

Ep #64: The Dental Chair Theory of Lawyering



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John E. Grant

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A law practice is an expert system designed to deliver expert information and expert outcomes for its clients. And like all expert systems, it runs best when it manages its commitments relative to its capacity. And now lots of professional services, also expert systems, have the same challenge. But there's a common object, one that I bet is in the room with you right now, that other expert industries use every day to balance capacity and demand, to deliver their expertise incredibly efficiently, and to create a high-quality customer experience. But it's a tool that lawyers almost never use.

In today's episode, I'll tell you what that object is, and I'll explain what you can learn from other expert businesses to improve the quality and flow of work in your law practice.

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

So I'm kind of kicking myself this week because if you've been listening to this podcast from the beginning, you might remember you probably don't remember because it's been so long. But way back in episode two, I made a promise to do an episode on this thing that I've been carrying around for a while called the dental chair theory of lawyering. And I was getting ready to record what will now be next week's episode on a better mental model for scaling your law practice. And I wanted to refer back to this dental chair episode only to realize it didn't exist until now.

So it's a little unfortunate because this is honestly one of my favorite sort of metaphors for modeling how to think about your law practice. And it's a little weird, it's a little funny, but I think it's one of those ideas that once you wrap your head around it, it's going to stick with you. So hopefully it'll help you think of things a little differently about how your law practice operates and some things you can do to get it to operate better.

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And let me start with this fundamental premise that a law practice is an expert system, and loosely defined expert systems are systems designed to deliver expertise, and therefore being an expert system is something that a law practice and a dental practice has in common. And one of the things that they have in common, really all expert systems have in common, is the expert in the system is the bottleneck, right? That's not really a dig. It's just reality. And so scaling an expert system is tricky, right?

The expert itself, himself, herself, you have all of the education, the training, the experience, the skill, the judgment to be able to deliver your expertise, but there's only so many hours in a day. And so, you know, as long as you want to do something more than just deliver one-to-one work, you've got to build a system to support the expert's ability to deliver their expertise in as focused and efficient a way as possible.

So once you've got this expert system, with the expert being the bottleneck, there are a couple of ways that you can scale that system. The one that I'm going to talk about next week is to build out teams and systems and empower your people so that the system can deliver more and more parts of the expertise without the expert themselves being involved in every step of the delivery system. So that's sort of a distributed, a team-driven approach. And like I said, that's what I'm going to talk about in next week's episode. I sometimes think of that as an expert-supported system, where the expert is really putting their expertise into the system's building work.

Today, I'm going to talk about the more traditional model, the one that most expert systems start with as they're starting to scale, building up. And that is a system that is built around the expert. And what I mean by that is that the system is designed to take sort of the non-expert pieces of work off of the expert's plate, so that the expert can sort of be more involved in what sometimes is thought of as highest and best use. I don't always love that framing, but I think you know what I'm talking about, right? We're taking all the little administrative, the support, the day-to-day activities off of the plate

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of the expert, so that the expert can really just do the expert thing that they do best.

And obviously in a law practice, we see that where there's an attorney supported by maybe first a paralegal or an assistant, and then eventually you might bring on an intake person, receptionist, sort of a front-end person scaling up with more legal professionals, maybe associates, maybe whatever. You see it in a dentist office, right? Where, of course, I think it's unusual to find a dentist who doesn't also have a hygienist that is doing kind of paraprofessional style work, some of the delivery work, but obviously not the more complex stuff.

And then, you know, as a dental practice grows, they also are bringing in front desk people, schedulers, things like that. And then, of course, on both sides, you've got all the technology tools and systems, the practice management, et cetera, that is also supporting the workers in doing that work.

So those are the similarities, but there is one really big difference between how a dental practice runs their operations and how the typical sort of scaling up law firm runs its practice. And it's not the fact that the dental practice can bill insurance in order to get paid. I'm gonna leave the real answer hanging for a minute, but we're gonna come back to it pretty soon.

