

Creative leadership to bring

Design Thinking and other innovation models to life in legal business

By Susanne van der Meer – Visual Thinking Consultant & Creative Lawyer



Design Thinking is gaining attention in the legal world as a method to generate visions for change and to provide directions for opportunities to respond to pressures in the various markets. This is certainly a positive sign of interest in structured innovation and willingness to learn new skills, in all layers of legal business: leadership and organizational models, profit models, client service models, operational models and talent development models.

“Intelligent People tend to be conformists. They learn the rules of the game and make use of them to have a comfortable life. Creativity tends to be left to the rebels who cannot or will not play the rules for a variety of reasons” - De Bono’s Thinking course, Edward de Bono

collaborative and effective unit of the business. To run like a business unit, it is important for the entire  global legal department have a culture of collaboration and an understanding of the organization’s business and strategic vision for progress.

Is Design Thinking the magic solution for legal organizations who want to quickly engage their intelligent, conformist lawyers to become game-changers? Or does it take more to think change and do change? Is Design Thinking the only method or are there other models that deserve legal attention?

In this article I will give an overview of various innovation models and practices, to broaden the view beyond the current trend of Design Thinking. I will argue that long-term success of innovation investments ultimately requires self-innovation, a creative mindset. Finally I will illustrate how legal organizations can provide leadership to develop creativity.

Ambiguous Enthusiasm for Innovation

Innovation is the hot potato that everyone loves to pass on to the next person in the board room, until it's been done successfully and it is safely on track to become the new hottest story in the industry. Until then it seems vague, costly, and unpopular. This is true for organizations in general, but even more so for legal organizations. Why is this the case?

Certainty sells better than uncertainty. It's easier to open people's mind to the certainty of the outer framework or model, than to the uncertain essence: creative thinking and being. Business leaders widely recognize that we live in a so-called VUCA-environment. VUCA is an acronym for Volatile, Uncertain, Complex and Ambiguous. The best strategy is to learn to come to terms with uncertainty and increase the resilience of your professionals.

As a legal innovator since 15 years, I have experienced that resistance to change comes

most often in the disguise of the Precedence question: "What are the best practices?" Could you share some more case studies? How are these ideas implemented in America/in Europe?" After a pause of silence, my answer is, with a big smile: "*That's up to you. This is YOUR chance to invent the best practices and create the case studies that will raise the bar. How can I help you with that?*" Frequently the conversation ends there, but luckily not always.

Lawyers as such are not the obstacle to innovation, but their default mindset, experience and core competencies are not naturally conducive to be innovation champions. The same can be said of the culture of many of the legal organizations where they work.

A critical look at Legal Design Thinking

Legal Design Thinking has gained speed in recent years. It's not a special invention for the legal field, but rather an application of a general method to the field of legal practice. Design firm IDEO made a strong contribution to promoting the model of Design Thinking, as a human-centered method for creative problem-solving outside of professional design firms.

One of their founders, David Kelley, started the d.school at Stanford University. The *Legal Design Lab* sprouted this environment as an interdisciplinary collaboration between *Stanford Law School & d.school*. Many others in various countries have contributed to the evolution of this field over several decades., for example Roger Martin, dean of the Rotman School of Management. (author of *The Design of Business - Why Design Thinking is the Next Competitive Advantage*).

