

Ep #8: Building the Lean Law Firm with Dave Maxfield



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John E. Grant

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In today's episode I talk with South Carolina consumer rights attorney, Dave Maxfield. Along with Larry Port, Dave is the author of the ABA publishing book *The Lean Law Firm*, where he provides a really interesting look into how lawyers can adopt techniques from the lean methodology to power and improve their law practices. And as I've said before, and as you'll hear again, lean and agile share a lot of DNA and they have the most overlap at the tool that is the Kanban board.

So you'll hear me and Dave talk a lot about how he's using Kanban in his practice to make work flow more smoothly. As well as some other important elements of the methodology, like limiting work in progress and a formula for actually measuring the productivity of your law practice. Fair warning, Dave and I go on a couple of tangents, but there's great information in there, so hopefully you follow along. And be sure to stay tuned to the end where I'll give a couple of concrete tips on how to put Dave's advice into practice within your law firm. 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.

John: Dave Maxfield, welcome to *The Agile Attorney* podcast.

Dave: Thanks, John, it's great to be here.

John: Why don't you give us a quick introduction for listeners that may not know who you are.

Dave: Sure. Well, I'm Dave Maxwell, as you mentioned. I am a solo practitioner lawyer in South Carolina with, I guess, what you would call a boutique consumer protection practice although we don't sell earrings or

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pierce ears, John. So maybe it's not really a boutique practice, but what makes you qualify as boutique? But it sounds pretty cool when you say it that way. And I also, with my friend, Larry Port, as you know from the work we all do together, I'm the author or co-author of *The Lean Law Firm*, which is a book that the ABA put out a few years ago.

That is about taking lean production systems, things like the Toyota production system and figuring out how to kind of flip those and turn them around and make them useful for a law practice. And so I'm really interested in lean. I'm of course interested in your work because of agile and the things that you also espouse. And so I'm pretty nerdy and I'm interested in a lot of nerdy things like that too. And I do a little bit of consulting, not on the level you do, but my day-to-day gig is as a consumer protection lawyer representing people against banks that rhyme with hell's cargo.

John: Okay. Well, and I'll admit, so you and Larry wrote the book and I forget what year it came out. But I was at the ABA Tech Show, which I think is happening right now as we record this. It'll be a few weeks, obviously, before it comes out. And I saw your book at the bookstand and picked it up and started reading it. And the initial thing that happened to me is my heart sank because you wrote the book that I've been meaning to write. And as soon as I got over that, I literally sat and read your book cover to cover on the stand and then I bought a copy.

And that night, I mean, I think I know Larry was there. I can't remember if you were there or not. But I went home that evening and wrote a review on my blog and said, "This is the book I wish I'd written and everyone should read it."

Dave: That was very kind of you and you've been doing this a long time and that was a huge compliment to us. And I remember you were the guy in the back of the room, you were asking a lot of questions that were like, "How does this guy know all this stuff?" And I don't know if I know the answer to these questions. So I actually remember that really well.

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John: Well, it is true to this day and I reread a lot of the book, preparing for this interview, and it still, it just holds up. It's a really well done, well thought out book. So I don't have to write that one. I'm working on a different one and hopefully we'll get it out in the next little while. But maybe tell us a little bit about how you got onto the lean bandwagon. And I guess before I say that, let me say because you mentioned agile already.

We have both sort of converged at the Kanban method and using Kanban boards. But we've come at it through these different angles and you came up through the lean angle. I came at it more through the agile angle, although they're close cousins. It's not like we have to draw these really fine distinctions between the two. But talk a minute about your lean journey and how you discovered this stuff.

Dave: Yeah. Well so I've always been in small law firms. I'm a solo practitioner and have been for 12 years and before that for about 17 years I was with another lawyer. And I have never worked in a law firm with more than a few lawyers and a few support staff. And so I've had maybe the curse, but maybe the blessing of never being in a professionally managed firm. And also never for the most part, having to be much of an hourly biller. A lot of the work I would do was on contingency or flat fee.

So at some point I found *The Goal*, which is by Eliyahu Goldratt, who's an Israeli physicist I think, who was really interested in production methods. And I read that book, which is sort of a business novel with a story in it, not like you, I read it cover to cover in a day. And I was like, "Wow, if there's some way to translate this, this all makes way more sense than anything else." Because I mean, aren't we just taking raw material, putting it through some kind of process and doesn't money come from our success at how well and how fast we can do that? And as Goldratt would say, eliminating the constraints in that process.

So once I did that, I had to kind of try to translate it and after reading some other things like *Critical Chain* by Goldratt which was harder to understand but I got through it. And some other things too, *Built to Sell*, some other

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really good books and ones that we probably both know. I really started to see this, my whole firm is this is an end to end process and things move. They come in on one side and they go out on the other side.

