

Ep #48: The Obvious Switch to Value Pricing with Jonathan Stark



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John E. Grant

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Hey everyone, this is John Grant, and you are listening to *The Agile Attorney* podcast but in a minute, it's not going to feel that way because today I'm running an episode of the *Ditching Hourly* podcast hosted by the fantastic Jonathan Stark. And his incredible radio voice makes me feel a little self-conscious about my own. If you don't know Jonathan and his work, I highly recommend checking out the *Ditching Hourly* podcast, which features attorneys and other services professionals on a regular basis.

I am also a big fan of his book, *Hourly Billing is Nuts*, which is a great primer on the concept of value pricing. Kind of like my past guest, Clarke Ching, who takes some of the complex concepts around theory of constraints and makes them more accessible and digestible in his books about bottleneck theory.

Jonathan distills some of the more complicated ideas from Ron Baker and others in the value pricing space. And boils them down to some really actionable and tangible steps you can take to start using flat fees and forms of value pricing in your law practice. Jonathan actually has just agreed to be a guest on this podcast too, so look for that episode in the next month or two but today you're going to hear him as host and me as the guest.

I really like how Jonathan is able to grab onto some of the concepts I'm talking about and add his own insights on why they matter in the legal services profession and among services professionals more broadly.

Jonathan: Hello and welcome to *Ditching Hourly*. I'm Jonathan Stark. Today, I am joined by guest John Grant. John, welcome to the show.

John: Thanks, Jonathan. Excited to be here.

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Jonathan: So today, we are going to talk about helping lawyers improve their delivery workflows so that ditching hourly becomes obvious. I like the sound of that.

John: Nice, yeah.

Jonathan: But first, could you tell folks a little bit about who you are and what you do?

John: Yeah. So, as you said, my name is John Grant. I go by the Agile Attorney. Well, I'll give you my mission first and then I'll do the quick version of my back story. My mission is to help legal professionals, legal teams improve their practices by making them more profitable, scalable, and sustainable for themselves and the communities they serve. I do it through a lot of different things and it sort of gets into my background.

I come from a family of lawyers, which meant that when it came time to sort of choose my profession, I wanted nothing to do with the legal profession at first and wound up in the technology industry instead. And I went on one of those super fun rocket ship rides of the early 90s, mid 90s dot-com era where I caught on with a company that eventually merged with Getty Images.

And we did one of those, I think it was probably a disruptive innovation story before that term was maybe overused, where we used technology but also a lot of really healthy business practices to first sort of take over. Well, first to disrupt and then eventually reconsolidate the entire stock photography industry around ourselves and to the point now here Getty's sort of a household name. And that really was sort of, I mean, in a lot of ways, a first grad school for me.

So, I learned a lot about project management and the importance of corporate culture and systems and all sorts of things. But the key was that we were never just using technology for technology's sake. We were using

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technology as a tool for making our customers' lives better and I think that's the key takeaway.

Jonathan: Cool. And then what happened next, you ended up getting sucked into the family business?

John: Yeah, I did. I mean, it was sort of a funny, I never really planned on, I sort of took the LSAT as a plan B. And anyone who is a lawyer is probably chuckling right now because I think the profession is full of people that took the LSAT as a plan B and wound up going to law school and loved it. And I'm really glad that I did the thing before law school.

I think being a little bit older, having some real-world experience, if nothing else, nothing that the law professors did in their Socratic interrogation techniques would faze me because I had presented to our CFO before, and no one was going to be as tough as she was in my Getty days. And so, yeah, I came out of law school. I actually was back in-house at Getty for a while. I then had my own practice, but I eventually realized that I liked working on my practice more than in it.

And I sort of made the pivot slowly at first into doing more legal consulting, legal operations consulting. I've had a few different life cycles since then. I've been a solo a couple of times. I've worked with a couple of other people a few times. I worked with a consulting firm for a while. And I was in-house at a big AmLaw 150 law firm for a while. So, a lot of different things that I've learned in different parts of that career.

Jonathan: Interesting. So, the premise here is, improve delivery workflows for lawyers. And in an industry, well, first of all, I love having lawyers on the show because it's kind of the prototypical hourly billing scenario, but there are others. I had someone on recently who, I don't think the show's out yet, but he streamlines operations for car repair shops like mechanics and they also bill by the hour. And he's like, "Geez, I'm having a really hard time

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getting traction.” Well, why would someone give you money to make less money?

So, what do you mean? Let’s drill into, what do you mean about improve their delivery workflows?

