 100% capacity, that is just full on gridlock, nobody's going anywhere. If there are cars covering every square inch of the freeway, that freeway is really heavily utilized. But the experience of any one of the cars on there is going to be terrible. So what's the solution that traffic engineers use? They limit the number of cars that can go into the freeway at any one time. They put meters on the off ramps and they only let so many cars in so that the freeway can flow at, at least a reasonable rate and people can get off of it, get to their destination slightly more quickly.

If we just have an unlimited number of cars any time of day, that can come onto the freeway, that's going to be gridlock and in a lot of places it is. The same thing is true in your law practice. If you just keep saying yes to new work, then all of the people that you said yes to before are going to have a worse experience. You're going to get stuck and that's going to lead to frustration on their part. They're going to start calling you, emailing you or maybe not, maybe they're just going to disappear.

And those are the people that are likely to leave you the bad Google reviews, maybe not going to refer other work to you. Maybe go so far as to file that bar complaint. And from the time I spent on the Board of Governors of the Oregon State Bar. And I think probably you've all heard this, the number one reason that people file bar complaints is lack of communication from their attorney. They don't know what the status is of their matter.

So that's the key, this relationship between capacity, priority and overwhelm. You feel overwhelm when you let more work items into your system than you have the capacity to deliver comfortably in a period of time and there's just no two ways about it. That is the key component of getting

overloaded in your system. The answer to that is that you have to be more brutal about your assessment of priorities.

You have to be willing to say, "I am going to focus on these one or two or three things today and only those three things. And I am not going to let other work interrupt me. I am not going to get distracted by shiny object syndrome." It's different if there's a true emergency, I get it. But a true emergency to me is something where it is truly on fire and that fire is likely to grow. There's a difference between people giving you emergency signals and a true emergency.

And I think part of being honest about your capacity and intentional about your priority setting is knowing what constitutes an emergency for me right now. And that is probably a lot less than what other people maybe would like it to be. There's also this problem that when you are overloaded, emergencies come up more often because balls get dropped more often. And so you really do have to figure out how to take a step back and focus on finishing a few things so that they're not just balls that are in the air that you have to keep track of anymore.

One of the unofficial slogans of the Kanban method is start less in order to finish more. It's a focus on finishing work, on delivering it, getting it out the door, or at least to a natural resting place where you're not going to have to worry about it for a while. As long as it's in your inbox, it's adding pressure and it's creating opportunities for people to do that failure demand thing of pinging you, "Where's my thing? Where's my matter? I need a status update." And status updates, if you're doing them proactively, they're great. If you're having to do them reactively, it's just another demand that is taking up your time and attention.

Another one of the things I talk about with my clients a lot is if you feel like the bathtub's overflowing and it is making a mess, water is going everywhere. The best first thing you can do is turn off the tap. Yes, you've got to get the drain opened up. Yes, you've got some clean-up work to do,

but as long as you're letting new things in that are continuing to overwhelm the system, then it's really hard to do the other work that you need to do in order to clean up the system.

For a lot of my clients that manifests as an intake pause where we just say we're not going to take new work for a while, sometime into the future. Sometimes it's a reassessment of what is the type of new work that I will take and a tightening of standards and being able to say, "Look, I am only going to take a new case or I'm only going to do a new matter if it meets certain criteria." And those criteria have to be exclusive. They have to be tight enough that you're not going to just keep getting more and more work into the system.

And you need to do that for a little while so that you can focus on delivering on the commitments that you've already made to those clients that are in the work, for those clients that are in your system. And a lot of times, it's a combination of both. You're going to both say, "I'm going to be more intentional about the type of new work that I take on or the type of clients that I'm going to work with." And also I'm going to say, "I'm going to be more intentional about scheduling that work into the future."

It doesn't always have to be no, it can be not now or not yet. And again, I will talk in a future episode about what I sometimes refer to as my dental chair theory of lawyering. But if you think about dentists, they're not just taking walk-ins all day, every day. They are allocating their capacity in an intentional way, and that is the key, I think, for lawyers as well.

So that's it for today. The takeaway is if you are feeling overwhelmed, if you're feeling overburdened in your law practice it's because you've put yourself overcapacity and the solutions to getting yourself back within a comfortable capacity are twofold. You have to prioritize closing cases. You have to prioritize getting work finished over getting new work in.

I recognize, especially if you're a law firm owner, that can be really hard. There's an emotional component to the potential revenue that comes from

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doing intake. And there is also this cultural sense in the legal profession that intake is the lifeblood of a practice. I mean, so much of the marketing and software that gets directed to you as an attorney is about bringing in new work. The culture of the profession is really skewed in that direction. And I don't think that's right for most people.

We live in a world where there's a lot of demand for legal work and probably not enough capacity in the system to meet all of that demand, which means that you have to be more exclusive. You have to be more discerning about how you allow your capacity to get used and deliver on those promises you've already made to people that are in your system and get those done first and that is the best way to free up your capacity to do more work for more people in the future.

Thanks for listening to *The Agile Attorney* podcast. I'm your host, John Grant. If you found today's episode interesting or useful, please share it with someone who you think would benefit from a more agile approach to their legal practice. If you have any questions, feedback or maybe a topic you'd like to hear me cover, you can reach me at john.grant@agileattorney.com.

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