



## **Practice Area Briefings: Finding a Competitive Advantage Through Innovation**

**Law Department Management**



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The pressure to be cutting-edge while trying to run a legal department can be overwhelming. How can you help your team be innovative with limited time and resources? Should you spend time and effort developing homegrown solutions? Will your team use the latest and greatest tools from the ever-growing number of legal technology vendors? How do you take action and actually effect change? Will your investment in innovative technology provide a ROI that will satisfy your board? Should you leave innovation to your outside counsel? Or maybe you wonder if cutting-edge technology is a ridiculous wild goose chase. Should you stop chasing the fads and hold the ship steady — this innovation phase will surely pass?

Step back from the hype, and focus on what is needed and what is possible. Maybe the much discussed disruption to the legal field will happen one small idea at a time. Small ideas, tested, proved, implemented, and successfully evaluated, can become the disruption that both law firms and clients are craving. This case study will provide one example of a small, unique project that will offer concepts for you to apply to your team.

## **Fostering creativity in your team — The act of being creative**

Why is generally being innovative and trying new ideas so important to the legal innovation process? To be an innovative leader you must continually challenge yourself. Try new tasks, read differing opinions, force yourself to view the usual from an unusual viewpoint. Putting yourself into new and

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unique situations will help you to become more openminded and will provide sources of inspiration. By leading the innovation charge, your team will emulate and follow you. Be open to your team's ideas, welcoming both good and bad suggestions in all discussions.

One process that has gained a lot of attention in legal technology is the concept of design thinking. Tim Brown, most recently the CEO of the global innovation firm IDEO, defined design thinking as, “a human-centered approach to innovation that draws from the designer’s toolkit to integrate the needs of people, the possibilities of technology, and the requirements for business success.” Identifying the needs, reviewing the tools at hand, and looking for a business success is an excellent formula for innovation.

In 2014, the consulting firm Forrester surveyed executives and found that 82 percent agree that companies benefit from creativity in both revenue growth and market share, and 58 percent of respondents said they set goals around creative outcomes ([“The Creative Dividend, How Creativity Impacts Business Results”](#)). Forrester concluded that to have the greatest impact, creativity should come from the top and creativity must be incorporated in to the fundamental tasks, tools, and techniques for employees.

Creativity must be valued by you and your organization to reap the highest results from your innovation focused projects.

## **Which ideas should move forward — Finding and choosing ideas**

In every organization requests for new projects touting innovation are put forth, but which idea should win your attention and limited resources?

Always build to cure a pain point, rather than simply investing in a good idea. However good the idea, if it solves no problem, it will ultimately be a waste of resources. Understand and talk to those who will ultimately benefit from this idea. Get into the shoes, the hearts and minds of the users. It is critical to gather a deep understanding of what the user needs to cure their ills, relieve their pain, and provide the extra shot of secret sauce into their work. The resulting product born out of your idea can be simple.

As you evaluate ideas, take time to investigate the need. All organizations have a rusty wheel that receives far more attention than is likely appropriate. Do not fall victim. Consider if the idea will provide the desired result. If you build a tool or buy a product, will you in fact receive the outcome promised? Consider how many people your idea will serve. Is this a broadly felt pain point that can be addressed by the idea, or will a discrete and small group of users benefit from this investment? There is not necessarily a correct answer to these questions, but it is vital that they are asked and that the goals of the project are documented to demonstrate success.

[A recently released study](#) asked attorneys what areas of legal technology most impacted their work. The tools that directly affected attorneys’ day-to-day work, such as document management, time and billing, case management, financial management, eDiscovery, and knowledge management rose to the top of the list. We are each interested in making our lives easier and more productive. Attorneys, law firms, and legal departments are no different. Understand and target the basic necessities of your user, and you will find opportunities for successful innovation.

## **Proof of concept — Testing out your idea**

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The proof of concept stage is a safe place to mold, shape, test, and experiment with your idea. Utilize this step and allow your team to find the weak spots in the idea. This is the opportunity to shape what will become the steps and procedures for the final project. This is where you kick the tires and test out options.

