

# THE PRACTICE™

**Volume 5 | Issue 2**  
January/February 2019

## Adaptive Innovation



### Adaptive Innovation

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## Designs on the Law

The arrival of design thinking in the legal profession

As Jodi Goldstein explains in “[Marketplace of Ideas](#),” invention is not the same as innovation. The former is about creating something altogether new—where “newness” itself is often viewed as the end goal—while the latter is about coming up with novel ideas and new ways of thinking with the express purpose of solving specific problems. This distinction provides a foundational understanding of what innovation is, but questions remain around how to *act* on that understanding. Broadly, how do individuals and organizations, including law firms and in-house legal departments, actually do the work of innovation? Of course, this question can be applied virtually anywhere in the legal profession. To take an example that has plagued law firms for decades, how might a firm innovate to increase the recruitment and retention of diverse lawyers? Or, elsewhere in law, how might an in-house legal department design a career path for the nonlawyer professionals joining their ranks and playing increasingly important roles?

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In this article, we consider one form of innovation that has cut across legal issues and practice settings: design thinking. Perhaps more than any other approach to innovation in recent years, design thinking has taken the world by storm. At its core, design thinking aims to tap into creativity to solve problems

with an end-user focus. A 1999 segment of *Nightline* offers a fitting introduction to what is often seen as an esoteric, amorphous process. In the segment, anchor Ted Koppel challenges the global design firm IDEO to “[t]ake something old and familiar—like, say, the shopping cart—and completely redesign it for us in just five days.” IDEO’s response is nothing less than a tour de force of innovation. The multidisciplinary team researches the current state of play. It turns out there were myriad issues with shopping carts at the time: thousands of children were injured with shopping carts each year, stores were left to deal with the frequent theft of carts, and plastic carts were easily (and forcefully) taken away by the wind. The team went to work brainstorming potential solutions and other improvements—carts with privacy screens, nesting carts, modular carts—before proceeding to experimentation and refinement. The example here may be quirky, but the process is tried and true. While born in the context of industrial design (and products like the original [Apple mouse](#)), design thinking principles are now being applied at virtually every turn, including redesigning [voting processes](#), [college admissions](#), and [food security systems](#).

“ Design thinking is about empathizing with all stakeholders, coming up with as many ideas as possible, and then actually testing those ideas out. ”



No organization is more closely linked with design thinking than IDEO. The global design company **characterizes** its approach to design thinking by three essential aspects: **empathy**, ideation, and experimentation. Empathy is about setting aside your own assumptions and presuppositions about the world to better understand the needs, hopes, frustrations, and perspectives of those within the ecosystem of a given product or service (for example, the customer or, if different, the end user). Ideation is about “going wide” by generating ideas, expanding the universe of possibilities, gaining insights from a broad group, and building enthusiasm. (Key to the ideation process, IDEO stresses, are seven core rules: defer judgment, encourage wild ideas, build on the ideas of others, stay focused on the topic, participate in one conversation at a time, be visual, and go for quantity.) Finally, experimentation is about testing out ideas without being afraid to fail and then restarting the process to refine. In short, through a process of empathy, ideation, and experimentation, design thinking is about coming up with as many ideas as possible and then going beyond just brainstorming to actually test those ideas out. These are core principles of design thinking, but what does it *look* like in practice? The answer: it can take a number of forms because these principles operate at multiple levels:

- **It is a process.** According to IDEO, one could imagine six basic steps to the approach: framing the question, gathering inspiration, generating ideas, making ideas tangible, experimenting, and then sharing the story of lessons learned. One manifestation of this process is the design sprint, an intensive session or series of sessions that runs through each step—or close variations of them—to solve a specific problem. (See the case study below for more on how these sprints have been used in a law firm context.)
- **It is an organizational approach.** IDEO frames design thinking as a process of innovating solutions that sits at the nexus of three qualities: desirability, feasibility, and viability. That is, any solution should be something the consumer/client/end user actually wants as well as something that is technically possible to do and that the organization can afford to do.
- **It is a mindset.** Underlying all the steps and sticky notes is a way of thinking—a distinct approach to problem solving that puts the people who will ultimately use the product or service at the heart of the process. This mindset requires a rich culture to encourage and support it, and in this respect IDEO practices what it preaches. All new IDEO hires are given what is called the Little Book of IDEO, a compilation of values that IDEO seeks to foster in its workplace: be optimistic; collaborate; take ownership; embrace ambiguity; talk less, do more; learn from failure; and make others successful.

