

Ep #50: Flat Fee Pricing for Lawyers with Elise Buie and Emery Wager



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John E. Grant

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John Grant: In today's episode, I'm bringing you another look into a practicing attorney's thought process, successes, and challenges around changing her pricing model, specifically around introducing flat fees into parts of her practice. I'm doing it by again running a replay of an interview I participated in on somebody else's podcast. And this is another one where I think it's an important topic where it's useful to hear the perspective of the interviewer. In this case, Emery Wager of Confido Legal.

But you'll mostly hear from Elise Buie, who has a family law practice in Seattle, where she came to adopt flat fees for parts of her practice, in large part because those flat fees enabled her to build some predictability and sustainability into her practice during a time where she herself was going through a divorce and raising four kids.

You'll also hear me trying to push Elise to think about flat fees for even more of her practice and specifically the connection between pricing and product in a legal practice. Like many lawyers, she was wrestling with how to use flat fee pricing on her more complicated cases. If you've been listening to this podcast for a while, you know I have an answer for that. And if you haven't been listening, then you're about to hear what that answer is.

I haven't checked back in with Elise since we recorded this episode in the summer, but maybe I'll see if she's willing to come on to this podcast and we'll share an update when we do.

You are listening to *The Agile Attorney Podcast* powered by Agile Attorney Consulting and I'm your host, John Grant.

A quick announcement before we dive into the episode. With the new year approaching, I know many of you are thinking about your goals and strategies for 2025. And as I say at the top of every episode, my mission is

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to help lawyers like you build practices that are profitable, sustainable and scalable. And to support that mission, I've created something really useful, a focused guide that I'm calling the Strategic Planning Shortcut.

This isn't just another planning template. It's a considered approach that will help you think through the four essential domains of activity within your law practice, identify realistic goals for what you can accomplish in the coming year, and then build a plan that engages your team, delights your clients, and delivers real results for your business.

I've distilled years of experience working with law firms into actionable steps that you can implement right away. To get your copy, visit agileattorney.com/SPS for Strategic Planning Shortcut. And there's a bonus when you download the guide, you're also going to get on the list to be the first to hear about my upcoming book, *How to Become an Agile Attorney*. But for now, make sure you get your copy of the strategic planning shortcut at agileattorney.com.

Okay, onto the show.

Emery Wager: Today, I am so excited to welcome two amazing people to the show, Elise Buie and John Grant. We're going to be talking about a topic that's very near and dear to my heart, how to design and implement flat fee services, flat fee legal services.

In my role, a lot of folks come to the legal technology space having been lawyers or former lawyers. For me, I came at this from the client perspective. And I've over the course of my career reviewed and paid millions of dollars in legal fees. And one of the most frustrating things about that experience is the lack of predictability in what those bills will be.

So it's really hard from the client's perspective to know what legal challenges should I solve, should I focus on if I don't know how much it's going to cost to actually solve those problems? So of course, there's many

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different tools to help with predictability, but a great tool of course is flat fee legal services.

The downside is that you're taking that unpredictability and shifting it from the client and moving it over to the law firm, which produces a ton of challenges, which will be the topic of our episode today.

So with that, I'm gonna introduce first, Elise. She is the founder and managing attorney of Elise Buie Family Law, one of the preeminent family and estate firms in the Northwest. Focus on divorce, custody, parenting and adoption cases. And one of the really cool things about her firm is the focus on collaborative law and mediation. I think for me, that's a fascinating area of law. And we could probably do a whole other episode just on that.

But many different accomplishments, super lawyers, multiple years, prolific speaker and author, and a big leader in the collaborative law movement. And the exciting thing that we're gonna talk about today is her journey to implement flat fee services at her firm.

And another exciting part about Elise that's also near and dear to my heart, her son is serving overseas in the Marine Corps. So I doubt he's tuned in listening to a lot of legal services, but if he is, we'll throw out a Semper Fi to him.

And I'll give Elise a second here to introduce herself. But John Grant, he's the founder of Agile Attorney Consulting. They specialize in helping law firms and legal professionals apply Agile and lean principles to improve operations. John has a background in both technology and in law. And John, I think it's probably not an exaggeration to say, you can correct me if I'm wrong, but through both your actual consulting and the information that you've put out there through your blog and podcast that you've helped thousands of firms become more efficient through that content.

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John Grant: Yeah, I hope that's true. But you know, I haven't personally worked with thousands yet but I'm certainly trying to put information out there. So thanks for having me.

Emery: Awesome. With that, I'm gonna stop talking and I'd love to start with Elise. Tell us a little bit about your journey to found your law firm. How did you get started in law? How did you choose family law?

And most importantly, how did you choose to start your own firm?

