

Ep #68: Adaptability by Design: Building Law Practices That Respond to Change



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John E. Grant

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In a world of seemingly accelerating change, and whether that be technology or AI to political or economic uncertainty, it's easy to just say, you need to be more adaptable. But real adaptability isn't a personality trait. It's a skill you can build. In today's episode, I'm going to share a real client story that shows you how being clear about your mission and goals and strategies puts you in a position to be more adaptable and to adapt intelligently, not reactively in your law practice.

You're listening to the *Agile Attorney Podcast*, powered by Agile Attorney Consulting. I'm John Grant, and I 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.

Hey everyone, welcome back. So, this week I want to talk about something that certainly has been on my mind a lot lately, and I think has kind of been out in the zeitgeist of legal practice in general. And that's this notion of how to build a more adaptable law practice. And the drivers behind that question are no surprise. We're in this era of seemingly accelerating technological change and the advent of generative AI and all the things that it's doing to potentially drive efficiency into law practice, although not without its limitations, obviously.

And then we've sort of got all of this societal and political and economic uncertainty and change happening right now, especially in the US. And how we adapt in light of all of those things is I think something that's weighing pretty heavily on all of our minds. And I want to try to use this episode to get past sort of some of the like pabulum that you see on maybe LinkedIn and other social media where it's easy for people to be like, oh yeah, we have to be more adaptable. And like, of course, we have to be adaptable. That's like a no brainer.

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But they sort of treat adaptable as if it's this innate trait that people have as opposed to a learnable skill. And so I want to unpack a little bit about my approach to adaptability, which of course, is a close cousin to agility. And really a lot of the purpose of the Agile and Lean and other systems thinking methods that I use and teach are about being able to be adaptable, responsive, flexible, agile, nimble, whatever adjective you want to use, in light of changing circumstances.

It's actually one of the challenges of being an expert and having expertise in a particular subject matter or with a particular way of working is that having to adapt actually sort of causes us to maybe call our expertise into question. And that can be a little bit challenging for people, especially if a lot of your identity is wrapped up in being an expert. And so, one of the things, and again, I don't want to like devolve into just be different. That's obviously not helpful.

But I think that a certain amount of openness to change and recognition that change is just inevitable, right? It's part of living in the world. It's part of doing business, it's part of working with people. And so, let me put it this way, where we're really clear on what our expertise is and what sorts of problems we're able to help solve and even our tools and techniques for solving those problems without getting too ossified or too rigid in the individual steps we take because again, new information, new technology, etc., has an opportunity to change that.

Part of the reason this is on my mind is I think it was actually sort of a hidden common theme from my last two episodes. So, going back to my chat with Carolyn Elefant, in terms of her work and her advice and really her purpose around helping lawyers launch their own practices and why that's such a good idea. And it was a good idea 20 years ago when she first started doing it and it's still a good idea today, even though the details have changed.

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But because she's really clear on her purpose and even a lot of the strategies for how to accomplish that purpose, she's able to really adapt to new information, whether that be the use of generative AI to help setting up parts of your practice or sort of the social political and other drivers that are causing attorneys to rethink their current employment or maybe having been excused from their current employment to a place where they might want to think about launching their own practice.

Similarly with Jonah Perlin, he is charged with the mission of helping first year law students write like lawyers, but really that, as we talked about in the episode means that they have to learn how to think differently about their writing, about their analysis, about their conclusions, being able to put that work into a format that is tailored to their audience and understands the purpose of the particular work.

These are all core principles and sort of the high level purpose that Jonah's really clear around what he's trying to accomplish through his teaching. And that then puts him in a position where he can adapt to new information. And whether that's new values of young people as they're coming up through law school, whether that's the reality that anyone that is entering his class today almost certainly had their education interrupted in some way by the pandemic. And so being able to adapt to that. And then of course, also adapting to new technology changes, generative AI and being able to incorporate that into his teaching and his working in an intelligent way.

If I had to break it down into something maybe a little pithy, I think the difference between having that clear purpose, having clarity around your mission, your goals, and even the strategies that you are going to try to use in order to accomplish those goals and serve that mission, that's the key to being able to reflect and respond to new information as opposed to being reactive to new information, right? We don't want to be in this knee jerk situation where we have to make a 180 in order to respond to some new

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thing, right? We want to be clear and intentional and make sure that we can incorporate new things in order to accomplish the goals and the mission that we already have.

So, this actually came up recently in the context of one of my consulting clients and they had actually listened to my episode several weeks ago with Damien Riehl from vLex. And if you remember, Damien is one of the people that's working on the Vincent AI tool, which is a lawyer specific AI made by vLex, trained on the data sets that are available through Fastcase and elsewhere. And they're really trying to tune it in such a way that it doesn't have some of the problems that general purpose AI's have that it really is sort of focusing on solving the needs of legal practitioners.

