**Ep #91: Broken Systems, Not Bad People:
How Blame Breaks Your Law Practice**

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With Your Host

John E. Grant

The Agile Attorney with John E. Grant

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John: Have you ever caught yourself thinking that client is just lazy, or my paralegal just isn't detail-oriented enough, or maybe my opposing counsel is a jerk? It's human nature when someone comes up short of your expectations to want to chalk it up to a personality flaw. But more often than not, those behaviors are shaped by that person's context, not their character.

In today's episode, I'm unpacking the psychology of the fundamental attribution error and showing how many of the breakdowns that we blame on people's motivation or character are really just symptoms of broken or unclear systems inside of your law practice.

You're listening to *The Agile Attorney Podcast,* powered by Agile Attorney Consulting and GreenLine Legal. I'm John Grant, and it is my mission to help legal professionals of all kinds build practices that are profitable, sustainable, and scalable for themselves and the communities they serve. Ready to become a more Agile attorney? Let's go.

So, this week I want to talk about something that I kind of keep hearing from a lot of my fellow law practice management advisors, and I think it's kind of baked into the profession's conventional wisdom, maybe even business conventional wisdom, that around the importance of hiring the right people to make your law firm work.

And that's not wrong, but I think it leads a lot of law firm owners to over-invest in the hiring process and filtering things and stuff like personality tests and skills assessments, and then actually under-invest in the things that will actually help their law practice more over the mid to long term, which is making sure that we are creating the right systems that will help people succeed in doing the work inside of your law practice.

And there's a great quote from management guru W. Edwards Deming, who I will talk more about in a minute, but what he says is a bad system will beat a good person every time.

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And you've heard me talk a lot about human cognitive biases in the past, and I think this tendency to want to really overemphasize on getting the absolute perfect right people into your practice is actually attributable to one of those, and that is the fundamental attribution error.

And this is a cognitive bias first coined by psychologist Lee Ross back in the 1970s. It's based on some earlier work by Professor Fritz Heider, and it basically is our human tendency to explain other people's behaviors by attributing those behaviors to internal traits like laziness or disorganization or a bad attitude, as opposed to situational factors like unclear priorities or overloaded systems or conflicting demands.

And so, there's some real-world examples of this, right? If someone cuts you off in traffic, the first thing that comes to your mind is that person is a jerk. But if you cut someone else off, it's often something like, well, I didn't see them, or I was running late. I was justified. And that's actually the other half of this fundamental attribution error, is we don't do it to ourselves. We only do it to other people.

So, this is a little bit the opposite. I've talked about the optimism bias, where the optimism bias is something that we tend to do to ourselves, but we see other people more clearly. This is the other side of that coin. We tend to jump to conclusions about other people, but we tend to excuse ourselves when we have bad performance in one way or another.

And I think there's a lot of places where this can show up inside of a law practice. So, I talk a lot about client homework and making sure clients are engaged, and I think there is often a tendency amongst attorneys and other legal professionals, if a client is not being as responsive as you would like or they're not turning something around, to jump to the conclusion that well, maybe they don't care so much about this or maybe they're disorganized, they're lazy, whatever it happens to be, where the truth is they maybe didn't understand the instructions you were giving them or they maybe don't have good tools for doing the thing that you asked them to do.

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They don't quite understand what it is you're looking for. I see this in the sort of Reddit paralegal posts all the time, which is for those of you that have practices where you need actual documents, like bank statements, clients love to just take a screenshot of the bank statement. They don't actually go into their system and download the thing, and you need the actual document. Rules of evidence apply.

But the client doesn't know anything about the rules of evidence. They don't understand unless you explain it to them, unless you give them the assignment in a way that helps educate them about the importance of the particular format. And so, we might think, oh, my client's an idiot or my client's lazy or whatever it happens to be, and that's really not the case, right? We probably have failed them in some way in the way that we have created the assignment.

And the thing about this cognitive bias is we do it kind of even when we know better, right? This is really ingrained into who we are as people. And the actual study by Lee Ross kind of helps highlight that. So, they did this thing, it was at Stanford in the 1970s, and they took a bunch of participants, and they kind of had three categories. Initially, they set up this sort of phony quiz show type thing, a game show situation, trivia. And they took a group of people and said, we're going to put you in the audience. And then for the remaining people, they split them evenly into people who were going to be quizmasters and people who were going to be contestants.

