

Ep #34: Short-Term Efficiency Can Hurt Long-Term Goals



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John E. Grant

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One of the common anti patterns I run into in working with lawyers and law practices is people who are constantly looking for little efficiencies to try to improve particular parts of their practice or parts of their legal workflow. In today's episode I'm going to explain why sometimes finding those short term efficiencies, even if they work in the short term, can actually cut against the long term productivity or the overall flow of work through your practice. Ready to become a more agile attorney? Let's go.

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

Hey there, welcome back to the podcast. So, this week I want to build on some of the things I talked about last week with respect to giving space and helping clients really have the time and the ability to articulate their specific reasons for why they're reaching out to you for legal help. Getting to their why statements, their motivations, their purpose statements for what inspired them to reach out for help in general. And then maybe specifically reaching out to get your help with respect to whatever legal matter it is that they're dealing with.

And if you'll remember, one of the things I cautioned against last week was using your experience and expertise and basically your knowledge of your particular area of law to jump to conclusions or make assumptions about why any individual client is reaching out to you for help. And I talked specifically in the context of doing that initial client intake or consultation.

But I think it can be true almost anywhere where you're dealing with a client that, when we have expertise about a particular type of law or type of problem that we help people solve, it's easy to start to recognize patterns

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and use heuristics to try to make assumptions about what those people are looking for. And like I said last week, that can be important, it can be useful. But it's also denying the client or the potential client the ability to engage more deeply with you.

And specifically, as I was listening back, I was reminded of some specific objections that I have heard when I have talked about this in the past with people. And specifically, it's that "this is fine," "but my initial consult, it's limited in time." "I am only giving them half an hour and I need to hit on the important things that they need to know about me and the process for dealing with their problem in that half an hour." "I don't have time to listen to their whole life story." "It's not efficient for me to listen to that." And I get that.

I understand that when you do a particular thing, you probably do have similar versions of similar stories coming up over and over and over again and it can feel a little tedious or unproductive to listen to that. You know kind of where this person is, where they're coming from, what they're trying to accomplish and it feels like it's more efficient to just cut to the chase.

But I want to push back on that a little bit because while I could agree that it is maybe more efficient within the context of that particular half hour or hour, whatever it is that you give, I'm not sure that it's more efficient. In fact, I would argue that it is decidedly less efficient over the lifecycle of your relationship with the client. And this gets back to a concept that I think I've talked about before. I don't remember exactly which episode, but it's the difference between localized efficiency and systemic efficiency.

And one of the anti-patterns that is really common in legal practice and really any type of professional work is that we tend to be a little myopic. And we tend to only see the efficiencies that are kind of right in front of us and we're always trying to maximize our ability to do the next thing as quickly or efficiently as possible.

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Without realizing that, oftentimes being efficient in those localized scenarios, whether that's local in terms of space or time or both, can actually run counter to the flow of work throughout the entirety of whatever it is that you do, your case, your matter, the help that you're giving to your particular client. And this goes back to the theory of constraints, which is episode three. I talk about it all the time.

But it's basically in any system, there's always going to be a single bottleneck that is constraining the flow of work through your entire system, through the entire flow of work through your processes. And in my experience, working with all the firms that I've worked with through the years, one of the most common bottlenecks in a law practice is client homework. Getting information or otherwise getting activity back from your client that you need in order to move the rest of the matter forward.

And if client homework or client engagement is your bottleneck at different phases of your practice, whether it's the information you need to draft a particular document or set of motions or pleadings, or whether it's getting the client to review something that you've already created, the key to making sure that you get that back in a timely fashion and also that they do good quality work for whatever it is that they're supposed to do, is to help make sure that the client is engaged.

And that they are really seeing themselves as a key part of the outcome that you're trying to help them achieve and that they're not just relying on you to do all the work. One of the things I talk about and in fact, well, I'll tell you a story about my time in big law.

And my time in big law was as the head of legal project management for an Am Law 150 law firm. And there was this kind of funny pattern that emerged within the firm. I was on the firm intranet as the legal project management person. And it was really common for the lawyers in that firm in having discussions with their clients to get asked for legal project

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management help. It was kind of a buzzword, it maybe still is. I don't pay as close attention to big law, corporate law as I did back then.

But the ACC, the Association of Corporate Counsel, was very specifically recommending to in-house lawyers that they ask their law firm partners to use legal project management because it helped make things work better. It was more efficient in the long term. It ultimately was a little bit cheaper. And so, these lawyers would get pushback from their corporate clients and they'd call me up, and sometimes it would be an email.

Sometimes it would be a phone call and they would say, "Hey, the intranet says that you're the legal project management guy. And I've got a client that says that we've got to do legal project management on this case, this matter and I need you to do your thing." And I would always pause for a minute and sort of push back and really ask the lawyer, "So why is the client looking for legal project management?" And different lawyers engaged with it at different levels.