And how good can I make that process at the beginning or throughout and where are my constraints in that process? And how can I visualize them and reduce them so that things move faster? Because I had an idea that if I could do that then I would be more profitable, which turned out to be true.

John: Excellent. And we're going to dive in because you've used the term of art already, which is constraint. And I'll say I too read *The Goal* eventually. Although the one that I read first was *The Phoenix Project*. I don't know if you ever read that one, which is also kind of an offshoot of *The Goal* in a way, but it's written a little bit more through the lens of agile and what's now known as dev ops. And we're probably losing people with word soup already, but we'll tie it back to law practice in a minute.

And so one of the things as I reread your book over the last week that really stands out at me is this sort of simplification that you call the income formula. And so I was wondering if you could talk a little bit about what you mean or what is the income formula. And how you've used it and how other firms can maybe think about using it to increase certainly the profitability or the revenue that comes into your law practice, hopefully the profitability as well. But it's through the act of accelerating the delivery of work more so than necessarily doing some other things that might be a little bit distracting.

Dave: I think that's a really good way to say it. So here's kind of the aha moment for me. And the disclaimer first is that if you're in an hourly billing setting, like a lot of things, what we talk about when we're talking about making things more efficient, making things faster. I mean, you still have some benefits from lean processes but you'll never change the fact that an hour is an hour. So you might become worth more during that hour but you're always in some way commoditizing yourself that way.

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If you could break free of that, then a lot of other things become possible. You don't have to do that to take advantage of lean, but if you do, it's where you really get unchained from that, that things take off.

John: Let me hit a quick tangent on that real quick, if you don't mind just because this is something that I talk about with my clients a lot. And I've kind of evolved through the years. I am not an alternative fee purist. I think there's a lot of places and a lot of good reasons why lawyers who bill by the hour do that. But a lot of what I've learned over the course of my work with clients over the last 10 or so years that I've been doing this is that even hourly billers are often feeling overwhelmed by the total amount of work in their system.

And that using these techniques, techniques that you talk about in your book and the ones that I teach and all the different things, really can help to reduce that overwhelm regardless of what your billing model is, regardless of what your profit model is. And then the thing that I find is that if you continue down that process improvement technique and you continue to reduce overwhelm. Then eventually you're going to come to this fork in the road where you say, "Well, wait a minute, if I keep making myself more and more efficient then under my existing revenue model, I'm shooting myself in the foot."

And that with a lot of the clients that I've had over the longer term, that's the pivot point where they say, "Okay, I'm ready to start exploring alternative fees. I think I can do this part of my practice on a flat fee or I think I can maybe convert these services to a subscription basis." So anyway I wanted to touch on that because it is still the dominant model.

I always love working with contingency lawyers and flat fee lawyers because they just inherently sort of wrap their heads around the importance of efficiency, but that's not to say that hourly billers don't also want to be more efficient. It's just often it's just to get better control over their own work life and their team's work life. So alright, we're on a tangent.

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Dave: Yeah, we're on a little bit of a tangent but I mean it's a valuable one. And I mean, we may even if we, maybe another podcast on another day. But I'm reading a book right now called *Four Thousand Weeks* by Oliver Burkeman. And one of the things that they talk about in that book, it's kind of about, in some ways it's like an anti-time management book, if that's such a thing. But it's kind of talking about, look, there's always going to be more things than you can possibly do.

And we as humans sort of struggle to get this sort of security or sense of control by thinking that we'll get to a place where we can do everything but you never do. It's not possible, you can't. And so he's kind of like, "Look, resign yourself to the fact that you can't do everything. Pick the things you can do and do those things and do the important ones because you'll never do everything."

But in the book they talk about, there was a study of corporate lawyers who billed by the hour and almost like you say, how difficult it was even in their personal life. Not to have the sense, when they're sitting at home watching TV at the end of a 10 hour day that geez, I'm wasting time doing this because I'm not billing for this time. And that's sort of that self-commoditization. I'm not going to say the hourly billing bill's evil.

But I can say that affirmatively, I think, not only is it mathematically probably less desirable if you can get away from it for the income formula reasons we're going to talk about. But that maybe makes the rest of your life better because you let go of this mindset that time not billing is wasted.

John: Yeah, it has a tendency to distort people's self-view of their own importance. It's sort of a fun house mirror, where it's, oh, well, I shouldn't read to my kids. I should let Alexa do it because I should be billing. That's an extreme example. I'm not sure that anyone's actually doing that.