And this client emailed me with a very specific question, which is, should we be adopting Vincent in our workflows right now today? And to answer that question, we kind of had to work through sort of a multi-step process. So, let me give you first, I guess, a little bit of background about where this firm was when they first came to me. And then I think that'll help give you context to the strategies that we're working on to address the problems that they were having. And then how Vincent or any sort of technology tool might fit into the bigger picture. And then hopefully this will help you think about similar questions in your own law practice.

So, the first thing to know is this is a litigation practice, and it's actually a fairly complex litigation practice, and it's a little bit unique in the world of complex litigation in that it generally is representing individuals and also the opposing party are also typically individuals. And the reason that's a little unusual is usually with complex litigation, you will tend to have a business on one side or the other. And, while this isn't universally true, I think that businesses tend to be a little bit more sophisticated or at least a little more used to some of the complexities around the legal process and the litigation process.

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With individuals, there is often more emotion involved and also kind of less familiarity with the overall process. So, the firm has to do more work keeping the client informed, keeping them engaged, sort of keeping them as calm as possible so that the firm can do the work that they need to do in order to reach the outcome the client is hoping to achieve.

And when they first came to me, this firm was very much a victim of their own success. And so, like many law practices, the reason they reached out to me is they simply were feeling overwhelmed, right? They were doing good work for clients that led to more demand for their work. It's in an area of law that not a lot of lawyers like to practice in, and so they're getting a fair number of referrals. And of course, they're tempted to take those referrals, right? When you have demand, there's an instinct to say, okay, we need to take these cases. That instinct can lead to overloading your overall practice relative to its capacity. And that's something I talk about all the time on the podcast, and it was certainly true with this group.

And so, in the context of my mission, right, helping practices be more profitable, sustainable, and scalable, they're certainly profitable. There's no problem there. What they weren't and are still working towards is being sustainable. And of course, if you're not sustainable, then by definition, it's not a good idea to scale.

And while the firm overall was experiencing this sort of overwhelm, the sustainability problem, really, it was also clear that one of the two main lawyers in the firm, who was the subject matter expert, was also the bottleneck in the overall practice. And so that person, who is the one that asked the question, that person was the one really feeling like things were not sustainable, that they were just on the treadmill, always firefighting, always on demand, couldn't catch a breath.

And so a lot of our early work, as it often is with my consulting practice, was focused on getting that practice from the roiling boil to the gentle simmer.

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And there's a few ways that we did that. One of them was the intake pause, which you've heard me talk about before. And that's just reflecting this idea that if the bathtub is already overflowing, yeah, we've got to do some work on the drain, but the best first thing you can do is turn off the tap. And we did do that, or at least we slowed it down considerably.

And then we spent a lot of time on sort of my typical process of making the work visible and drawing really more express phases out of the overall workflow and making sure that we knew what were the stages of the work and what are we trying to accomplish in each stage? How does it work in concert with the other stages to accomplish the goals and the outcome for the client?

Now, one of the things we wound up doing, and again, this is actually pretty common in my work with my clients, is we introduced a stage that it existed, but it wasn't called out as a separate part of the workflow. And that is a case strategy phase.

And this is something I run into a fair bit, especially with smaller firms as they're starting to grow, is that when it's a smaller group and you have a smaller number of clients, smaller number of people, it is maybe not advisable, but it's relatively straightforward to sort of hold the strategy for each of your cases in your head. So, it's not that they're not doing a strategy, it's that the strategy isn't made explicit, right? There isn't sort of a working document that you can turn to.

And that's actually another one of the key things that I do and that I sort of insist upon is once we've defined workflow stages inside of a law practice, I really like there to be a clear deliverable for each stage, right? Something tangible that you can turn to and say, yes, that's the output from this particular phase of work.

And so I think what was happening with respect to case strategy is, again, the team was thinking about strategy. It wasn't like they didn't have one, but

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there wasn't an output, there wasn't a deliverable. And so part of what we've been working on is coming up with what does that deliverable look like? And in this case, it's not actually a formal strategy document. It's not super detailed. We're kind of starting simple with effectively a case strategy outline that allows us to at least gather the information, sort of make the assumptions explicit in terms of what we think is going to happen, why we have those assumptions, what information informs them.

And then also, what other information do we need to find in order to either confirm or maybe invalidate some of the early assumptions we've made? Another piece of it is being really clear about what are the goals of the client? What is the outcome they're trying to accomplish? So that we can obviously ground our assumptions and our overall case plan in achieving that outcome.

Now, one of the things that's interesting and actually, I think really useful about that process, particularly of documenting assumptions. And I talk about this sometimes in the context of the Lean startup and these other notions that I work with, is that the hardest part of validating your assumptions is recognizing when you've made one. And so part of what this strategic plan outline does is forces the attorneys involved to actually document and state these are the things we believe are true based on this information, but also recognizing that, okay, some of this is an assumption because I don't have all the information. I need to go get some more in order to prove or disprove this particular line of thinking.