I don't want to make it sound like everybody was clueless to it, but it also wasn't uncommon for people to say, "Well, it's just a buzzword. It's the thing that clients are doing now and we've got to jump through this hoop. And last year it was a different hoop, and next year it'll be another hoop still." You can kind of imagine sort of the old salt lawyer that has maybe got a lot of experience and they're not entirely wrong. These flavors, they do cycle through, but whatever it was, they were sort of dismissive of the concept.

But in any event, I would always say a couple of things to that lawyer. And one of them was, "Well, I am happy to work with you on this legal project management and set up a project plan and communication guidelines." And all the things that I knew how to do in the context of that work. But I wanted to make it clear to the lawyer that this is something that I need to do with you. It is not something that I can do for you. That I'm not the expert in the matter, and even more, we actually need to do it with the client.

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We need to engage all of the people that are involved in solving whatever problem it is that they're trying to solve. So that we can manage it like a project and use the tools of modern project management in order to get a better outcome, a faster outcome, a cheaper outcome, maybe some combination of all three for this particular matter. And as you can imagine, that didn't always sit well with the lawyers. I'm too busy for this. I don't want to do this thing. And I get it, but I held pretty firm that it wasn't just something.

And for me personally, it wasn't something I was going to gloss over. I feel passionately about the role of project management and process improvement in improving outcomes for certainly the clients of legal work, but ultimately for the lawyers and the other legal professionals as well. But that's not what this lawyer was looking for. They wanted a check the box activity.

The other thing that I would say is, and this is related to that doing things cheaper part of it, project management is about doing the work more efficiently. But that efficiency really comes from getting things organized so that we prevent a lot of rework. And frankly, the reality in a lot of hourly billing practices and certainly this particular practice was that rework is still billable work.

Getting back up to speed or revising documents or all of the little inefficiencies that are just inherent in kind of typical law practice were adding up to point twos and point threes that wound up on the client bill. And that, number one, generated revenue for the firm. Number two, it helped the lawyer get to their billable hour targets faster. It all was something that was subversively useful to the lawyer and to the firm.

And I wanted to make clear that by using legal project management, we were going to actually eliminate some of that. And I wanted to make sure that the lawyer understood it and to some extent was okay with it. And I always made it clear, part of what you're asking me to do is sort of reach

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into your wallet and pull a little bit of money out of it because you're going to have to go find the next matter to work on. If we can do this work that would have normally taken you 100 hours and we can do it in 90, that's a 10% sort of reduction on your billable hour targets or your revenue goals, whatever it happens to be.

And not surprisingly, a lot of lawyers in the firm, when they heard that, said, "Well okay, let me get back to the client and I'll tell them that we've talked and we'll figure out what next steps are." And then I never heard from them again. And maybe that's on me for being too blunt or not understanding the culture of that particular law firm very well, which I will readily admit I do not understand the culture of that law firm. It was a very strange place to me. But again, I wanted to be clear as far as what I was trying to accomplish and what I thought that my tools and methods were helping to accomplish.

And I also did make it clear with the lawyer that, "Look, ultimately this is going to improve your relationship with this client. So, while you might lose 10% of your hours, revenue, whatever, in the short term, on this particular matter, this is going to improve your relationship with this client. Hopefully increase the stickiness of that relationship. And so, it's going to make you and the firm more likely to get more work, repeat work from this client over the long term."

But again, one of the shortcomings of the hourly billable hour targets model is, it doesn't care about the long term. It really is very short term focus. I have this target, I have this goal and I need to reach this goal or else things happen that I don't want. I make less money, or if I miss the goal by too much, then I've got to deal with questions from the partner committee or the compensation committee or whatever else happens.

But that's my point, is that when you look for these local efficiencies, these short term efficiencies, you could be cutting off the longer term benefits from different sorts of behaviors. And maybe in the moment you're inclined not to care. We care about what's right in front of us, but we want to build

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systems and build tools and build practices within our practice that are going to help us work on the longer term gains, even if it feels slightly inefficient in the short term.

I'll give you another example and this sort of speaks specifically to the engagement process and it is a blog post from frankly, a long time ago now. And it's written by a guy named Sam Glover who's one of the founders of Lawyerist and I love Sam. This is a reflection of where Sam was in his understanding and his journey at the time. Maybe at some point I'd love to get Sam on the podcast and maybe we can sort of chat about whether he still feels how he felt when he wrote this post. But the subject of the post was, why are lawyers so expensive? And again, way back when Sam wrote this post, his response was this and I'm going to quote.

"After a client signs a retainer with me, I look them in the eye and tell them, 'Okay, you don't have to worry about this anymore. Your problems are now my problems.' It's just a thing I say, but it's a true thing I say. My clients go home and sleep soundly for the first time in weeks or months. I go home and think about legal issues all evening. At night, I dream about my clients' case. Sometimes I wake up in a cold sweat and pull up the scheduling order on my phone, convinced that I blew a deadline. When I'm at the playground with my kids, I check my email in case I get something from opposing counsel or the court. When I go to dinner with my wife, I talk about hearings and depositions." And that's the end of the quote.