Dave: I guarantee you that somebody on Wall Street is doing that right now. So you asked me about the income formula, I'll hit that. So John, it's the dumbest formula in the world. It's so simple that I could even say it on a

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live podcast. It's throughput times average case unit value. So I could talk about what throughput is or do you want to talk about that?

John: Well, yeah, give me your definition of throughput.

Dave: Okay. I just look at that as how many, I guess, units and we could talk about those as cases or sometimes lawyers talk about those as matters, do I put across the finish line any given period of time? If it's a year. if I say, "Okay, I'm going to complete 125 cases." Let's just do it even number, 100 cases this year. Then it's sort of like a factory that builds 100 cars in a year. And every time a car leaves the door and it's sold to somebody and the money is in the bank for that car, that's throughput.

They've just put all the way across the finish line and they've gotten paid for it. I think of cases or matters sort of like that. We've got the money, it's all the way done. There's nothing else to do. It's out of inventory and we're done with that.

John: I tie it back to and I've talked about it on other podcasts. I don't think I've talked about on this one, how economists define productivity. And there's this funny thing in the legal profession where we think about productivity, or again, if you're an hourly biller, you think about productivity as the number of hours you bill over a time period.

But an economist would think that's an absurd way to do it because productivity by definition, is the number of widgets you deliver in a period of time. And if you have time in both the numerator and the denominator, they sort of cancel out and you wind up with a nonsense thing. So you don't want to do hours per hours or hours per day. I mean, you can, but that's a function of effort, not a function of customer derived value or what is an actual sort of deliverable.

Dave: Yeah, optimistically it's a function of effort because I could let an hour pass and bill for something and maybe not put my whole heart into it or I could be beating my brains out and it looks the same on paper.

John: Okay, sorry. We keep going down these tangents.

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Dave: We do. I should finish the two-part formula.

John: Perfect. Thank you.

Dave: So we have throughput, which is kind of a speed measure, how many, you're going to grandma's house, you're going 60 miles an hour, your throughput rate is 60 miles an hour. It's in some ways a speed measure. How many units do you finish in time? And then times the average what I would call the average case unit value, which is how much on average is each one of your cases or matters worth to you. So if we go back and say you got 100 cases you finish a year, each one's worth \$1,000 in income to you.

Your income formula would, if you did the math, it would be \$100,000 a year, pretty straightforward. And these are all just representative numbers. But I guess the aha moment for me has always been, well, which one of those things can I change? And we'll talk about hourly billers. Well, you could go up on your hourly rate and the formula doesn't work [inaudible] with hourly billers. But let's say you're a flat fee biller and you're billing \$1,000 per case. Maybe you're doing divorces or something like that, kind of low end divorces and everybody gets a flat fee, \$1,000.

John: Probably not for 1,000, but that's okay.

Dave: No, probably not.

John: Yeah, we'll continue, yeah.

Dave: John, it's just a model.

John: Okay, I'm kidding, yeah.

Dave: So \$1,000 apiece. What can we do? We can say, "Okay, I want to make more money, so I'm going to bump that to \$1500." And that might be fine. Maybe you should have done that a long time ago. But there's going to be a place where you hit a ceiling where the market is there's nobody who's going to pay that, or you're just too high, I can get it next door, for cheaper.

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If we flip that and say you're a contingent biller and you have a soft tissue injury case where you think this case is probably worth \$20,000, but I really want \$100,000. So I'm going to just hold out for that. You might get it, but you might not. But in the end, the people who decide whether you get it or not are not you, it's an insurance adjuster, it's a jury, it's a judge, it's an arbitrator. So that unit value lots of times we have a little bit of control over it. We can improve our quality. We can improve our skill.

But the market gets to decide how much it's worth and other people get to decide what it's worth lots of times. So what does that do? That means we kind of have to look at the other part of the formula which is throughput. If I can maybe change a little bit and go up on the unit value, that's good. But if I can really put more across the finish line, is that easier or at least do I have more control over that?

And the answer to that is, you've got way more control over that because you can make more efficient systems, you can get rid of constraints in your system, you can outsource things to AI. I mean, these days you can make each little task take less time. You can eliminate the time that can build up between things, so there's not gaps. And so that's where we really in the lean law firm methodology, focus a lot of effort is going to be to, well, what can we do to make throughput faster? And there's a lot of things you can do about that. So that's kind of what we focus on.

John: There are indeed. And you've mentioned constraints a couple times. And I want to come to constraints but I want to come do it through the lens of a Kanban board. So you're using Kanban boards in your practice and have been for a while. Can you describe a little bit about what your Kanban setup is for your practice?

Dave: Yes. Well, I'll give you a little bit of history on it. Seven, eight, nine years ago there weren't really any or many that I know of law firm practice management systems that had any kind of a Kanban board feature.

