

DESIGN THINKING IS THE COMPETITIVE ADVANTAGE BUSINESS LEGAL SERVICES PROVIDERS NEED

The US legal market is over roughly \$300 billion. Over one million lawyers compete with roughly 45 thousand new graduates added each year. Design thinking is a key tool for law firms and their senior partners to utilize in differentiating themselves against their competition. Lawyers stand as a unique group in the United States: they are the only individuals, legally, who can provide legal advice. At its core, the legal profession is a service industry. Those who work in the legal profession provide access and expertise to a unique area that is granted to them through training and legal statutes. Lawyers are a gateway. This White Paper is aimed at those legal professionals who wish to find a way to differentiate their services and stand-out against their competition beyond mere pricing discounts to absolutely satisfy their customers and secure long-term relationships.

2014 and 2013 were record breaking years for the United States legal profession. These years saw [large law firms take in record profits](#), and saw [smaller to mid-sized firms merge in record numbers](#). In short, the delivery of legal services has seen a sharp change in how consumers, especially sophisticated business entities, purchase legal services. While the top firms continued to benefit from their top position, those firms in the middle and lower have found it hard to differentiate themselves against their competition. How can firm 188 on the American Lawyer 200 differentiate itself from firm 189? This paper does not need to focus on a specific firm, only a certain type of firm.

Therefore it will be easiest to introduce you to the hypothetical firm of A, B, and C. The law firm of ABC has been in operation for over 85 years and boasts a number of practices areas but its primary focus is in business transactional work and business defense claims. While not in the American Lawyer top 50, let's say that the firm falls somewhere below that number. It is a regional firm with aspirations of becoming a national firm, but has not made any moves yet. A large portion of ABC's revenue comes from its biggest client: XYZ Corporation.

James is the senior partner in charge of the XYZ portfolio. His duties include regular meetings and discussions with XYZ's general counsel, John. James and John have worked together for a number of years, but their working relationship has become stressed by John's need to present a more predictable budget for legal expenses. Further, John has been asked to show tighter presentations on legal spend and to justify certain firm choices. In short, John has been tasked with reining in the legal budget and forcing its legal service providers to justify their bills.

Without engaging in design thinking, it is hard to imagine firm ABC could say to differentiate itself from its competition. Is it location? Probably not. Most regional firms have offices located in same or similar areas. Years of experience? Once again, probably not. If you were to examine any larger law firm's promotional materials, you would see some indication as to the number of years of practice. That is not to say that these do not offer legitimacy to new customers, or are a way of leveraging an older working relationship, but the recession of 2007 has shown that often times a working relationship cannot justify a large bill. Results? As any lawyer can tell you, it is often hard to predicate the outcome of a case. To bring up an earlier point: does firm 188 offer better results than firm 189? If so, how can you quantify that or use it as a justification? It is hard to say. What is left? In terms of areas of practice, it is unlikely that any regional competitors can differentiate themselves. There are unique exceptions, such as firms that might specialize in patent or other intellectual property law, or perhaps admiralty. That leaves two final choices: price and process.

Without getting into the logistics of firm realization rates, it is sufficient to say that any large-term price discounts are unsustainable, especially from a firm's largest customer. If anything, price discounts are a short-term answer to a long-term problem. These discounts also open a firm up to simple price competition against its competitors, especially if the customer is engaging in this type of firm-wide audit. The only remaining answer is process.

Process is important for two reasons. First, process is a term that is rarely employed in the legal field. Most law firms currently operate in very similar ways. This sameness goes to the second point. Engaging in process evaluation, critiquing, and modification allows firm ABC to fundamentally evaluate its business model. This is where design thinking becomes an indispensable tool. By re-evaluating its business model, firm ABC can engage in hard discussions about processes (including process control), its target market, delivery of value to the consumer, training, an understanding of its key partners, and total service offering. Most importantly, engaging in this type of "self-evaluation" allows firm ABC to implement its own internal metrics, training, and evaluation tools.

Let's begin firm ABC's self-evaluation aided by design-thinking.

In order to understand how design thinking can enable and empower a firm dedicated to using such a tool, it is first important to understand empathy. If asked, most people think of empathy and being the ability to feel what someone else feels. That definition is not far from accurate. However, in the context of design thinking and in particular, the delivery of legal services, it takes on a sharper definition. In the context of the delivery of legal services, empathy is the ability to place yourself in the shoes of your customer. To feel what they feel, think how they think, and anticipate their needs, wants, desires, and frustrations in order to engage in only those activities that add value to the consumer. This sounds like an easy definition, but it is much harder than it appears. Before being trained in the deployment of design thinking and consumer empathy, most individuals would engage in backwards thinking: I have a great idea, a consumer must suffer this type of problem, and ergo, my idea meets their unmet need. This is the opposite way of thinking in apply design-thinking: begin with the consumer, not the problem.

