

A Need for Lawyers With Empathy

There is an opportunity—and a need—for lawyers to be better listeners, a skill not typically honed in law school and developed during the course of one's career.

By Alexander C. Gavis and Mark E. Young | August 07, 2018

There has been much discussion in recent years about whether lawyers need an MBA. Are the skills and immersive understanding of business that come with a business school education required for success as a lawyer? Maybe, but one thing is for sure: there is an opportunity—and a need—for lawyers to be better listeners, a skill not typically honed in law school and developed during the course of one's career.

The backdrop of starting big-law salaries of \$190,000 for freshly minted lawyers begs the compound question: What skills are required to ensure excellence in service delivery, and what foundational attributes should clients expect from their lawyers? By stepping back and looking at the increasingly important intersection of client and professional development, there is a gap, and it can be filled with empathy. With an understanding of why and how empathy plays such an important role in lawyering, the benefits to both client and lawyer become readily apparent.

People seek out lawyers to help them solve and resolve their problems, and lawyers today are often perceived as trained brains who can untangle the spaghetti of rules, regulations and laws to find answers. So when lawyers are educated (and in training), we see a focus on the making of the best critical

thinkers, those who are highly analytical and who can efficiently apply logic to the spaghetti. Pick practically any area of the law these days—immigration, securities, health care—and it comes with a patchwork of case law, statutes, regulations and interpretations coming from the state and federal government. It is no wonder that we see lawyers, like professionals in many fields, becoming exacting specialists in specific and sometimes arcane areas of the law.

The law schools contribute to this endeavor by training lawyers first to be critical thinkers (like legal Swiss Army knives). The common approach in legal education is to give lawyers a set of facts that can be carved up and analyzed against the lawyer's understanding of the law. This caselaw teaching method helps precondition lawyers to focus on the sharpness of the blade and perhaps not on the subject itself.

The legal profession is in its foundation a service industry. Lawyers exist to advance the goals and interests of clients and serve to protect clients from harms or other challenges, whether they be framed by individuals, businesses or governmental entities. In serving clients, lawyers draw upon a broad mix of skills, including critical thinking, advocacy, negotiation and communication. But what is often missing from this core skill set and approach to service delivery is the appreciation for and commitment to discernment: truly understanding what matters most to the client, and why. Think of this as the discipline for a front-loaded—and sustained—needs assessment. Lawyers are great at solving problems, but what about finding problems?

Hard-wired to demonstrate expertise, act decisively and proceed with haste, lawyers often don't stop and get the full picture on what is motivating the client, and why. In his book, "The Lost Art of Healing," Nobel Peace Prize winner and cardiologist Bernard Lown eloquently captures the critical

importance of taking a patient's history. Lown connects the science of history taking and the art of listening with a question: What is the doctor listening for? If the aim is to understand the medical problem as well as the person behind the symptoms, Lown suggests that the latter is typically what needs clarification. So, for lawyers, herein lies the extraordinary opportunity to gain this holistic view, to take "the client's history."

As important as it is to understand all that lies beneath the client's needs at the inception of the engagement, this should be an ongoing process. By asking—and listening—with sustained diligence, the lawyer has the ability to re-evaluate constantly her approach to problem solving and, with that, innovate actively. Today, the buyers of legal services are increasingly expecting innovation in the service delivery. Armed with this evolving client insight, the lawyer can unlock the unique definition of innovation and advance a highly collaborative working relationship.

The development of lawyers with empathy should start with their training in law school. While clinical law programs have been offered for years, these programs should be expanded to introduce more recent human-centered design thinking approaches. A handful of law schools in the country are testing out such programs. At Suffolk University School of Law, students can now take the course, "Design Thinking for Lawyers and Business Professionals." The Legal Design Lab is an interdisciplinary team based at Stanford Law School and the d.school. Similarly, Executive Education at the University of Toronto's Rotman School of Management offers "Design Thinking: Connecting Innovation and Strategy." And that's the key, linking client-centric innovation with strategy.

Practice areas involving complicated legal concepts that must be explained in clear and understandable terms to individuals are ripe for using these

techniques. Estate planning and immigration law immediately come to mind. Lawyers who embrace a client-centered approach have the ability to frame and advance an innovative approach to service delivery. First, lawyers interview representative clients and the public to understand fully, in a nonjudgmental way, these individuals' problems and needs. Sometimes in this step unintended results pop out; for example, in using this technique immigration lawyers might discover that prospective clients are unable to read and understand the lawyer's intake forms or can't read signs to locate offices.

Once problems are identified, lawyers develop personas (descriptions of a representative client) for use in their research, and then articulate a problem statement. Next, the lawyers brainstorm ideas that could address the clients' problems, even creating some prototypes of ideas (think: model forms or diagrams explaining the immigration process). While challenging for lawyers, this step involves flaring broadly in suggesting ideas. A selection of these ideas can then be tested with individuals and a feedback loop for developing better ideas is developed. The goal of this process is to understand deeply client pain points and develop solutions to address them, rather than develop solutions to the lawyer's perceived notions of clients' problems.

For practicing lawyers, this skill set must be strengthened, developed further and expanded in scope. For in-house lawyers, it is imperative to understand better the organizational and personal goals of internal constituencies. Larger corporations, particularly in the technology and financial services industries, are developing new products and services using human-centered design techniques. Lawyers that serve within, and as outside counsel to, these companies should be educated on these techniques and approaches. Further, this additional insight and perspective can fuel innovation and more productive and efficient service delivery, which will in turn strengthen and deepen existing

client relationships. Lawyers who can empathize and identify the underlying problems give their clients an extraordinary advantage.

There are also real opportunities to introduce these concepts to lawmakers and regulators. The design of laws, regulations and governmental policies must involve a deep understanding of the regulated subjects and human-centered design research could play a significant role in educating policymakers. A limited use of these techniques has recently occurred in collaborative work initiated by the Financial Industry Regulatory Authority (FINRA) and Stanford Law School regarding regulated disclosures in advertising. The time is ripe for additional efforts.

Whether in-house at a business, serving in government or working in private practice, lawyers today face immense challenges as they balance competing pressures on both the client service and client development fronts. Lawyers must constantly reassess how they can service clients better and, at the same time, look for ways to more purposefully align interests and advance mutual investment in each other. Critical to client service and development success is an understanding of core needs and unique definitions of value, together with immersive, forward-looking insight. And this cannot be done without empathy. Active focus here can open new avenues for today's lawyers such as deepening client loyalty and relationships, driving new business opportunities and making closer connections with business teams.

Change comes through learning and practice, and empathy work is all about developing listening while embracing innovation. Now is the time for both law schools and law firms (and corporate and government legal departments) to bring this forward and enable lawyers to carry these techniques into the offices. Once the profession gets a taste of how powerful empathy work can

be, there will be no going back. And if the goal is a shared lawyer-client vision for success, then this lawyer skill is priceless.

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