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Teaching Empathy – A Law Teacher’s Journey

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Introduction

Throughout my legal career, I have studied and been fascinated with how lawyers interact with and are perceived by their clients, and how the practice of law can be shaped differently if there are overriding examples of behaviors that better serve clients. With that thinking in mind, I co-wrote a series of articles with a colleague expressing the need for lawyers to incorporate empathic behaviors in their day-to-day thinking, practice and lives.² The theme for the articles originated from my work serving as an in-house counsel at Fidelity Investments, a major U.S. financial services firm in Boston, Massachusetts.

Beginning ten years ago, I became intimately familiar with the concepts of human centered design while collaborating with groups at Fidelity who were using this process to develop new and innovative financial services products and services.

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² Alexander Gavis & Mark Young, *A Need for Lawyers with Empathy*, Corporate Counsel (Aug. 2018); Gavis & Young, *Lawyers with Empathy in Practice*, Corporate Counsel (Sep. 2019); Gavis & Young, *The Important of Lawyers with Empathy: Pandemic Edition*, Corporate Counsel (Mar. 2021).

Fidelity established a relationship with the Stanford d (Design) School to help understand and implement commercial ideas using design thinking. This work involved using empathy research to uncover important problems that needed to be solved by financial services customers.³ For example, some of the problems to be solved involved how to meet clients' needs for estate planning services and student loan relief. From this work, I began to consider how design thinking processes could assist in the provision of legal professional services and in legal education.

In 2014, I had the opportunity to collaborate with faculty at Stanford's d School and teach a class on the design of legal communications. We introduced both law and other professional students to the concepts of design thinking and how to apply them to specific areas within their professions and settings.⁴ A learning from this collaboration was that teaching the elements of human centered design could be useful and impactful in the legal educational field.⁵ After returning from Stanford, I considered whether

³ See Alexander Gavis & Philippe Mauldin, *The Lawyer, The Incubator & The Egg: Innovation in Financial Services*, Harvard Law School Center on the Legal Profession – Speaker Series, at <https://www.youtube.com/watch?v=x1fn0yIxxurU> (presentation discussing how a financial services company embraced and facilitated innovation using a design thinking approach including examples such as how to meet clients' need for estate planning legal services).

⁴ For a description of the class and summary of learnings, see Margaret Hagan, Alex Gavis & Kursat Ozenc, *Designing Legal Communications that Resonate*, Legal Information Institute, VoxPopulli, Cornell Law School (Sept. 2014), at <https://blog.law.cornell.edu/voxpop/2014/09/05/designing-legal-communications-that-resonate/>.

⁵ This collaboration also led to a 2016 project to bring together legal educators and students with policymakers to study through design thinking regulatory challenges. In a Stanford Law School Policy Lab (led by Margaret Hagan), we partner with the Financial Industry Authority (FINRA) to examine with students the complexity of disclosures required in certain types of financial communications. For a summary of this work see Margaret Hagan, *Designing 21-*

there could be significant value in introducing law students to the concepts of empathy research – practicing listening actively to clients in order to develop a deeper understanding of their issues, and using this information to define clearly problems to be solved. While continuing to work in financial services with innovation teams, I embarked on a journey to develop a course that would introduce law students to design thinking and empathy research.

The idea was to develop a curriculum outside of doctrinal teaching and to introduce law students to new avenues of thinking and to assist them in their career journey and as emerging lawyers. A counterbalance to students' case study learning in U.S. law schools might be a form of *experiential* learning providing students with fresh approaches to client interactions and problem solving. A human-centered educational focus could offer law students the ability to stand outside of their typical analytical practices and to help them focus intensely on client empathy and understanding. My overall focus was to develop a plan to bring law students together to participate in teams, building connected relationships, while developing a root understanding of the design thinking process. Another focus was to bring outside world perspectives to students through by introducing expert practitioners – and at that time, businesspeople who employed human centered design processes to client problems.

Century Disclosures for Financial Decision Making (July 2016), at <https://law.stanford.edu/publications/designing-21st-century-disclosures-for-financial-decision-making/>.