John: No. Yeah, not that long ago for sure.

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Dave: We were managing things kind of by lists and things like that. And so you would have, if you had a meeting in your firm about, well, where is this case right now? You'd have this meeting where everybody sometimes would sit in a conference room and go over a list of cases. And people would be like, "Well, what's going on with this? And where is this case and what are the deadlines or why isn't it moving forward?" A lot of times, the answer to why isn't it moving forward is, "I don't know, it just isn't."

John: It just isn't. Yeah. Again, reaching into your book, and I guess I'm proving to you that I've read it, but it's what you call the waiting for no reason definitions, well, why are we waiting? Well, just because we can't get to it, we've got too much going on.

Dave: That can be an issue about, well, I have too much inventory at any one time. Waiting is an interesting thing because in law, there's a lot of waiting. There's a lot of things that we can't control. If I sue somebody tomorrow, I can't shorten their end. I could give them more time to answer, but I can't give them less time. I can't say, "You know what? My process is really I want you to answer in 10 days. Do you think you can do that?" They're going to be like, "No, Dave, I can't do that."

John: You've got to be crazy.

Dave: Right. I want more time. So the law has a built in system of would you do this? This person has 30 days to do this. When you do this I've got 14 days to do this.

John: Due process is an intentional inefficiency in service of what we hope is fairness in the system. So, we as society have said that we're going to have due process and due process means giving people time to do stuff. And that is a tradeoff that we accept as society is sort of an inherent inefficiency in the system. And for lawyers a lot of times that benefits lawyers, sometimes it doesn't benefit lawyers, but it's there for a reason.

Dave: Right. That's actually a very, I've never heard anybody say that, but that's a very, very good way to put that. I mean, we have, when you get

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notice of something, you have to have time to respond. If your time to respond was 10 seconds, we would know that's not fair. And I would just say this too about speed and time. Speed and time and all these things are really, the older I get, the more I realize how malleable and weird it is, without getting into a super tangent again.

If we talk about, you're creating intentionally, especially as a contingent firm, a firm that can move really fast. And in an adversarial system that is very disorienting for the other side and often really unexpected because people want to do the opposite. And so if you're moving at a very quick speed, that can be overwhelming and tactically advantageous to you in an adversarial case.

And oddly, that can increase the value of the case sometimes. So we talk about there's not a lot we can do. There's some things we can do. One of them is as a byproduct of being leaner and faster is you become a little scarier sometimes because you can turn things around so quickly.

John: I've seen that with some of my clients, who are litigators and I use the lens of agile. But for me, part of agility is increasing your options. And so you have sort of more too, because you're able to do things a little bit quicker, respond in a little bit more agile fashion. You might be able to do some things with respect to the litigation that does give you a competitive advantage against your opposing counsel or opposing side.

Dave: Yeah, I think that's very true. And I'm limited a little bit because I do litigation. So if we were saying, "We're really trying to get this permitting done so we can build a skyscraper." Then that might be different, but it does, from a psychology standpoint, have an effect on the human being on the other side sometimes so it can be useful that way. And there's probably lawyers out here listening right now who are on other sides of cases with me who are like, "Maxfield, where's my discovery responses?"

John: Well, like I said, it gives you options. You can move fast, whether you choose to or not is up to you.

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Dave: Yeah, that's absolutely right. So before we went down that side road we were talking about.

John: Your Kanban system.

Dave: So back several years ago there was no really easy way to do it that was built into a case management system. So we turned outside to Trello and things like that. Kanban systems that were already built, they had a lot of things we could add into them and they became really flexible. And over time, fortunately the value of Kanban systems has been realized for law firms and most businesses, lots of kinds of businesses because they let you see everything and where it is real time.

So that meeting you used to have to have in a conference room about where is this and where is that is just a board where everybody's like, "There it is." I could answer that question in 10 seconds by looking at this screen or this board. So we eventually have adopted or used a case management system called Lawcus. And the reason that we did it is because they have made the Kanban board really the central focus of it.

That's where you spend a lot of your time. That's what you look at, everything sort of drives off of that. And to me that is the view of a system operating in real time and where things are within that system that gives me the most information. So that may not have answered your question about how it's set up, which I can try to do.

John: Yeah, well, I am interested. So because you mentioned lists and one of the things that was certainly true of Trello in the early days and I'm going to say this, I don't mean it to be a true negative thing. Because there is something incredibly powerful about just the process of visualizing your work using the columns on the board and the cards in the columns. But at the end of the day, Trello really was kind of just a list of lists, and that it lets you say, okay, especially back then, I think it's improved a lot.

