Lean by Design

By J. Stephen Poor
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Editor's note: This essay originally appeared on Rethink the Practice, Seyfarth Shaw's online publication on change in the legal industry and innovation in the business and practice of law.

From better processes to better experiences

If you are a fan of *Scandal*, the Shonda Rhimes show, you know how a seemingly simple premise can give rise to a complicated plot. From the premise of a former White House aid turned "fixer," the universe of the show has now traversed plotlines about conspiracies to fix elections, covert operations galore, too many kidnappings to count, and cover-ups of various flavors from tangled love affairs to murders to who knows what. I confess. I love that show.

Talking about Seyfarth's expeditions in service delivery can easily become as convoluted as a Shonda Rhimes plot twist. I certainly can't tell you what is going to happen to Olivia Pope next year.

It is a bit easier, though not by much, to describe our journey. The through line is this: we started by simply trying to design better processes.

Along the way, we've become enmeshed in technology delivery, transformation thinking and on and on. Although we started with Lean Six Sigma, our particular plot has led me to the belief that we are really driving toward—and what I believe the industry should be talking about— is **client-centered service design.**

What is "service design"?

Like Lean Six Sigma, design thinking is an established discipline, bringing into our discussion its own set of insights, worldview, tools, methodologies, and terms of art. To avoid turning this into a glossary of design thinking parlance, I defer to definitions provided by the experts.

Tim Brown of IDEO fame defines design thinking as the application of "the designer's sensibility and methods to match people's needs with what is technologically feasible and what a viable business strategy can convert into customer value and market opportunity."

Josh Kubicki of the Legal Transformation Institute explains service design as the conversion of the user experience into business value. From those definitions, the aspects relating to "utility" and "experience" are most germane—and would be of the greatest value—to those of us in legal services.

Most people associate design with the aesthetic value of tangible "things" we can see (graphics, visuals, etc.) or touch (products). It is a bit different in the service context—after all, you can't see or touch a service. Truly great design, however, isn't just about how the "thing" looks. In this

context, it is the interaction between the feature and the user experience that truly demonstrates great design. Thus, because the designer is focused on the human experience, the methods that create delightful products can be adapted to create delightful services.

Lean Six Sigma brought us greater depths of client understanding through tools and techniques like the voice of the client and Kaizen sessions. Those techniques, in turn, created an **outside-in** mentality. While process-driven approaches helped us map how work flows from beginning to completion, I believe that design thinking methods can help grasp—and improve upon—how clients experience the delivery of legal services from the first touch point to the last.

As an industry, we rarely think about how clients experience the delivery of our services. We should.

A design mentality, drawn from outside-in thinking can lead to needed insights about clients in a way that creates the ability to consistently create and deliver the best possible client experience. It is, in turn, the creation of the client experience that will help in closing the value gap.

How did we get there?

At the outset of Seyfarth's Lean journey, our sole focus was on improving our own capabilities as a services business—to create greater value for our clients. What began as an effort to engineer better legal processes in our internal delivery systems became a broader and more client-centered effort to design better legal services. As the "more for less" challenge continues to escalate, the need to prove the value of services should be top-of-mind for all lawyers both in-house and in private practice.

While it is difficult to pinpoint a moment in time where this shift to more design thinking occurred, it nevertheless was a significant transition—reimagining the "how" behind service delivery inspired us to redefine the "what." What does that mean? As described above, we started down our path simply trying to apply Lean principles to the delivery of legal services.

Untangling legal processes remains a core effort to enhance quality and the service experience. It remains what most people consider "SeyfarthLean." When we graphically depict that part of the journey, it looks like this:

The first part of the SeyfarthLean journey: adapting Lean Six Sigma for the legal industry.

We found that first evolution to be a critical first step. It is only that—the first step—as it only begins to scratch the surface of what is possible. Building upon the foundation of Lean thinking, we embarked on the next phase of our exploration: client-centered service design.

From Lean Six Sigma to client-centered service design: SeyfarthLean 2.0.