John: Yeah. So, one of the tools I use for framing is that in any law practice, and really this is probably true of any business, there are three high level systems. There’s the getting the work system. There’s the doing the work system, or what I’m calling the delivery system. And then there’s the getting paid system. For the most part, regardless of how lawyers bill, any problems that they’re having in their getting paid system probably stems from a shortcoming in either they’re doing the work or getting the work systems.

And so, if you’ve accumulated a bunch of AR, there are tools and there are things that you can do to improve that. They’re actually relatively straightforward. It’s a simple problem to solve in the legal industry but that’s not necessarily where I focus. At the other end, the getting the work system, that’s sales, marketing, biz dev. I definitely work with a lot of my clients on that, but it’s not where I consider my core competency to be. So, my core competency is in the delivery system, the doing the work system.

And one of the things that I have found in doing this for coming up on a decade now of this consulting work is that number one, law is very much a seller’s market. There is more demand for legal work than there are supply of lawyers or legal professionals to do the work. And that’s true all the way up into the very tippy top end of the market. I think that’s some of the market forces and maybe we can come back to that in a little bit more detail.

But bottom line is, if you hang a shingle doing, especially in sort of a people law sector, it’s not so much a question of getting work. It’s a question of getting the work that you want. But let’s assume for a minute that you’re

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able to sign up all the clients that you want and probably more clients than you want, which is one of the problems. What winds up happening is the relative inefficiencies of delivering legal work in these delivery workflows, the doing the work system that I talked about, winds up slowing down.

There's a relationship known as Little's Law and it basically says that the time it takes to deliver any one widget worth of work is proportional to the number of widgets you have in progress in your system. And so, one of the things that I see that's really common with lawyers, and I think probably other service professionals too, is that they sign up lots and lots and lots of work, which creates a lot of work in progress or WIP.

And the tremendous amount of WIP that they're carrying winds up causing every one unit or every individual client to have a worse and worse experience because of how long it takes to deliver whatever it is that you've signed up to deliver. So, I'm being intentionally generic because there's obviously lots of different kinds of law practice out there. And I see this problem in almost all of them.

Jonathan: So, they just have a ton of parallel projects?

John: A ton of parallel projects, yeah. And so, in the Agile world, and that's obviously, I call myself the Agile Attorney, one of the things that they focus on a lot is multi-project environments. And a lot of times when I'm talking to folks that do Agile with technology teams or other folks. And they'll be talking about multi project environments, and they'll be talking about five or ten. And for law firms, it's not uncommon for it to be 70 or 80 different matters, different projects going on at the same time.

Jonathan: So that creates, I'm going to guess, that creates a lot of non-billable overhead.

John: It does. And so, it's interesting and this is one of the things, and when you and I spoke a couple of days ago before starting this up. I mentioned that one of the problems with sort of the legal delivery systems is that that

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non-billable overhead actually kind of gets billed a lot of the time. Or it's not always clear when it gets billed or when it doesn't get billed, or it can be a little insidious when it creeps in and so you don't necessarily know that you're billing for it.

But the switching costs, there's a term out of the Agile world, and I think this comes from Lean as well that I've really liked and been using a lot lately, known as failure demand. And failure demand is basically any demand on your time and attention that is the result of failing to do something correctly the first time, or maybe not having good processes and procedures.

And so, a real-life manifestation of that, and this comes from a client that I've been doing a lot of work with recently where one of the reasons he felt like he couldn't actually buckle down and focus on doing a bunch of the drafting tasks that he needed to get out the door. Was that he was constantly responding to client emails and client voicemails that were effectively people that he'd already promised work to calling up and saying, "Hey, what's the status? Where's my stuff? I thought I'd have this by now."

Jonathan: Right. Yeah. There's a great Amazon story. The reason or a huge motivation, and this might be apocryphal. But I read that a big reason for Amazon wanting to make the shipping window a day quicker than humanly possible at the time, much quicker than humanly possible at the time. Was that they could see and measure the costs of customers who had ordered stuff, contacting customer service to say, "Where's my stuff?" And he was like, "We could cut out, if we're spending \$10 million across the organization to answer that question, then that gives us a budget of \$10 million to just get them the stuff so they stop calling us."

So, I have another story that just popped into my mind where the failure demand, that's very interesting, I just, for the past 10 weekends or something, I've been rebuilding my garage door. And I got it to a phase where the door was built in place, but the store didn't have the brackets

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that I needed to use to attach the springs that would allow me to lift it. So, I got everything, the old door down too late, crossed that Rubicon. Now the new one's up, but it doesn't open or it's 200 or 300 pounds too heavy to lift.

And that day, we had a big vanity for the new bathroom delivered. So, a piece of furniture in the driveway needed to be in the garage and it was going to start raining. So, since I wasn't able to finish the project quickly, it created this window that was a brand-new problem that wouldn't have existed if I had been able to put the brackets on when I put the door on, which I didn't realize until it was too late.