But okay, this is a list called cases in discovery right now. This is a list called cases in settlement negotiations. This is a list called whatever. And

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each card in there was that. And I think that's not far off probably of the interface and I haven't seen Lawcus in a little while, but that's kind of the Lawcus interface too. Okay, these are the stages of this particular type of legal work and we're going to use columns to represent those stages. And then we're going to use cards to represent the matters on the board.

Dave: Right. I think that's still true. And I think your point is taken too that really just all you're doing is taking something that you're used to seeing one way. And you're putting it in what for most people, is a much more representative visual way to understand the same information. And so, yes, could we do all this with a list? Yes. For some reason, in the west, at least, a left to right visual flow is sort of how we think about something. This started here and it moved over here. And so that's really powerful for some reason.

And I think that the other power of a board versus a list is that it gives you a very obvious indicator of where a constraint is because you'll have a list of things that stack up within a column either right in the constraint or right before the constraint. So it gives you, where should I focus my efforts right now? I've got to reduce this constraint, so I'm going to work in this column for a while till things are moved out of there.

And it reminds you what you're really doing is you have this big system and you're the guy that when something gets stopped in the pipes, you're going to unclog that pipe because your idea is you want your whole system to flow.

John: Yeah. that's exactly and you've left sort of the perfect transition. You get to be sort of the high level expeditor, the air traffic control, whatever that says, "Look, I've got finite."

Dave: The plumber.

John: The plumber, yeah, I know as a firm owner, as a team leader that I have finite capacity, finite resources. And the Kanban board gives you

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pretty good information about where you need to deploy those resources at any given time.

Dave: Yeah, absolutely.

John: I should say, including yourself.

Dave: Yeah, ourselves, who in small firms are often the biggest single constraint in a firm because there's one of us. So you have a resource scarcity and you have a lot of things that only that, maybe only that resource can really do. And so it helps us put our, by definition, to get back to that *Four Thousand Weeks* book, helps us make the best choices about what we're going to do with our limited time.

John: Yeah, I love that. And I talked, I think it was the second episode of the relaunch of this podcast but I think it's numbered as episode two about my formulation, which is the honest reckoning with capacity. So it sounds like the *Four Thousand Weeks* book is pretty similar to that. Each of us only have a bucket that is so big and once it starts to fill up, you've got to start making choices.

It's part of why I like to lead with that concept of an honest reckoning with capacity because until you know that your bucket has a finite size. You won't start to make good decisions around priorities because if you think you can do it all, you won't really prioritize well.

Dave: Yeah, that's 100% true. So I think one of the things and I don't know if we, we kind of alluded to flow a little bit and sort of how our job is to kind of oversee that. If you don't have a top level view of it, it's very hard to see where the blocks are. So the Kanban board gives you that. I'm going to hit two concepts real quick, and then I'll try to get into, if you want me to, kind of how mine individually are set up.

So the concepts I would hit would be if we're looking at throughput and we're saying that's the thing that we can control to get back to that formula. Then the things that mainly govern that are two things, one is cycle time, which is on average, how long does it take a case to finish from beginning

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to end? And that's more of not a speed measure but a time measure. This one took 120 days and my average is 180 days, whatever it is. And the thing that really dictates throughput besides that is inventory, capacity.

You said an honest reckoning with capacity. All the lawyers I know think they can do more than they can do. And the core problem, I think that law firms face, especially ones that are smaller contingent billers is they think their problem is a marketing problem. And so they go out and get a whole bunch more potential cases, leads and maybe convert them into cases.

And then they have this giant load of cases. And then they wonder why everything's going so slow. And the reason is because it's just like if you tried to put 15,000 people into a McDonald's restaurant, it's going to take a really long time to order, it's just you don't have the capacity for it. And so a lot of it, an honest reckoning, which we can do kind of mathematically, but we also have to sort of do sort of subjectively too just based on our experiences to get that number of inventory right.

How many cases do I have in between my start and finish at any one time? That's got to be the right number or the rightish number, because otherwise it's going to be that that drags everything to a halt.

John: Yes. And so what you've just described in, I think both the lean and agile and certainly the Kanban world is a WIP limit, a work in process limit. And basically acknowledging that my firm overall has a carrying capacity of x number of units. And that might be 100 cases, but knowing that not all cases are built equally, you may want to give them sort of a weighted average.

I actually have a client that I'm working with right now who has done this family law practice and she knew that she was overwhelmed. And you mentioned the subjective component to it. So subjectively, she knew she was overwhelmed. We did some things to basically put some objectivity to it. And we said, "Well, what's your current case count?" The number was 50. But I said, "What number sounds realistic?" And she said, "Well, maybe

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40.” But here’s the thing you need to know is that 10 of those are bigger than one.