From DMAIC to 3Ps

The challenge we all face in this industry is to close the value gap. To do so, we should seek to raise client-defined value by delivering the best possible business outcomes and the best possible client experience.

In approaching each challenge, I think the design elements can be sorted into three basic components: **people, process and technology** (or, to keep the alliterative flow, 'platform'). Before talking about the individual components, it is important to note that the three must work together.

In exploring service design for legal services, however, it is equally important to recognize that these components rest on **two foundations:**

The first foundation is **legal excellence**. Substantive quality is critical.

The second is the reality that the **core culture** of the organization in question will undergird its ability to drive meaningful design. Culture might be an abstraction, but its impact can't be ignored. In the real world, culture can be a powerful enabler or a silent barrier to change.

At our firm, we are fortunate in that innovation is part and parcel of our organizational history and identity. For any legal organization tackling the change of redesigning its approach to service delivery, recognizing the role these foundational elements can play is crucial.

Platform

The development and deployment of the correct technology platform is a key component. At our firm, we have developed and deployed several award-winning examples. Technology is a critical enabler in any solution set but, in my view, is should rarely be a stand-alone solution. Yes, I know, stand-alone technology in our industry is all the rage. I believe, however, that technology is secondary. Critical, but secondary. Smart and intuitive technology has value insofar as it empowers people to be more productive and effective—but the big technology-driven advances come in the interplay between the human ability to exercise judgment and learning and technology advances. It is in the interplay that we learn how to maximize the returns that technology development.

People

The recognition of the varying roles people can play is critical. Of course, this first means lawyers. Even limiting the discussion to lawyers, there is a wide variation in the needs of multiple generations of lawyers in the current workplace. Those generational differences affect how each individual defines his or her relationship to work and the workplace, resulting in significant changes to the traditional staffing model. Moreover, the current flat demand cycle, declining law school enrollment, and people who have chosen/want a different path all play a part in the continuing evolution of the profession. For the law firm, these macro-level changes give rise to potential management challenges that require adaptability—but they also open up an array of potential advantages that have not previously existed.

Importantly, however, the people side of the equation is not limited just to lawyers. As we tackle client problems of increasing complexity, lawyers must learn to partner with process engineers, project managers, and technologists. As the needs of our clients continue to expand and evolve, our industry needs multi-disciplinary teams working in true collaboration to stay flexible and agile, to create and deliver value against a backdrop of very rapid change and increasing complexity.

Process

Ten years into Seyfarth's Lean journey, we still begin each design challenge with process. Careful and creative process engineering leads to streamlined workflows, and those workflows form the critical building blocks for great client experiences. When applied in close collaboration with clients, a focus on process answers critical questions. What should we be doing? What

should we not be doing? In what order? These and other questions then allow us to determine which people, enabled by what type of technology, are the right people doing the right things at the right time. Process is what knits the solution together—and process discipline enables the execution of the solution.

Innovate for Impact

As we think about service delivery, the critical question is the assembly of the component parts into a great client experience. I think lawyers usually tend to avoid looking holistically at the interaction of those components. Yet, all of those parts—legal project management, legal process improvement, legal technology, data and analytics—are critical in their own right. In our industry, the repertoire of tools and frameworks and methodologies continues to grow. This should give each of us the ability to apply different levers—people, process, technology, analytics, strategy—as required by each particular client challenge to create a meaningful impact on the client's business.

Without that impact, innovation is just a pretty—and these days, very popular—word. And at the end of the day, how one creates that impact doesn't matter very much.

For those of us in this business, the journey should never be about processes, approaches, or the various innovation philosophies that guide us—because it should never be about "us."

The journey should always be about the client.

The Process of Magic

By J. Stephen Poor
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I grew up playing and watching basketball (as you might expect from someone growing up in Indiana). My favorite play to watch is still the well-executed fast break. When I was in college at Indiana, I used to marvel at the team's ability to run a multi-player fast break without ever needing to dribble. It looked like magic to me.