The Initial Concept

As an initial concept in building the first generation of a legal design thinking class, Suffolk University Law School accepted a proposal for an intensive one-week January term sprint for law and business students. To accomplish this, I recruited a co-teacher with a strong business innovation background, whom I had worked with on design thinking projects. Together, we developed a class in which 15-20 students were put through a one-day design thinking boot-camp and then were provided with a series of hypothetical fact scenarios in specific subject areas for teams of law and business students to research and develop solutions. Scenarios provided to the students included examining how to address privacy issues for minors who use online games and investigating and addressing the problems of scarce and expensive student housing for college and graduate students in the Boston area. The week-long course was intense as students worked for 3-4 hours each day; first understanding the steps of design thinking and then applying those concepts to challenges, with coaching from the instructors.

The January-term class was taught for several years to build a baseline understanding of how law students adopt and interact with experiential learning and team exercises. These early years in teaching design thinking to law students were focused less on *legal* design and more on imparting the concepts and process of

applying empathy research and human centered design. The reason for this focus was to teach a new and emerging area being used across technology and other major businesses in the US and abroad. Law students should be prepared to encounter business and other organizations using design thinking, and they can gain an understanding of the process through their studies. Growing out of these teaching experiences, we next developed a full-semester course, and entitled it *Design Thinking for Lawyers and Business Professionals*.

A Full Semester Experience

While recognized that the course should incorporate legal concepts, we aimed to provide students with an awareness of the growing emergence of both academics and professionals practicing legal design throughout the world. We also wanted the classroom experience to be impactful, joyful, and fascinating for students so that they might consider employing some of the concepts and techniques throughout their legal careers. To that end, we redesigned the curriculum to focus on real-world issues that might be occurring at the law school and with outside legal organizations. This development involved working with faculty and administration at Suffolk Law School to identify problem areas within the law school, which might benefit from a design thinking focus. Additionally, we proposed to focus on non-profit legal organizations, who might be interested in having a team of law students address an issue or problem.

We wanted the students to have a unique law school experience unlike anything that they had encountered elsewhere.

To foster an academic setting for students that promotes collaboration and teamwork – somewhat unique attributes for law school classes – we developed a new approach for the course’s schedule. We worked with the Law School’s administration to have the class meet for just under two hours for two days each week, instead of the typical law class schedule of meeting once a week. We made this adjustment after the first year of teaching the class for a full semester when we met once per week. During that semester, we saw the momentum regarding team collaboration drop off each week between class’s assigned day. The students were not collaborating in teams outside of the classroom, as we had hoped, likely due to students experiencing busy course schedules and internship commitments. Having the class meet in person twice a week helped with the teams’ collaboration efforts and allowed the instructors to provide more quality in-person coaching and mentoring each week. This twice a week meeting schedule was a unique course structure for the students and Law School.

The Bootcamp Experience

We designed the course to have several essential segments – with the first focused on introducing and educating the students on the concepts of design thinking and overall approach. We usually invite a business associate who currently works with

human-centered design processes to join the class for a design thinking boot-camp. Students are introduced, through a compressed lesson, to the various phases of design thinking – empathy research, defining the problem, ideation / brainstorming, prototyping, and testing and re-testing. We cover the various mindsets that we expect the students adopt during the course, including having a bias toward collaboration and action.

To illustrate the problem-solving aspects of the course, we often ask all the students to stand up and go around the room high fiving everyone; and once that is completed, we ask everyone to do the same thing but this time attempt to make everyone happy. The purpose of this simple exercise is to demonstrate the differences between a complex logistical problem (high-fives) and an ambiguous problem (happiness) that will be the focus of their upcoming projects for the class. After that exercise, we move to have the students work on an exercise such as redesigning the department of motor vehicles experience – first having students spending time interviewing each other about their experiences at the DMV to gain stories, and then moving the exercise through the various steps of design thinking. Another even more active exercise that we have used to help student’s understanding of the process involves having students observe and interview people who are purchasing subway tickets (called *Charlie Cards*) at a downtown station in Boston and then having them

return to the classroom to discuss and redesign what they encountered through the experience.

The Project Challenges

At the end of the boot-camp, we randomly group students into teams of four to five students and present them with a description of the challenges. When developing the challenges before the class begins, we typically work with the Law School's administration and faculty to identify somewhat ambiguous problem areas that the Law School or one of the groups within the school are encountering. We also reach out to non-profits in the Boston area to identify problems that they may have.