So, then I had to go out and buy all of this stuff just to open the door, just a mechanical system to pull the door open manually so I could put the thing in the garage and close it before it started raining. And it was such a physical, that work never would have had to be done if I had rearranged or I had just waited until I knew I had all the pieces I needed to kind of cross the Rubicon.

But it's work that didn't need to exist in a different organization or if it had been more streamlined or if I knew what I was doing. This isn't a question of doing all that work faster. It's a question of doing it in a way that erases a whole bunch of work.

John: Yeah, I mean, I love that example. And it's one where it's totally normal, I assume that you're, well, I know from listening to your show, that garage door repair is not your primary line of work. Therefore, it is understandable that as a rookie, as a DIYer that you would get it wrong. But if you'd hired a garage door company and they'd done that to you, you'd be furious. You'd be out of your skin.

And I think what happens with advanced professionals, whatever they happen to be, lawyers, CPAs, software developers, whatever. When you're hiring those professional services, especially high dollar professional services, you expect a certain attention to detail and a certain level of

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planning. And I'm not saying that lawyers don't do that. But I think that a lot of law practices that I encounter at least, they don't invest in upfront planning, they sort of make a lot of assumptions about, well, this is how it usually goes. And this is how I've done it in the past.

But there isn't really a planning and strategy phase sometimes. Some lawyers are better than others. But again, well, and even when there is, and this is where it gets into all of the natural human tendencies around delays and things like that. Is that when the lawyer does plan, oftentimes they plan for this sort of ideal situation where, of course, I'm going to be spending the right amount of time and attention at the right times to your matter, to your legal case, your project, whatever it happens to be.

But realistically, if you're not managing your workloads upfront, then chances are some other emergency is going to come in and steal that capacity away, which then has this ripple effect and domino effect. And then all of a sudden, you've got a vanity out in the rain, metaphorically, that is causing some expense or some cost at some other part of the project.

Jonathan: Right. Yeah, it's a completely unnecessary expense. But if they're billing for it, whether in [16:57] or not, what's the financial motivation for them to pay you a million bucks to spend a month of probably painful systemic changes to your organization to make less money? Explain to me how that's not the calculus.

John: Well, it is at very nuts and bolts and I guess at a thin layer, that is a calculus. And back when I worked at the big firm, this AmLaw 150 firm, I was the head of the legal project management department. And it was this sort of funny thing where, I mean, really the firm had a legal project management department for marketing purposes only. They wanted to be able to say they had it. And partners would call me up and they'd say, "Hey, I'm in this negotiation with X, Y, Z client. And they want to do the legal project management thing on this, on this case and so can you do that thing?"

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And I'd have to pause for a minute and say, "Well, a few things you need to know. Number one, it's not a thing I do for you. It's something I do with you. This is a team sport. But number two, the reason your client is asking about legal project management is that it will make you more efficient, which means that you will bill fewer hours on this case. And if you bill few hours on this case, you're going to have to then go get the next case, which may involve some non-billable work in order to do it." So, I was really transparent that at a high level, what you're asking me to do is reach into your wallet and take money out of it.

Jonathan: So, who would say yes to this or not many people did?

John: Well, a lot fewer people did than I would hope, but that was my intro piece. And then I would go on to talk about why this is the right thing for preserving customer relationships and making sure that you start having these win-wins. And you'll never want for business if you are doing the right thing by your client. And there were definitely some partners that were very interested in that, and we had some very successful engagements doing different types of work, including some flat fee work of different sorts within that firm.

But if it was a more traditional partner that wanted a more traditional hourly relationship, I often didn't hear back from them. And to this day, I'm not trying to sell to those people in my consulting practice. If you really truly believe that the billable hour is the right model for you and you're not sure you ever want to move off of it, then I'm probably not going to be someone that's going to help you in your practice.

Now, that said, I do have a lot of clients that are still traditional hourly billers. And the reason why they like working with me is that it reduces their personal feeling of overwhelm and their own sense of having too many balls in the air, having to work long nights or weekends or all of the things, the work too much.

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And so, a lot of the work that I do, even with hourly billing clients, especially in the early parts of my engagement. Is really about sort of turning down the temperature from that roiling boil that many law practices are to something more like a gentle simmer where it feels a little bit easier to work with. Now, the side effect of that is that once we start putting systems in place that make the work feel better from the practitioner's perspective.

They often will then start to think, well, oh gosh, if I'm billing fewer hours for this, I am starting to lose money billing hourly, maybe I need to think about converting this to a flat fee or converting this to value based pricing.