As the 1974/75 Hoosiers team would run it, the fast break would start with Benson on the rebound. He would have to immediately recognize his placement on the floor and the position of the other team's players. If there was an opportunity, he would plant and pivot to the outside of the court. The forward on the strong side, usually Abernathy, would move to position in the outside lane at roughly the free throw line extended. In the meantime, Buckner, the point guard, would have moved to center court and Wilkerson and May (the guard/forwards) would have moved to fill the outside lanes. Pass to Abernathy, pass to Buckner, movement of the ball to the free throw line, recognition of the open man, deliver the ball and boom, lay up or short jumper.

When they were really on, they would do it without dribbling the ball. (I get teary just thinking about it.) At the highest level, of course, a fast break like that requires supremely talented players, each with their own unique magic. That, however, is only part of the story. It also requires practice, practice, practice. The players gifted with the necessary speed and agility must hone their individual judgment to spot the right opportunity to initiate the play and the ball-handling skills to execute the passes.

But equally, it involves breaking the play down into its component parts and coordinating those components in just the right way: making sure every player on the court knows when and where to be on the court, looking at the spacing, positioning, the ball movement—in short, the process that enables the magic.

Only by understanding the process can the fast break play be executed by players properly and consistently, over and over. And only by looking at the process and the execution of the play can the players improve over time.

We don't seem to believe that this analysis applies to the practice of law. Traditionally, our self-image has hinged upon the view of the practitioner as a highly credentialed professional with specialized knowledge that is inaccessible and incomprehensible to laypersons.

The "artisan complex" imposes a view of legal practice as disconnected acts of magic. There are significant advantages to this viewpoint: prestige, illusion of scarcity and pricing power. Our systems are built to reinforce this perspective for the industry—from law school structures to bar regulations.

Articulating the dilemma in the context of his "[knowledge funnel](#)" analysis, management thinker and author Roger Martin describes it this way:

> *Out of sheer self-interest, they are reluctant to relinquish their enigmatic and valuable capability. …They have the skill—the heuristic inside their heads—and the company has the capital. The company would like maximum compensation for providing the capital. The talent would like maximum compensation for running the heuristic. As long as the talent keeps its heuristic shrouded in priestly secrecy, it can bargain successfully for a bigger share of the value it creates. …*

> *In many organizations, including professional service organizations such as law firms . . . talent is winning this battle. And the price of maintaining an ongoing monopoly on important heuristics is high. These heuristic-running high priests create a big bottleneck in the middle of the knowledge funnel, blocking the movement forward to algorithm.*

> *Roger Martin, The Design of Business.*

Let's not kid ourselves. Expertise, wisdom, experience play critical roles in the provision of legal services. When they exist and are deployed properly, they should be valued and, frankly, paid for. Market scarcity and market economics both attest to the rarity of the gifts and skills required for that magical fast break. But when the mechanics of the profession are simply tucked away in a black box, it is difficult to see opportunities for service delivery improvement. The practice is simply not a series of disconnected insights—rather, there is a process at work that supports even the most difficult legal issues.

Looking at the practice of law as a collection of processes—or in other words, an interconnected chain of value-creating activities—opens up new possibilities. Most legal projects (deals, cases, whatever) are handled by teams of lawyers. Handoffs, rework, duplication of work, less-than-clear communication channels all conspire to add unnecessary complexity (confusion, delays, frustration, and yes, costs) to the project.

Take the surgeon. Even the most highly skilled surgeon requires a team (and, yes, not every surgery requires the most highly skilled surgeon). More to the point, the team is not redesigning the operation every time it occurs. Indeed not. There are standards and protocols—the types of equipment necessary, where the equipment is to be placed, the pre-surgery protocols, the steps in the procedure itself. And on and on. When something goes off plan, we all want the surgeon with the magic hands to get it back on track but there is an underlying process at work.

The same variables apply in the context of delivering legal services.

While there are perhaps multiple ways to look at this challenge, **we found that the underlying structure of lean methodology presents a framework to analyze legal work in a structured way, to break down legal work into more manageable pieces and to see how the pieces connect.** The idea of analyzing and reengineering the basic unit of work—a process being that basic unit—to streamline & simplify the overall client experience thus becomes more intuitive.

