

Lawyers With Empathy in Practice

The journey for lawyers in becoming empathic listeners is one that can be accomplished through a more intentional embrace of practice and client management principles.

By **Alexander C. Gavis and Mark E. Young** | September 13, 2019

Regardless of whether a lawyer works for a firm, herself, a corporation, a governmental entity or a not-for-profit, a significant key to success is becoming a better listener. We have described in a prior article—A Need for Lawyers With Empathy

(<https://www.law.com/corpcounsel/2018/08/07/a-need-for-lawyers-with-empathy/>)—that practicing a form of empathy, or careful listening toward better understanding clients’ needs, can yield powerful advantages, including both a stronger practice and more successful client outcomes. The journey for lawyers in becoming empathic listeners and empathy researchers is one that can be accomplished through a more intentional embrace of practice and client management principles. While this activity can be described in a framework, such as what we present here as a disciplined “design-thinking” or “human-centered design” approach, there are certainly additional and alternative pathways that could be developed and refined.

Starting at the core, service professions are built on the trust of clients and expectations that their problems will be solved. Clients today seek out

lawyers and other service professionals to help unravel complexity and to work, or collaborate, with them to develop pathways to good results. This means that clients expect, if not demand, that their lawyers understand the external environment and forces that brought them to seek legal advice in the first place. We also hear that clients do not want textbook or doctrinal answers; they seek innovative, market-immersed thinking from their go-to lawyers.

Like the overall movement toward consumerism, clients want lawyers who really understand them and provide options, guiding them to results that work specifically for them, all at reasonable costs. To address these developments, lawyers and law practices have embraced helpful, but inwardly-focused, solutions such as new project management processes, alternative billing arrangements and technologies that shorten hours spent on tasks. The process that we advocate here is designed to focus, through empathy research, outwardly on client needs and envisions a truly deeper understanding when developing and providing services.

With an embrace of design thinking concepts, lawyers have enriching opportunities to transcend the positions of local expert or tactician to assume an even more engaged role with clients, to plan collaboratively with them. This in turn can extend the lawyer's influence by allowing her more fully to understand the why behind all of the client's most pressing challenges and opportunities. Also, importantly, we believe that with better knowledge of client needs and expectations—a value-added mindset—the lawyer can more purposefully focus on advancing organizational objectives and solving her clients' most pressing issues and problems. We believe that this process, described more fully below, can move lawyers from being service providers to value-added contributors.

The first step in deciding whether to employ a human-centered, design-thinking strategy is to evaluate a firm's practice areas for vibrancy and longer-term viability. In some instances it may be easy to identify those areas of practice that are lagging behind others, based on project flows, work assignments or revenues to the firm. In other instances, it may be more difficult to determine whether a practice area is humming along with truly satisfied clients and the anticipated flow of new work. In either case, it may be a good time to start to take stock of whether each practice area has a backlog of engagements and a pipeline of future prospects for new business.

Apart from analyzing and understanding the financial dynamics of a practice area, it is important to understand clients' needs and their problems to be solved. Without a clear understanding of these needs, a law practice may not thrive as a place that will attract and help retain new clients. An example of how this approach can be used within the confines of a law practice:

- **Identify.** Among the practice areas for consideration, we recommend to identify a group of lawyers that regularly interacts with clients. For example, real estate, intellectual property, estate planning or immigration practice areas could be a good place to start. Each of these practice areas actively engages and connects with individual clients.
- **Discern.** With a practice area identified for evaluation, the next step is to consider who are the client groups that the firm is currently serving and groups that the firm hopes to serve. These groups can be divided into past clients served, current clients and prospective clients. From this list, the firm may then identify individuals or groups to conduct in-person interviews. Here, the goal should be discovery and awareness—with the goal of probing what concerns, issues and problems these clients have in the area of law involved. For example, if real estate law is the subject, the process is to identify what are clients' needs when buying and selling real property.

This process may begin with open-ended questions such as, “what concerned you when you last purchased or sold your house,” or “how did the process of buying/selling real estate work for you?” From these open-ended discussions with clients, there can be follow-up questions to focus in on identified problems. The interviewers should not approach clients with leading questions, but rather must skillfully seek to uncover the nature of and reasons for the client's problems or challenges. Instead of asking “why aren't you more organized in tracking your mortgage payments,” try: “how would you like to better understand your overall mortgage debt?” For an inventor seeking a new patent, the question might be: “how do you envision maximizing licensing revenue streams across different markets?” With each area probed, a goal should be to elicit specific areas where the client may have needed help or have a problem to be solved. This insight is

invaluable because it comes from those outside observing the legal profession.