She actually had a name for them. She called them red file cases. She’s like, “They’re worth two. And so even though my total count is 50. My effective count right now is 60 because I have 10 red file cases.” And what she’s done and is actually in the process of doing sort of through our work together right now is saying as a policy, as a firm, she’s going to define the carrying capacity at 40 cases with red file cases counting as two.

And then there’s sort of a sub limit under that which is, and also we’ll take no more than five red file cases at a time. And so she’s attempting to create a definition of the carrying capacity of the firm. We don’t know yet whether it’s the right one or not. We just think it’s going to be better than the one that she had, which was, I don’t know. And we’re in the process now of trying to get down from that clearly overcapacity down closer to capacity. And that’s not something she’s doing all at once. She didn’t go fire a bunch of clients, she didn’t, whatever.

But she is being a lot more conscious, and this is one of the things. I mean, this is straight out of *The Goal*, which is drum buffer, rope which now we’re getting super nerdy and I won’t do that. But what that refers to is a feedback loop, which is to say that you don’t let new work into your system until existing work flows out of your system. And you use the idea of the rope, those two things, intake and outflow are connected. And you don’t open up the intake valve until something goes through the drain at the outtake side or the outflow side.

Dave: Absolutely. And that’s one of the things, this isn’t in the book, but later on we started actually saying, “Okay, if we’re trying to put 100 cases across the finish line in a year, then at any one time.” And one thing that’s hard for people to wrap their heads around is your inventory number is not your throughput number. So if she were to drop her inventory, let’s say hypothetically to 30, not only is she probably not going to lose any

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throughput, even though she'll have, at any snapshot time, she'll have fewer cases and inventory,

Overall they're probably going to move faster. So usually your throughput's going to at least be the same, but usually increase. So she's going to get more done in a year that way. But we sort of follow this loosely now because it's sort of become second nature. But two cases have come out, okay, now two more can go in. Once you find that sweet spot inventory number, it's no longer a drag, but it's not too few, then you can let them in and let him out like that, And that actually is a very good way to work.

John: Yeah. Well, I think it is a vastly preferable way to work and it's something again that I try to do with a lot of my clients and I'm doing with this one we just talked about. And I do, I want to repeat what you just said, which is a smaller amount of work in process or that inventory number at any snapshot in time will actually lead to a greater throughput number. Because lower amount of work in process and this is Little's law, which you and I both know, again getting nerdy.

B what Little's law teaches us, and I talked in a previous episode about the Kingman's formula, which is a different formulation of Little's law. That the speed at which any one unit flows through your system is inversely proportional to the amount of work that is in your system, meaning the more work you have, the slower stuff is going to go.

Dave: Yeah, and that sounds like such a weird alien concept for law firms until you say something to them like, "Well, how many cases do you have now in inventory?" Once they've finally, a lot of firms don't know that number. But when they figure out that number, they say, "I've got 100." And you're like, "Okay, that's good. What if you only had one? Do you think that that one would move faster despite the constraints that the court builds in, 30 days to answer and stuff like that?" And they're like, "Yeah." "Well, why?"

"Because it's the only thing I'd have to work on. I wouldn't have to change between one case to another." And you're like, "Okay, what if you had a

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1,000, do you think it would move slower?” And then at that point they’re forced to go, “Yeah, Sure it would, because there’s still one of me and I’ve got to change, I’ve got to work on this case and this case and this case.” Just everything becomes exponentially harder at some point. And so there is that sweet spot. We don’t have unlimited carrying capacity, but we sort of think we do.

Yeah, I mean I think your friend that you’re advising, your client that you’re advising to do that is in some ways, she’s finally recognizing that. And she’s maybe even kind of recognizing that she’s maybe building kind of different products. If you’re in a factory where you are making cars and hers probably not, they should probably run on the same line. Because I’m going to answer that Kanban question about how it’s set up in a second.

But one option for her might be, those things might be so different in value because what you have to do is different and more in one. And she may want to run two Kanbans, two production lines. One of them with a certain cycle time, the other with a different cycle time and just treat them as two different streams of income within the same firm with sort of different expectations.

If Toyota’s going to build a Corolla on one line, but then they also like, “Hey, we’re going to build a Lexus LS500”, which is a vastly different car with much more complexity and a lot more material and time that we’re going to sell for a much higher price point. We probably wouldn’t put them in the same factory.

John: I love where you’re going with that notion of product lines. And I think it’s another one of the things that once you’ve spent a little time in exploring how other industries apart from legal treat things. Then this notion of product lines and even different products and services within each product line starts to make a lot more sense. But it’s not intuitively, we think about practice areas, but practice area and product line isn’t quite the same thing.