A few things about it. Number one, I think that's pretty common. I hear things like that from lawyers all the time to this day that my job is, when a client signs me up and they lay down their gunny sack of problems. My job is to pick those problems up and sling them over my shoulder and carry the problems for the client.

And I'm going to ignore for now the latter parts of the quote that are pretty indicative to me of the fact that at the time, Sam maybe didn't have the right tools and systems in place to allow him to have confidence in the status of

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his matter. So that he was waking up in the middle of the night to worry about things instead of really knowing that, okay, my tools and processes and procedures are such that I don't have to wake up at night to worry about that.

So again, setting that aside. The issue that I have with Sam saying, "Your problems are now my problems and you can go sleep soundly while I take all of this worry and put it on my shoulders." Is that it's actually a disengaging statement. It's a disengaging premise where you've now sort of given this idea to the client that I am the only person that is responsible for making sure that you get the outcome that you're trying to achieve through this legal matter. And you don't have to worry your pretty little head about it anymore.

And imagine, once you've given the client that message, when you come back to them later and say, "Okay, I need this chunk of information from you. I need these documents, these financial statements," whatever it happens to be, part of what they're saying in their minds or maybe not saying, but what they're experiencing is, "well, gosh, that's a mixed message. I thought you told me you've got this. You're telling me that I just cut you this big old check, and now I still have work to do. That's not fair."

And they sort of disengage. They drag their feet around it or they don't fully understand why it is that you keep coming back to them and maybe even are getting frustrated with them for their lack of ability to produce the thing that you want. And it's largely because that's the message you gave them, again, using Sam's example.

And like I said, my experience is that that client homework is almost always one of the most substantial bottlenecks in the flow of work for any law practice. It's where work gets stalled. It's where it gets stuck. I'm not saying it's always the worst bottleneck, but it is always a leading candidate.

The other time where it makes a difference is when you have drafted your documents and I mentioned this already, whatever it is that you need the

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client to look through it and make sure that you got things right or that they're willing to stand by the statements that you've made on their behalf in whatever document it happens to be. Again, if the client's like, "Well, wait a minute, I pay you so that I don't have to worry about this. And now you're telling me that you need me to do things. Well, that doesn't compute. I'm not sure why you're bugging me. I thought you had this."

And so, the better practice, in my opinion, is to do what I was doing with those big law attorneys and try to give messaging to the client around the idea that this isn't something that I'm going to just do for you. It's something that we're going to work through together. I'm in it with you.

And if you go all the way back to episode six where I talk about what clients really want from their lawyers. You'll recall that one of the main emotional things or sort of social emotional things that people are looking for from their legal professional is a sense of consortium. Someone actually understands their problems and is in it with them. And not just a transactional relationship that this person is doing it for me.

And bringing it all the way back to what I talked about last week and getting to understand what a client's purpose and values and their why statements around the particular things they're trying to accomplish. You understanding and giving them the time and space to express those things is really one of the things that's giving them that sense of consortium. And the alternative, in my opinion, to Sam's formulation that I'm going to basically carry this gunny sack of problems on your behalf is a different sort of messaging.

Where we say, "Okay, go ahead and lay down your burden. Dump your gunny sack, but instead of me picking it up and carrying it for you, what I'm going to do instead is go through it with you and we're going to unpack what's going on here. And there may be some of the components of your problem set that I, your lawyer will pick up and carry on your behalf because I have the tools and the knowledge and experience to do that.

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There are going to be other things inside of your problem set that I am not going to take on, that you are actually going to have to do and that some of those things you're going to have to do so that I can do my work."

And then ideally you might also find a few things that you can try to jettison, assuming you can convince the client to do that, which is not always easy. But again, the idea that I want to get across is that if you give the message, the seemingly efficient message, if you're saying, "Hey, rest your head, don't worry anymore." It's a great way to end the intake or end the client conversation and maybe get them to feel better about the rate that you're charging and that's okay.

But if you do it in that microcosm of, my goal is to get this person off the phone and quit bugging me about money. That can have these long term impacts on their level of engagement with their matter and your ability to help them with their matter throughout the course of the work that you're doing. So, my challenge for you, or my encouragement for you is, beware of these little things that you might be doing in your practice that are helping you be efficient, or at least you think they're helping you be efficient in a particular situation, a short term scenario.

And question whether they might be working against you in the long term. Or flipped another way, think about the long term goals of your work and your representation with a client. And try to be intentional about designing systems and messaging that is going to really help you engage the client and do that work effectively over the entire lifecycle of your representation as opposed to just trying to get certain things done really quickly so that you can move on to the next thing.

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

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john.grant@agileattorney.com.

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