Elise Buie: Sure. Well, I became a lawyer many, many moons ago, and I went to law school actually thinking I was going to become a public defender. I was going to do appellate death penalty work. That was literally what I really wanted to do. But those silly old student loans got in the way and I was like, oh, I actually have to get a job where I earn real money so that I can pay those student loans. I didn't really do a good job calculating all those, I think, when I signed up for them.

So I ended up doing insurance defense litigation for years. I'm from New Orleans and actually went to law school in New Orleans and so practiced in New Orleans after I clerked for a federal judge for a couple of years and then stayed home with my kids for a long time.

I mean, Hurricane Katrina threw us all around. We ended up relocating all over the place because of the hurricane. And then I divorced, got remarried, ended up in the Pacific Northwest and started my law firm there in the Pacific Northwest in the Seattle area and started it mostly virtually because I was trying to work and deal with a blended family of six. And that was kind of complicated, you know, to do all that and sit at an office in downtown Seattle every day from 8 to 6. I was like, yeah, football practice happens at 3:30, not at 6. So it was a whole process.

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But, and so I started my law firm very distinctly to provide a working environment for women who really wanted to be able to be great moms and great lawyers. And I found that at the time that I did that, it wasn't easy to find that. People, you either kind of were choosing one or the other. And I just was firmly on the side that we could do both. And so, and that required things like a flexibility, you know, being able to work remote, having everything be paperless, where you could work wherever you were. Like if I was sitting on the side of a lakeside football game, I could sit there and do my work and that was perfectly fine and reasonable.

So I went into family law very much because of my own divorce. And I think as I learned how to co-parent myself, I thought, wow, there is a lot to this. You know, this is not just as simple as going to sign a paper and ending a marriage. At the time, you know, I had four biological children. Learning to co-parent in a situation where you're divorcing is not the easiest task. And so I really went on a, I mean, I consider it still a lifelong adventure of learning about successful co-parenting, which meant a lot of learning about how to be a better human myself. Do you know what I mean? So that I could bring my best self into co-parenting.

And so I think when I decided to start my law firm it just seemed natural that I would take all that learning and that education I had and try to share it with other people so that other people could learn to co-parent in a way that was successful for their children. Because I think that's what so many divorcing parents really want is to be able to divorce peacefully and still bring positive psychological well-being to their family.

Emery: John, same question to you. You've had an interesting background in technology and in law. Tell us a little bit about how you got to where you are today.

John: Yeah, well, and I'm gonna start by reflecting on some of the things Elise just said, because they're, and I, you know, Elise and I have not, I

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don't think we've met each other before. Yeah, and so many of the things that she talked about really resonate with me. And the reason why I'm now doing this consulting work that I'm doing.

I have made it my organization mission statement that we help lawyers and legal professionals build practices that are profitable, sustainable, and scalable. And what I've come to learn is that those things need to happen roughly in that order.

And in part, what I'm hearing from Elise is that sustainability was a big part. And it's not just the sustainability of the law practice, it's the sustainability of the life she wants to have in the law, and the life she wants her team to have in the law. And I think that's really important. I think it's one of the really motivating factors for a lot of people that go into running their own law practices that maybe cuts against some of the traditional cultural elements of law practice that maybe aren't the most healthy and aren't the most sustainable. And I think, again, we'll get to it in a minute, but I think flat fees really play into that sustainability piece as well.

The other thing, and I won't keep reflecting on Elise, but one of the things I talk about with my clients all the time is my belief that fundamentally, lawyering is a caregiving profession. And I don't think we get a lot of exposure to that as we're training, as we're growing as new lawyers, etc. We have a lot of focus on the technical work, right, the delivery work of producing legal documents and achieving legal outcomes.

And I think it's easy to miss because we just don't focus on it enough that we really are engaging in caregiving. And that's certainly true for practices that are focused on the needs of everyday people. But I actually think that's true for corporate practice as well, right? There's just so much about legal that we need to, I think, be intentional about the human connection and the human journeys and the human elements of it. And, you know, we've gone

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almost 10 minutes without mentioning AI, which we're not, I don't think we're even allowed to do that.

But as we look at changes that are likely to come. And it's not just AI, right? Any technology that allows us to empower different parts of our practice, the thing that will always be there, I think, is going to be that humanity and that human connection.

So my journey is a funny one. I'm a fourth generation lawyer who wanted nothing to do with legal practice when I came out of my undergrad education. I wound up actually in Seattle. I'm in Portland now, but I went to work for a startup, relatively startup company called PhotoDisk, which as the name implies was like selling photography on CD-ROM. Right. It was early. This is dating me, right? This is the mid-90s.

Singles had just come out. Seattle was the coolest place on the planet to go live. And I found myself there and with this company that was using technology to create an improved client experience in an industry, right? And that industry just happened to be the stock photography and media industry.

But I think the lessons that I learned, and I should say, PhotoDisk eventually merged with a company called Getty Images, which lots of people have come across. And Getty was able to use some of the technology innovation that PhotoDisk had, and then the deep, deep family resources of the Getty family, right to sort of fund some expansion. And really, we were one of those great rocket ship rides of the late 90s, but nobody knew about us, right? Because we were in this sort of weird under the radar industry.