So traditionally, when I go on my dental chair theory of lawyering tangent, I start with posing a question to my audience, and sometimes this is in a workshop, sometimes it's in a training, but I basically ask this, what is the worst possible experience you could imagine having in a dentist's office? And not surprisingly, the answers that people come up with are the ones you would expect, right? Root canal, maybe the numbing not working, tooth extraction, right, all of the things surrounding the sort of physical discomfort of things that can happen when you're getting dental work done, all of which I agree with, right? It is not fun to have to do at least major

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procedures. And some people really don't even like the teeth cleaning, and I get it.

But there's another answer that I will propose, and it's one that would be so uncomfortable for a patient in a dentist's office that it's borderline unthinkable that it would ever, ever happen. And that is if the dentist tried to put another person in the dental chair with you while they were doing work, like physically trying to put two butts in one chair at the same time. And aside from the fact that physically that would be impractical, uncomfortable, we would be super weirded out by it, right?

It would be this sort of very complex, emotional, psychological situation where it just would be so weird feeling to be in that situation, which, of course, is one of the reasons why it never, ever happens. And in fact, you rarely even see two chairs kind of next to each other where you can even see another patient in the room, right? You want to have a feeling when you're working with your dental professional that there is a focus on you, and that is totally understandable.

But here's the dirty little secret about law practices. And this might even be true with yours. In fact, I would guess to some extent it probably is true with your law practice, which is we do that to our clients all of the time. Now, we're not literally doing it right. We're not bringing two different clients with different needs into our office at the same time and sitting them next to each other, much less in the same chair.

But when we're doing our legal work on behalf of the client, how many of you are guilty, I know I am, of having a document open, maybe I'm doing research, maybe I'm drafting a thing, maybe I'm checking a draft that someone else on my team made for me, but at the same time I've got my e-mail open, or my phone's not on Do Not Disturb, or my office door is open in a way that I can get a flyby, and so an e-mail comes in, a text message, a phone call, whatever it is with a different client issue, and what

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do I do? I switch over and I pay attention to that other client. And what I've effectively just done is divided my working time across two different clients.

And a lot of you maybe don't stop at two. And again, I'll admit this isn't a perfect metaphor because it's not obviously something that the client is experiencing in the moment, I guess unless you're actually in a meeting with them or on a phone call with them and you let that interruption happen in that situation. But I will say that they do experience it in the aggregate, that it contributes to a degradation of the overall experience they're having working with you and your firm.

I'm gonna give you a slight variation on the same theme only because I tend to go back and forth between these metaphors in my mind, and that's the salon chair theory of lawyering. So in the hair salon world, and I'll admit I am not the most qualified person to talk about the intricacies of sort of high-end salon work. I've got a pretty simple haircut.

But let's just say that you call up a high-end hair salon or, you know, go to their online schedule at this point, and you say, I need a cut, color, and curl, and I want to schedule time with the salon in order to get that style that I need. You have a pretty reasonable expectation that a few things aren't gonna happen, right?

Number one, you are going to be the only person in that chair when the stylist or when the colorist or whoever is doing their work on your head. So just like the dental chair, they're not putting two butts in the same salon chair either. But the other expectation you have is you don't expect the stylist to sort of cut the right half of your head and then say, oh, I'm sorry, can you hold on a minute? I'm gonna send you back out into the waiting room and have you sit in the front because I need to bring another person in so that I can do a little work on their head.

And then I'll bring you right back, right? We'll switch you back in, right? That's unthinkable. It would be like the hygienist cleaning the top side of

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your mouth and then sending you back to the waiting room in order to let another person into that dental office. That rapid switching is almost as unthinkable as putting two people in the chair at the same time.

And again, flipping back to the salon metaphor, if you have come in for a cut, color, and curl, you know that you might have to switch chairs, you might have to go to a different part of the salon in order to get one of the other procedures done, but you have a reasonable expectation that they're gonna happen in a pretty predictable, pretty close sequence, right? You may get your cut done, you hope that you're gonna go straight to the colorist chair. You don't expect to have to go out to the waiting room and wait for an hour or much less have days or weeks in between appointments in order to get that work done.