One recent example of design thinking in a legal profession context is IDEO’s redesign of the associate review process at Hogan Lovells. Outlined in a *Fast Company* article, the problem was that associates were getting feedback on an irregular basis that lacked substance, leaving them largely in the dark about what they were doing right and where they should improve. IDEO looked at what the associates wanted from these reviews and where the reviews fell short. They looked at them from the reviewer’s perspective. They considered what the firm wanted to accomplish through these reviews and what else they stood to gain. The ultimate solution was ostensibly simple: they devised a physical note card with specific questions to keep the regular 10-minute conversations on track. Associates appreciated that the reviews produced more-tangible feedback. Partners appreciated that the note card absorbed some of the awkward formality of the process and allowed the conversation to flow more naturally. Overall, the firm came out better for it as a place where talent could develop more efficiently. IDEO reached this solution through empathizing with Hogan Lovells lawyers on all sides of the process, coming up with numerous potential solutions, and then testing them out to see what actually works. It was classic design thinking. And, as the subtitle of the above-linked *Fast Company* article notes, “they didn’t even make an app for that.” **Rochael Soper Adranly**, an IDEO partner and the firm’s general counsel who guided the project, says in the article: “When we did our research, we thought we could go the tech route, but it’d probably reinforce the behaviors they were trying to change. ... If you’re trying to encourage direct in-person feedback, and you give someone an app to deliver it, they’re going to hide behind the app.”

Another example is the work of Stanford’s Legal Design Lab. The Lab, an interdisciplinary collaboration between Stanford Law School and the Stanford d.school, claims the intersection of human-centered design, technology, and law as the locus of their innovations. The Lab’s mission is to both train law students and professionals in design thinking as well as design innovations in the law—particularly in areas like access to justice, better internet legal help, smarter legal communication, and new models of legal organizations. As one example, the Lab has created a new tool called *Wise Messenger*, which sends automated text messages from a court or other legal organization with the goal of improving appearance rates at hearings, appointments, and other important legal events. As with IDEO, the Lab’s explicit goal is to bring design thinking principles directly to the legal context.

IDEO's work with Hogan Lovells, the Stanford Design Lab, and an increasing host of other examples (such as Georgetown Law, which ran a design thinking workshop this January) reflects the latest and most explicit connection between the principles of design thinking

and the law. As we see below, design thinking is increasingly no longer the exclusive domain of external design experts and is even being brought inside legal organizations. As law firms struggle to keep up with client demands, they too are beginning to embrace the concept at each level. After all, design thinking is about asking the right questions and thinking about the problem from the user's perspective. For law firms, that means instead of inventing new ways to do legal work they have a tool to help them think through what their clients' needs really are, come up with ideas for addressing them, and then act on them.

“ As law firms struggle to keep up with client demands, they too are beginning to embrace design thinking at each level. ”

## Design thinking at Faegre Baker Daniels: A case study

David Gross is a senior partner at Faegre Baker Daniels, a Minnesota-based law firm of more than 750 lawyers. He is a member of Faegre's management board and the founder of its Silicon Valley office. As a litigator, Gross represents companies in intellectual property, product liability, and commercial litigation—what he often refers to as his “day job.” Not long after the Silicon Valley office opened its doors in 2013, Helen Chacon, a graduate of Stanford Law School, joined the team. Chacon is now an IP litigator, sixth-year associate, and, with Gross and a handful of others, a key evangelist of Faegre Baker Daniels' deep-dive into design thinking.

Gross and Chacon are both trial lawyers, which may make them unlikely champions of design thinking—their success is typically won in the courtroom, a space often defined by strict procedures cemented in expansive rules, where words like *empathy*, *ideation*, and *experimentation* are not often used. Nevertheless, they are on a mission to transform their firm through design thinking.

## The birth of design thinking at Faegre Baker Daniels

As trial strategists, Gross and Chacon are no strangers to the art of conveying ideas, building arguments, and communicating

effectively through the use of visual aids—what they call *visual advocacy*. “We've been doing this for 20 years,” says Gross, coauthor of the trial advocacy book *The Power Trial Method*. It was in this context that Gross and Chacon were introduced to design thinking. In 2016 Chacon ran into her law school classmate, Margaret Hagen, director of Stanford's Legal Design Lab, at a seminar in visual design. That is when Hagen introduced Chacon to the world of *legal* design, prompting Chacon and Minneapolis partner Kate Razavi to invite Hagen to visit their Silicon Valley office so they could learn more. “At the time we were just more focused on *visual advocacy*,” recalls Chacon, “but then she started teaching us about design thinking, which we had never heard about before.” By the time Hagen left their Silicon Valley office, Chacon, Razavi, Gross, and another Minneapolis associate, Patrick Bottini, agreed to participate in a design sprint—a time-limited challenge that applied design thinking techniques to solve a particular problem. Gross and Chacon already knew the value of visual advocacy and viewed it as a skill all their colleagues should have, so they went along with it. “We realized that also means learning how to use the technology more and actually convincing people to use it,” says Chacon. She explains that, for them, that first design sprint was about searching for a new way to solve that problem:

“ As trial strategists, David Gross and Helen Chacon, lawyers at Faegre Baker Daniels, are no strangers to the art of conveying ideas, building arguments, and communicating effectively. ”



We went into this design sprint thinking, OK, how do we get people to think of this as more than just adding pretty pictures to something? Then we did the design sprint. It was a whole long day of the design sprint, and we were exhausted by the end but in a great way. We joked that it was like a therapy session. We really thought about the stakeholders, what other people in the firm were thinking, and about approaching these things from a different angle. It's really that empathy piece that I think was so important. We realized we want to go beyond just visual advocacy. We think this whole design thinking process is important and can become a really important part of our practice.

That is when they decided that if they were going to try to bring design thinking to Faegre, they were going to go all in. Gross, while still performing his day job, went back to school at night and spent a year studying design thinking at the Stanford d.school. Chacon, too, began learning more about the design thinking process, participating in more design sprints and taking a course on the topic at Berkeley. "I probably spent 500 hours, and Helen easily spent a similar amount of time, on nonbillable training, practicing, leading sprints, educating ourselves," notes Gross. "I would say we were under the radar just doing investment and training for a full solid year at least." Over time, together and separately, they began to lead design sprints of their own, both internally at the firm and externally with clients. Meanwhile, Minneapolis lawyers Razavi and Bottini worked with the University of Minnesota's law and design schools to build and teach a [visual advocacy course](#) at the law school.

One critical element to their success was their pacing. Because Gross, Chacon, and other members of the Faegre design team really enjoyed what they were learning and were committed to taking a long-term view of integrating design thinking principles in the firm, they

took their time understanding what design thinking was all about and getting good at leading sprints and being facilitators. Indeed, this strategy of staying under the radar gave Gross and Chacon the time and space needed to understand how to embed design thinking into the processes and offerings of a law firm. "What we haven't done is rush it," emphasizes Gross, "and that has made all the difference." He continues:

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We didn't draw a connection between doing all this design stuff and how it would help us in cases or with clients. What's ironic is that we did this for the pure love of it—we just wanted to get really good at it and see where it went—and in fact it has had a massive impact on our cases. The irony is that *because* we started out doing this for the love of it, we were able to get really good at it and we're way farther than we otherwise would be. And now it's had this massive effect on business development and case strategy.

## Getting buy-in

Armed with new skills, the question for Gross, Chacon, and others shifted to how to convince their colleagues—and the firm—to begin applying a technique that produced few billable deliverables while taking up lawyers' time. Gross notes that being a senior partner, of course, helped, as did the fact that the Silicon Valley office was humming with business, so when Gross put in a request for funding a design thinking initiative to the leadership, the request was approved almost immediately. But he also notes Faegre's culture and Midwestern roots were critical. "It means that everyone gets paid well and everyone has nice houses and everyone enjoys their life, but we're not a New York firm that has New York billable hours requirements," says Gross. "We work very hard, but we also have a culture that includes spending time mentoring people in our firm and, for us, doing design activities."

This is not to say Gross and Chacon have encountered no resistance. Indeed, many of the lawyers they have engaged were initially skeptical about using design thinking to work through problems in the legal sphere. "The thing about design thinking is it can be a little bit difficult to explain," says Chacon. And, as lawyers themselves, Gross and Chacon understand the hesitation. "When you hear 'design,' the initial reaction is that it just sounds light or gimmicky," says Gross. But, as he explains, the proof is in the pudding:

The only way we've managed to get past that is by having people participate and by dealing with real problems. When they see real results, we win them over. The initial resistance is, "This is silly." I also think we've preempted that a little bit because we took this so seriously that we can actually be effective. I think if we wouldn't have invested as much time, it might have been genuinely silly. It actually might have been light.

Seeing and understanding other stakeholders' points of view is a major tenet of design thinking, and Gross and Chacon are themselves tapping into that empathy when they acknowledge not just *that* there is resistance to their initiative but *why* there is resistance. Their ability to take those points of view into consideration as they

demonstrate design thinking's core tenets allows them to make a more compelling, triangulated case for its potential. It does not hurt that they are lawyers, either. Being lawyers themselves allows them to empathize more seamlessly with their fellow sprinters than perhaps any other sprint leader could because they share many of the same goals, have roughly the same training, and have a similar day-to-day experience as other lawyers. Gross explains:

If I'm listening to a group of lawyers talking about the trouble they're having in a business unit, I can walk up to the board and say, "Have you thought about this?" or "Why don't you look at it this way?" or "Why don't you do this?" I can do that because I've been at this for 30 years and I know exactly what they're talking about. If we didn't know anything about the field, then we'd be more classic facilitators asking questions, listening, telling what we're hearing, and reflecting. But we can substantively help the design process from time to time. You don't want to overdo it. You want to make sure you're not getting in the way, but it means you can get much more done. Helen and I have a lot of street cred being lawyers because we understand what's going on. There might be a very different, perhaps more awkward vibe if we weren't lawyers and we hadn't let everyone know that this is actually helpful.