Each of the challenges has either a sponsor at the law school (faculty or administrator) or a sponsor at a particular non-profit organization (e.g., Boston's Volunteer Lawyers for the Arts). All of the project challenges that are selected for the class will have a component of ambiguity in terms of the problem and possible solutions. Once the teams provide their ranked list of preferences and choose a name for their team, they are assigned to a specific project challenge. What follows is a representative example of a project challenge for student teams in the course.

Professionalism & Professional Communication

Lawyers are expected to communicate and behave in a manner that exhibits respect for our legal system and all its stakeholders, including clients, opposing counsel, supervisors and judges. Law students should understand this expectation and exhibit the willingness and ability to learn about the expectations.

In preparing Suffolk University Law School students for practice, the goal is to help students transition from thinking like students to thinking like junior lawyers. This includes, among others, becoming self-directed learners, understanding the importance of and meeting deadlines, dressing appropriately for the workplace or occasion, using appropriate formality orally and in writing, displaying politeness and careful listening when meeting and working with people in person or virtually, etc.

Law students' experience, knowledge and understanding of these expectations varies widely. Failure to meet expectations of professionalism and professional communication can limit students' ability to access opportunities necessary to meet their career goals. As such, the Law School, its faculty, and Office of Professional & Career Development (PCD) endeavor to teach and promote professionalism and professional communication through lecture, instruction, modeling behavior, and opportunities for practical experience and reflection. Despite these efforts, students sometimes do not understand, have experience with, or exhibit these professional expectations, e.g., not dressing in an appropriate manner for a networking event, not turning on their camera during remote programming introducing them to alumni or other legal professionals, or not appearing at scheduled appointments, etc.

The opportunity is to determine how professionalism instruction and communication of professional norms can be improved in a way in which more students understand professional expectations and exhibit professional behaviors: that is, that they begin to take responsibility for their actions and transition from thinking like students to thinking like junior lawyers.

Sponsors:

Gerald Slater
Associate Dean
SULS Office of Professional and Career Development

Shailini George
Professor - Legal Practice Skills
Author of The Law Student's Guide to Doing Well and Being Well, Carolina Academic Press (June 1, 2021)

The instruction then takes a brief detour to discuss team and project management. This lesson includes a discussion that teammates should get to know each other and their strengths, discuss potential roles and responsibilities going forward, develop a plan on how to communicate with each other when not in class, and track and manage team tasks throughout the semester. For tracking of team

responsibilities, deadlines, and tasks, a brief discussion of the concept of *kanban* boards and similar planning tools ensues. Since the students rarely work in teams in law school (except in situations such as moot courts or law journal editorial boards), we spend quality time outlining appropriate team building approaches, including coaching of appropriate behavior for interactions.

The Empathy Segment

We next move forward with our empathy sessions – or what we call empathy workshops – and a significant amount of time (at least four class sessions) is devoted to explaining and coaching teams through empathy exercises and work. The instruction first asks students to complete a “we wonder” exercise – each student must contemplate several questions: Why he or she is interested in the project? What key elements of the project description drew their attention? Is anyone on the team familiar with the topic? What preconceived notions do team members have about the topic? What initial question does each team member have about the topic? Answers to these questions set the stage for the team to embark upon their empathy work, which will involve each team identifying groups or individuals to interview.

Teams are further coached to engage, immerse, and observe as they begin to meet with their interview subjects. A goal for each team is to seek to understand their interview subject’s behaviors, motivations, feelings, and beliefs. In advance of meeting

with interview subjects, the teams develop written interview guides – outlines of topic areas to probe and sample questions. As the teams begin their interviews, they must develop an appropriate approach to engaging, observing, and capturing the elements of the interview for further study and analysis. We will often act as interviewee subjects to test the fullness of a team’s work on formulating questions, and coach the teams toward asking good questions.

Stokes. Throughout the course, there are moments where we take law students out of their comfort zone and introduce them to exercises that appear to have no relevance to their legal education but illustrate specific teaching points. One exercise that we enjoy employing is a Stoke – a tool to boost classroom energy and build connections among students.