And the reason I bring up the salon metaphor is that it in some ways might be closer to the legal work that you're doing, where you can't usually get someone from A to Z in their entire matter in a single sitting, that's not realistic. But we do have some defined phases of work. And a couple of things are true, right?

Number one, from a client perspective, and also I would argue this is better from a worker from a team perspective, once you begin a particular phase of work, you want to get that matter all the way to done for that phase so that you're not doing the equivalent of cutting part of someone's head and then putting them in the back burner and letting time pass before you come back and finish the job. That's a terrible experience for a physical customer, but it's an equally bad experience, even though they don't necessarily notice it for the customer when you're doing work on their behalf, even though they're not in the room.

Now, illegal may be a little different from the salon chair. You know, we may have phases of the work that we have to send out to other parts, right? Maybe we're making a filing with an agency or with a court. Maybe we need to engage an expert or an appraiser or some other person in order to

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accomplish part of the work, right? All of that is natural, but we want to try to, number one, accelerate and get done in a single sort of series of steps as much of our work as we can so that we can push it to that next phase. Number two, we want to minimize the waiting between phases as much as we can, right? To the extent that we have control over it.

So I'll come back to that question I asked a few minutes ago. What is the thing that the dentist's office and the hair salon have in common that allow them to do work and approach their work in this sort of more intentional way that we are typically missing in law practice? And you've probably come up with it because I've mentioned it several times, but it's the chair. The chair itself is this physical, ever-present reminder that only one person can get worked on at a time. It's a constraint, but it's this really useful one because it forces you to prioritize on the piece of work that's right in front of you. It makes it almost impossible to engage in multitasking.

And here's the thing, because of that chair, those businesses, the dental business, the hairstyling business, they schedule different. They think about timing, they think about capacity, they understand flow. They know how long each procedure, each service is supposed to take. And because of that, they know how to meter when to bring people in and also how to leave certain amounts of their capacity sort of in slack, right, to keep it available for the unexpected things, the emergencies, the reschedules, things like that.

I can tell you, right, the very stark example of this. For my own life, you know, I've got kids, and when I want to schedule a teeth cleaning for my kids, I'm scheduling months and months in advance, right? And there's all this competition to get the sweet spots on the teeth, the no school days or afternoons after school. It's a whole thing. Those of you who have kids, you understand this. But getting that routine work scheduled is a process.

However, one of my kids used to be a goalkeeper in soccer. And one time he took, I don't know if it was a ball or a foot to the face, but it loosened one

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of his teeth, which can happen. And the dentist was able to bring them in that day. And the reason why, of course, is that they are managing their capacity in such a way that they can deal with emergencies. They know how to bring that person in and give them reasonably quick service in order to, in this case, save the tooth or prevent it from coming all the way out and be able to take care of it.

But again, I think the key thing here is that it all comes back to the chair, right? If you're going to see the dentist, you need to sit in the chair. If you're going to see the hairstylist, you need to be in the chair. And so these businesses are really good at managing demand relative to capacity so that they are optimizing the use of that finite resource, in this case, the chair.

So what's the equivalent of the chair in a law practice? Obviously, you know, aside from the ones opposite your desk, if you even have a physical office anymore, you know, we do have chairs, but we don't do most of our work on behalf of the clients when the client is present. But I would argue we still need an equivalent. We need something that is giving us a visual, almost physical, sense of what our capacity is so that we can manage work to that capacity, bring in demand relative to that capacity, so that we're not double booking our mental chairs, not having two or three or 10 different client matters open on our screens at the same time.

So we've got to simulate the chair. And I think the best way to do this, no surprise, is with a Kanban board. And that won't surprise you at all if you've been listening to me for a while. If you're new to this podcast, I will say I've got a couple of episodes about how to incorporate Kanban boards into your law practice.

