Design Thinking for the Legal Profession

EDITED BY ALEX DAVIES

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Executive summary

There has never been a more exciting time to practice law. While artificial intelligence promises to minimize mundane tasks, clients' legal issues are becoming more complex. But, to successfully navigate these changes, legal professionals must better develop and exercise their creative problem-solving skills. For decades, companies in other industries have refined techniques to better understand their customers' needs, uncover insights, and develop new-to-the-world ideas, which are now products and services we use every day. Organizations have concluded that successfully adopting these methods, known as design thinking, can lead to greater financial returns than pursuing more traditional ways of operating.

As the legal industry grapples with increased complexity, accelerated market deadlines, and budget constraints, design thinking holds promise to create a more delightful client experience while also increasing profitability.

The book's opening chapter, by Lann Wasson, associate director of legal project management and Rebecca Holdredge, innovations manager at Husch Blackwell, introduces the fundamentals of design thinking and identifies both challenges and opportunities for including design in the delivery of legal services.

The challenge of introducing such a radically different concept to what lawyers are used to is explored in chapter two, by futurist, John Alber. He argues that if ever there was a discipline ripe for correcting law's ivory tower self-absorption, design thinking is it. Design thinking's human-centered approach to innovation – once the province of professions typically associated with design, such as architects, urban planners, and industrial designers – is now seeing increasing use in businesses of all types, including even a few law firms (and it is being taught in a few law schools). These firms have descended from the ivory tower, and are, John argues, much the better for it.

In chapter three, Meghann Barloewen and Jason Dirkx, Littler Mendelson, look at how design thinking is a user-centered, multi-stage methodology that advocates framing problems amidst deep user

empathy and rapid prototyping of creative solutions to service issues or barriers. Their chapter looks at how design thinking can help lawyers better understand their clients' work, overcome their own biases, and define clients' underlying and truest needs. Successful solutions require practiced emotional empathy. This chapter takes a deep-dive into two essential stages of the design thinking methodology: empathizing and defining the root problem. It includes practical experiences and perspectives learned through using design thinking in action.

Design thinking (or service design) is a methodology that has been used in manufacturing and many other industries for decades, but its entry into the commercial legal space has been slow. And yet law is a professional services industry, where success is predicated on client satisfaction. There are many reasons to use design thinking in law firms (and with in-house teams), but perhaps chief amongst these is the importance of re-orienting the practice of law around the needs of the client. The methodology can also be used internally to facilitate widespread culture change, and to instil an innovation mindset within a population of employees who may be set in their ways. Chapter four, by Nicola Shaver, managing director, innovation and knowledge at Paul Hastings, explores the reasons why design thinking can and should be used in law, and provides practical guidance to help newcomers get started.

Design thinking is a well-known methodology for producing work and collaborating in software development. More recently, we have seen other industries adopt design thinking as a way to improve collaboration, increase creativity, and remove bias from work product and process. The legal industry has become increasingly more competitive since the great recession of 2008, leaving firms and departments struggling to find ways to increase productivity, efficiency, recruit and retain talent, as well as deliver excellent customer service that provides a rich experience. By embracing design thinking and the theory behind it, the legal industry – from individual law firms to large government departments and everything in between – can begin to reimagine their workflows and offerings to be in line with current client expectations, moving into 2020 and beyond. In chapter five, Zena Applebaum, director of customer insights and engagement, Thomson Reuters Canada Legal Tax and Accounting, looks at the options.

Legal Lean Sigma® is the unique combination and application of Lean and Six Sigma methodologies, concepts, and tools so they are taught and applied specifically in the context of the legal profession. Legal Lean Sigma Design takes a similar approach. In chapter six, Catherine Alman MacDonagh, CEO and founder of the Legal Lean Sigma Institute LLC,

explains how the Institute combined elements of traditional design thinking, then layered in specific Lean Sigma methodologies and tools in order to develop a unique approach to their combined application to the legal field. Legal Lean Sigma® Design is a completely new and distinct approach to improvement and design.