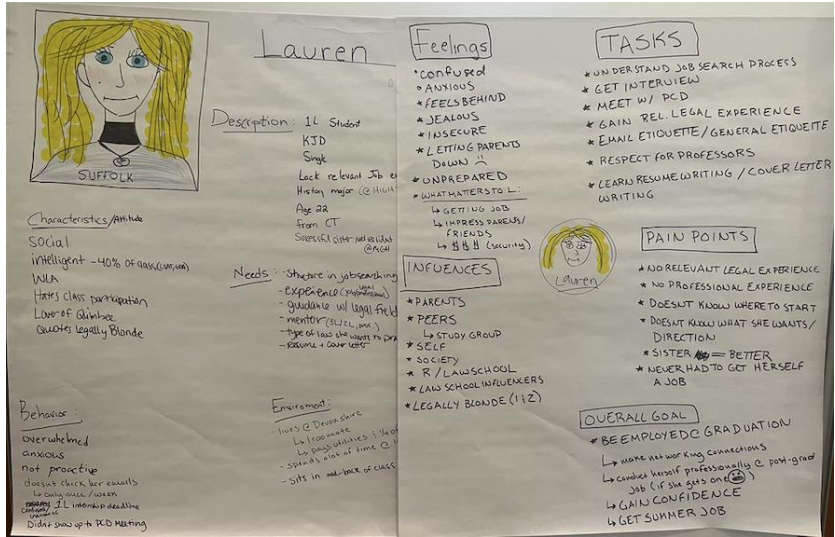
An illustrative of a common Stoke is one that involves asking each student to team up with another. We then say that the first student must assume that the year is 1713 and that they need to explain to their partner, who knows nothing about the world today, what a cellular phone is. After a few minutes of students joyfully attempting to explain this object, we ask the students to turn the table and the second student must describe what an electric car is to the other student. The purpose of this popular Stoke is to demonstrate how to focus on alternative mindsets and using simplifying analogies to communicate effectively.⁶

The Persona Segment

Once the empathy sessions are completed, we move to a workshop in which each team must decide who they will be solving for (creating a *persona* or ideal type of individual) and determining the “why.” Everyone on the team contributes their idea of the persona and that the group will focus on and additionally each writes down his or

⁶ See Stoke #22, at <https://stokedeck.io/stokes/1713/>.

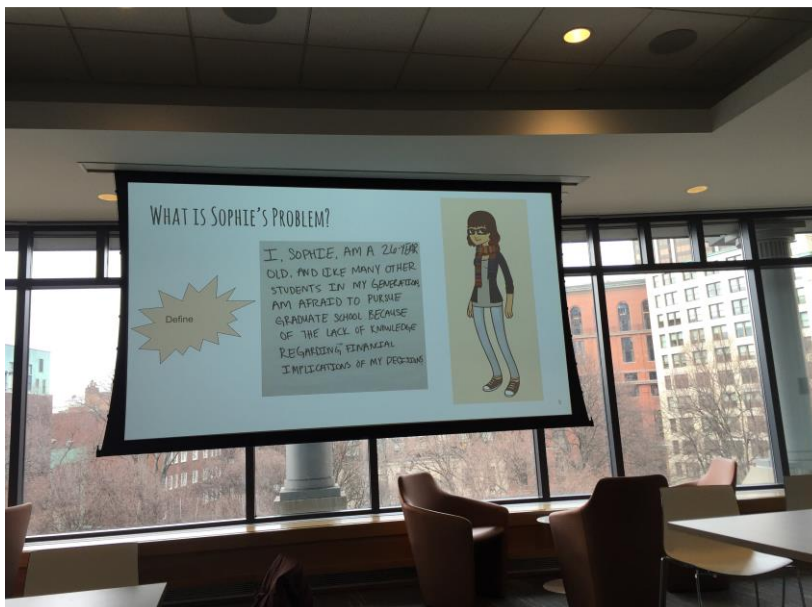
her reason why. Next, each team member votes on their first and second choice of who to solve for. Then each team creates a visual picture of their persona with a description, characteristics, attitudes, needs, wants, and behaviors.