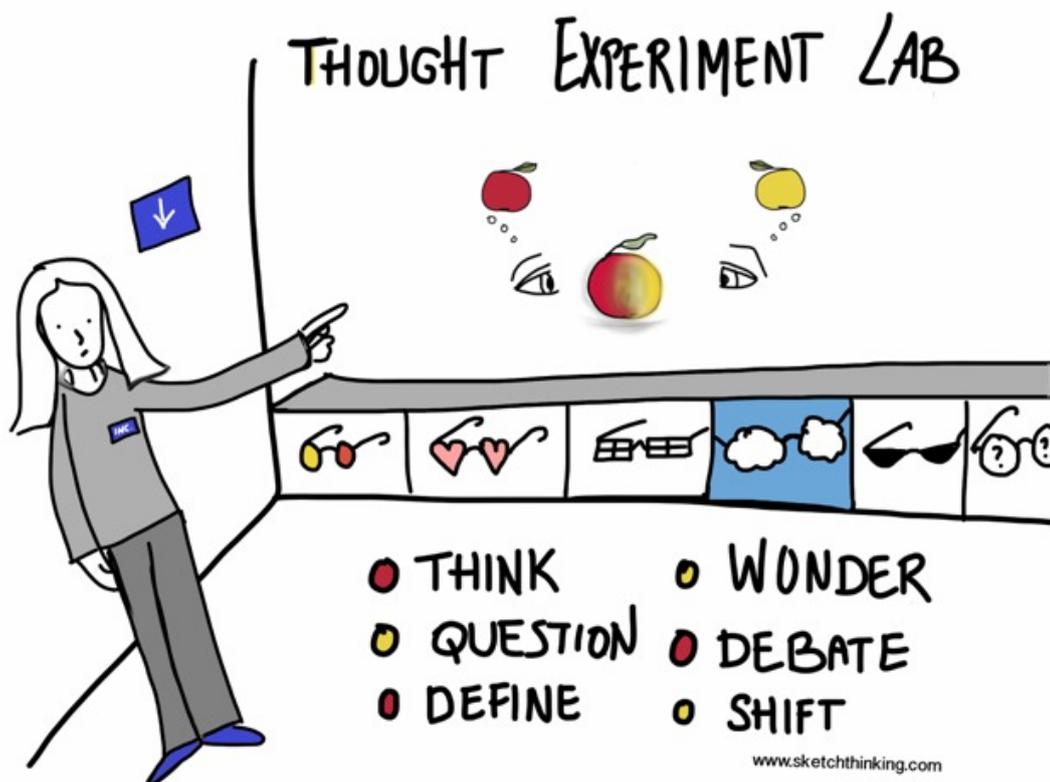
The method is quickly spreading into the educational field as a whole. Lawyers have recognized the strength of the model. Professionals, formerly known as legal business consultants, trainers or information designers now present themselves under the umbrella of Legal Design. A growing number of conferences and publications express the popularity of the model in the legal domain.

Design Thinking offers a framework to design innovations through a series of six thinking steps: Empathy, Define, Ideate, Prototype, Test, Implement. It's a solid and accessible model, that can produce inspiring results.

The model is a good starting point to generate interest for legal innovation and to remove resistance to genuinely look outside the legal box. It's a signal that deserves celebration.

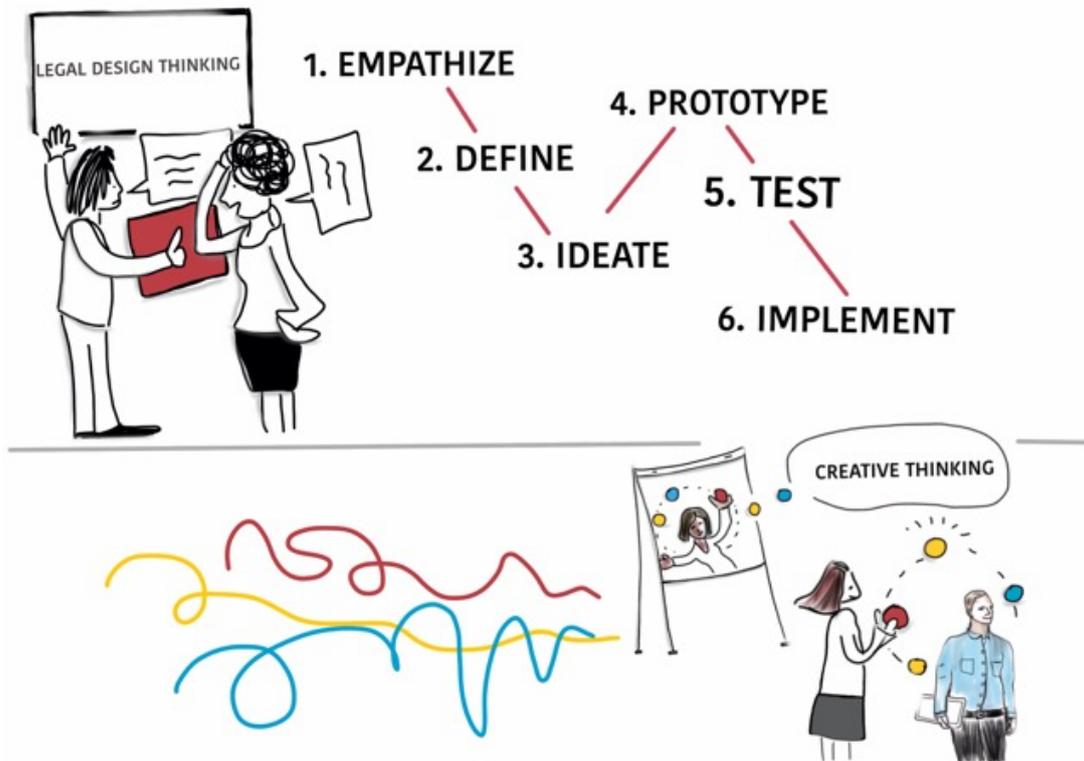
However, I invite the legal community to bring some critical awareness to the table:

- Design Thinking is not the only valid innovation model, it's just one of many.
- It's not a one size-fits-all model. It is applied in various ways, by various practitioners with various levels of depth and expertise.
- If one has a hammer, everything looks like a nail. If one does design thinking, everything looks like a design question. Every organization and situations deserves an honest and customized assessment. Could there possibly be a need for clarity on vision, mission and values? Or could the most important issue at hand be the culture of the organization.
- The choice for Design Thinking has the risk of focusing too early on the What and How questions, instead of beginning with the Why questions.



- Let's zoom out: The goal of design is problem-solving and the outcome is change. Let's pay attention and give credit to other significant change agents and thinking models in the legal field. A good overview can be found in the new book of J. Kim Wright: *Lawyers as Changemakers. Conscious Business Law*, for example, is the legal expression of trends like *Conscious Business Practices*, the *Sharing Economy*, *Self-Governance* etc. . The field of *Pro-Active Law* (developed by Helena Haapio and many others) provides thought-leadership to thinking about user-friendliness in the positioning of legal services. These communities have created many innovative innovations, such as *Conscious Contracts* and *visual contract design*, as well as legal tech start-ups. *Wevorce*, for example, is an American mediation legal technology company specializing in amicable divorce.

- Let's not forget content. Good frameworks are critical, but without substantive well-informed content and ideas it's easy to overlook the underlying problems and valuable possible directions to solve them. The work of Richard Susskind (author of *The End of Lawyers*, *The future of Lawyers*, *Tomorrow's lawyers*, *The future of the professions*) provides visionary and practical insights that simply need to be "in the room".
- And most important of all: the professional development of the lawyers who do the daily work and are the face of the legal market. Can we outsource creativity to thinking consultants and facilitators? Can we leave it to the boardroom? Or do we need to invest in the most vital resource that we have: the legal minds in our organizations. Let's see what they need to become a continuous part of the innovation conversation and let's



equip them with 21st century thinking skills to grow into legal design thinkers /creative change agents themselves.

Creative leadership: growing a creative mindset and skills set for lawyers

So how can leaders and managers bring out the creative sparks in lawyers?

1. *Recognize existing creative skills*

Many lawyers are suspicious of the word “creative”. Who wants to be called “creative”, if it evokes associations with bad practices such as “creative accounting”. Yet affirming the creative qualities that lawyers already bring to their work is the best point of departure. Holding paradox and opposing views is natural for lawyers.

Lawyers are motivated to solve problems.

Lawyers like engaging their minds.

Lawyers are good, critical listeners.

Lawyers like to argue. And the best of them can find a surprising point of view in every story and a winning strategy to make a difference in a challenging case or project.

Roger Martin identifies this mindset as a creative superpower for problemsolving in his book *The Opposable Mind – How successful leaders win through Integrative Thinking*.

Another way to cultivate the existing creative qualities is to reward people with everyday fresh ideas, not just the big game-changing ones, but a suggestion to improve the work process or to present legal advice to clients in a somewhat unconventional way.