You can have an estate planning and probate practice. But the process, if you look at those two things, estate planning versus probate or trust

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administration or however you do it. You're dealing with the same documents, but the process for the work is very different. The need of the client, the customer expectation is different. The involvement of other parties is very different. And so those are two very different production lines even if you're an estate planning and probate practice.

Dave: Yeah, absolutely. Just depending on kind of what you're making. I think the other thing and I'll finally answer the question about how have I set it up? I handle consumer protection law in about four or five different areas. And I've really deliberately limited things to those areas because just like having too many cases, having too many areas increases the complexity of things and the types of different things that you have to do.

So I try to have kind of a niche of sort of things that are related in some way and similar but also they might not be exactly the same. And so we kind of do have two production lines. But the way that they work is that I have kind of a master Kanban where all the cases start and it's a left to right flow. You come in on this side on the left and one day your case is finished and we're just waiting on the money and you hang out on the far right of the Kanban board.

John: Either way, I know.

Dave: Either way, it's South Carolina's Kanban board.

John: Yeah, that's right.

Dave: I actually have a couple of supply chain majors from Clemson University who are in my class who are now in law school. And they always straighten me out immediately on that, and a lot of other terms too. And then I just crack on them for all the USC people, University of South Carolina, people just crack on them for going to Clemson so it's fun. But we have them all the way on the right and then one day their case is finished and they drop into the bucket of finished cases on the extreme far right.

And here's a really simple stupid trick. A lot of case management systems will want you to close out a case, there's a closed button on or something

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like that. We don't ever do that. What we do is we just have columns on the extreme far right of a Kanban, if you're setting it up that are closed 2021, closed 2022, closed 2023, closed 2024. And when a case finally finishes in that year, just drop into that column. So if I want to look now, what was my throughput in 2022? It's right there because the card, it just keeps a card count in that column, super easy.

So it's set up like that but along the way, as lawyers know, a lot of cases settle, some don't, some shouldn't, some should. But if we kind of have this early opportunity to sort of see which kind of case this is going to be and it's kind of we have an easy way Kanban board and kind of a hard way Kanban board where it's, alright, well, we've looked at settling this. There's not really any interest or this isn't a case we want to settle. This is dropping off into the full litigation Lexus LS500 board, which is a separate board.

There's more complexity in that board. There's more things that have to be done. There's certain kinds of discovery, certain depositions. But it allows me to sort of, well, I can see where everything is and you could do this on Trello with board filtering too. But also see where I can kind of think about this is, like your client, a different sort of a case. This is a red file case and so it gets treated a little differently, but still it's still in a process moving left or right.

John: Yeah. And what I love about that, and so one of the ideas behind agile is that we want to accelerate learning. We want to be able to sort of maximize the amount of information we have about a thing with the least amount of effort. And I think part of what you're describing, if I look at it sort of through my agile lens is that you've got a process at the outset of a case designed to maximize your understanding of the case and all cases follow that process. And then you've got sort of a pivot point or a fork in the road where you say, "Okay, now that I have maximized my information, I need to categorize where this goes next."

And if it's of this type of case, it's going to go down the easy production line. And if it's this other type of case, it's going to go down the harder

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production line. And objectively, you don't especially care other than maybe in calculating your carrying capacity. But you know that the complex cases are more likely to result in a better payout for your client and therefore for your firm. The simple cases, also important to the client, and my guess also is that complexity and simplicity isn't always a stand-in for the value of the claim, but there's probably a rough relationship between those two things.

Dave: Yeah, there is. And so two things about that. One is that the good thing about the boards being within the same case management system is that sometimes things move back and forth. Cases that go down the litigation thing, sometimes, wait a minute, now it looks like there's a lot of interest in settling, it's going to mediation. It could pop back on to the other board, and maybe it's several places ahead of where it would have been before. But those boards, you could transition between those because that's really what's happening. All this is a mental model, but it's a good way to keep track of it.

And I guess the other thing I would say, when we think about sort of red file cases, is that especially if it's a flat fee or a contingent fee, a case with a giant payout can be a case that takes a lot longer. And we're like, "Oh, yeah, it's worth waiting." But only to sort of an extent, if I were to say, "John, this case is worth \$1 million but it's going to take you 75 years to get it. But here's a case that's worth \$10,000 and you're going to get the \$10,000 in a week." Well, what are you going to do?

John: That's right. Yeah, it's about return on investment, not just absolute top line revenue value.

Dave: It is absolutely. And something that's not in the book that we kind of hit later was that a really useful measure that nobody ever measures really is sort of your dollar per case unit per day. And by that I mean, if here's a case that, let's say it's a \$10,000 case and it took, I'm just going to make it real easy math for me, let's say 1,000 days to resolve, about three years. Here's a \$2,000 case that took 10 days. And if we do the math, one of them

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was worth \$10 for every day we held it in inventory. And one of them was worth \$200 for every day we held it in inventory.