A new kind of awareness is emerging in the legal market. It is coming from both lawyers and business professionals. It is the recognition that new approaches to strategy, growth, and innovation must be found. More and more practice groups and in-house teams are experiencing significant structural, cultural, and financial stress within their organizations. They are struggling to operate their existing business platform while also exploring, testing, and launching new ways of working and new service models. Design thinking is a problem-solving opportunity-finding method that turns traditional business strategy-making on its head. Its popularity within legal has been growing exponentially recently. In chapter seven, Josh Kubicki of Bold Duck Studio argues that clients, firms, inhouse teams, and the entire legal ecosystem stand to gain from this new mindset and methodology, if – and only if – enthusiasm can be accompanied by actual execution. Design itself is not the cure-all, but is a potent tool to add to the leader's arsenal that will better equip them to make real, sustainable, and desirable change happen. It is wonderful that there is a growing design-interested community in legal. It is imperative that this community advances its maturity and capabilities in order to tackle the systemic and cultural challenges that lie ahead.

Every day the legal industry is inundated with announcements about new innovative solutions. From all sides, organizations are pursuing new ways to deliver services, new products and even new business models. Yet, in the rush to adopt technology and appear "innovative", organizations often lose sight of their customers and the needs they aim to solve. As a human-centered approach to innovation, design thinking starts with the customer and includes a number of mindsets and techniques to uncover insights that can lead to ideas, and ultimately solutions, that delight clients. Chapter eight, by Lann Wasson, focuses on the role that empathy, observation, and collaboration play in learning to see problems from different points of view. Examples of various ways to practice building one's creative muscles and real-world examples of how to develop and communicate insights to teams are included.

Tess Blair, of Morgan, Lewis & Bockius LLP, writes about and lectures on legal design and delivers a program called a "Legal Design Jam" that uses elements of human-centered design thinking, six sigma, legal project management and a heaped helping of finesse to leverage what would

otherwise be unique constraints in the legal environment (i.e. lawyers) to maximize the potential outcome of a legal design exercise. Tess uses what she calls "psych-ops jujitsu" to turn the challenges in legal (i.e. lawyers) into assets that optimize the time, engagement, and outcomes of their exercises to deliver client-centered solutions. Tess has spent a lot of time observing lawyers in their natural habitat, studying the unique business structure of law firms, and speaking with and following the insightful work of Dr Larry Richard, the leading expert on the psychology of lawyer behavior. This, combined with her background in industrial design, led Tess to create the Legal Design Jam – outlined in chapter nine.

Clients want their lawyers to (1) understand their business, (2) solve the legal or business problem at hand, (3) make their life easier, and (4) be likable. The five stages of design thinking (empathy, problem definition, ideation, prototyping, and testing) are natural steps to foster client intimacy. In chapter ten, Mark Beese, president of Leadership for Lawyers, looks at the expected results from using design thinking to innovate with clients, which include a better understanding of the client, their needs, context, industry and preferences, increased trust and communication about difficult topics, increased awareness of how the legal professional can help the client, and, ultimately, increased client loyalty.

Partnership track, the "T-shaped lawyer," the "Delta Model of Lawyer Competency"… there are models out there that tell you what you should want or how you should build your legal career. But as a law student, young lawyer, or accomplished attorney, what if you still haven't really found "what you want to be when you grow up"? Chapter 11, by Amani Smathers, senior legal solutions architect at Davis Wright Tremaine, and Amy Monaghan, practice innovations manager at Perkins Coie, builds on Bill Burnett and Dave Evans's *Designing Your Life* book to help those in the legal profession use design thinking to design a career that is personally fulfilling.

How great would it be if you could grab 20 people from your office, have them block their calendars for three days, bring in your key clients, and do a full-on design thinking workshop to create the next great firm-client product? Um, really great, actually. (You should try it!) But you work in legal, where that sort of thing is not all that simple to pull off. So, is design thinking off the table?

Luckily, no – argue Andy Peterson and Kate White of Design Build Legal. In chapter 12, they demonstrate how there are practical ways to infuse your daily work with aspects of design thinking. From turning around that group meeting that always devolves into a complaint session; solving a challenge by expanding the number of voices in the

room; gaining buy-in from leadership around making new investments; to creating stronger relationships between your firm and your clients.