Jonathan: Right. Yeah. Once things are under control. So, there's this overwhelming demand leads to too much work. And yeah, I've encountered people who do what you do, like Geraldine Carter who does this similar sort of thing, not exactly. But she takes CPAs from crazy hours to non-crazy hours without reducing their income.

So, there are, for anybody in the audience who is not getting enough leads, there isn't as much demand, or they're not differentiated as much in the market. You've got a different problem. You need more leads. But as John has pointed out here, that's not typically the case with lawyers. They can have as much work as they want. And it's the same with CPAs, you can have as much work as you want and okay, now what?

Now I've created this prison almost. Am I working for the business or is the business working for me? Okay, so I love this. Well, what is it that you're doing? Are you systematizing things? Are you creating checklists? Are you adding automation? Are you bringing software into the mix more heavily? Are you having them cut out stuff that was just busy work? What are the kinds of things that you would do to streamline this operation?

John: Yeah, so it's a combination of all those things. I don't follow it religiously, but there's a methodology, it's known as the Kanban method, which is one of the offshoots of Agile. And Kanban is kind of the most

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confusing of them in name because the Kanban methodology kind of comes from Lean, it kind of comes from Agile. The Lean version is a little different from the Agile version. I try not to get too hung up on all of that.

But I do like, there's an organization called Kanban University. And I sort of in the last year and a half or so, I've been going a little bit deeper into a lot of their writings and doing some of their trainings. And it really is a good sense making tool. So, there's a few things that come from that, that have been really helpful for me and working with my clients.

One of them is just starting to measure some things with respect to your delivery pipeline. So again, a lot of lawyers are measuring the number of leads they're getting and their marketing pipeline, how they convert those leads into clients. But once the work enters the delivery systems, they're not tracking anything anymore.

Jonathan: Just hours.

John: It's just hours. And so, I try to do just some real simple metrics like how many cases or how many matters, we use those terms interchangeably in legal. How many matters are you opening in a month versus closing in a month? If you're opening more than you're closing, that means that your matters in flight or your matters in progress is going to go up. Which according to Little's Law means that your delivery of any one matter is going to now take longer.

And so, by doing those measurements, I try to begin to help lawyers be able to put some objective numbers around the thing that they're feeling around overwhelm, so the overwhelm is very emotional, very sort of visceral, but it's hard to put a data point on it. And so doing those simple measurements. The other thing we wind up measuring is what's the average case duration. And if you've had enough lawyers on your show that you'll know that their favorite answer to questions like that is, it depends.

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But there is an average, even if it's an average that's got a long tail in terms of what's affecting it. And so really trying to start with whatever they're doing and then begin to put some processes in place. And so, checklists are a big one. I look at checklists a little bit differently than a lot of people. I don't think of checklists as to-do lists so much as they are quality standards.

And you mentioned one in your garage door example. There actually are two important stages where these quality control checklists come in. The one that most people are familiar with is the definition of done. Something isn't complete to spec until all of these things on this checklist are true or at least accounted for. But the other one that is equally important is the definition of ready, which is what are all the things that have to be true or at least accounted for before you even begin the work.

And it's that lack of definition of ready or putting in place a definition of ready, I should say, is one of the easiest and most transformative things that I do when working with new clients. Because what lawyers do, and I think any professional services business, especially if you're not keeping these metrics, it's really easy to say, "Well, what's one more case right now? This is what I do. I handle estate plans, or I handle criminal defense," whatever it happens to be. What's going to be the harm if this client who called and needs my services, if I just fit them in?

And when you're not counting things, it's really hard to tell. And one of the funny things about Little's Law and the relationship between work in progress and all the rest, and I'll give you the traffic on the freeway example.

Obviously, if the freeway is mostly empty, then cars are going the speed limit, if not 10 to 50 miles over the speed limit pretty regularly. You can get a freeway up to about 75% capacity, 70 to 80% capacity maybe and cars are still going pretty close to the speed limit. But once you get to that 80% to 90% capacity, that's when things really start to slow down dramatically.

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So, I think if you don't know what that capacity is, then any additional increment really has the potential to create some disasters for you and the clients that are already in there.

Jonathan: Yeah, it reminds me of a bunch of things that we don't need to go into. But it's a little bit like the garage door example where if work existed, so in the traffic example, work has been created out of nothing for the drivers. They have to pay way more attention, be way more active in their driving. The speed goes way down because everybody has to be way more careful. And it's work that didn't need to be there if you had more capacity.

John: Or if you managed your existing capacity better.

Jonathan: True, yeah, right. So, is there any pattern in the psychographic, sort of the worldview or the outlook of the people who are interested in doing this? Because the other thing is, there's a high demand when you have employees, especially to be running at full capacity at all times. Employee utilization is something that's measured quite a bit.