## The proof is in the pudding

Since their first design sprint in 2016, the Faegre design team's efforts have taken off both within and outside of Faegre. Last spring Gross and Razavi delivered a TED-talk-styled presentation to the entire partnership on design thinking that has resulted in a litany of changes within the firm, including implementing design elements into client meetings, using design to analyze legal claims, and tailoring design sprints to work in mock trials. They have also led design sprints across the country. Chacon recently led one in Minneapolis around making technology more accessible in the firm. Gross led another in Santa Fe around improving continuing legal education for lawyers. They led one together at Faegre around rethinking how they approach profitability.

"It's also had a huge impact in client relationships," says Gross. "I now have in-house counsel reach out to me and say, 'Would you be willing do a design sprint for our legal department?' I just did a design sprint for a legal department on how to better connect with a new business unit. It's really exciting. I'm getting strangers whom I don't know calling us up." In other words, the value proposition of Gross's and Chacon's sprints to the client is changing as they perfect the craft. Perhaps initially it was little more than a sign that Faegre was at least trying to be innovative and open to creative approaches. Now that it has proven effective, it is viewed as a viable way to solve real problems.

Put differently, when Gross and Chacon began offering to lead design sprints for clients' legal departments, it was a chance for clients to try out the new approach relatively risk-free. When that

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provided proof of concept, clients became open to design thinking in not just nonbillable relationship-building activities but in billable matters as well. Meanwhile, because Gross and Chacon have put in the time to build expertise, the firm has a new avenue to engage with clients—one that may even be unique in the legal profession. Gross explains:

It's a competitive, durable advantage because this just isn't what most law firms do. There's simply no way that at another law firm a senior trial lawyer and other lawyers are investing enormous amounts of time in becoming good at this. We're taking advantage of our firm's open culture and our willingness to experiment and our creative side—and the more we do it, the better it is.

## Design thinking becomes part of the day job

While not the initial intention, design thinking has also become a part of Gross's and Chacon's day jobs as trial lawyers. "We now do classic design thinking in preparation for our trials, and that's something we never did before," says Gross. "That's brand-new." He continues:

Helen and I now will go into our Design Lab, we'll bring in people, and we'll do the design thinking process of how can we empathize with the jury and what question are we really trying to solve and let's brainstorm all the different ways to do it. Then let's try this one solution, this one approach to the case, and then we test it. We've achieved enormous progress by taking classic design thinking and applying it to trial work, but that wasn't obvious. That wasn't something we had been doing for a long time. That has been new and very exciting.

It is worth noting that these *are* billable hours. Chacon stresses that this would not have happened if the firm was more hawkish when it came to return on investment. "We didn't jump in immediately using design thinking in terms of practicing the law," she notes. "And that's still not the main goal. But more and more we are doing design thinking as part of our billable legal work."

There is a motif of long odds to the story of design thinking at Faegre. The concept had to be presented to just the right kinds of lawyers in just the right way. Gross, Chacon, and others at Faegre were already working in the space of visual advocacy, and design thinking was

not such a leap. But then it also had to start as an experiment. They had to build expertise first as they were gauging what design thinking could offer them. And critically they needed the unusual combination of significant resources (through time and funding) coupled with minimal oversight. Perhaps owing in part to Gross's reputation and his performance at the firm, they got them both. And the rest all flowed from what they were able to do with that leeway and the strength of the concept.

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## Here to stay?

As the pioneering work of IDEO exemplifies, design thinking is both a process and a mindset. It is about seeing a problem from as many angles as possible, taking a “yes and” approach to brainstorming solutions, and having the guts to put those ideas in motion at the risk of failure. It is human-centered and bold and all the things that brought IDEO's segmented shopping cart into existence. Through the case study of design thinking at Faegre, we see it has real potential in the legal profession as well.

At the same time, lawyers should take caution not to confuse process with outcome. To view design thinking as an end in itself would contradict its very nature—it is, after all, about solving problems. Failing that, design thinking could easily fall prey to skeptics' worst suspicions as the latest fad diet. That being said, there is no question it has produced results—just ask Hogan Lovells's associates. The role it will play in the legal profession going forward, however, remains to be seen. Will design thinking remain Faegre's unique value proposition to clients in addition to being a cultural component of the firm? Or are Gross and Chacon the first movers in a burgeoning industry within the profession?



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