And we want to say, "I need as many \$10,000 cases as I can." But you can make a lot of money with a lot of cases that are \$2,000 cases that resolve quickly depending on. And so sometimes I'll take a case that's a very low dollar case. There's \$500 from this case maybe, but it's a flat fee and it's a discrete thing that I can do in two days. And I'm almost mindful of the shelf life of that. I prioritize that. I get it done. I flip it. It's out of inventory. And that case to me was worth \$250 a day.

When we start to think of ourselves as finite like we are or as left tackles in the NFL who have a shelf life of 10 years. Because we have a career that we're going to make as much money for most of us if we're in small firms as we're going to make. It's going to come from us during the time that we're practicing. So we want that money density to be up there. And so we all think, well, I need to measure my hourly time.

I mean a real time measure to me is, well, how long did this case take from beginning to end and how much money did I make relative to that? That to me is a more important measure than, especially since I don't hourly bill, but that's what we should be measuring.

John: Yeah. And I'm going to introduce another concept really quick, and we're going to have to pick up this conversation another time. But in the process of optimizing for that sort of dollar value per day metric or value per time metric which I love. It's another one of these situations where you have two levers you can pull. One way that you can accelerate or grow your dollars per day is to do the work itself faster.

So when it touches your desk and it's in front of your eyeballs, maybe you're using FORM file or document automation or an AI assisted writer to allow you to do that work faster. And there's a certain amount of return on investment in improving your processing speed. But there's another lever that you can pull that in my experience has a way bigger impact at first,

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which is you can reduce the waiting time in between the places when you're actually doing the work.

And as we said, sometimes you can't reduce waiting time because it's with opposing counsel, it's with whoever. But if it's in that waiting for no reason, so I brought it back to that, if it's just sitting around in your system waiting for a resource because your firm is operating in such a way that everybody's busy fighting other fires and they don't get to this one.

That's a signal that maybe you're operating overcapacity because having fewer cases in flight at any given moment is going to allow you to shorten that waiting time, shorten that tracking time, the investment that you have to make in your firm to know where all that work is. And that's going to accelerate that dollars per day or improve that dollars per day number way faster than shaving 10 minutes off of your drafting time and writing a complex memo.

Dave: Yeah, absolutely. I think that's 100% dead on. And all these things work together. It's a function of inventory, waiting, because a lot comes from having too much inventory lots of times. But that 10 minutes a day in the aggregate can matter a lot because what you're really doing when you make something go faster is you're freeing up the resource that's working on that thing to do something else.

John: Yes, it's not an either or. It's a yes and.

Dave: It's yes and, yeah, all of those things.

John: In the early stages of process improvement, my experience is that reducing waiting time has an initial bang for your buck that is better than reducing processing or working time.

Dave: That's one million percent true. That is the first place people should look. Yeah, I agree.

John: Well, Dave, we better leave it at that. Thank you so much.

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Dave: We knew this was going to happen, didn't we? But it's good. It was fun. And thank you again for having me and let's absolutely do it again because like we said, we could do this all day.

John: Awesome. I'm going to take you up on that.

Before we go, I want to just give you a quick sort of action item or a way to think about making something actionable from this episode. And specifically I would love for you to think about the income formula that Dave mentions. So just to recap, the income formula is that your income for your firm is equal to the total throughput in terms of the case count for your firm multiplied by the average case value for the work that you do in your firm. So in order to start thinking about that for your firm, I'd like you to do a couple of things.

Number one, go back for maybe just a few months, but if you can do it for the whole of last year, that might be great. And just get a case count, how many cases did you finish in your law practice? Don't worry about cases that are in progress. I just want to know the ones that actually got done. And then divide it by your firm's total revenue for that year, and that gets you to a good enough sense of what your average case value is. And this is a way of looking at your practice in terms of that throughput.

Now, if you want to take it a little bit deeper, you could maybe separate income by different practice areas or different matter types and then figure out what the average case value is. Again based on the revenue that came in for that matter type in order to understand what your average case value for that practice area or that matter type is. But I would start with just a really rough sense, just do it for your firm overall. And get a sense of what is my average case value and what is my throughput. How many cases am I actually closing in a year?

And then we can use that information to help you sort of get some impetus and get some incentive to start closing more cases because if you can

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keep that average value more or less where it was before, but you can close more cases in a time period, that's going to cause your income to go up. So hopefully that's a little bit helpful, makes some sense. For more be sure to check out Dave and Larry's book, *The Lean Law Firm*.

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