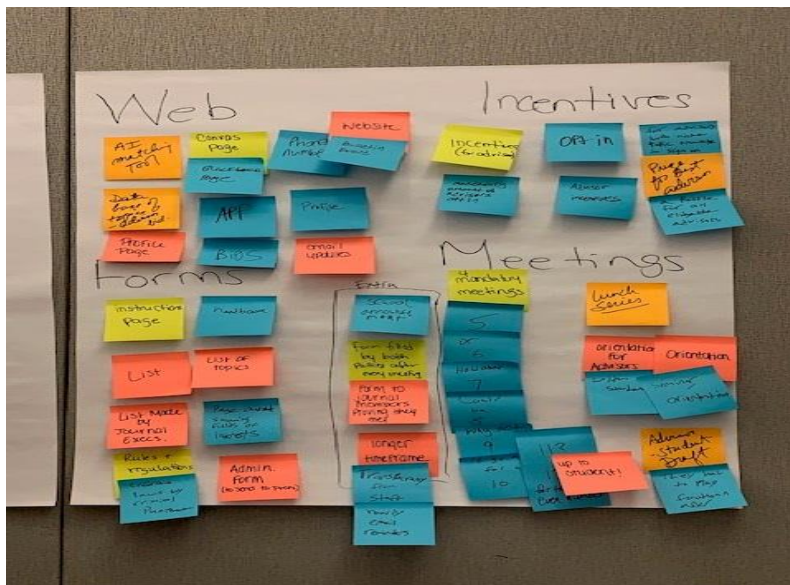
Our coaching focus is on helping students encapsulate and summarize what they have heard and learned through their empathy interviews. This persona work also leads us to ask each team to create a “mind map” – attempting to stand in the shoes of their persona by creating an outline of the tasks, feelings, pain points, goals, and influences of their chosen persona (often doing this standing at a whiteboard. We emphasize the importance of mindsets -- hypothetically standing in others’ shoes – as being a critically important skill within the design thinking and beyond.

Problem Statement Segment

As the class moves forward each team is instructed to begin developing a problem statement (often called a “*how might we*” statement), with the instructors coaching the teams to refine and rationalize their work and statements. We find that law students sometimes struggle with this exercise, as they have a natural predilection to form a structured analysis and begin jumping to solutions while considering the problem at hand. We bring the students back to focus on the exercise by using a “mad-lib” approach to crafting a how might we statement with a template of the key elements that should go into such a statement: the Who: “How might we....find a way to...[The need] ... because[A surprising insight].”

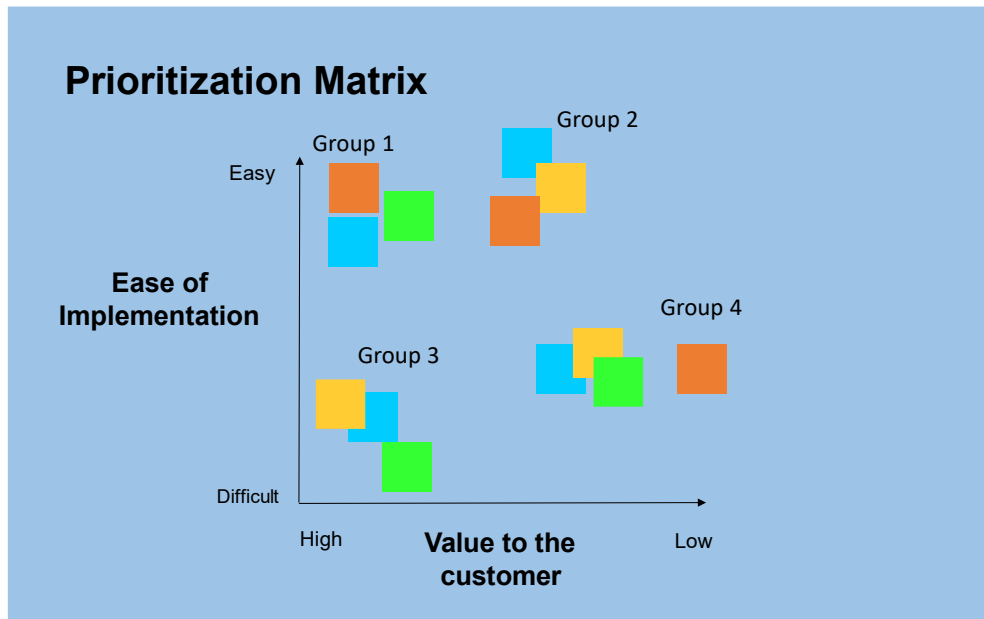


Our goal is for each team to embrace the direction that they are heading so that they can begin the next step of using ideation (a fancy term for brainstorming) to develop potential solutions for their problem statements. Here, it is quite interesting to see law students work to develop a “yes, and” positive attitude to group consideration of solutions. We work with the teams to ensure that they are not sitting behind computers and are standing up as a group, working with sticky notes to post possible solutions to the problem that they are addressing or attempting to solve. The activity of *flaring* -- thinking freely, broadly, openly, with no judgements -- is not something typically experienced by law students. Each team is asked to produce at least twenty ideas, with no judgment by teammates, and then they are to group the ideas into like categories.