So, I almost feel like someone needs to be, unless they're just crazy overwhelmed and they're thinking about closing up shop and going in-house for a cushy job or something like that. What is the profile, if there is one person that is feeling a pain that they want to do something about, even if that means not full employee utilization and not maximum billable hours? What's in common, is there an age, a gender, a certain number of kids or a certain age, a size, a head count of the practice.

That's an interesting one. Well, before I answer your question, I will say that resource utilization is something that I consider to be an anti-pattern, which that's a word that I have to explain to lawyers.

Jonathan: Totally agree.

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John: They don't know what anti-patterns are. But by maximizing your utilization, you are begging for a gridlock.

Jonathan: Right, exactly, you're begging for it.

John: And the other thing is there's this, well, again, here's an anti-pattern that I see very frequently is a lawyer becomes overburdened. And conventional wisdom of law practice management is when you get overburdened, you need to either hire or delegate or some combination of get the work off of your plate. And the tendency that I think any high-end professional has or an expert has is to push the easy work off on other people and for lawyers, that's often some of the upstream work.

So, the client intake and onboarding to the extent that they don't want the face time with the lawyer, the client doesn't want the face time with the lawyer to make that purchase decision, which is often true. But then the initial research and drafting, it gets pushed onto paralegals or associates. The problem is that eventually hits a quality assurance phase in the lawyer's workflow. And they don't think of it as QA, but again, I came from this technology background.

So, they think of it as attorney review or something. But really what they're doing is saying, "I'm going to review the work of this other person to make sure they did it to my standard." And there's a couple of intertwining problems that happen, especially if you maximize utilization of those people you hired upstream, you'll be spending all of your time doing QA. And to the extent that you, the lawyer, are also may be doing intake or may be doing some drafting or maybe you just want to have a life outside of the office.

If you're constantly having to do QA on other people's work, it's really hard to feel like you're ever going to get off that hamster wheel.

Jonathan: And it feels like a real false economy.

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John: It can be. I ran into this very specifically, again, with one of my consulting clients. And one of the things we realized in mapping the workflow and measuring some things, and yes, we use Kanban boards and all sorts of fun tools to make work visible, which I think is helpful in any knowledge work environment. I think getting some visual physical sense of the work can be really helpful.

But he very quickly realized, and he had an associate that he wants to keep, but he started putting that associate on the task of just closing out old files, old matters. And the associate was like, “What are you talking about? Why do I want to do this? I went to law school to draft stuff, not to close files. That seems like paralegal work, but that seems like admin work.”

But what this lawyer had discovered was that he needed to find work for this person to do that was downstream of QA, that wasn't going to require the time and the attention of the lawyer to make sure it got done correctly. So that the lawyer could spend some time doing the catch up. The other thing, and this is related, and then I'll get back to your question about the demographic.

One of the other problems I run into all the time with lawyers doing quality assurance is that they don't have an objective standard that they're checking against. They're basically using their knowledge and skill and experience, but it's all in their heads. And so, the joke that I make sometimes is that the lawyer version of quality assurance is, well, I'd better read this a fourth time to make sure I didn't miss anything on the first three passes. Hey, you laugh, it's very real.

Jonathan: Yeah, I'm sure.

John: And it's because they haven't done that extra step of saying, “Really, what am I trying to accomplish here?” The beautiful thing is that if you take the time and you begin to express your quality standards in a written form, then you can actually push those standards upstream and say, “Hey, these

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aren't just my quality check standards. These are also your drafting standard." And it winds up becoming more cultural and sort of improving the work upstream of where the bottleneck is actually happening.

Jonathan: Interesting.

John: To answer your question, in terms of commonalities, I won't say this is the only one. But definitely transition planning or firms that have been operating one way successfully for many, many years, probably decades. And all of a sudden, there are newer, usually younger people that are moving into management and they're starting to question some of the assumptions around the old ways of working.

And I would say some of my most successful clients are situations where sometimes it is, in very small practices, it's not uncommon for a son or daughter of an attorney to be taking over the practice. and saying, "Okay, if I'm going to be stuck with this for the next 30 years of my life, we're going to have to change some things from the way that mom or dad did things." That same idea happens when it's not, obviously, moving to a family member as well.

So, when there's any sort of succession planning, transition planning, understanding, it's the whole Ron Popeil infomercial. At some point, they have their own little quiet, there must be a better way moment. And hopefully, if my content marketing is doing its job, then they will find me when they have that moment, if they confess it into Google.

