

Ep #21: You Can't Scale Your Way Out of a Sustainability Problem



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John E. Grant

[The Agile Attorney](#) with John E. Grant

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One of the features of modern life and modern business is that there's all this pressure to grow, to scale, to do more with less. And lawyers and their teams are not exempt, not by a long shot. On the one hand, it makes some sense. We want to leverage our resources, leverage our impact, but growth for growth's sake isn't always the healthiest approach either for your business or for the people in it.

It turns out there are ways to generate profit and create value that don't require you to always be searching for that next growth or next scale opportunity. In today's episode I share the story of one of my clients who thought they needed to find ways to scale their law practice, but discovered that there were a couple of things that were more important and more impactful for their overall success. It was a powerful enough experience that it inspired me to change my business's mission statement to reflect what we learned. 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, sustainable, and scalable 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.

Welcome back to the podcast. In today's episode, I'm going to dive a little deeper into the story of one of my clients and explore the critical importance of prioritizing sustainability in your law practice. But before we get into the story, I want to take a moment to share a recent change I've made to my mission statement, which is directly related to the lessons I learned from working with this client.

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You may have noticed I made some changes a couple of weeks ago to the intro to this podcast, no problem if you didn't. But for years my mission statement has been to help lawyers and legal professionals harness the tools of modern entrepreneurship to build practices that are profitable, scalable and sustainable for themselves and for the communities they serve.

However, my experience with my client, Laura, led me to realize that I had a couple of terms in my mission statement in the wrong order. Or more accurately, it helped me understand that there actually is an order to them. I think when I first wrote the mission statement, I probably ordered the words based on how they sounded, not so much on what they meant.

Working with Laura and reflecting on my experience with other clients has led me to really consider how much the three sort of main things in my mission statement really are steps along a journey to a thriving practice. And my original wording of the mission had them in the wrong order. So, my new order is profitable, sustainable, and scalable for yourselves and for the communities you serve.

And profit comes first. The most important thing is to make sure that your law practice is profitable. And I mean that both in the economic sense and in the sense that at least most of the time, the practice overall should be fulfilling to the people who are working in it, but the economic profit is important. I see a lot of attorneys who are committed to serving their communities, but they're barely scraping by or sometimes they aren't scraping by and they wind up closing their practice to do other things.

So, if you and your team aren't generating profit from your work, meaning there is some money available after you've accounted for all of your expenses, then by definition it's not going to be sustainable and you sure as heck aren't going to want to scale it. Now, the same thing goes for the non-economic sense of profit. I know a lot of lawyers who are really good at

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generating money but they feel like they've sacrificed some part of who they are in order to do it.

Now, part of being an adult is understanding that you've got to make some trade-offs in life, not everything is follow your passion. But work that is emotionally or psychologically draining is ultimately going to run into the same sorts of sustainability problems as work that's draining your bank account. So again, at risk of unintentionally plugging a book although, it's a book that I'm a fan of, you've got to put profit first because without profit, sustainability is impossible.

And unless you've got a really long financial runway from a rich aunt or uncle or some other angel investor, scaling a business that isn't profitable would be crazy.

So next, after profitability, now I've got sustainability. And if you've been listening to this podcast for a while, you know that sustainability is one of my recurring themes anyway. I often talk about it in the context of reducing overwhelm, because running your practice with a red line is sort of inherently unsustainable. And that's no accident, because the concept of sustainability is really core to the lean and agile methodology that I draw from for my work anyway.

In agile, we talk about the ability to maintain a steady, predictable pace of work without burning out and without compromising quality. And it's all about finding a rhythm, a cadence that allows you to deliver value consistently over the long term. And agile principles promote sustainability through some of its practices like iterative work, regular feedback, continuous improvement. And really by breaking work down into smaller, more manageable chunks and frequently reviewing progress for that work.

Agile teams really do make themselves more adaptable to change and are better able to avoid committing to too much work relative to their capacity.