Next, we show the teams a prioritization matrix with implementation (easy to difficult) on one axis and value to the client (high to low) on the opposite axis. From

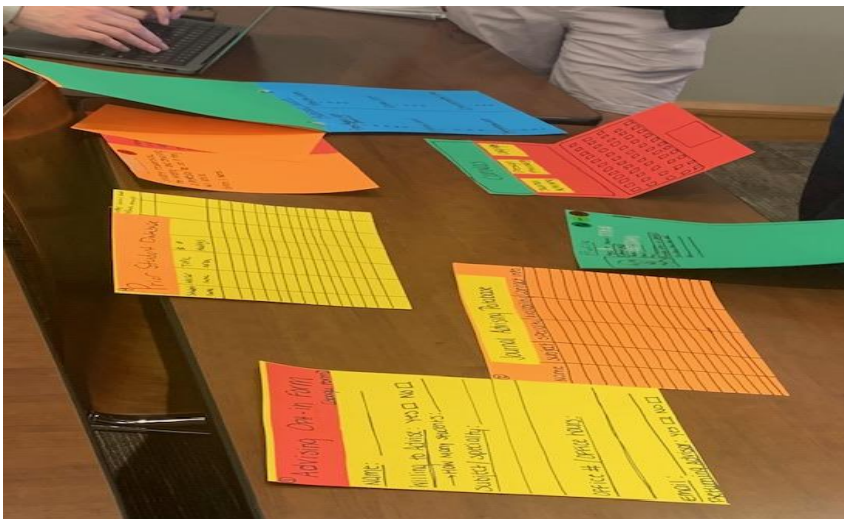
that exercise, the teams choose an idea that fits a view of implementation versus value. We also use various exercises and *Stokes* to help the students practice innovative mindsets. It takes a class or two to move the needle, but the resulting output is usually quite satisfying.



Along with forming a prioritization matrix, we ask that the team evaluate and explain why their problem statement may meet a significant need. The team should look at the key assumptions that they have made regarding their problem statement, including could a potential solution be intuitive and easily adoptable and would it be viable and feasible.