The thing that I learned, I mean, I learned a ton from Getty and that whole experience, but the thing that really colors almost everything that I work on today and work with both my clients and then I am the board president of a

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nonprofit law firm that I do a lot of operations work with as well, is that we use the technology to create better customer experiences, full stop, right?

That is the purpose of all of the innovation is to create better outcomes, better experiences for in legal, what we would call our clients, but in every other business, the customer. And I think looking at it through that lens, we may scratch a lot of our own itches in the process. But that's that should never be the primary purpose, we should always be looking at it in terms of how can we improve outcomes more broadly.

And part of the reason you know, I've been doing this consulting work I had, so I did go to law school. I wound up actually back in-house counsel at Getty for a while. I had a copyright and trademark practice for a number of years, a boutique practice. But I found that I just liked working on practices more than I liked working in them. And so I increasingly started doing that with other people. And I've now been doing that for over 10 years.

And it's just taught me a lot about both what really does work behind the scenes in a law practice, but also where a lot of the conventional wisdom falls short and a lot of the historical practices, you know, that my forefathers in the profession think were just normal or kind of almost a required part of what we do. And they really are working against us in a lot of ways. And, you know, one of those things is over-reliance on hourly billing. Although we'll talk more about that in a minute.

Emery: Awesome. And a huge milestone in John's life that he didn't mention is he was the first guest on Financially Legal back in 2020.

John: Was I number one? I didn't realize that.

Energy: Probably didn't tell you that at the time. We're 56 episodes in and I think Dan Lear did a solo episode before that.

You were the first guest. Okay. Excellent. Welcome back.

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John: Thank you.

Elise: I love that. He's like the goat. Okay. Yeah.

John: Yeah. Dan. Well, that's, that's Dan working his Rolodex as Dan does.

Emery: Yeah, exactly. Yeah. John's an OG financially legal here.

Awesome. Well, Elise, I want to turn to you because we'll start talking about flat fees and you've been experimenting with that in your practice recently.

And one of the things you wrote is that the first thing when you decided to start exploring flat fees is you wanted to make sure your team was all aligned that we were doing this for the right reasons. And that everybody kind of agreed that yes, this was, you know, we were doing this for the right reasons. What were those right reasons?

Elise: Yeah. Well, I mean, as with anything, I feel like the owner, the visionary, whatever, we have these ideas and we come into our team with these ideas. And I often feel like I get this look of, oh, gosh, what is Elise thinking now? But, I mean, for me, the right reason of flat fees is the ability to give your clients all the value, all the service, and all the, what I call from Will Goddara's book, *The Unreasonable Hospitality*. It's the lanyard, it's the stuff I grew up in New Orleans knowing as lanyard, where I literally grew up thinking a dozen was 13 because every single place you go in New Orleans, you go buy a dozen of something, they give you 13.

But it's this idea of like, how do you constantly put your client first and think about like, to your point, when you mentioned earlier in the show, I mean, how utterly insane is it that you come to a lawyer and you're like, oh, your case could be \$5,000 because you have this, you know, no contest divorce and your spouse is hiring the most lovely, reputable, ethical, collaborative, you know, high thinking person, or you have a \$150,000 divorce because

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they have hired psychopath on the other side who wants to litigate, you know, whether your end table should be valued or not. And it's like, no, it was bought at Ikea. We shouldn't talk about it. Like, leave it alone.

But you know, you can't know this all the time. And for me, very deeply, it is when I am talking to a client and somebody who is going through such a difficult transition, and they are literally like absolutely laying out all their stuff. They're telling me about their spouse who has had affairs, who maybe has cheated on them for 30 years and they just found this out. When they know that the billing clock is running, it's really hard for them because there are so many layers and it takes a lot of time to get through all that. And there are so many times I say to people, I literally just did it last Saturday. I was on the phone with somebody and I could tell she was feeling rushed and upset.

And I was like, I'm like, let's just not even pretend we're billing this call. I go, let's just have a call where you can tell me all the things you need to tell me without regard to anything else. And that is literally the kind of human connection I wanna have with my clients.

And flat fees allows you to do that better, in my opinion, because you don't have to deal with all the little logistics of, you know, was this call a 0.6? Was it a 0.7? Did I write my note in follow-up? Did I write my recap email? You know what I mean, where it's this whole little thing.

But I have to be really honest, we haven't gotten to a place where we have rolled out all flat fees for all things. We are definitely still a work in progress, you know, where we've started in more of a non-litigated area where it is easier to develop SKUs and look at what will it cost and then figure out what is the value of the expertise you bring to that.