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And this is critical both at a business level and a human one, because we want our people who are usually our most important resource to be able to maintain a sustainable cadence and balance in their lives that prevents the kind of chronic stress or other sort of emotional, psychological things that lead to burnout.

If we go all the way back to episode two of this podcast, you might recall that we talked about one of my favorite terms, which is the honest reckoning with capacity. And the key idea here is that your capacity is finite. No surprise. But it can be hard for us to recognize that there is in fact a limit to the amount of work that you and your team can realistically handle in a given period of time.

And to make good decisions about how you manage your workload so that you can deliver value in a smooth and predictable way, you need to accept your current capacity and try to define it as it is, not as you wish it were, not as you want it to be. Then the other thing happens because once you engage in that honest reckoning with capacity, you have no choice but to take the next step, which I often call the brutal assessment of priorities. And it's brutal because inherent in the act of prioritizing one thing is the fact that you've just deprioritized everything else.

And as humans, we hate deprioritizing things, but of course, that's also part of being an adult. Recognizing that you've got to make hard choices around what's important and what's less important, even if we don't always get it exactly right.

So, with that in mind, let's talk about Laura and how her journey helped me realize that you can't scale your way out of a sustainability problem. And let me start by saying, Laura has given me permission to talk about her story, although, as with anything I'm sure I'll probably tell it a little differently than she might. So, Laura is a family law practitioner based in British Columbia, Canada. I think I might have previously referred to her as being in the

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Pacific Northwest, but generally she's in Cascadia where we all have sort of a strong affinity for another.

When Laura first reached out to me, she was interested in some of the flat fee and limited scope family law work that I've been helping with in my capacity as board president of the Commons Law Center and some of the other work I've done with other clients of mine. And one of the things that I think Laura and I really share is a very strong access to justice spend. We're trying to improve access to legal services for everyday people. And it's one of her goals, to make legal services affordable for everyday folks in her community.

And so, another way of thinking of the sustainability goal is that Laura was looking for ways to define and deliver her legal products and services in ways that might be more scalable than the traditional billable hour approach but that would also be more affordable for her target audience.

One of the things I've learned in doing my work, though, is that regardless of how good an idea it might be to change things up in somebody's law practice. It's really hard to do any kind of change work, even improvement work when the resources you need for that change are already feeling like they're running on the hamster wheel because of how busy they are. And it was pretty clear to me after a couple of conversations with Laura that she and her team were extremely busy.

So, one of the phrases I use a lot with my clients is that before we try to make any changes to your law practice we need to take the general craziness down from a rolling boil down to something more like a gentle simmer. And doing that requires getting a better handle on why things are so darned busy to begin with. And with Laura, we started with a simple case count. What are all of the in-flight matters that are taking up your and your team's finite capacity?

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And then inside of all of those matters, we asked the second question, what are the sources of demand? Is it the actual legal work? Is it the communications? Is it tracking and overhead? Whatever it happens to be and it's almost always some combination of D, all of the above. In Laura's practice, the total case count was right around 65.

As we were doing that count, however, she stopped me to say, "Not all of those cases are created equal. Some of them are what I think of as red file cases that take up a lot more of my time and attention than the others. And I think we should count those at two." So that's what we did. We came up with a weighted case count of 77, 65 actual cases, 12 of them were red file cases, so we counted those twice.

Now, if you go back to some of my previous episodes where I mention Little's law, I know I talked about it in episode five and I think again with Dave Maxfield in episode eight. You may recall that Little's law and its close cousin, the Kingman formula, Tell us that the more work you have in-flight in a system, the longer it will take that system on average to complete a single unit of work.

In other words, the more a system's capacity is used or the higher its utilization rate, the less efficient it will be at delivering completed work product. You can have really high resource efficiency, but that often leads to extremely poor flow efficiency. Or, to put it another way, you have lots of activity in your practice but not a lot of progress. Literally what happens with that hamster wheel, it's moving but nobody's going anywhere. So, once we knew what the status quo was, what is the existing case count, I asked Laura, "What would an ideal case count look like?"