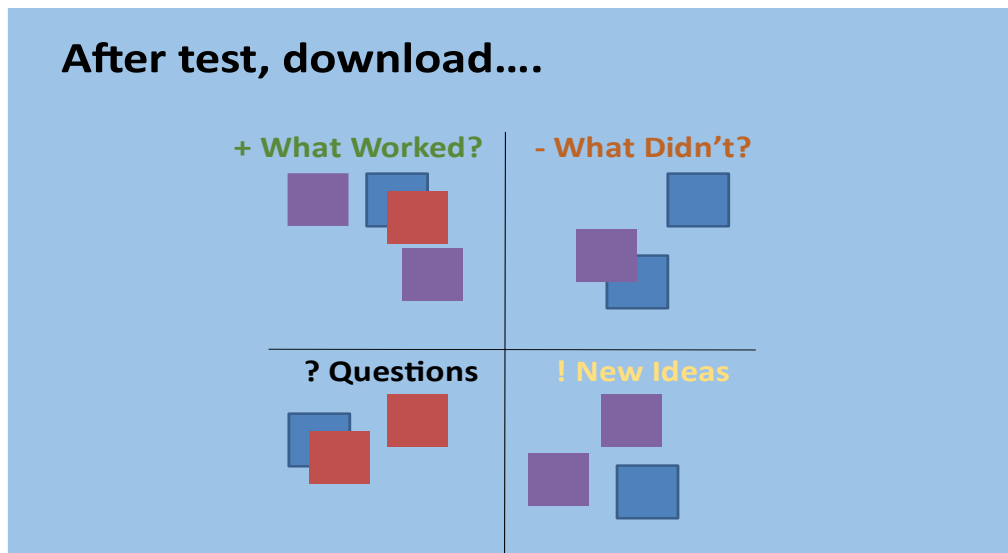
The Prototyping Segment

After the brainstorming segment, we move to prototyping -- designing a proposed solution, which will then be tested with subjects. Here, law students often live in the realm of *"the perfect is the enemy of the good."* What we emphasize is low-fidelity (not highly polished) prototypes are usually most effective when testing with subjects. This approach is often difficult for the teams initially to accept. We provide the students with craft materials (e.g., cardboard, stickers, play doh, glitter glue, etc.) to build relatively crude prototypes. Showing examples is useful for students to digest -- we might use an example of a prototype a webpage drawn on a piece of cardboard with sticky notes to indicate links to embedded pages or a subway card machine made out of a cardboard box. This is typically very purposeful work, and it moves the students to consider the meaning of representational work.



The teams must embrace and answer a series of questions as they begin to set-up their testing, including “Is your prototype aligned with the problem statement? What does the team want to learn from testing? Who should the team test the prototype with?” Next, the teams are coached to follow specific guardrails when testing – setting the context; engaging users by asking questions; letting the user experience the prototype (*no leading the witness!*), and careful notetaking and observing. We spend time coaching the teams through an effective way of asking questions of test subjects – law students are inclined to lead test subjects through their prototypes rather than holding back and asking questions and for the thoughts of the test subjects first. We coach the teams to check their tendency to overexplain their prototype and to use questions such as: “What would you like this prototype to do? How do you think this should work? What is your view of this process?” Testing with subjects comes next. After the testing, the students are asked to download what they have learned in a

simple four quadrant matrix.

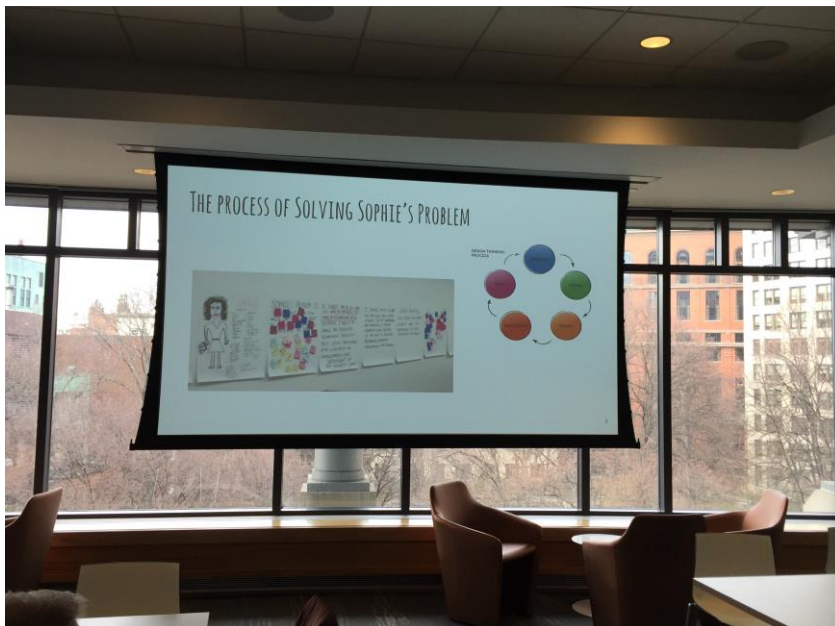


Considering the “new ideas” quadrant, the teams may find that there may be additions to their solution or even a need to pivot to a new solution. We spend time explaining the idea of *co-creation* – test subjects helping to provide insights and suggestions on the prototype to make it even better. This act of contribution is often a foreign concept to emerging lawyers, who envision that that the client is the one receiving advice after the contribution of facts. Testing and re-testing can occur over several classes, and the teams refine and work to present their solution to their project sponsors who provide further feedback.

The Pitch Presentation

The final segment for the course is preparing the teams to provide a presentation on their design thinking journey to the project sponsors. While the team presentation is

an important final step in the course, we emphasize that it is the journey and not the result that we envision will stick with the students. For the presentation, we coach the teams on presentation techniques and expect that each team member will be an active presenter and contributor. The bulk of the presentation, we counsel, should be spent describing the journey of the team through the design thinking steps and process.



It is interesting to see how law students manage a group presentation and whether there is cohesion in the process of bringing all of their learnings together from the course.