In the second of his two chapters, Mark Beese discusses how, when teaching design thinking for legal, there are six mindsets that drive innovation. These mindsets are human centered, radical collaboration, show, not just tell, prototype, bias towards action, and trusting the design thinking process. For some legal professionals, however, these mindsets are counter-intuitive and take some time and effort to master. In chapter 13, Mark discusses how to overcome potential lawyers' reluctance, and to master the mindsets.

How do you in reality make service design work in the legal industry and within large global law organizations? In chapter 14, Alex Smith of iManage RAVN delivers practical lessons from the front line of creating a service design approach within an innovation program – outlining how and where service design can make tangible changes to the way legal service is delivered. Alex also looks at how to bring a product approach using user-centric design best practice from the technology industry to legal services and why a product focus can influence more than just #legaltech innovation.

To conclude the book, consultant Duncan Hart offers a word of caution. Today's market for legal services imposes considerable demands on firms to creatively address the way they operate. This includes not only the way they go about securing clients but also the processes they use to how they service clients. Design thinking is not necessarily the best approach for firms to adopt, however.

It highlights close attention to client needs and envisages a strong team-based approach to exploring those needs and the rapid development of experimental "prototypes". This approach, however, must be tempered, particularly in the case of law firms, by a recognition that experimentation cannot often be conducted at what might be a potential cost to the client, let alone the firm's insurers!

Firms need also to be aware of the "cultural" requirements that adopting design thinking demands. This requires careful assessment as to the specific context in which such a process can be appropriately deployed. Many teams within the firm may simply be unsuitable or unable to execute a design strategy in view of any number of dysfunctional elements that beset teams. In short, firms need to carefully assess whether design thinking is an appropriate response and process to the issues they are seeking to address. Chapter 15 looks at the potential pitfalls of design thinking.

About the authors

John Alber serves as futurist for the Institute for Future of Law Practice and for the International Legal Technology Association. He writes, speaks, and consults widely, focusing on finding practical ways to reshape the delivery of legal services to suit a future demanding excellence far beyond substantive legal skills. Prior to his current role, John was a transportation industry CEO. Thereafter, he led Bryan Cave LLP to become one of the most innovative firms in the world, serving as its strategic innovation partner for more than 16 years. While at Bryan Cave, he also served for seven years on the firm's operating group (its management committee). John is an Emeritus fellow of the College of Law Practice Management. He has received a number of awards, both in the legal field and in information technology generally. Among other awards, he received ILTA's first ever Premiership Award, was named American Lawyer Media's first ever "Champion of Technology", was given a Lifetime Achievement Award by Law Technology News and recognized as one of the Top 25 CTOs in the world by Infoworld. In addition, while under his leadership, Bryan Cave received recognition as a *CIO Magazine* "Top 100 Company" and was twice recognized as ILTA's Most Innovative Firm.

Catherine Alman MacDonagh is a former corporate counsel and law firm executive. She teaches and provides training and consulting services in process improvement and project management, strategic planning, marketing, and business development. A Legal Lean Sigma® Black Belt and a certified Six Sigma Green Belt, Catherine is the CEO and a founder of the Legal Lean Sigma Institute. It offers consulting and the first and only process improvement and project management certifications, courses, and workshops designed for the legal profession. Catherine created Legal Lean Sigma® and the award winning Legal WorkOut®.

Zena Applebaum is a competitive intelligence strategist, legal blogger, personal brand advocate, and trying to change the legal industry one design thinking workshop at a time. Having been one of the early pioneers of law firm competitive intelligence nearly 20 years ago, and authoring *Business Intelligence for Law Firms* published in November 2012, Zena shares her passion for the industry as a speaker, writer, and a contributor to blogs, including 3 Geeks and a Law Blog with topics ranging from competitive intelligence to change management, qualitative data analysis and personal branding. In 2015, Zena was inducted as a Fellow of the Council of CI Fellows and has been a sessional instructor at the University of Toronto iSchool, Rutgers University and a guest lecturer at law schools across North America. Zena honed her CI skills as the director of competitive intelligence at Bennett Jones LLP for over a decade prior to taking on her current role as national director, market insights and engagement at Thomson Reuters in Canada. In her role, Zena is responsible for client feedback and intelligence, market insights, and sales enablement.