Tech and engineering companies often have a short safety topic for every meeting. Legal meetings could include a creative

topic. For example sharing a creative achievement or brainstorming new dream clients and ways to charm them.

2. *Understand the basic psychology of creativity*

The next level for leaders is to get basic understanding about the workings of the creative process, especially the psychological side. I'll give a short reading list:

- *Big Magic, Creative Living beyond Fear* by popular author Elizabeth Gilbert is a good, cheerful start.
- *The path of least resistance: Learning to become the creative force in your own life* by Robert Fritz is a classic. It introduces the concept of creative tension as the natural, dynamic force that propels us forward to create change. Learning to work with this tension instead of avoiding it is a key skill for leaders.
- *The Art of Engagement – bridging the gap between people and possibilities* by Jim Haudan talks about the disengagement canyon “*I can't be engaged when I'm scared*”. People need to feel safe to fail and learn from failures. People need to think it's safe to suggest better ways of doing things.
- *Creative Confidence, Unleashing the Creative Potential within us all*. by founders of IDEO and the Stanford d.school, Tom Kelley and David Kelley. “*In the business world, creativity manifests itself as Innovation. We think this self-assurance, belief in you creative capacity lies at the heart of innovation.*” They have found that Design Thinking helps to foster creative cultures. Yet they also find that there is no

short-cut: to unleash creative capacities, one has to act and overcome the fear that have blocked people's creativity.

Working with a model like Design Thinking does not provide this safety automatically. It's part of the bigger culture of an organization, the specific process and project. When selecting facilitators or consultants, it's important to interview them on their insights, sensitivity and expertise on engaging the creative hearts and minds of people.

As lawyers we tend to strongly identify ourselves with our thinking abilities and above average intelligence as experienced in school settings. Creative thinking expert Edward de Bono (Lateral Thinking, six Thinking hats) argues that we need both logical and creative thinking, and most of all an attitude of mind with the willingness to try to look at things in different ways. We need an understanding of how the mind uses patterns. His book 'De Bono's Thinking Course' gives many warnings of the Intelligence Trap. These ones are particularly recognizable in the legal profession:

- Verbal fluency is often mistaken for thinking. An intelligent person learns this and is tempted to substitute one for the other.
- Highly intelligent minds often seem to prefer the certainty of reactive thinking (solving puzzles, sorting data) where a mass of material is placed before them and they are asked to react to it. On the contrary, real life more usually demands the projective type of thinking where the thinker has to create the context, the concepts, the objective.
- The sheer physical quickness of the highly intelligent mind leads it to jump to conclusions from only a few signals. The slower

mind has to wait longer and take in more signals. From this broader basis, it may reach a more appropriate conclusion.

Understanding this as a liability of the legal mind is important to develop an innovative culture and to coach lawyers towards more creative confidence.

3. Teach lawyers to stretch their creative muscles

If we bring our typical ways of legal thinking to Design Thinking, chances are high that we will arrive at safety-oriented, rational, procedural and innovation-averse solutions. Einstein has wisdom on this: "*No problem can be solved from the consciousness that created it.*"

Therefore innovation requires a different, more creative consciousness, not just a different method. There are infinite ways to develop creativity. All of them require a bit of courage and willingness to "get the look", because of the immediate resistance it triggers.

Be curious about the creative hobbies of your lawyers, and share stories of doing something novel, that involves an open-ended process and medium that allows for free-form discovery: writing, improv theater, drawing, painting, dancing, stand-up comedy, drumming. Much to my surprise I have found that many lawyers already have these types of hobbies and interests, but keep them anxiously separate from their legal "professional" work. Just start the conversation and see what happens.

Trial lawyer Gerry Spence invites lawyers to take creative experimentation with their cases to a whole new level. In 'How To Argue and

Win Every Time' he talks about his painting process. *"When I teach young trial lawyers how to deliver their arguments to a jury I first introduce them to painting".* Through painting he lets them discover the parallels with the court room. *"I became as aware of the negative space as the positive. I learned that the spaces between the words are as important as the words themselves (...) So it is in argument."* He promotes creative exploration as a method to arrive at original fresh painting and thinking *"If the argument is to be fresh, it cannot be a replay of old, banal, expected arguments of others. The argument must be new, out of one's own creative cauldron where one's psychic witch stirs the magic brew."*

Meeting one's psychic witch is not part of legal training, nor it is a part of a relatively comfortable model like Design Thinking. Yet, that's how you develop real creativity and surprising solutions from the inside out.