Because one of the things I think is a struggle, at least for me, when somebody will say, Elise, I just paid you X number of dollars and you

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settled this really quick. And it's like, because I have expertise in being able to get to the real issues, not alienate the opposing counsel, understand what the judge wants, try to meet your goals. Like there is a there is expertise in all that.

And no, that's not going to be something that you can parse out and be like, oh, well, that took 28 hours of this, you know, and it's like, it might have taken just a very short amount of time. And so that's a struggle because a lot of family law clients then will say, well, I shouldn't have to pay for that. And it's like, well, you are paying for 22 years of expertise.

Emery: Yeah. And I think this is, I wanna get into the details of how you came up with the pricing and kind of dive in there. But I think this is a great segue into... John, maybe you can talk a little bit about your evolution in thinking about flat fees, how you used to think about it and how now you're thinking about today? Because I think it really does align with what Elise was saying about paying for that experience.

John: Yeah, so I first started experimenting with different alternative fee models when I was practicing myself. And it frankly came from a place of hating time tracking, where I come in and a lot of my thing is taking these ideas out of technology and manufacturing and relating them to the things that we do in legal.

When I first went to flat fees myself, I actually did what I would now consider to do to be the exact wrong thing, which is I went with a firm estimate model, which is basically, I said, okay, I should be so good at this that I'm going to give you a fee cap. And I'll bill you hourly under that cap. But once I hit that cap, I'll turn the clock off. And the reason I did it is that I thought it was the fairest thing for clients.

And I did that before I really understood the true sort of value of value pricing, because that's really only a half step out of hourly. And like I said,

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it's the worst of both worlds, because you don't get to participate in any of the potential upside of a true value pricing flat fee model in terms of your profit margin, and you still have all the downside risk of if this gets more complicated or goes longer than you thought, now you're on the hook for it. So I don't recommend that anybody does that. But I did it. And I'm here to tell you, don't do that.

I then started doing, I think, what a lot of people do. And certainly, I think that the human nature way that people go about flat fee, setting a flat fee price or going to flat fee is they start with some impetus like the one, Emery, that you talked about, which is my clients hate the unpredictability. So I've got to give them predictability. I want to be responsive to that.

And so the way I'm going to do that is I'm going to figure out how long it typically takes me to do one of these matters. I might then pad it by 10 or 15% to sort of cover for the edge cases where it goes long. And then I'm going to multiply that amount of time by my hourly rate. And I'm going to set that as my flat fee.

And I don't want to say that's a wrong way to approach it, but it's definitely not how I recommend it anymore. And there's a couple of problems with it. One is, it still is only a half step out of hourly. So kind of like my own journey, it doesn't really get you out of the concept of hourly thinking.

Number two, there's this phenomenon that I run into all the time, which is, let's say you do 10 of those, you probably six or seven or eight of them are going to go fine. And you actually will come in sort of at or under the estimated hours that you had accounted for. But one or two of them is going to go long.

And there's this phenomenon that I see all the time, where once an attorney has one of those matters or two of those matters that go over, they

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tell themselves a story that, oh, I'm losing money on this matter. I'm now losing money on this case. And that's actually a false story. Because you're not losing money, you're just taking a lower profit margin, right? It takes a lot of overwork to get to the point. You know, lowering is reasonably profitable. It's why a lot, you know, it's why we're doing it.

Yeah, there's lots of reasons, but it's a good business model. And hourly is a good business model. The problem with hourly is your potential profit margin is capped, right? Once you set your hourly rate, then there's nothing left to do but control costs on the underside of it.

When you get into flat fee, you've now sort of untethered your potential profit margin. You've got more upside, but you've also, as Emery pointed out earlier, you've taken on a little bit more of the risk. And so the way that I now recommend people go about coming to a flat fee style offering is to actually really work on optimizing your workflows and your processes and your systems while you're billing hourly.

And do the harder work of saying, okay, how do I define the steps of my process? How do I understand what are the policies and procedures for each step? What are the inputs? What are the deliverables? How do I really get to know my service offering and my suite of service offerings, because a lot of times there's more than one, even within a single matter type. And if you get really clear about each of those offerings and each of those sort of pieces to the overall bundle, that is a divorce case, then you will inevitably, once you define and understand those processes, you'll inevitably get better at them and more consistent at them, and the work itself will start to flow more smoothly through different parts of your system.

And what I found in working with, you know, scores of law firms at this point doing that approach is eventually somebody wakes up and says, oh, I keep getting more efficient, which means it's getting harder and harder for me to make money under an hourly billing model for this work. The work that I'm

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doing is no less valuable than it was a year ago before I started doing this process improvement and systems improvement work, but I'm getting paid less. That doesn't make sense.

And so now we can actually switch over and say, well, what is an appropriate value for this part of my service offering? And you also don't have to go whole hog, right? So sort of like Elise said, the idea that you would, when you first meet a divorce client, be able to say, yep, I guarantee that I will do this entire divorce on a flat fee basis of X amount of money, you'd have to put that number into the stratosphere to cover for all of the eventual complexities that could come up with it.