And none of this is rocket science, right? I mean, like I said, most attorneys are doing some form of strategy evaluation. But I think, again, this process of making it explicit, of giving it an individual phase introduces a couple of things, right? Number one is it forces us to be clearer about, well, in order to create this strategy outline, what specific information do we need, right? What do we need to hear from the client? What documentation do we want to see? What parts of legal research might we need to do in the early

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phases in order to really make sure that this first pass strategic outline, and it is that, right? It's a first pass, but that we get it as accurate as we can based on the information that we have. And then we can develop a plan for improving our understanding of the case and the facts and the personalities and everything else in order to accomplish the client's goals.

And what's interesting is that strategic outline may not even be something that the client sees, although it can be the basis of something the client sees. So, once you've got this documentation, number one, it makes it way easier for the firm to coordinate. And this is especially true now that they're starting to add more attorneys. So part of the overall story in terms of the overwhelm is, yes, we're doing this process improvement work, but we're also adding capacity to the firm. And I think they're up to six or seven attorneys now and sort of an equivalent number of support team members in order to deal with all of the demand that they're getting. And of course, when you add new resources, new members to the team, yes, you get some capacity, but you also introduce some communication and some coordination challenges.

And so part of what this strategic outline does is help solve for those. It makes it really clear. Number one, everyone in the firm is creating an outline to the same standard, the same specification. So the outline is a document that we recognize as something that is appropriate to this firm. And then because we have that commonality, that standardization, then it makes it easier for anyone in the firm to sort of get up to speed on a particular matter. And that, again, helps with the coordination and the communication overhead that comes from adding resources, right? That's just a natural part of growth.

The other thing we gain by calling out the strategy planning or this develop initial strategy plan as a discrete phase in the early part of the team's workflow is now for all of the downstream stages, right? And whether that's the pre litigation, letter writing, demanding, etc., etc. Whether that's early

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phase litigation, the pleadings, whether that's once we get a little deeper into discovery, each of those phases, yes, is designed to accomplish an outcome if we can, but it's also designed to improve our information about the case. And what that means is that sometimes the deliverable coming out of those future stages, there might be some individual deliverables as well, right? If you're filing pleadings, obviously, you're going to produce some pleadings, but there also is the deliverable of updating the strategic outline.

So every step along the way, we're making sure that we're taking what we've learned, feeding it back into our initial assumptions, validating, invalidating, adjusting courses we need to, so that our ability to manage the case towards the client's outcome, or even frankly, we might learn that the client's preferred outcome is not really likely or achievable, and that's important too, right? So now we have an opportunity to loop back with the client, adjust expectations, adjust course, etc. But the key thing about having this tangible document is it now becomes a resource that we continually refine through the process of the litigation.

So, this probably makes sense to you, right? And regardless of what your practice area is, even if it's transactional, if it's administrative, whatever happens to be, the strategy plan may be more or less complex depending on your area of practice. But I think there's a lot of value in having it, number one, making sure it is an explicit part of your process. And then also making sure that the downstream parts of your process include an adjustment to the strategy if needed. And also obviously a communication back out to the client if there's going to be an adjustment, or frankly, even back out to the client if there's going to be no adjustment, right? Here's what we learned. It's more or less what we expected. Everything is on track. That's a great client update.

Here's sort of the twist, I guess, when it comes to adaptability in terms of your overall law practice, right? So that's adaptability within the context of

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an individual case or matter. But adaptability in the context of your overall practice has to work kind of the same way.

And so going back to this attorney's question, should we be adopting Vincent in our practice? The answer depends on what are the strategic goals of the practice. And I'll actually give you a little bit of a idea of what this particular practice is trying to do.

So, first off, one of the things we noticed, right? So the goal of the initial process improvement work was to sort of turn down the temperature, reduce the overwhelm, improve the sustainability. But it also started to make the individual matter work more efficient, right? We are maybe getting to certain outcomes a little quicker, we're reducing rework, we're eliminating some of the administrative overhead from handoffs and delays.

And the problem, right, to the extent that it's a problem, but this firm is billing hourly, like most litigation practices still are. And so the risk that we're starting to encounter is that this improvement work focused on sustainability is actually starting to erode to a limited extent, but to a noticeable one, the firm's profitability.

Now, the firm doesn't necessarily want to be profiting from inefficiency. I don't think most people do. But they also don't want to be reducing their profitability either. And so one of the strategic initiatives that we're working on together is to explore a phased flat fee approach to litigation, something you've heard me talk about in other episodes, to see if we can create an environment where we're creating this win-win, right? Where the client understands what they're going to have to pay, what this particular phase is going to accomplish, how it's going to make them more informed, smarter about the overall thing they're trying to accomplish.