- **Brainstorm.** The raw interview data comes back to the firm for further analysis and discussion. That discussion should take the form of identifying clients' needs and jobs to be accomplished, and typically this is done by composing a problem statement for a particular model client group (e.g., how can we serve a millennial-aged client who wants to protect her family by establishing an estate plan efficiently and at a very reasonable cost). The firm then turns to solving for the problem statement. This next step— active brainstorming—can be challenging for most. Lawyers must suspend their analytical selves and seek broadly to come up with new ideas. This flaring means being open at the outset to even the most seemingly impractical solutions to identified problems (e.g., an automated lifelike robot shows up at the client's house to intake data for an estate plan). Often a way to combat the lawyer's typical response to a way-out idea, is to insist that each acknowledge "yes, and..." after each idea, rather than focus on its flaws.
- **Categorize and prototype.** The brainstorming exercise can be exhausting and exhilarating, and can yield powerful insights. The group of lawyers developing ideas can then group them into categories (e.g., house visits for estate planning and a mobile estate planning food truck) for further refinement and discussion. The winning idea or ideas are then built out into roughly designed prototypes that are to be tested with clients or a larger segment of the public. The idea is not to develop a fully refined example of a solution, but something that can be tested relatively easily with a client group for feedback and refinement. The prototypes are only rough cuts (think: draft papers, hand-drawn foam boards or interactive skits). With testing of the prototypes, the clients or prospective clients may become co-creators, providing input that works its way into the next version of the prototype and ultimately the problem's solution. A client provides input, for example, on the hours for a mobile estate planning van to arrive on her street, or on the different industry sectors for which there is a need for the invention. An iterative process of prototyping-testing- refining-testing-building can result in improvements in client engagement and service delivery systems.

While these steps can be used to refine and develop practice areas, other internal applications are ripe for consideration. A firm's public communications, including examining how clients and prospects interact with web and mobile sites and newsletters, could be a useful area for probing. Further areas for examination might include a look at the firm's services and processes such as client intake, office lobby experiences and closed matter reviews. For example, could an immigration practice improve its client intake process by focusing in on whether its communications materials clearly and effectively explain clients' rights and responsibilities (and are translated into understandable languages or visual materials)?

This process can also be helpful for practices that work with in-house legal departments. Using a human-centered design process to understand deeply how an in-house client desires to interact with and manage workflow from outside counsel can be time well spent. Law practices that focus on human-centered design techniques can gain an advantage of being able to train lawyers to focus intensely on identifying problems before jumping to or articulating solutions. This could be a professional development track for law firms and legal departments and organizations, regardless of size. Client engagement and professional development should be aligned closely.

Further, let's consider a couple of illustrative examples of how the invested lawyer can be the catalyst for innovation proactively framing the development of new solutions. Consider a business client who is struggling with customers misreading or not understanding its online contract/terms of use. This may be driving up costs for the client as customers are using up associates' valuable time by calling with questions and concerns. Employing a design-thinking process could greatly assist understanding where the consumer problems lie and how to revise the contracting process to avoid confusion, lowering or eliminating the volume and costs of incoming calls.

Consider also a client who may see a newly proposed governmental rule as not being well-informed of various important viewpoints. A lawyer employing a design-thinking approach could work with her client to conduct empathy research to understand how the rule might impact the client, customers or the public generally. She could then draft a comment letter from the client to the government agency with research results, proposing adjustments to the rule or new approaches. Finally, think of situations in

which consumers struggle to understand privacy principles and policies articulated by businesses or other entities. Lawyers could facilitate a design thinking approach for clients that looks to consumers for their thoughts and ideas on how such principles affect their lives and activities, and then use that research to propose adjustments.

It should be an imperative for today's lawyer to seek out new techniques for delivering top-quality services to clients. An important step is considering and then embracing ideas like design thinking, which can lead to innovative approaches both in the provision of legal services and in helping clients achieve their goals. As we have said from the beginning, the first step is to help lawyers become better listeners and empathic helpers. The next step is to take action and to put these ideas into practice.

Alexander C. Gavis and **Mark E. Young** are Boston-based lawyers. Gavis is SVP & Deputy General Counsel at Fidelity Investments, and teaches in the area of design thinking and the law. Young serves as Counsel at Vox Actio LLC, helping law firms develop and advance client engagement strategy.

Reprinted with permission from the September 13, 2019 online edition of Corporate Counsel © 2018 ALM Media Properties, LLC. All rights reserved. Further duplication without permission is prohibited, contact 877-257-3382 or reprints@almcom.