So, in other words, what's the number of weighted cases you feel like you can reasonably handle without feeling like you're having to make diving catches all the time. And her answer surprised even me, it was 40. And also, she said, "No more than five of those could be red file cases." So, we

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were essentially talking about cutting her case count in half. And that actually raised a little bit of a red flag for me in terms of keeping the practice profitable.

So, we backed up and did a little bit of financial analysis on that number, asking the question, “Would 40 weighted cases still produce enough revenue to keep the firm running at its current profitability rate?” And in asking that question we learned a couple of things. Number one, Laura was actually willing to trade some of her profit for less stress and a better feeling of control over her practice. So, taming overwhelm was actually a higher priority for her right now in the moment than making more money.

Now, she didn't want to lose money, but she didn't necessarily feel like she needed to be making more, at least for now. But the thing that we also learned when we ran some of the high level numbers is that she shouldn't have to make that trade, and especially for her hourly work, because the demand for her time and attention already exceeded her capacity. So, removing some of the excess demand wouldn't really have an impact on her bottom line.

You can't put more water in a bucket than the bucket can hold. Her capacity was full. She was using it all. So excess demand for hours wasn't really doing her any good. What's more, we determined that Laura might be able to actually increase her amount of billable time because fewer cases overall meant that less of her total capacity was going to get sucked up by the non-billable administrative overhead work that she felt like was taking up so much of her day.

So, with the expectation that this work was not going to be detrimental to her profitability, we developed a three-part strategy for Laura to reduce her caseload based on these concepts from episode five and this notion of close the closable. And I should say we had already built a kanban board for Laura. And so, we had the cases on the board and we kind of knew

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where they were in her overall process. And that really helped us in identifying where the opportunities to close cases were.

So, step one was to look at the right side of the board and identify cases that were really close to being done, but maybe just needed a little push to get it all the way across the finish line. And this is really common. I've talked about it in other episodes where we have cases where we finish the bulk of the legal work, but there's just some administrative stuff that needs to happen to wrap it up, to close it in our systems, to get that disengagement letter out. Or otherwise just confirm that we can get it off of our plates.

So that was a big chunk of the close the closable work that Laura and her team were able to do. The next thing we did is we actually looked all the way at the other end of the board at clients that were relatively new in the process. And specifically, we looked for clients that were being non-responsive or otherwise sort of not engaged in solving their own problems. And we came up with a strategy to basically send a fish or cut bait message to those clients.

We said something like, "Look, we know that you've engaged us as your lawyers but we asked you to do some homework, to do some other work, to get us the information we need to do the legal work for you, and you're not doing it." And so, we came up with a hard deadline and said, "If we don't get the information from you by a certain date, then we're actually going to disengage you." The third thing we did, and this isn't so much about closing the closable, but we got a lot more selective about taking on new cases.

I've talked about this previously as an intake pause. And it really is about when you wind up defining what your total carrying capacity is, then you need to do that drum buffer rope exercise that I've talked about, when I talk about theory of constraints. To make sure that you're not letting new cases in the intake door until something goes out the outtake door and really until

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enough things go out the outtake door that new intake isn't going to continue to put you over the capacity that you've defined for yourself.

And so this close the closable really was the theme for Laura and her team over the next several months. And I have to say, they executed the strategy beautifully because I think it took about three months for them total to get their weighted caseload down from that 77 number into the mid-40s. And she hadn't quite hit her target of 40, which was a made up number to begin with. And she still had a few more than five of those red file cases, which was the other part of her goal, but the overall improvement was substantial.

Most importantly, the impact on Laura's stress levels and her work life balance was kind of remarkable. When we talked as she was approaching that mid-40s number, she was saying things like, "I can feel like I can make a plan for my day and have a strong expectation that I'm going to get everything done that's on that plan before I leave work." Another thing she said was, "I feel like I can finally be proactive on some of these cases instead of feeling like I always have something to catch up on."

And those feelings, the feeling that she was getting through her work, or that she could actually get proactive, those were really powerful. But here's the really interesting part is, when we started talking about how Laura might be able to use some of her newfound capacity to work on ways to scale up her offerings, like those flat fee products or other ways of packaging her work, Laura actually realized that scale wasn't what she was looking for.