In order to achieve this mindset, you need to deal with the fear of displacement—the concern that the profession will be taken for granted and high-level competencies will be devalued. These are certainly fair and understandable concerns. The reality, however, is that the willingness to engage in a full and candid discussion about service delivery and how business objectives can be met does not degrade the credentials or specialized expertise—it enhances them.

Let me repeat that point. Looking at the practice of law through a process lens enhances the value of the artisan. Counterintuitive? Perhaps. However, the process approach gives us the basis to assign relative value prioritization to each activity in the value stream. **It reserves the highest-value activities for those with the credentials, specialized expertise, and the experiential know-how to handle them.**

Further, it highlights those high-value activities and recognizes their importance. In addition, it places the expert in the role of designing a service delivery model that meets the strategic needs of the client, which can only enhance the business relationship.

Let's use another example. Examining service delivery through the prism of process-disciplined thinking is akin to the art of choreography in dance. Each individual is a highly gifted artist who has honed his or her craft through many years of practice and study—but the choreography in itself is a technical craft, one that brings together a larger group into a harmonious whole, creating something that is greater than the sum of its parts.

There are still moments of individual virtuosity and wisdom—magic if you will—that happen in handling business problems rooted in the law. As I said earlier, those moments need to be supported, celebrated and paid for.

But first and foremost, the magic moments need to be identified, and the process-focused mindset allows us to make the positive ID.

Ultimately, it is a question of balance. This is not to say that every piece of legal work can be standardized and codified such that the human element can be removed; that is demonstrably untrue. Some legal work, however, can be codified. Some can be structured such that it can be systematized and made more efficient.

Looking at the delivery of services as a process is the key to finding this balance—and picking the right spots for drive efficiency and enhance quality.

Fitbits, Data and Lawyers:
What? I was promised no math.
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I love my Fitbit. It tracks all sorts of things—steps, calories, exercise, floor-climbing, among others. It then visualizes the gathered data and presents it to me in a way that allows me to take action based on that information. I can make different decisions based on real information. Whether I actually make the right decision is on me, but I have actionable data upon which to rely.

And, ok, I like the competitive aspect as well.

Yes, we live in a data-driven age—and Lean Six Sigma was certainly ahead of its time in its affinity for data-informed decision-making. You cannot venture too deeply into that world without being engulfed by arcane terms, formulas, tests and discussions of data capture.

In our industry these days, we hear constantly about "big data" and the powerful insights that can now be drawn from our ability to process terabytes of data. It is quite easy to become overwhelmed by the wave of data analytic acolytes, whose scope and scale of vision seem provocatively incredible by intent: "[b]ig data in general, and predictive data analytics in particular, are the potential holy grail in the practice of law." - Donald Wochna, Legal Technology News

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So, what's a lawyer to do?

After all, most lawyers will admit cheerfully that they "don't do numbers," and some will even tell you that they got into the law game specifically to get away from math. Do not despair, my friend. It does not have to be that complicated. When we say we use data to drive decisions, the Fitbit example is what we mean. **Manageable data, analyzed simply, and presented clearly in a way that allows us to make better decisions.**

Data analytics matter for a new and improved legal industry. Basing decisions on actionable data leads to better, more fundamentally sound decision-making (particularly for business-of-law decisions, but in some cases even in practice-of-law decisions).

Our experience teaches that, done correctly, data analytics helps lawyers in two main ways:

- first by leading to **new flashes of insight** (you will find trends that are surprising and discover new ways to look at old problems);

- and second by **quickly validating** or in some cases eliminating potential courses of action that hinge on assumptions (you will save time and money in course-correction).

We have found that there is also a third, important value of data-informed approaches—one that is particularly relevant to dealings with lawyers: the right data tends to **narrow the scope of the inevitable arguments**. Note, I did not say eliminate. I said reduce. No one is going to keep lawyers from arguing.

As more reliable information can be produced about the process or outcomes, however, the scope of the argument—and along with it both the problem space and the solution space, as our mathematician and design thinking friends would add—will narrow. It will inevitably move from an argument over the existence of a problem to a discussion about the problem itself and ultimately progress toward possible solution sets.