Ideas often sound good and maybe look good on paper, but the execution of an idea can prove much harder than anticipated. Sketch out how you think the project should proceed, and then take small steps and practice each one. Evaluate the process and results, make changes, and determine when you are ready to move to the next step in the sequence. Allow your team the opportunity to reject their original idea and offer new suggestions. This is the time to experiment and discover the best solution. During this initial phase of testing and development is when most “ah ha” moments occur. By digging deep into the process, the team will learn the best practices and create superior products and processes through trial, error, and discovery. Do not rush this phase.

Build what will be useful and what is unique. Sometimes ideas are presented that can be answered by an existing product. Spend your limited time creating something new, and be sure to reuse, repurpose, and utilize all of your existing products. If someone approaches you or your team with an idea that can be answered with an existing product, take the time to train that user on the unknown features of that existing product. Only spend time creating what is truly new and unique.

As you work through your design phase and better understand both the needs and capabilities, be willing to change and mold your project. Be willing to bring in partners to provide subject matter expertise.

As you build and design, ensure that the team moves beyond function and utility. Remember to always consider why this product or project was chosen. You are building or buying something to fix a problem. Go back to that fundamental problem throughout the development cycle.

Once you have passed the proof of concept, created or purchased the perfect tool, tested, evaluated, and declared the project a success, you must decide if you want to continue, maintain, expand, or pass off to a partner.

Ensure that you track usage and continue to market your tool. You must keep track of your investment, and share your success with key stakeholders.

## **A case study: The pilot cycle**

The research department at Littler Mendelson was recently awarded the Judges’ Choice at the American Association of Law Libraries 2019 Innovation Tournament. The Tentative Rulings Database for Santa Clara County served as the research department’s entry. This project is an excellent example of the innovation cycle: choose, test, evaluate, pilot, market, and use.

### **How this project started**

An attorney identified a useful and free data source and approached the research department requesting assistance in organizing this data into a useful format. The information would provide case teams insight into a judge’s thoughts on particular issues. The data was not readily available from any existing vendors, nor did we uncover any new vendors to supply the data.

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## The problem

Knowing how a judge made a particular decision can be a powerful tool in preparing legal arguments and developing new client business. With this information, attorneys can draft briefings and take positions that align strategically to the judge's legal vision.

Unfortunately:

- The judicial mindset on similar topics and procedure can be difficult to find.
- In California superior court, for instance, tentative rulings reveal a treasure trove of judges' discernment and thought process.
- The court website displays the insightful rulings for one week before replacing with a new round of temporary decisions.
- Although subscription services such as Lexis or Westlaw provide the final rulings, the valuable tentative rulings disappear.

By way of background, in California, state court tentative rulings indicate the way the judge is prepared to decide the matter based on the information before him or her when the ruling was prepared. A tentative ruling becomes the final ruling of the trial court:

1. Only if the court does not order oral argument in its tentative ruling, and notice of intent to appear is not given by one of the parties; or
2. Only after the hearing on the motion is conducted, assuming the court does not then render a different ruling (Cal. Rules of Court, Rule 3.1308).

In short, tentative rulings provide attorneys an excellent opportunity to review and understand a judge's approach to particular legal matters. The information is not readily available other than on court websites, and those websites are not user friendly.

We talked to the attorney to understand the pain point on this issue. Was this a nice-to-have or a game-changer? Who would use this product — one attorney or hundreds of attorneys? Sometimes a good idea will surface, but it will ultimately only assist one or two attorneys. Remember, in the research department we serve the many, not the few. We asked the attorney what exactly they expected to accomplish by using the tool and information available. We discovered that the useful data that had been identified was pages and pages of Word documents. We spent time discussing what the end product would look like and if that product would provide the attorney with valuable, actionable results.

We ran tests to determine what could be accomplished by tools we had on hand with little or no development. We evaluated how much work would need to be done by team members. We invested time in measuring our commitment to the experiment. Because we could use skills and resources we already had on hand, we utilized current tools and staffing and were able to move forward quickly on a small scale to test our project.