In fact, we both realized that Laura's initial inclination was to try to scale her way out of a sustainability problem. And that by focusing on sustainability itself in a way that didn't sacrifice profit, we'd actually accomplished her primary goal in a way that she wasn't initially thinking of.

Instead, what we both realized was that Laura needed to actually work on running her practice in a sustainable way for a while. Partly to sort of reset

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her nervous system away from this notion that she needed to be working harder or even just working all the time. And developed this new notion that her business model is a sound one and she really only needed to put in a sufficient amount of work to sustain the model.

And I should add here Laura has a couple of young children. And at one point she let me know that she and her husband had recently purchased a small boat for cruising around the strait of Georgia between mainland British Columbia and Vancouver Island. And once it became clear that Laura really needed to sort of sit with his newfound sustainability for a while, I told her my sincerest wish for her was for her and her family to make some great memories out on the water this summer. And if you've never spent any time in the summer in coastal British Columbia, I can tell you, it is absolutely spectacular.

Now, the other thing we needed to come to terms with though, was that Laura was working within her capacity. Meaning with a lower in-flight case count didn't necessarily meet her goal of improving access to justice or access to legal services for the communities she serves, or so she assumed. But one of the things that Little's law teaches us is that by managing capacity in a way that prioritizes throughput, meaning you're accelerating the speed at which work gets done by working on fewer things at once. You can actually increase the number of completed projects you finish over a longer time period.

This is why we meter the on ramps for busy highways, it's not about rewarding people who get on the freeway first. It's because everybody is going to get home faster if we control the utilization rate of that highway. There's fewer cars on the freeway at once, but over the course of a couple of hours, more of them are getting where they need to go. And I'll admit that we haven't quite borne that out with data in Laura's practice yet.

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But at least in theory, she and her team should be able to help about the same number of people, if not a few more, over the course of a year, even if they're working on fewer matters at once. And finally, I'll say, Laura is not giving up on the idea of developing a more scalable practice, more scalable products and services inside of her practice. But she is giving herself permission to not feel like she has to do it right now.

She's got a lot of her career ahead of her and it's really, truly not on her to solve the access to justice gap all by herself. I'd argue that it would be a lot worse for access to justice overall for Laura to burn out and wind up either taking a job where she doesn't have to worry about all the administrative work, but also doesn't have as much control over her client mix. Or maybe wind up leaving the legal profession entirely as so many lawyers tend to do.

So, it's perfectly reasonable for Laura to take a few months or even a few years and just run her practice in a sustainable way. So, like I said, Laura's experience and my experience working with Laura has really crystallized for me the importance of prioritizing sustainability over scale. Because if you try to scale in an unsustainable way, you're only going to accelerate that day of reckoning where the craziness of it all catches up with you in one way or another. And who knows how it's going to hit you when that day comes.

Alright, I want to offer my sincerest thank you to Laura for allowing me to tell her story. And hopefully my recollection of things tracks pretty closely to yours. We can chat about it some more if you want to. But for everybody else, as we slide into the summer season, I hope that you're able to find ways to turn the roiling boil of your practice into something more like that gentle simmer. If you haven't already tried it, I will suggest that capping your total in-flight case load is a really good place to start.

But regardless of what you try, hopefully you have some equivalent of Laura's boat, something that you can spend some time doing in a way that

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gives you fulfillment and recharges your batteries a little. There's one other takeaway and that's the idea that your mission statement can and should evolve as you improve your understanding of what you're trying to achieve with your practice, with your business. My tweak to my mission was pretty small, but I think it reflects an important insight and it's definitely going to impact how I approach my work with clients going forward.

And if you don't have a mission statement, or if you don't have one that you like, I'll just say, helping lawyers craft meaningful and impactful mission statements is one of my favorite things to do. So please don't hesitate to reach out to me if you could use a little help with that. That's it for today's episode. Talk to you again next week.

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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