Lessons Learned

Each year that we have taught the course, we hear afterwards from students that their journey through the course was worthwhile and that they have started to

incorporate some of the mindsets into their thinking. While not all students immediately benefit from our experiential approach, we know that they will leave with a better understanding of how human-centered design can effect change and how it might be used in the legal profession to design solutions that resonate with clients.

Throughout our years of teaching design thinking concepts to law students, we have developed several helpful practice points. As an experiential learning course, we want to be able to interact closely with student teams, both teaching and coaching them through the design thinking steps and process. To that end, with two instructors, we find that having no more than twenty students in the class can allow for optimal coaching opportunities. We have experimented with team size – some years with five teams of four students and other years with four teams of five students. We are mindful that on one hand smaller teams allow us to see greater participation and effort from each student. On the other hand, with smaller teams, especially if the class is taught over the winter months, there may be absences due to sickness that result in just a few students picking up the work of the team at intervals. Further with five teams, the burden falls on the instructors to develop five interesting and challenging projects, which can be difficult in some years. Randomizing the makeup of the teams has been an important goal and to do this we count off students by numbers – 1,2,3,4 – and put

all the ones together, twos together, etc. This prevents students who may sit together as friends from being on the same team.

At the beginning of each course, we found that devoting one to two classes for an intensive bootcamp whereby students are immersed in learning the steps of human centered design is critical. It is also especially useful to bring in additional design resources such as practicing professionals who are working in design to help with the bootcamp. This enriches the experience and brings a fresh perspective to the classroom. Further, over the years we have pivoted towards developing challenges that are legally focused. With the rise of the legal design movement, we have found many good resources including articles, websites and books focused on legal design and its many aspects.⁷ We intersperse these resources throughout the reading syllabus and speak to them over the course of the semester. This provides students with a solid glimpse of the many aspects and areas of legal design being used today throughout the world.⁸

⁷ When we first started teaching the course, we assigned only the book *Creative Confidence* by Tom and David Kelley, see <https://www.creativeconfidence.com/> along with many articles and other resources about design thinking and human centered design on the Internet. More recently, we have found *The Legal Design Book*, by Astrid Kohlmeier and Meera Klemola, as a useful textbook that discusses many aspects of legal design and its relevance for today's practitioners. See <https://legaldesign-book.com/>.

⁸ The instructors participated as mentors for the 2024 Brainfactory program at the Legal Design Conference held in Helsinki, Finland in September 2023. This experience along with attending the conference provided many useful examples for the instructors to highlight in class those practitioners around the world who are using design thinking approaches to solve important legal problems.

In the earlier years of teaching, we found ourselves lecturing quite a bit during the beginning classes to orient the students to concepts of legal design and in an attempt to convince them that they had made a desirable choice in choosing our experiential course. More recently, we have moved away from this type of lectures and monologues and have worked to create an interactive dialog and hands-on activities for students at the outset. This engages the students, and most importantly, results in students closing their laptops and putting away their phones to focus on the tasks and interactions at hand. There is nothing more demoralizing than see a range of students all staring into their laptops instead of focusing on what is happening in the classroom. There is a great tendency of the students to consider collaboration as the sharing of Google documents and sitting in a group with all laptops open. The digital lives of students work against team interactions in this course, and I often wonder whether laptop use should be banned from certain segments of the course.

We tried during the peak of the Covid pandemic, and as required by the Law School, to conduct our experiential classes through video conferencing. This turned out to be quite challenging, particularly with respect to managing collaborations with the student teams. We found ourselves constantly creating breakout groups that all were in separate online channels. From an instructor's standpoint this was a difficult experience. Having teams in a classroom allows the instructors to look across groups to

see who might be struggling or needing further coaching. Further in-person teaching allows for casual interactions and drop-ins by the instructors to team meetings. The online approach, while efficient in its execution, is not ideal for this type of experiential course.

At the end of each semester, we consider as a goal for emerging legal professionals to understand and possibly embrace alternative approaches to listening with empathy. We find that when law students journey through a design thinking course, they emerge with an understanding that applying a design thinking mindset to certain legal problems might lead to new pathways for the provision of legal services. Our hope is that our students will have an appreciation of design thinking and its process, practices, and mindsets. The students will have had a rich experience in working in collaborative teams to practice design thinking while tackling real-world problems. And we hope that the students will consider how empathy research and applying these human-center design concepts can enrich their practices, lives and the lives of others going forward.