Throughout building of the tool, we spent time with the requesting attorney to ensure we were meeting expectations. We also showed early drafts of the tool to local knowledge management counsel and key stakeholders in the local office. We adjusted the project to fit the needs of the office.

With a simple research request to track tentative rulings, we built a SharePoint-hosted database of relevant tentative rulings. Littler captured the ephemeral rulings by initiating a database of tentative

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decisions from the Santa Clara County Superior Court in San Jose, California.

What you'll find in the tentative ruling database:

- Superior Court judges' orders regarding labor and employment cases and decisions on class certification, arbitration, discovery requests, and other relevant motions in any practice area.
- Case name and number, judge, alternate judge (if applicable), date, and type of motion.
- A short summary of the case, motion, holding, and a link to the full-text tentative ruling.
- Littler's assistant librarians obtain, review, refine, and enter data, and the library manager serves as the catalyst for use among targeted practice offices.

At launch, we did a roll out to the office including both training and marketing. We wanted to ensure that the tool would be used and tested by the office. We carefully tracked usage, checked on usability, and continued to build next steps.

The searchable database of over 1,000 tentative decisions helps attorneys prepare tailor-made briefs based on previous rulings in Santa Clara County Superior Court.

Advantages for attorneys:

- Better comprehension of judges' legal reasoning and behavior – awareness of crucial insights that were disappearing from the court's website.
- Presentation of arguments with a more likely chance of success.
- Creation of a business development asset for clients litigating in Santa Clara County that allowed attorneys to identify tentative rulings that directly relate to the issues before the court and help shape a winning litigation strategy.

Going forward, the functionality of the tentative ruling database will be enhanced with:

- Contract automation software to generate custom reports based on judges, motion practice, or timeframe;
- Analytics;
- Expanded scope incorporating other superior courts in California and potentially other states;
- Marketing to bolster attorney and staff training and, consequently, usage within Littler;
- Strategic partnerships with other firm departments and third-parties; and
- Ongoing review of third-party vendor tools.

We are not alone in valuing the information gleaned through California's tentative rulings. Third-parties are trying to capitalize with similar tools. One particular new product was recently reviewed. Although it had greater court coverage, our users found it lacked search functionality, filters and document display.

## **What success looks like**

Do not allow your idea and subsequent project left to be judged by onlookers. Review your initial goals, measure your success, and document lessons learned. Each project will require different success metrics, and those should be built into the planning and execution stages. Gather your data and present your success back to stakeholders.

Consider questions such as:

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- Is it possible to gather the data and present it in a manner that the attorney will readily utilize?
  - Can technology be utilized to streamline or simplify the process identified in the pilot?
  - If you have a useful and desirable product, is it scalable?
  - How many people in your organization will want the product, and what will it take to deliver said product?
  - Do you want to keep this project on a small scale until you have the resources to build out the technology or staff to offer an enterprise solution, allowing you to perfect the product before you expand your services?

## Conclusion

Innovation is a way to streamline processes and provide greater value. It is an opportunity to discover the extra piece of knowledge that will differentiate you. Innovation can foster meaningful creativity resulting in actionable information and reliable tools that can provide a competitive advantage to your department. Those businesses that will thrive in the coming years will be filled with creativity and the drive to try something different.

[Scott D. Rechtschaffen](#)



Chief Knowledge Officer

Littler

Scott D. Rechtschaffen is Littler's chief knowledge officer and leads the firm's effort to provide

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innovative client services by integrating new technologies and work processes and enabling attorneys and clients to access the collective knowledge and experience of the firm's more than 1,000 attorneys. As shareholder, he combines over 25 years of experience representing companies in every area of labor and employment law with a broad understanding of technology to help the firm's attorneys and their clients in tailoring unique solutions that enhance the firm's ability to deliver legal information and legal services to its clients.

## Cynthia Brown



Director of Research Services

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Cynthia Brown is Littler's director of research services where she leads a team of research librarians, assistant librarians, and interns to provide the firm's lawyers and clients with the research resources they need to succeed. And as part of the firm's knowledge management leadership team she is involved daily in the knowledge management department's efforts to develop innovative systems, procedures, and work flows.