Design thinking is an iterative process; it never stops. In order to assess how empathy can aid ABC, we will use a design tool: [the business model canvas](#). Building this canvas will allow James at firm ABC to gain a functional understanding of exactly how his firm operates. This includes an understanding of what areas he and the other partners would like to improve, change, or update. Engaging in this thinking enables James to gain a holistic view of firm ABC. Applying empathy to the analysis he receives allows James to effectuate meaningful changes that differentiate ABC from its competition and satisfy XYZ corp.

Let's begin with firm ABC's key partners. Without a doubt, all law firms' key partners are the law schools. These schools provide each firm with the statutorily certified workers that enable it to deliver legal services. While firms do receive lateral lawyers from other firms, ABC's competition is not a partner. There are other examples that might be more particularized to a practice area, such as an investment banker for an estate planning practice.

Next, let's examine what ABC's key activities are. Without a doubt, one of its key activities (and an area of stress on this business model) is training. In order firm ABC to grow into the future, it needs to have a stable, attractive, and low-cost training program in place. Tension arises in the current model

due to the firm's inability to bill for younger associates (or bill at extremely discounted rates). Firm ABC also has to engage in recruiting as a key activity. This includes both for new attorneys (with its key partner law schools) and for lateral attorneys.

The next area of our business model canvas for firm ABC are its key resources. It should be no surprise that ABC's most important resource is its lawyers. These lawyers enable the firm to produce legal services, grow its business, and train other attorneys. Another key resource for firm ABC is its technology. Now, lawyers have been known to be late adopters when it comes to technology, and this issue is unique across firms. It wouldn't be unreasonable to say that all law firms could aspire to make technology a larger key resource in a future business model, but it is without a doubt, a key resource. Compare legal researching today against that done 30 years ago.

The next area is one of the most important: ABC's value proposition to its customers. Preliminarily, all lawyers' value proposition is lawyers. Lawyers are a unique profession in that they are the only ones able to provide access, opine, and effectively research the law. It is possible to go deeper through. Is firm ABC or any other law firms' value proposition lawyers or is it a lawyer's access to the law. It might be more accurate to say that firm ABC's true value proposition is a gateway to legal services. In addition, depending on the firm, another aspect of this gateway value proposition is the geographic location. In our hypothetical, firm ABC provides the gateway to legal services in its regional area. Other firms might provide specialized services in a select state.

Another extremely important section on our business model canvas for ABC is its target customer. This area would include qualities and characteristics of its target customer. While our hypothetical has selected a certain firm, ABC still needs to evaluate who it wants to target with its services. ABC must be **as specific as possible**. This is the customer that ABC and its lawyers are going to empathize with when creating their product and understanding their client. Therefore it only helps to deal in specifics. For other law firms, is the target customer a certain business? Is it a certain kind of business? Can you narrow ever further into a certain kind of business that offers a certain kind of product? Who do you target in that business? Is it the general counsel? Someone higher?

The next area on our canvas is the customer relationships. How do customers value their relationship with ABC? For many firms, ABC included, it might be as simple as making the least amount of mistakes and not being the most expensive. Being the most expensive requires extensive justifications. In our hypothetical, it might very well be the situation where the justifications provided to John by James will need to be communicated higher up in XYZ corp.

Next we move into channels on our canvas. This section challenges ABC to think through how it reaches its customer segments. Is this the way that they currently want to be reached? Which ones are the most efficient or the most cost-effective? For firm ABC, how does it acquire customers currently? Most likely it is through its partners. Perhaps it is through word of mouth, maybe a select few through some type of marketing, but it is unlikely this is a substantial area of new acquisitions.

The next two areas of our canvas can be analyzed together: revenue and cost. When we discuss revenue, it is not simply about making more money, but about securing money. This is especially true in the legal industry where long-standing relationships might stand as informal long-term contracts. For nearly all law firms, this comes in the form of billable hours. When it comes to cost, there are two aspects to this section of our canvas. Hard costs, which include fixed expenses such as overhead and

soft costs, such as opportunity cost. By doing this work or investing in this project, what are we passing on? All law firms, including ABC have overhead. However, one of the largest areas of cost for ABC is its own lawyers and their salaries. All of these costs are a measure of how hard it is to beat competition. This proposition should be true for anything placed in this section.

There is another section that we need to add to our business model canvas: legacy. In this section, ABC needs to engage in a dialogue about major business decisions that were made both in terms of organization and process that led ABC to where it is today. What considerations were made in making these decisions? Who made these decisions? Are these considerations relevant? Finally, and perhaps the most challenging is to try and map the current process used by the firm for the matters it processes. Who handles which aspects? Is this process uniform?