An attorney in Littler Mendelson's Knowledge Management department, **Meghann Barloewen** collaborates with subject matter experts, practice groups and other firm departments in the creation and management of innovative client services in all areas of labor and employment law. Significant areas of focus include new development and content sustainment of the HR applications for Littler's award-winning joint venture, ComplianceHR. Meghann also leads the development of other technology solutions, including risk analysis and document automation applications, workflow processing tools, and other educational materials. As Knowledge Management counsel, Meghann frequently draws upon her prior experience in advice and counsel work and litigation experience defending employers in a broad range of employment matters.

Mark Beese is president of Leadership for Lawyers, LLC, a consultancy focused on helping lawyers become better leaders and business developers. He provides training, coaching and consultation to firms in the areas of leadership development, business development and innovation with law firms and other professional service firms. His clients range from small, single office firms to global Amlaw 10 firms. Mark is an adjunct faculty at the University of Denver school of law and former adjunct faculty at the Center for Creative Leadership. He focuses on issues of change leadership, team development, influence, cross-generation issues, collaboration, innovation and design thinking. He is a Fellow

of the College of Law Practice Management and has been inducted into the Legal Marketing Association Hall of Fame. Mark facilitates design thinking workshops for law firms, legal departments, and professional departments – www.designthinkinglegal.com.

Tess Blair is a litigator and legal entrepreneur who has practiced at the intersection of law, technology, and design for more than two decades. Tess is the founder and leader of Morgan Lewis's eData practice, a data-driven practice that combines great lawyering with technology and design to enhance the delivery of legal services. A practicing litigator, Tess serves as national discovery counsel to some of the world's largest organizations alongside her client's trial counsel, and as a core member of the litigation team, she develops and executes all aspects of the client's discovery strategy as well as optimizes her client's evidence gathering, analysis, and presentation. Tess counsels a host of Fortune 500 companies, conducting risk assessments and guiding her clients as they develop internal information governance policies and controls to address privacy, security, retention, and disposition of information and data. As leader of eData, Tess works with her team, her colleagues, and clients to design and develop tools and techniques to improve the delivery of legal services. The eData team uses process design, automation, UX, product design, application development, machine learning, and augmented intelligence tools to develop technology, process, and service solutions built to meet our clients' needs. Tess lectures regularly on civil procedure, eDiscovery, and data privacy – including cross-border discovery and data minimization – and writes frequently on eDiscovery, information governance, and data privacy for a variety of legal publications. She is the lead author of the eData Deskbook, currently in its third edition. Tess also serves as Special Discovery Master to the Eastern District of Pennsylvania.

Jason Dirkx, knowledge management counsel at Littler Mendelson, focuses on identifying and integrating new knowledge management technologies with the firm's legal work processes. He works with attorneys, practice groups, other knowledge management attorneys and clients in an effort to provide innovative client services in all areas of labor and employment law. Jason has worked for several other law firms, developing and globally deploying legal technologies and services. Prior to law school, he worked as a software engineer, developing military planning and readiness software for US Strategic Command (US STRATCOM) and the Department of Defense.

Duncan Hart practiced as a barrister and solicitor principally in the area of intellectual property for more than 25 years before becoming a managing partner at one of Australia's largest law firms. He opened his own consultancy in 2002 in Melbourne, providing management consulting advice to the legal and allied professions. Duncan's educational background includes Legal (LLB) and Master of Business Administration (MBA) degrees. Duncan has acted as chairman of partners and managing partner for various professional service firms, including three law firms and a patent attorney firm and has also undertaken project management consultancies as in-house counsel. He is a regular traveler to SE Asia and China as well as the Middle East. He is a director of several companies involved in supporting the export of services to those regions and the commercialization of their intellectual property. He has lived and worked in both the US and UK, providing management consulting and legal advice. He is based in Melbourne. He is the author of *The Strategic Law Firm* and *Lean Innovation for Lawyers* and a regular speaker at conferences dealing with leadership, strategy, innovation, and marketing issues.

Rebecca Holdredge is the innovations manager at Husch Blackwell and an experienced data scientist, attorney and Six Sigma Black Belt. Rebecca leads the firm's innovation advisory team and the associates legal innovation team and encourages attorneys to create a culture of innovation, efficiency, and quality by developing best practices and leveraging technology. She also engages with clients and in-house counsel to better understand their needs, develop relationships, and collaborate on innovative and effective solutions. Rebecca is well versed in the approach and techniques of design sprints to encourage more collaborative ideation and experimentation.