And so one of the things I bring through the Agile lens, right, and Agile is a sort of a project management methodology that is really common in software, is that you take this iterative approach and you can say, well, I'm going to do a flat fee for the first part of this engagement, which is really just about orienting me to the client, getting the basic information, doing some sensemaking and some navigation for the client so that they understand what they're working with. And that's something that you can easily figure out. Okay, there's a start, there's a process, there's an end. There might even be a deliverable that comes out of that, which is a strategy plan or an initial strategy or a roadmap, whatever it happens to be. And you can flat fee that.

And you can say, okay, I can offer this for X amount of dollars. And I know exactly how to deliver it. I know how long it's going to take me internally. I know what the experience for the customer is going to be like the client. And then at the end of it, we'll reassess and say, oh, looks like you've got one of these divorces. And opposing counsel is someone I'm friends with and I've worked with a lot. And you don't seem to have a lot of tension with your soon to be ex. And so this is going to go smoothly.

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And now I'm willing to come up with a flat fee, maybe not again, not for the whole thing, but for the next phase. Whereas if you learn that you've got one of those pit bull pugilists on the other side, then you might say, look, I'm sorry, I would love to do this on a flat fee basis, but this opposing counsel is unpredictable. And unpredictability is the death of a flat fee service. Right?

You need to gather information in order to know in, you know, within certain boundaries, right? You're never going to be able to get it down to a 99% certainty, but I often will work with my clients on 80, 85% certainty. If we can sort of make a bet that four out of five times we do this, it's going to come in within these guardrails. That's a bet that most people will take.

Emery: Almost getting to the point where flat fee becomes inevitable and the hourly model doesn't make sense. Talk to a founder of an AI-powered e-discovery tool the other day, and he basically said that this company called Sillow, that one of the biggest reservations he gets is these big law firms will upcharge on eDiscovery. They'll hire 100 people to review documents and they're actually quite lucrative. And they're not willing to run it through AI and have that whole process happen very quickly.

And so he's had to become an evangelist for flat fees for that exact same reason that, okay, your revenue might come down, but your profit will go way up. And you provide that predictability. I know, by the way, it's less for the client. So yeah, I love that. Absolutely.

Elise, I'd love to... You talked about the right reasons and why you started flat fees. But maybe talk a little bit about how that journey has gone. How did you think about the pricing? Was it similar to what John was saying or a little bit different? Because of course, there's a lot of different ways to do this.

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Elise: It's so interesting because John and I don't know each other, but literally he, I mean, he just mapped out like my whole thought process of what, you know, and I mean, I like John had this very initial like, well, I'm just gonna add up my hourly thing, I'm gonna multiply it out, and that was not my best plan at all. So I, like John, don't recommend that either. And interestingly, I mean, we are, you know, like I said I mean, we do flat fees in estate planning and relationship agreements, you know, all the time. Like that is a very predictable kind of thing.

And I think to John's point, it is that unpredictability that absolutely keeps you up at night. And so for the family law, when we were thinking, okay, we're going to roll out flat fee in the family law side and do it by stages. I mean, and again, just like John, I had this, you know, we would do the initial stage, what we would call temporary orders where we really get in and we learn what's going on, we learn the level of conflict. So that was our most unpredictable phase was that initial phase to do this.

And then I became very, I don't know what the right word is, but I got kind of stopped in my tracks. And again, to John's point, because I thought to myself, we have so many improvements that we could make in the workflows from A to B to C to D. And so we are in that process right now of improving all of these workflows, all the systems.

And as part of that, we have been working towards this whole model of the 30 is the new 40, where we are going to have a firm where a full-time week is gonna be a 30-hour week. But that is forcing efficiency in our team because right now. Oh, it's been fascinating. Again, I got some people that are looking at me like I've got six heads. Nonetheless, I mean, because while we're still on an hourly model, we are able to track like what billable hours are required in a week, based on every person that picks up, they decide their billable hours. I don't decide them.

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People in my office choose their billable hours and then I let them know what we'll pay them for that work. So they make that decision. So when we're moving to this 30 is a new 40, they are keeping their billable hours because nobody has billable hours, you know, above this 30 hours a week.

There was all this built in time. And so now we're figuring out how do we bring more efficiency into the system so that they are able to do that within 30 hours. So I'm gonna be paying them like they're working 40 hours, but they'll only be working 30. And then that will allow us to take the next step into flat fees better because we have forced efficiencies, if that makes sense.

John: It's funny, it makes perfect sense to me. I have a new client in the UK that had moved to a four-day work week before they came to me. And so very similar things. And they actually are also in the process of converting from a primarily hourly to increasingly flat fee piece.