Drawing, doodling and sketching are valuable tools, for design thinking and creative thinking in general. The Kelley brothers recommend easy drawing in Creative Confidence as one of the low hanging fruits to get people over their creative hurdle, and give them a first-hand experience of an excellent creative thinking tool. It's also one of the best ways to engage others, to get an idea across.

I teach flipchart and business sketching skills to lawyers to better collaborate with other professionals.) Mind Mapping is another easy to learn, yet powerful method to move from linear thinking to more dynamic and nonlinear thinking.

4. Bring a legal artist-in-residence to your office

Often overlooked is that the legal environment can be its own creative incubator. Legal information, clients, services, technology, cases, and workspaces provide ample material to re-imagine. Doing both is a way to genuinely develop new creative fluency, that can be applied to every part of legal business. Not just top-down by managers, designers, leaders, entrepreneurs, but bottom up, grass-roots from the lawyers up.

In The Art of Business - Make all your work a work of art, Stan Davis and David McIntosh discern between

- Economic resources; land, labor and capital
- Creative resources: imagination, emotion, intelligence and experience

Both resources have their own flow. In the artistic flow, intelligence is the ability to connect the dots between what you can see and what you can imagine.

What would happen in legal business by seeing both the economic flow and the artistic flow in legal business? In their essence the legal service chain has more in common with Art than with a production value chain: artists create, performers perform and audiences appreciate. Lawyers create, perform their tricks and clients appreciate their mastery.

Many large corporations have discovered the ripple effect of bringing in an artist-in-residence. Siemens invites musicians-in-residence through its hearing aid division. Kohler lets visual artists use its industrial equipment to create sculptures. Amtrak launched a residency

inviting authors to write while traveling by train. Microsoft Research has an artist-in-residency program to build collaborations between researchers, engineers, and artists/designers to create beautiful and innovative experiences that inspires new ways of thinking about existing and future scientific challenges. There is a wide open space for law firm or big corporate legal departments to pioneer with a legal artist-in-residence, as part of their innovation investments. Two Australian lawfirms, Clifford Gouling and Curwoods, stand out as innovation leaders in this realm: they have established a formal artist-in-residence program.

Legal artists-in-residence are not found on typical legal job websites, but they certainly exist. Various lawyers have developed art projects at the intersection of law and art.

- Spanish lawyer and mediator Isabel Añino *Granados* has a degree in Social Sculpture and applies the creative dialogue practices from this field (based on the work of artist Joseph Beuys) to law. See Warmlaw.com and parakletos.es.
- Lucy Finchett-Maddock is implementing art as a way of critical legal thinking. See criticallegalthinking.com
- Carey Young is an artist who creates law-based works that examine law as a conceptual and abstract space in which power, rights, and authority are played out through varying forms of performance and language.
- My blog Goodmoodlaw.info shows examples of free-form experimental play with legal information: a privacy policy in the form of a mixed-media painting, a consumer protection bill painted on a brown paper bag, an

embroidered legal news update and stuffed animals called “good mood lawyers”.

Conclusion:

Innovation frameworks, such as Design Thinking, can provide valuable guidance and buy-in for legal innovation projects. Yet, it is critical to keep the form and essence of innovation together. A model or a formula can't substitute skills development and content expertise on specific legal challenges. Supporting the creative intelligence of lawyers and the creative climate of legal organizations is vital for long-term innovation success.

About the author:

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For over a decade Susanne has operated her own design, training and consulting business to support lawyers and others in user-friendly visual communication and creative thinking. She is the author of “Visual Language for Lawyers”. She teaches visual thinking skills as part of a Design Thinking program at the University of Denver, Colorado. www.siftvisuals.com, www.legalvisuals.nl, www.goodmoodlaw.info.