And ultimately, even for the firm to be able to sort of charge less on a flat fee basis for that phase than they might be charging on average on an hourly basis today. That's fine. But what we want to do is create a situation

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where the firm gets to benefit from the investment they're making in process improvement and then eventually technology implementation so that they're not in this world where they're eroding their revenue streams because they're doing the right thing in terms of systems and workflow and efficiency.

And this strategic initiative around revenue model change, pricing model change, it's not a small set of tasks, right? There's a lot that we want to do. We don't want to jump into making a bunch of changes that we don't have a good idea of what the implications of those changes are going to be. So we're taking it slow, we're being deliberate, we're running experiments, we're doing design.

And we're also being intentional about all of the sort of tangential implications, right? We're going to have to change the engagement agreement. We're going to have to keep an eye on the incentivization program that is currently also built on an hours target. And, I've talked about this a little bit before too, but if you're going to be implementing flat fee or value based pricing, you definitely don't want to be incentivizing your team members for their effort while your pricing model is rewarded by efficiency. So we've got things like that, we've got to think through as well.

But again, getting back to this core question, do we want to start adopting Vincent? My answer is absolutely we want to start understanding it. And I think it's worthwhile for this firm to probably sign up for this particular attorney to start using it. I think it costs maybe a couple hundred dollars a month. I don't know the exact pricing, but this firm's doing pretty well. They can afford that even on an experimental basis, at least for now.

And I think that strategically, right? So one of our other strategic plans right now or sort of initiatives is to continue to work to make sure that this one attorney is less and less of a bottleneck in terms of the firm's overall work. And so one of the things that could be really useful right now for Vincent or

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any other technology system, it doesn't just have to be that one, is if the tool can help this attorney improve their personal throughput and be able to get matters off of their plate and back out onto other members of the team, then it probably is worthwhile, right? We do want to make sure that the cases are flowing smoothly, that they're not getting stuck and specifically that they're not getting stuck for want of a resource in the form of this particularly skillful attorney.

But we have to balance that against this other strategic initiative around making sure that we don't drive too much revenue and therefore some profitability out of the practice before we've changed our revenue model so that we can create that win with the client and make sure that we're not getting harmed by these investments in efficiency as opposed to just sort of chipping hours out of the overall system.

So, at the end of the day, and I think the direction that this attorney is going is, yeah, they're going to try out Vincent and they're going to see what happens, but we're going to also do it sort of in the form of an experiment. And we're going to make sure that we're able to, number one, understand the capabilities of the tool, but then to the extent that those capabilities are useful, we're going to adopt and use them in a way that serves the strategy of eliminating a bottleneck, but is measured enough to allow this other strategy of improving the pricing model to sort of get mature, get in place so that we don't have a cost associated with this efficiency investment as opposed to a benefit that comes from it.

All right, I'm going to leave it there. I'm going to put in another quick plug for my Agile Attorney Pocket Guide to Law Firm Strategic Planning because I think it's a really good resource to help you think through the strategy planning process inside of your own practice. And so if you haven't picked that up already, if you go to agileattorney.com/sps, that will get you a link to go do that.

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If you do get that book, or if you've already read through that book, I would love to get your feedback. A few of you have written me already, but I'm thirsty for more. So if you have thoughts, criticisms, I can take it. I'm in the sort of final stages of getting that thing ready to publish on Amazon and I would love to make it as useful a resource as possible before I do that.

So you can always email me john.grant@agileattorney.com. I'm happy to sort of do a quid pro quo with you if you want to chat a little bit about your practice or maybe questions about how to implement strategy. I'm all ears and I'm going to be helpful and hopefully give you some good thoughts and advice around that as well.

If you do want to just chat with me about your practice, you can also set up a call with me if you go to agileattorney.com/discovery. That'll get you to my scheduler and I love talking about this stuff, so I'd be happy to chat about your particular practice with you.

I'm also putting the finishing touches, or at least the initial finishing touches on the light version of the Agile Attorney Community. And so if you have already gotten the law firm book, you might have a login to the community already. But either way, you can get one for free if you go to agileattorney.com/join. That will get you to either the login page or the signup page, depending on which one you need.

And one of the other things that's in the community that you might find useful on this topic is a one page canvas. And if you're familiar with the business model Canvas or the Lean Canvas, you'll recognize this approach, but it's basically a one page worksheet to help you think through your practice model for different practice areas inside of your law firm. So, another good tool inside the community.

As always, if you have questions for me or topics you'd like to hear me cover, you can reach me at john.grant@agileattorney.com.

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This podcast gets production support from the amazing team at Digital Freedom Productions and our theme music is Hello by Lunara. Thanks for listening and I will talk to you next week.