The thing that I will say about the process improvement work, since Elise is in the middle of it right now, and you're number one, you're always in the middle of it. It's not like it ever ends. This is another one of these human nature things where I think the human instinct when they go about trying to improve processes is that I need to improve my working time on something. And so, I need to automate this, I need to use AI, I need to do whatever.

But if you look at things from a systems level, and especially, so what one of the recommendations I make to my clients a lot, and this is a mental exercise, but I say, imagine that there's a GoPro camera, and it sits with the client file. And any time the client wants to, they can log into that camera and they can see what's going on with that file. And 95% of the time when they log in, what are they gonna see? They're gonna see that it's just sitting there. They're going to see that nothing's actually happening.

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And so the sort of counterintuitive piece about process improvement that I've come to learn in doing this work for so long is that the best gains from improving processes don't come from reducing the time you spend on working time. It comes from reducing the amount of waiting time. It comes from eliminating the gaps between working sessions.

And the thing about those gaps is that they tend to lead to additional administrative overhead. It's almost a form of inventory inside of your factory floor and you have to spend money and cycles knowing where is it, where's it going next, who's responsible for it, and all of that tracking is not billable work.

Now, some people maybe bill for it in different things, or you try to come up with it. I won't dive deep on that, but it certainly isn't directly generating value for the client, right? It's overhead cost. And so much of what we do in legal is connected to a little piece of overhead, a little piece of administrative work. And so the more we can, again, define our system, standardize our processes, understand roles and responsibilities, the more efficient we make that administrative work. And it's in making that that back end, reducing the waiting times, reducing the handoffs, all of the back and forth, that's where the real gains come in.

Emery: Elise, tell us a little bit in your early experience, I'm gonna put you in the spot here. Thanks. Let's call it matter creep. Things are not going in the direction that you're expected. Talk about the communication and strategies around that.

Elise: Well, interestingly, I recently learned of matter creep in a matter that I got brought into late and for not the best reason, but I learned that we had a flat fee matter where we had said we would do 4 hours of particular work. And literally the team and spent 17 hours doing work. And I was like, whoa, I was like, that's a big difference between 4 hours.

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And so I had the pleasure of contacting that client and being able to talk to them about what had been done, what went awry, how did we end up going from a 4 hour thing to a 17 hour thing, and what were we gonna do moving forward. And I think that is probably one of the biggest fears that people have with flat fees is the matter creep, but then it's also on the flip side, the ethical considerations of how do you handle that with the client? How do you handle that with the court?

I mean, if goodness, you had signed a notice of appearance and gotten involved in an actual court case, can you get out? I think the matter creep issue is real, it has to be tracked. Now, I mean, this is probably where John and I might disagree, we are a time tracking machine in our firm. We track, we track, we track because I want to know what do we do.

To John's point though, what is all that administrative non-billable nonsense that we are doing and where and how can I delegate that more effectively to a non-billable employee or an AI solution or some type of automation? But also to John's point, I am a huge believer in the velocity of a case and how keeping that velocity going limits all of this non-billable stuff because if you are touching that file weekly and if you are looking at it every single week, I mean we do case status meetings every Monday. And so we are looking at every single case in our firm, every single Monday, that allows things to keep going so that there isn't that, you know, getting lost on the factory floor kind of thing.

But I think when you find the creep, and I mean, lucky for us, you know, we do track it. So I was able to see it when I looked into that, I'm able to immediately see it, I can document it to the client, which to me, there's a real ethical power in being able to show the client exactly, minute by minute, what has been done, even on a flat fee matter, so that when I am telling them, I am no longer going to keep doing this work based on the fee that you have paid. Like we have so far exceeded the work that we were supposed to do.

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John: And I'm not saying it's a bad idea to record time. I'm just saying I personally hated it. I recognize the value in it. I think there are ways, some of the things we even talked about, right? Getting that visibility. I love that you use the term velocity because that's actually a word we use in Agile all the time, right? We want to maintain velocity. It's exactly the term we use.

But I do want to address just before I forget about it, one of the things that I strongly recommend, and I think this is available in most US jurisdictions now, is if you're going to do work on a flat fee basis, do it under a limited scope representation agreement and not a full scope representation agreement. And I can tell you, even though limited scope rules have been on the books in most jurisdictions for 15 to 20 years now, they're vastly, vastly underused as a tool.

And again, it depends on the jurisdiction. I know here in Oregon, one of the advantages of being under a limited scope agreement is when you appear, you file a notice of limited scope representation. And then when you are done with representing that person, you don't have to file a motion for withdrawal. You get to file a notice of termination of limited scope representation agreement.

The other thing about that notice of limited scope representation is in most jurisdiction, it forces you to define what that scope is in the document. And that definition of scope and what Emery and Elise are referring to as matter creep, the rest of the universe knows in the project management world as scope creep, right? And scope creep is a problem everywhere.