Trust me, if you get there, it is enormous progress.

Understand What's in Your Way

So, what are the main challenges?

Math intimidates many lawyers. As previously mentioned, lawyers typically do not relate well to numbers. Our stock-in-trade is language. So, we react negatively to the arcane discussions of statistical analysis typically found in Lean Six Sigma analysis. This can be resolved by the increasing democratization of data: simple applications of visualization techniques can help dispel math-phobia and help lawyers find their inner data geeks. Good dashboard design takes the math out of the data by aggregating, synthesizing and interpreting the numbers—and zeroing in on the insights.

The goal is to de-mystify the data analytics process; remove the jargon and produce information in a way that makes sense to lawyers.

Good data is rare in legal organizations. The more difficult challenge is that reliable data is very hard to come by in this industry. One of the first problems we encounter in working with legal departments is the lack of reliable or usable data. This makes sense since lawyers historically have not relied heavily on data analysis. Data is certainly maturing around the pricing of legal services because buyers are starting to use that information. In other areas, however, lawyers have shied away from using objective data (or they use anecdata, which may be worse).

Thus, they have not found it essential to develop accurate data sets—the proverbial chicken/egg problem.

Similarly, useful public data focused on key decision points in areas like litigation is difficult to find. The potential is clear—just look at Lex Machina in the IP space or the work the Stanford Securities Litigation Analytics (SSLA) project is doing. Broadening this construct across other types of cases—where settlements are confidential and automated access to key data is rare—is quite difficult.

There are tremendously interesting things being done in the world of data analytics in our profession but do not understate the challenge and cost in gathering the amount of reliable data needed to produce actionable information.

The legal function is seen as a cost center. In most instances, we find that legal departments have to fight for resources—particularly technology or similar support resources. Cleaning up historical data usually requires such resources, and a fair amount at that. In order to change this dynamic, we need to help the underlying businesses recognize the strategic value such investments into the law department could bring to the enterprise as a whole.

Of course, demonstrating that value usually requires—you guessed it—data, and so we encounter yet another chicken/egg problem.

Getting Started

So, make it simple and start small. Start by counting stuff. I mean that literally. Count stuff. Legal organizations may have big data problems but they are not yet Big Data problems. Instead, think of it as the creation of Small Data, or Tiny Data. We do not need massive processing power and an army of statisticians. Legal practice data is a different beast. To get started, we need core information around the practice mechanics, outcomes and results.

In our experience, the exercise of counting things forces the raising and answering of the most important questions. As the saying goes, you manage what you measure—and you want to manage what matters. So, we want to measure what matters. Counting things means figuring out what matters. Is it speed to resolution? Count cycle times and dispute durations. Is it risk management? Count the number of lawsuits (or go further upstream and count administrative charges, and internal investigations, or complaints to HR).

Count stuff. Once you start counting, you can then get to comparisons (benchmarking against historical or industry baselines) and to binary treatments (are we hitting a pre-set goal or not?). Then look for patterns by ordering the numbers (are there hot spots?) and look for correlational trends (are there linear or inverse relationships?). Beyond these descriptive analyses lies a whole horizon of possibility: risk mitigation and predictive analytics. It will take time to build up a valid set of data to attempt these data applications but you will never get there until you start.

The key is to devise a centralized strategy that can produce a return commensurate with the time and effort investments necessary to keep the process going. The long-term possibilities of data analytics—advanced decision support and access to predictive analytics—are too significant to ignore; as the legal industry matures as whole in its handling and usage of data, third-party data pools will become more accessible and useful. Until then, we need to deal with the realities of the here and now to both produce useful, current data as well as to support and lead into the opportunities of the future.

The immediate benefits—enhanced visibility, the ability to measure operational performance of the legal organizations—should serve as the low-hanging fruits that merit the startup costs of beginning a data hygiene and management program.

The important point is that you have to start. Otherwise, you will never get anywhere. So get up and walk around the block—otherwise, you will never hit your steps target.