Episode four, and then also episode 44, which make it easy to remember, are both about using a set of columns on a board, and it could be a wall, it can be a computer software, it doesn't matter. And then using those columns to define phases of your workflow and then using cards within those columns. And again, it can be sticky notes on a wall. It can be cards

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in a software tool that represent units of work that then flow through your system.

And as I've talked about before, in some ways a Kanban board is a visual fiction that makes the knowledge work of law practice perform a little bit more like a factory floor where you can physically see the work as it progresses from intake through to done. So the Kanban board is a great tool for being able to visually see both the amount of work that's in your system and the way that that work flows through your system, or when you're first starting out, sometimes how it doesn't flow.

But that alone isn't quite enough to simulate the chair. The other thing that you need is a WIP limit, a work in process limit. And again, I've done several episodes on WIP limits, again, starting with episode four, where I bring them up. Most recently, I did a deep dive on WIP limits and episode 56 titled "Less is More: Why WIP Limits Boost Legal Productivity". It's also come up in a few of my interview episodes, episode eight with Dave Maxfield, where we talk about sort of a firm wide WIP limit, a carrying capacity. And then in episode 58, in the conversation I had with Brita Long, where I kind of had this epiphany that she's using flat fees as a way of limiting the amount of work in progress or WIP in her practice.

For today's purpose, what I'm talking about is establishing sort of a column-level WIP limit or a personal WIP limit, which is to say maybe it's the drafting column for whatever my legal workflow is. I want to have a pretty low work in process limit for that column, maybe one, maybe two, I would say no more than three, which is to say, okay, this is the number of chairs I have in my shop, in my law practice, and I'm not going to put myself in a situation where I'm trying to hold open in my brain, in my computer, wherever, the information I need to engage in five or six or 10 different drafting or analysis or other tasks at the same time.

I'm gonna really stop and say, okay, I'm going to take this one piece of work. I'm going to put it in the chair and I'm going to work it all the way to

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done or at least phase complete before I allow another piece of work to come into my environment.

It's a promise you're making, you know, kind of to yourself, but ultimately to your clients that I am going to just focus on this right now and I'm going to do it in a way that doesn't involve me getting partly done and forcing you to go back out into the waiting room while I do something else for somebody else.

And again, it comes back to these unofficial slogans of the Kanban method that I talk about a lot, right? Start less in order to finish more, stop starting, start finishing, right? We just, we're using WIP limits, we're using the salon chair or dental chair metaphor to really help force us into a monotasking situation because it's just better for everybody.

Now, the other thing that is true in your typical dental practice and certainly your medium to higher-end salons is they're not walk-in clinics, right? Unless you've got a dental emergency in the case of the dentist's office or maybe you're a celebrity or something in the case of the hair salon, it's not realistic, it's not reasonable to think that you're gonna get same-day service. And in fact, like I said, for the most part, they're scheduling things weeks, if not months in advance. And it's that scheduling that helps us recognize that this is not a walk-in clinic, obviously.

But here's the thing that's easy to miss, is that when the scheduling person is scheduling a patient or a customer for those types of service offerings, they're not just scheduling time with the professional, they're scheduling time for the entire experience. And so they know if it's, again, this cut, color, and curl, especially if that's gonna be performed by three different people, they need to make sure that they understand, number one, the availability of all three of those people, number two, the availability of the resources those people need to use, the tools, the systems, the chairs, whatever. Number three, they kind of know how long each phase in the process is going to take so that they can schedule those things sequentially, right?

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When you come in for a teeth cleaning, the dentist office already knows about how long you're gonna need to spend with the hygienist, and then the dentist is gonna be available for that sort of quick check-in right after the hygienist is done. Here's the thing that I'll argue, and I apologize if this seems a little accusatory, but I would say that most lawyers probably think of themselves as the high-end salon that's not taking walk-ins off the street, but they actually are behaving more like the walk-in clinic. And the reason they think that they're the high-end hair salon is that you're scheduling that initial appointment with an attorney. So there is a scheduling component to the work, but it's only that very first part of it that most law practices are keeping in mind.