And now, here's the thing that's interesting, right? The quizmasters were given the instruction to go write 10 trivia questions based on things that they knew that they thought would be hard for the contestants to answer.

And the contestants obviously were set aside in a different room while the quizmasters were coming up with these questions. And so then they ran this sort of phony quiz show in front of the audience, and lo and behold, the people who were the quizmasters would ask these questions and sometimes the contestants would get them, but more often than not, the

contestants would struggle to get the right answer because the whole task was to come up with questions that might be hard for the contestants.

Now, after the show, everybody was asked to rate who was more knowledgeable about trivia in general, the quizmasters or the contestants. And the thing that happened is everyone in the audience, not everyone, but the majority of people in the audience, as well as the majority of the contestants, tended to say that the quizmasters were more knowledgeable than the contestants were. And they thought that these were just attributes of the people. But the reality is that the quizmasters had this incredible structural advantage in the experiment. They got to come up with the questions. So, of course, they appeared more knowledgeable. They were giving questions around things that they had knowledge about.

And the quizmasters on the whole actually recognized this, and so they kind of knew that they had this structural advantage. But the audience and the contestants did not. And I think even after a stretch of time, they continued to sort of have these perceptions that the quizmasters were smarter students than the contestants, which is a little bit absurd because we're talking about Stanford after all.

But here's the thing, right? This is baked into who we are. It is part of some ancient evolutionary strategy that probably served us well, at least in terms of passing our genes on to future generations, but it's something that I think really hinders us in our relationships and even our ability to run our practice as well today.

I'll give you one other example where I think this shows up a lot in law practice for those of you that regularly deal with opposing counsel, and it's easy for us to get frustrated with opposing counsel when they don't respond, when they maybe give us flippant answers, or maybe even they're a little bit terse in their responses with us. And no doubt, there are opposing counsel and lawyers in general who are jerks.

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I'm not saying that that isn't a personality type that exists, but as much as anything, I see a lot of the shorter responses that might come from an attorney as attributable to that attorney's practice being overloaded with work, right? Which is the thing that I see in almost every practice I encounter.

And so, that other attorney may not be a jerk. They may just be as burnt out as you are in terms of having taken on too much work into their system. And so, they're just trying to do the bare minimum to move the thing down the road. And it comes off as jerky or tense or short or whatever.

But I want to go back to this thing that I hear from again my fellow law practice advisors around, you know, when things aren't going well in your practice, we have this tendency to say, well, maybe I just don't have the right people or I don't have the right people in the right role, things like that that come up. And again, there's some truth to it, but I still think that there are a lot of things that you can do from an engagement standpoint and from a systems design standpoint that will help make the role successful, regardless of what people are occupying that role at the time.

And I actually want to bring back the concepts of W. Edwards Deming for a minute. You've heard of the 80/20 rule, the Pareto principle, right? Deming actually had a slightly different rule that was kind of, and he didn't think of it this way, but it was the 94/6 rule. And what he said is that when troubles are happening inside of a business, a system, a workflow, whatever, that 94% of the blame belongs to the system, which is to say the people who set up and designed the system or who failed to design the system and just sort of let it evolve organically.

And that only about 6% of the problems were attributable to the actual people operating within the system. Which is to say that the vast majority of the problems you see in your law practice, whether it's stretching on deadlines, dropping balls, client frustrations, it's not so much about the people inside of your practice being bad, it's about the systems not being

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designed as well as they need to be to achieve the outcome you're trying to achieve.

And I know this was just a week ago, but Tim Lennon actually captured this really perfectly in Episode 90 last week. And what he said, and this is a quote, is, we want folks to have clarity around what good work looks like. And that's why negotiated working agreements is so powerful. Instead of assuming that everyone's on the same page, you actually put people on the same page, and that reduces confusion and creates more room for accountability.

So, if you didn't listen to that episode or just to do a quick recap, the core theme last week was this idea that these negotiated working agreements, working with the members of your team to design what the system should look like is a far superior way to achieve the outcomes you're trying to achieve than what most of us do, which is these top-down policies and procedures and SOPs and other things that maybe are really good at the actual instructions, the how and the what to do, but they don't always do a great job of capturing the why.

And even if you try to capture the why on a top-down basis, that's still not as effective as actually discussing the why with your team and making sure that they're engaged with it, and then letting them help come up with the what and the how that needs to happen once you have come to that common understanding around the why.