Jonathan: Right, if they confess to Google. That's funny. Okay, well, that makes tons of sense. And I've seen the same thing happen in several other industries for other reasons where the status quo is essentially an extinction level event. The status quo will not change until there's an 'extinction level event'. Where the people who got the business to where it is over the past 40 years retire and the next generation starts to take over.

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And some of those kids grew up with the internet and they have always seen, I've had the experience of I can't stand paper-based processes as a customer when I have to deal with the school department or the IRS or some other bureaucratic institution. So, why are we operating in that same way? There's got to be a better way. Is there not a better way to do this?

Okay, let's just loop back to the original premise of this episode, which is, once you get things down to a nice active simmer instead of boiling over constantly. How does the idea of ditching hourly become clear to them? Is it just patently obvious that, wow, we could really predict scope on a huge class of matters? Why don't we just fix price them and deliver better results for less money for more profit? Does it become obvious, or do you introduce them to this notion, or do they have to be led horse to water style?

John: I would say that most lawyers, most of my clients, I should say, I don't know about most lawyers in general but will start to come to some realization on their own. And part of it is just a function of not being on the treadmill, which means you have a second to catch your breath and look around and start thinking more expansive about things. I'll give you a great example.

One of my longest-term clients, and this is a guy that I've been working with for, I think, seven years now. I think he's my single longest client. And a lot of what we did in the early going, and this is a multi-year process, by the way. And it doesn't have to be, but when you've got a really busy law firm, it's hard to carve out the time to do the process improvement work. So, it winds up being very incremental.

But eventually, we got to a place with his practice where they felt pretty good about the state of their day-to-day processing of the work. And this is an estate planning and administration practice in California. And one of the things that he had been doing for a long time, which he just thought was a normal part of his sales cycle, was saying, "Hey, send me your existing

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estate plan and I'll take a look at it." And I'll do what in consulting we would call a gap analysis. What is your estate plan actually doing versus what you hope it's doing?

And he would create a nice flowchart for it and do a bunch of things and then show it to the client or the prospective client at this point. And the prospective client was very regularly saying, "Oh, my gosh, I understand my estate plan for the first time ever. Why didn't the last lawyer who actually drafted this darned thing do this for me?" And what my client learned is that that is a marketable product in and of itself.

And by doing a little bit more research, a little bit of talking with customers, he's actually now turned what we're calling an assessment product into a five-figure product, and he value prices it. He's got a ballpark of where he thinks it should land. But the price that he will wind up quoting for that assessment is related to the net worth of the person that he's doing it for, because that's how much money they've got at risk or that's the sort of things that are in play.

And so actually part of what I love about him is that he took it all the way almost straight to value pricing. He didn't go through the thing that I think a lot of folks have to go through, including myself, of having the step of going from hourly to then flat fee, then to value pricing. He just went for it and went for value pricing and that's been great. He still does some flat fee work, too.

So, the other piece that we've wound up doing is saying, once he actually sells the estate plan, the basic estate plan, that is a flat fee and it's the same for everybody. But it's all the ancillary documents that you might need. And the more complicated your estate, the more complicated the sources of your wealth, the more different little things you're going to need. And so that's where he almost builds to value pricing through the combination of the deliverables that he has to put together in order to build this estate plan.

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Jonathan: Right. Yeah. It makes sense. So, cool, I'm looking at the clock, so we probably have to wrap up soon. But I want to ask a self-serving question which is, you've been doing this for, I think you said coming up on a decade. And across that period of time, has it felt like there are more or fewer lawyers billing hourly? Does it feel like a small minority is increasing of folks who are giving some sort of flat fee, whether it's the kind of productized, menu-driven approach or if it's value pricing? Do you feel like there's any movement or is it pretty static?

John: I think there's been a ton of movement. I think there's more movement than most people in the profession want to recognize. I think that there are now entire practice areas where flat fee is the norm, estate planning being one of them. Immigration is very common for most immigration work for flat fee to be the norm. I'm trying to think of others. Trademark is another one, different types of IP, where it just is almost automatic. There are others. There's been a lot of movement towards subscription type legal pricing.

Another client that I'm working with right now that's a startup firm, they're effectively an outside general counsel model. And subscription has become more and more common in that type of practice where we don't know what's going to come up month in and month out. But we know that over the course of a year you're likely to have these sorts of issues. And so, if you pay me X dollars a year, payable monthly or payable quarterly, we'll just handle most of the normal stuff.

And then every once in a while, there might be some big project and we'll either flat fee that project on its own or we'll default to hourly if we really don't know how to scope it. But I would say those have become way, way more common. I think in the biggest law practices, and this is part of the problem, is that there's what's known as the AmLaw 100, the top 100 firms in the US as ranked by a particular trade magazine.