They're not scheduling people to come in based on what it's gonna take to draft and deliver the entire estate plan or to manage them through the entire divorce process or get their business up and running, whatever it happens to be, right? They're scheduling the expert for that first touch-in or maybe even the expert in the intake person for the first couple of touch points, but they're very rarely looking at it from an end-to-end service capacity and resource availability standpoint. And because of that, it sort of is like a gated walk-in clinic. Like, yeah, you've got to get over the hurdle of that initial appointment, but once you're there, then very few practices that I see are actively and intentionally managing to the rest of their capacity and their ability to deliver the entire work product.

So this kind of comes back, and I'll be quick about this because I've talked about it before too, but I really think getting started with Kanban, use the tools you have. Absolutely, if it's drawing lines on a whiteboard and using sticky notes, that's great. If it's starting with Trello or Microsoft Planner because it's part of a package that you already subscribe to, I'm fine with that, but they're not gonna scale with you very well. And this is true for most law-specific Kanban tools as well. They really are just kind of cards and columns interfaces, which is nice, right? The work becomes visible, but number one, they're not enforcing WIP limits. You can still do the soft one.

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You can put a WIP limit in parentheses and the column name, right? There's ways to get around that.

The bigger thing is that they're not giving you the data and the information about the flow that you need in order to basically make more intentional capacity and timing decisions. So what I really like about the Kanban specific tools that I recommend is that once you've been using them for, you know, depending on the length of your typical legal practice, a few weeks to a few months, it's constantly looking at how are the cards moving and what types of cards are they, what type of work does it represent? And then you can use the analytics and the reporting tools of those systems that say, hey, on average, it takes you three hours of working time, but three weeks of elapsed time in order to draft a basic estate plan.

And once you have that data, that information, you can use it in a few different ways. You can use it for your capacity planning so that you make sure you don't bring in too much work that puts you over capacity. You could also use it in your system's improvement efforts. So as you're running experiments to make the drafting process faster, to reduce the number of handoffs, to reduce the waiting time, you can then use the measurements that come out of a good Kanban system to be able to tell you did your improvement efforts work or not, right? What was the reduction in the working time? What was the reduction in the total time? So I really advocate strongly, use the tool you have to get started, but really be thinking about bringing it over to a Kanban-first software system.

Okay, so real quick, let me give you three kind of core takeaways from all this. Number one, expert work needs focus and multitasking is not focus. So just like no dentist would try to put two patients in the same chair or even try to treat two patients in adjacent chairs, you shouldn't be juggling multiple client matters in the same mental space and the same screen on your laptop, right? Single tasking is not a luxury, it's how expertise gets delivered well.

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Number two, your calendar isn't your full capacity, right? Booking that initial client call is easy, but making sure that you've got the capacity in your overall calendar over time and in your entire practices systems over time to not just bring the work on board, but actually have the ability to do that monotasking, that delivery work to get the final delivery out the door. That's the key to understanding capacity relative to demand and your ability to deliver good work with smooth and predictable flow.

Number three, while it's not really practical to have a literal physical chair that you're going to sit in for your client do that legal work, you do want to put in place a system that acts like one. And so using a Kanban board with WIP limits, both at the column level and ideally also at the board level, and being able to really visualize the work, to control the work at day one, and to be able to do it at night, different process phases and then queue up the work in an intentional way, sort of waiting room packed with work, packed with people that you owe work to, but you've got so much of it that it's really hard to sort out.

Okay, I'm going to leave it at that. Stay tuned for next week, where I'm going to talk about this other way of scaling expert systems. For now, please share or like and subscribe, all the things that help other people discover this podcast. It's always helpful.

If you have questions about this topic, you want to discuss maybe ways to implement these things in your law practice, or if you just have another thing that you'd like to hear me discuss on the podcast, please don't hesitate to reach out john.grant@agileattorney.com.

As always, I am grateful for the production support I get from the fantastic team over at Digital Freedom Productions and our theme music is Hello by Lunara. Thanks for listening and I will catch you again next week.