Josh Kubicki is co-founder and design principal for Bold Duck Studio. He is a former chief strategy officer for a global law firm, worked in Verizon's general counsel office, and has worked with numerous in-house teams, law firms, start-ups, and leading corporations – designing and launching new business models. At Michigan State University, he was an adjunct faculty member where he developed and taught the industry's first law school curriculum on design thinking.

Amy Monaghan is practice innovations manager at Perkins Coie. As a member of the Knowledge Management team, Amy works side-by-side with practice groups and clients to design, develop, and implement

innovative solutions, particularly those involving artificial intelligence, document automation tools, and logical reasoning systems. Amy is responsible for educating the firm and its clients on the availability and capabilities of legal technology and is a frequent speaker on these topics.

Andy Peterson has spent a decade throwing himself into designing better experiences for law firm clients – more transparent, more collaborative, and more efficient, where decision-making is driven by data as much as by gut feeling. One of the original contributors to Davis Wright Tremaine's De Novo effort, Andy is proud of how he and his peers took innovation at that firm from a collection of grassroots projects, to a firm-supported initiative for internal improvement, and finally to a client-focused effort to drive revenue, client loyalty, and brand awareness. Andy thrives on working directly with clients to design technology and staffing initiatives that solve some of their most difficult legal and business challenges.

Nicola Shaver is the managing director of innovation and knowledge at Paul Hastings, LLP. Her interest in design thinking was sparked in 2015 when she participated in one of Margaret Hagan's workshops and witnessed the power of empathy and user-centric design to solve problems in a more meaningful way. Since then, Nicola has introduced design thinking at two major law firms, both as an internal driver of change and as an external tool for improving client service and engagement. Nicola is an IDEO-trained design thinking facilitator, and a 2019 graduate of the Helsinki Brainfactory Legal Design Workshop (in association with the Legal Design Summit). She is also the founder of the Legal Innovation and Design Association (LID), a support and education network for innovation professionals in US law firms with an interest in service design methodologies.

R. Amani Smathers is the senior legal solutions architect at Davis Wright Tremaine. Amani works directly with clients and partners to design solutions to legal business challenges. She specializes in process improvement methods, document automation tools, and developing simple systems to manage workflows and turn data into actionable insights. Her favorite projects are those where she sees her work make a real, positive impact on a team's workloads and outcomes.

Alex Smith is global product lead for iManage RAVN, delivering search, next generation legal data and using AI techniques to extract insight

from data used in legal work. He heads up the product team, working closely with customers. Alex previously worked at Reed Smith LLP, leading the firm's Innovation Hub program. He headed up a physical and virtual program of client-centric ideas-generation and rethinking of legal service design. Based in London, he managed activities in the Innovation Hub, Reed Smith's unique space for co-creation with clients using service design and innovation techniques. As a user-centric design practitioner, Alex puts the client at the heart of everything he does. He has two decades of experience interacting with lawyers in law firms and inhouse teams to design new products and technologies, primarily as innovation and new product lead at LexisNexis.

Lann Wasson is the associate director of legal project management at Husch Blackwell LLP and holds certifications in project management (PMP), Lean Six Sigma (Green Belt) and Design Thinking (IDEO). For the past 18 years he has worked closely with client teams, practice groups, and in-house counsel to understand their needs and guide the design and development of new solutions from technology platforms to new products and services to new business models. Lann conducts workshops with internal and external clients in the areas of artificial intelligence, legal project management, and service design. In 2017 and 2018 the ACC recognized two of his client projects as Value Champions.

Kate White is the co-founder of Design Build Legal, a consulting company focused on supporting law firms in applying people, process, and technology to design client-centered legal solutions. She has been working with law firm leaders to launch new practice and industry groups, apply account management principles, gather client feedback and insights, and develop client-centered products and services for over a decade. Kate also works with in-house legal teams to develop outside counsel management programs. Prior to launching Design Build Legal, Kate served as a founding member of Davis Wright Tremaine's innovation initiative, DWT De Novo, through which she worked with clients to identify challenges and develop integrated solutions. She holds a JD from Seattle University School of Law and a BA in Journalism from Seattle University.