I also talked about elements of this all the way back in Episode 22, which is about how to write effective law firm policies, although I really need to revisit that episode, I think, in light of the evolution that I've been having, again from my discussions with Tim and others around how to co-create these policies as opposed to how to just write and give them a top down approach.

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Now, of course, the one other reason that we like to blame people as opposed to blaming systems is that we think, or at least our brains sort of trick us into thinking, that dealing with people problems is somehow easier than dealing with a system redesign or system problems in general.

And I think maybe that is its own sort of flawed way of thinking. I don't know if it's an official human cognitive bias or anything, but I don't think anyone would argue with the notion that hiring and training and getting people up to speed is expensive. It takes time, it takes investment. And so, when you're investing in systems that are designed to get certain parts of your practice or functions within your practice to operate in a consistent and predictable way, which I talk about all the time, regardless of who is the operator, then I think over time what you'll find is you don't have to invest quite so much.

Turnover is natural for whatever reason. If you bring new people in, maybe you're growing, and you need to have additional resources, be able to do the things that parts of your practice are trying to do. When you've got those systems right, then that process tends to be quicker, and it tends to get people up to a quality output a lot sooner.

This is actually something, it's an objection that I sometimes hear when people are debating whether or not to hire me to come in and help them with some of their systems design, is they'll say, well, I'm gonna be bringing in this new person and I don't want to have you do this work until they come on board. And on the one level, I get that, but in the big picture, number one, if we're putting better systems, processes, procedures in place, then that person is gonna come on board in a better way than they would if we waited to put those good systems in place until after they come on board.

The other is, you know, it's sort of this false thing. It's not like I'm going to come on and fix your entire practice in a month or two, and then you can hire someone, right? Or if you hire someone and then bring me on too, that together we're going to fix your practice all at once, right? This is something that takes time, and it's as much about changing the mindset and the

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culture within your practice as it is about the outputs, right? The actual policies, procedures, system design, etc.

And the thing that I hear from my longer-term clients all the time is that once we've started to put these things into place, right? Often, almost always for me at least, it's setting up a Kanban system. It's getting clear about what are the stages of work, and then what are the quality standards, the definitions of ready, and definitions of done that govern each of the phases of that work. And then eventually we might get down to a more granular level around specific tasks or to-dos that need to happen. But that's kind of less important than these high-level quality things.

But once a law practice puts even some of those things into place, what they tell me is that they have a much easier time onboarding new people into their firm, into their practice. Number one, because we've organized specific parts of the system in a way that are easier for people who are new to that system to wrap their heads around. Also, because one of the other benefits of this Kanban system is people get a much better understanding of the big picture of the practice.

So even though they may be hired to perform a specific small set of functions, they get a better perspective about how those functions fit inside of the larger work of the firm, right? The client journey, the matter flow, whatever it happens to be.

So with that, I will give a couple of plugs for myself and the things that I'm working on. One of them, you keep hearing me talk about, is greenline.legal. And this is the Kanban for lawyers setup and software that I wish had existed for the last 10 years, as I've been working with clients on this stuff.

And we're really focused on going just beyond sort of cards and columns as an interface, which a lot of legal software is doing today, and really making sure that we're using the core tenants and some of the slightly more

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advanced, but pretty actionable parts of the Kanban method to make sure that we're engaging in systems improvement and process improvement and not just sort of throwing things into a visual interface, but letting the chaos continue.

We are set up to support a lot of different practice types, but we're really focusing a lot of our templates and our base systems right now on estate planning and administration attorneys. And so, specifically if you are in estate planning, I urge you to go to greenline.legal and hit that request a demo button because we would love to show you what we're building.

We are starting to build out templates for a few other practice areas as well. We're doing some work with immigration, we're doing some work with family law, and we're doing some work on litigation workflows. So, while we don't have things quite as polished on those areas, if you would like to be part of the early adopters and that's your practice area, please go ahead and set up a demo for those practices as well.

Or if you're not sure if software is the right play for you yet, or you just sort of want to talk about better systems, systems improvement, specifically Agile lean systems improvement, go ahead and set up a discovery call with me. You can either shoot me an email at john.grant@agileattorney.com or go to my website at agileattorney.com and look for that book a discovery call button.

As always, this podcast gets production support from the fantastic team at Digital Freedom Productions, and our theme music is Hello by Lunara. Thanks for listening, and I will catch you next week.