And the key to scope creep is better definitions up front about what is in scope and what is out of scope. Number one. Number two is exactly what Elise is talking about, which is a frequent review, a tight feedback loop to make sure that, okay, where are assumptions about what this case needed and what the scope should be? Do those assumptions still hold?

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Again, part of what I like about the phase flat fee approach that I talked about earlier is that I like to build in a specific sort of road mapping session at the end of each phase where we say we, the whole purpose of this is that we're going to review our assumptions, we're going to reflect on what we've learned, and now we're going to chart, maybe not chart a new course, we're either going to determine whether the course we thought we were on is still the course we should be on, or we're going to renegotiate the agreement. And that renegotiation may be into a different flat fee piece of work. It might be into an hourly piece of work.

And that's, as long as you set that expectation up front, and you know, to my mind, literally made it part of your client roadmap, right? And this is a thing that I don't think enough law firms do, which is provide their client with a roadmap of at least high level what this is going to look like. I sometimes will refer to it as your clients deserve a Domino's pizza tracker. Yes, they do. And it's not like they're going to be able to log into the app and see exactly where it is.

But the nice thing about the Domino's Pizza Tracker and the TurboTax navigation, this isn't unique, is people want to know what are the phases of this work? And it's OK to say, yeah, this is, in fact, I did this with a client that does complex trust administration work. And as we named the phases, there was like an intake and strategy phase, and then there was an initial information gathering phase. And then somewhere I can't remember if it was phase four or phase five, but we literally called the phase the long middle.

Elise: Yeah.

John: And we tell the client, this is the long middle. This is where there's just a lot of stuff going on. And it's going to take a while and you just are going to have to sit tight. There's not a lot for you to do. You just got to bear with us because this is going to take a while.

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Elise: I love that. I love the long middle. That is perfect.

John: Long middle. Yeah. I don't think he trademarked it, so, you know, we'll leave it out there.

Emery: I'm so excited that we've got into the Domino's pizza tracker of legal matters. Absolutely.

John: Look, clients deserve it. I will die on that hill, right? Clients deserve to know what to expect and they deserve to know upfront what the, again, you don't have to know in detail, right? You just have to know what the milestones are.

Elise: You should know when the pizza's in the oven. I mean, like-

John: Absolutely, yeah. And the nice thing is, is that that actually does a tremendous amount to communicate value to the client. Completely.

Elise: And it builds trust.

John: It builds trust, it builds camaraderie, It builds engagement, right? So another thing that I think is great about that approach, when I look at the gaps in most legal processes, client homework is always one of them, right?

Clients are not always great at doing their homework assignments. And part of the reason is that the way most lawyers assign homework is a disengaging process, not an engaging process, right? Yeah, we have these eight page questionnaires, and we chuck it over the fence and say, Yeah, you got three weeks.

And we never check in on them. And, you know, clients do not respond well to that. And so, the more we can sort of map it out and say, yeah, we're

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asking you for this information because we're going to need it when we get down here into phase three. We're going to need it when we get to phase five. And by getting this information up front, it makes us strategically smarter and able to chart a more effective course as we're going through your matter. And again, I think clients deserve that.

Emery: Well, we're getting close to time. I want to throw up one quick one. Elise, you've talked about the importance of data at your firm and how important that is in decision-making. Emery, obviously, your consulting practice is heavily based on data analysis. Talk to the listener right now who is thinking, man, I just, I don't have any of this data at my firm.

Like, where do I, like, where can I take the first step? You know, I'm billing hourly and I have no idea.

Elise: Well, you do have the data in your firm. I mean, in all likelihood, you have practice management software and that practice management software will tell you so much. I mean, you can go in and pull, you know, by user, by date, day by day, look at what their billable is, what their non-billable is, what their discounting. And I mean, we took that data, just that data alone, billables, non-billables and discounts, and was able to find a massive leaky bucket in our firm in non-billable to the tune of multiple hundreds of thousands of dollars. And it was like, whoa, that's a lot of money that we are not, you know, handling.

Well, I was like, I am not being a very good steward here. And so the data is there working with somebody who can help you understand the story. The data tells you is probably one of the most critical things I think as a law firm owner you need. If you can't look at that data and understand the story. So then you don't understand what lever you need to pull or what page you need to turn, then you're in trouble.

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But you have the data. You probably just need some help in figuring out how to read it.

John: Yeah, yeah. Yeah, I'd echo that. I would also say that don't boil the ocean with data, right? Start really simple. And let yourself understand the big picture pieces.

And a good data set or a good analysis of a data set will always lead to another question. And let yourself go, don't let yourself go deep, deep, deep down the rabbit hole at first. Make sure you're really clear on what the high level story is, and then you can use the data to, you know, or go find a new set of data or start tracking a new thing that will help you answer that next most interesting question.

Yeah. The one other thing that I would say just to wrap this up, and I, because I think it's important, is that when you switch to hourly, you are not changing your pricing model, you're changing your business model.