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And really even more than that, there's 15 to 20 mega firms that are largely global. They're not necessarily ditching hourly because they have such market power, they really do get to control a lot of their pricing. Although they also have the most sophisticated clients, which are Fortune 100 companies that are also trying to dictate pricing. But I think they get outsized attention.

I think for most lawyers, most law practices, I think that folks are far more willing to explore and implement different ways of exchanging value for their services than they were, certainly when I first hung my shingle back in 2008.

Jonathan: That's good to hear. Cool. I've had a number of lawyers on the show because like I said, it is kind of the prototypical industry or the hourly industry. And the thing that I recommend to software developers who are my core audience being one. But would probably work for any, if some lawyer is listening to the show, someone shared it with you, you tell me what you think, John. But even coming up with, from a pricing/billing standpoint, even coming up with one service that you can comfortably fix price, I don't care if you based on cost or whatever.

And you just set a decent average price on it that you feel would be across 10 clients, you'd do well. Some would be more work than others, but you've got this one fixed price offering. And when you sell one of those things and then you go to deliver it, at least this was my experience when I first switched to fixed. My entire head turned upside down because every hour I worked, I was losing money instead of every hour I worked, I was making money.

And it turned on this mechanism in my brain that immediately went to, how can I make this more effective and efficient, quicker, less work for me without cutting corners? And this whole mechanism in my brain that previously I would have said existed. I would have said that I'm always

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doing the work as quickly as I can for my clients because I bill by the hour, it would be unethical to do anything else.

All of a sudden, a whole bunch of dormant machinery came to life, and I got very creative about how not to lose that hour. And not losing that hour without cutting corners is better for the client because they get their result more quickly. So, if somebody wanted to experiment with this, just create one productized service, just create one thing. What's the slam dunk thing you've done 1,000 times at the beginning of a certain type of matter over and over again and just it's 2,000 bucks?

John: Yeah. I think it's a couple of things that are sort of mental blockers that I ran into for lawyers. Number one, they think they have to flat fee an entire matter, so they're going to do it from soup to nuts. And I think the far easier way to go about it, and frankly, the far safer way to go about it because it allows you to learn as you go, is to do phased flat fees. And again, with a relatively simple processing matter, and I don't want to diminish the work that immigration lawyers do.

But going for a green card adjustment or status, it's a pretty known set of things that you're going to do, so flat fee that. That's easy. Everyone always tells me, "You can't flat fee litigation. It's too complicated. There are too many different variables that come into play." And I've worked with at least five different firms at this point that have done flat fee litigation in different ways. It's totally possible.

Jonathan: Wow. That's another episode right there.

John: Yeah. And again, usually not by flat feeing an entire case, but by turning it into phased flat fee. And you flat fee the phases of litigation, not the entire thing. And that way you can make adjustments. If you learn something in an earlier phase that's like this next phase is going to be bigger than I thought it was going to be. Great, have that conversation. That's the inherently agile approach to doing the work. The whole point of

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sort of scoping things out in chunks is so that you maximize your learning about what the next thing is going to look like.

The other piece and you hinted at this, because you said, do it for 10 people, is that lawyers, it's really hard to break out of that mindset of, well, the way that I'm going to compare whether I made money on this flat fee is I'm going to look at what I would have charged had I done it hourly. And if I make less money on a flat fee on this one matter than I would have had I build hourly, then flat fee obviously doesn't work because I'm losing money.

And what I tell people is when you convert to flat fee and even to phased flat fees, you can't look at the individual units that you sell anymore. You have to look at it like a product line.

Jonathan: Yeah, it doesn't make sense to look at it like that.

John: And so, you have to say, "Okay, over the course of 10 or 20 or 100 sales of this widget, yeah, I'm going to make more money on some than on the other, but what is the health of the product line overall?" Not what's the health of one individual sale? But that's a really hard mindset to get out of.

Jonathan: Yeah, I agree. There's another factor to it that's super important, which is they'd be making that decision flat fees don't work before they've had any chance to let it sink in and optimize the cost of delivery. So, even if they came close to what they would have made hourly, it's a win, a huge win because they've set themselves up in a way that they can deliver that thing probably in half of the time for the same money.

So, profit-wise, there's no way to optimize hourly, there's nothing. Because assuming you're honest, if somebody buys an hour, it takes you an hour to deliver it. And time is the only meaningful cost in this situation. I mean, there's maybe rent or computers or something, but time is the main expense here for the seller.