These are the tough questions ABC needs to answer in order to fully understand how it functions in a holistic manner. Not only does it give ABC a holistic view, but it allows ABC to engage in moments of clarity. Perhaps these questions have never been assessed before. Maybe there was no general understanding of how a certain process works, or how a certain decision was reached. However and most importantly, ABC will gain a total view of its strengths and weaknesses in order to best meet John's needs. Most importantly however is another consideration that guides all of the business model canvas: what incentives does this business model reward? Engaging in the business model canvas allows ABC to understand what behavior it incentivized, not only internally, but also between James and John.

Now, having engaged in this process: what changes can ABC engage in, aided by empathy and design thinking, to better its servicing of John's needs?

Fundamentally, the legal profession is about servicing. This canvas allows ABC to understand exactly how its service is delivered. Empathy allows ABC to envision how John and its other customers would like to see that service be delivered. Unfortunately for ABC and for many other firms, culture and a long-standing history add extra perceived challenge to altering from the status quo. The most fundamental question ABC should ask itself as it evaluates what changes it can make is:

If law firms were illegal, or if law firms never existed, how would my customer satisfy this need?

Often law firms are called a necessary evil. That describes an unsatisfied relationship. ABC should be able to anticipate its clients' needs to effectuate changes to its business model or their relationship before they are demanded and to engage in meaningful conversations about how it provides access to legal services.

A clear example of this can be found in the following hypothetical. Imagine that John decides that the best way for him to deal with the challenges presented him is to utilize a technology platform from a service provider such as Tymatrix or Thompson-Reuters to control billing, cost allocations, and to capture metrics about the firms that XYZ Corporation uses for its legal needs. Had James and ABC engaged in this process and understood that John would want this type of control, James and ABC could have created its own technology platform to anticipate this happening. This would have allowed ABC to create a platform that was unique to its firm and would have allowed itself to train its users internally at its own pace. Now, the customer has taken this away from ABC as being a differentiating factor and forced it into the industry as a whole. This includes to ABC's competition.

For the legal industry and for the business model we created for ABC, there are three key areas immediately ripe for change. The first is key resources. In the world of today, technology is one of the most important unutilized tools in law firms. Look in the area of e-discovery and how an entire industry has grown in less than 20 years. Most firms have some type of knowledge management system, but is it utilized by all? Is it actively added to, maintained, updated, and processed? Perhaps for some, but definitely not for all. What type of metric capturing tools are unutilized by law firms? Imagine if Amazon or UPS were to become a law firm: what types of controls and technology-aided tools what these companies utilizing in creating a law firm?

The second area is in training. This is a tougher question to answer. Fundamentally, partners do not benefit from training their associates. They ultimately benefit from a trained associate, but writing off time and reviewing work is wasted time for a partner who bills at a much higher rate. Many of these problems might go to ABC's key partner: law schools. However, it is harder to effectuate a change in that partner. Is it possible that ABC could create its own training program utilizing other underutilized human capital in its firm? Perhaps. Is a paralegal with 10 years of experience worse than a first-year associate? Most likely not. Could ABC create its own post-graduate program that trains its young associates to be specifically attuned to XYZ Corporation's business model, needs, wants, and desires? It's a possibility, and it is one that might be easier to justify when billing.

The third is our legacy section. Most specifically, process. Many firms are currently engaging in some type of process control or monitoring, many in the form of lean thinking, which comes from the changes Toyota made in revolutionizing automobile manufacturing. At its core, isn't the legal profession one that can be broken down into key steps, process, and centers? All of which can be tracked and monitored to provide precise metrics? These metrics in turn can be used as a clear differentiating factor from competition. This is even more true where ABC's competition has not engaged in any kind of business model evaluation.

These are just a few of the ideas that could exist. Ultimately, the challenge rests with James and his other partners: what costs are we willing to expend now (both in terms of financial cost and culture) to effectuate the changes that we need today to secure our long-term future.

You might be thinking: why should I engage in this process? Or you might be thinking of the innumerable hurdles standing in your way to beginning this process. Instead of taking this approach, think of the alternative possibilities. The first is that your consumer becomes turned onto this idea and forces it into your business model, with a time constraint. Or, even worse, your competition undertakes these challenges and anticipates your clients' needs by engaging in design thinking.

While is not an easy process, design thinking is key for lawyers to differentiate their firm and its delivery of legal services in today's highly competitive market.

Now, if you are a lawyer: what is stopping you from engaging in this process?

If you are a general counsel or purchase legal services: how many of these changes would you like to see now? How many would you demand today?