And you're really moving from a services business strategy to a product business strategy. And they require different things, they require a different perspective. Sometimes they require different team members or different approaches to compensation or different assumptions about client acquisition.

And I will say, one of the most challenging things is to do what Elise is doing, which is to have an overall business that has some of its products operating under a product strategy and some of its offerings operating under a services strategy. Because the levers that you pull to optimize those businesses will sometimes work against themselves.

And that's not to say that you have to take an all or nothing approach. But what I do think can be useful, and this is something that we've done at the Commons Law Center where I'm on the board, this is a nonprofit law firm,

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is be really clear about measuring data inside of your different product offerings.

So don't try to do an apples to apples comparison between your flat fee and your hourly work. Really look at them independently. And then when you do want to do apples to apples comparison, the thing you need to look at is what is your profitability under each because you can get to a profitability calculation both ways.

But don't look at hours worked, don't look at hours billed, don't look at payments, all the rest. You have to get to that profitability before you can do that apples to apples.

Emery: Well, I would love to keep going on this conversation. Honestly, I've learned so much. Before I give you each kind of a chance to say your last piece, I just wanted to bring an awesome quote forward from Elise that she wrote in her article on flat fees. "There's no denying that money is deeply rooted in emotions. And by taking the guesswork out of pricing for legal services by providing transparency, we can also provide what is incumbent upon us as members of the legal profession, trust."

And I just love that, you know, your motivation for getting started on the flat fee journey, coming at this from the client perspective is awesome. So I really appreciate you both taking the time to join today. Emery, I'll start with you. Anything, kind of final words or anything you'd say to our listener base of legal professionals?

Elise: Just try things, have fun, track the data, get help, like realize that this is, I mean, they don't teach us any of this in law school. So it's okay to not know. I mean, I embrace my dumb blonde self better than anybody. I'm like, you know, learning and trying things as you go allows you to really, I think as an owner, not only have fun, but be able to actually practice law in the way that you envisioned when you started law school.

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Like we all went to law school, kind of like John was talking about is this caregiving thing. You can take that and do it in almost any practice area by bringing that spirit of what you're trying to accomplish. And there's so many interesting, unique ways to do it. And I find data to be such a powerful tool in this because it allows me to take any emotions out of it. I can deal with numbers all day long and be able to, you know, see how those things can benefit my clients and my team.

John: Amen. Yeah, I think that's right. I mean, I approach all of the work that I do, like I am very much trying to help the lawyers and the clients that I help. I'm very much trying to make life better for lawyers and their teams, but I'm doing it out of a deep care for clients and a deep understanding of the access to justice gap more broadly. And I think one of the things I love about flat fees is that they really do have the potential to help close the access to legal services gap, not just access to justice, by allowing people to have options for getting legal help that they can afford, even if it's not the full meal deal.

And the only thing I'd say to close, if I'm allowed to do this, is I'll plug my own podcast, which is the *Agile Attorney Podcast*, because I do talk a lot about strategies for process improvement and systems improvement. And I'm not really selling anything off of it. I just think it's so important that I want people to understand these concepts from, again, different business domains and how they can apply in legal.

Emery: Yeah, and I'll say a lot of the things that you kind of touched on very quickly and teased. There's full episodes on, you know, like the homework, for example. Right. You touch on that significantly. So, Elise and John, thank you so much.

John: OK, once again, there's a lot in there to unpack, but here are my key takeaways. Number one, I strongly recommend that lawyers engage in some product definition and process improvement work before jumping

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straight into flat fees. Once you get clearer about the deliverables your team needs to produce as part of a particular matter or case type, and then improving your systems and workflows to produce good quality deliverables in a consistent and predictable way, then that better understanding of how work moves through your practice and delivers value to your client will make your pricing strategies seem almost obvious.

Second, consider starting with limited scope engagements and phased pricing. You don't have to flat fee your entire practice at once. Look for those predictable pieces of work where you can test and refine your approach to pricing and you'll learn things that will help you expand your pricing into other parts of your practice.

Third, remember that successful flat fee practices are really well supported by excellent client communication. If you can give your clients clear roadmaps around what to expect and build in regular checkpoints to review progress and assumptions, then you're going to have a lot easier time getting the value from the client in response to the value you're delivering back to them.

Finally, use your practice management data to inform your decisions. Whatever tool or system you're using, you probably already have some valuable information around time, effort, and outcomes that you can use to guide your evolution towards a different pricing strategy.

All right, that's it for this week's episode. As always, please share this podcast with your colleagues who might benefit from a more agile approach in their legal practice. And I always welcome your feedback, your questions or requests for topics to cover. You can email me at john.grant@agileattorney.com or reach out through the contact form on my website.

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This podcast is produced by the fantastic team at Digital Freedom Productions and the theme music is the song "Hello" by Lunara. Thanks for listening and I'll catch you next week.