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And to even come close, to even get into the ballpark of what you would have charged on your hourly rate on your first engagement, you can pretty much double it. You say, “Okay, well, in a year, the profit on this will be double what it is right now, and I’ll be crushing my old hourly rate.” If my old hourly rate was \$200 an hour or \$500 an hour, it’s going to be \$400 an hour effectively or \$1,000 an hour effectively because I’ve had time to systematize the process, cut out the flab and just do the stuff that is going to deliver the best outcome quickest for my clients. That revelation doesn’t hit you, well, it hit me right away.

John: It takes time to build. Yeah, but even when it hits you, it takes time to put into practice.

Jonathan: To make it real.

John: Yeah. And I think that’s key. And I think that sort of back of the envelope is pretty close to what I see. I think if I can get a client of mine and I usually don’t have trouble because once they’ve done the work with me, again, they’re doing some of the internal systems work while they’re still billing hourly most of the time. So, I’m sort of pre-loading that learning curve a little bit and then eventually they start to see, well, I could be making more money if I weren’t billing hourly and that makes the transition a lot smoother.

But even if you were to go sort of cold turkey, I still think you’re right. I think that there’s probably a six-to-12-month window where you just have to commit to it because if you’ve got cold feet. And I will also say, the product that you deliver six or 12 months from now may look very little like the product that you imagined on day one or week one of doing this work.

The whole point and the whole reason to make this conversion is so that you can learn more about how to deliver things that clients find valuable and will pay you better money for than if you just sort of throw up your hands and said, “I don’t know, just pay me 400 an hour.”

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Jonathan: Yeah, tell me when to stop. Yeah, it's funny. On that point of it might look very different in 12 months than what you do now or what you thought you might be doing a year from when you started. I get a lot of software developers who are like, "Well, can you give me some examples?" And this is a genuine question. Can you give me some examples of software developers who are either using value pricing or have productized services?

And it's really hard because once they understand, once someone who knows how to write software understands the concept of real profit, they change their business because they're like, "Oh, well, I'm not going to offer services anymore, that's terrible, it's risky, hard." I'm going to make a SaaS or I'm going to create an info product. So, they kind of leave the 'profession'.

It's different from lawyers because I would suspect that few people are just, after all of the sunk cost of law school and the identity and all of that. There are probably fewer people making a pivot like that from service to product. I know they exist, but it's pretty common in software where somebody's like, "I'm going to stop building software for clients and I'm going to build software for me and then sell it to people like me."

And they have a tendency to get that taste of fixed price and they're like, "I'm going to go to product because fixed price services are a little riskier." I mean, the reward is potentially higher as well, but in both, the reward can be very high.

John: Yeah. I would say in legal, the thing that I see and certainly again among some of my clients is the pivot from doing delivery work into doing strategy work.

Jonathan: Yeah, that makes sense.

John: And if you can build systems or outsource or we haven't mentioned AI or ChatGPT, thank you. All these things that do promise to take time out

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of the technical work of delivering widgets, legal document widgets in this case. Then the natural place to go with all of the sunk costs of going to law school is moving into strategy work.

Jonathan: Right. Yeah, increase your altitude of involvement in my terminology. Cool. This has been amazing. Thanks so much, John.

John: No, thanks for having me. It's fun to actually interact with you on the podcast instead of being a passive listener.

Jonathan: Right. So, if there are any lawyers listening who have this sort of this modern worldview, where can they go to find out more about what you're doing and maybe get in touch?

John: Sure. At agileattorney.com or if you Google Agile Attorney, I think I'm still the first person that comes up. There are some others. Yeah, I would say follow me on the socials, but that's all in flux right now too. I guess LinkedIn is probably the easiest place to find me. I'm occasionally on some of the others, but not as reliably as I used to be.

Jonathan: Right. Same here. Alright, well, thanks again.

John: Yeah, thanks for having me.

Alright, folks, that's it for this week. I'm Jonathan Stark and I hope you join me again next time on *Ditching Hourly*. Bye.

Alright, I hope you got some good things from that episode. We recorded it back in the summer of 2023. And it's interesting for me to listen back because it was my first time discussing some of the concepts that have become really common on the podcast. You heard that last bit at the end about my social media. You can still follow me on LinkedIn and I'm also now on Bluesky where you can find me [@agileattorney.bsky.social](https://bsky.app/profile/agileattorney.bsky.social) or just search for agile attorney and I'll come up.

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There's a lot of great lawyers and legal tech thinkers and legal ops thinkers that are moving to Bluesky so I encourage you to come join the fun. As always, if you have any thoughts or questions about the podcast or the topics I cover, please don't hesitate to reach out to me at john.grant@agileattorney.com. This podcast is produced by the fantastic team at Digital Freedom Productions and the theme music is the song Hello by Lunareh. Thanks for listening and I'll catch you next week.