



TECHNOLOGY



WORKING ON WORK

By Marc Lauritsen¹
Capstone Practice Systems

Preparing documents is only part of what most legal advocates do. But together with structured fact-gathering, analysis, and advice-giving — activities quite amenable to the technologies discussed here — document preparation in a broad sense makes up a very large part of the legal work needing to be done in many contexts. So it stands to reason that improvements in those activities could have a major impact on that work.

Here are some general thoughts on improved effectiveness — reinvention prevention, waste avoidance — in legal work. You can look at this from at least three perspectives: individual practices, delivery systems, and supporting tools. But let us first talk about waste.

Living in a Knowledge Wasteland

- Do you leave your faucets running at home while you are at work?
- Do you turn outside floodlights on during the daytime?
- Do you leave your car idling in the parking lot while shopping?
- Do you use your main oven to toast a bagel?
- Do you throw away your dishes and silverware after a meal? Toss books after you've read them?

No? How about these:

- Do you mow your lawn with hand scissors?
- Do you calculate complex budgets with pencil and paper?
- When you put on that addition, did you use toothpicks instead of two-by-fours?

Most of us do not intentionally do those kinds of things. Even though modern societies tolerate a lot of waste, some practices just seem to cross our threshold of acceptability. We are wasteful, but also selectively waste-averse. Most of us especially hate to have our time wasted, and have a sense of environmental responsibility (so long as it is not too inconvenient). We

bristle immediately at the above examples because, in the first group, valuable resources (water, electricity, gas, cutlery) are being consumed for no good reason, and, in the second category, scarce human time and energy are.

What does this have to do with law offices?

More than we care to admit, I am afraid.

As a practitioner, teacher of practitioners, and maker of software tools for practitioners, I have seen more lawyers in more practice contexts than most. Training and consulting work takes me behind the scenes in many different legal work settings.

My honest impression is that practices as laughably wasteful as those above occur just about every day in every law practice in the country. I am not talking about the paper we recklessly proliferate, or the untouched luncheon sandwiches that get trashed while homeless folks beg for food downstairs. I am talking about our core professional activities. In an age of intelligent technology and “working smart,” too many of us work dumb. We constantly redo, reinvent, forget, misremember, misplace.

You might say that we lawyers live in a knowledge wasteland.

Individual Practices

In my experience, people spend much more time thinking about what they do than how they do it. Much of the promise of document automation and related “knowledge tools” will only be achieved when practitioners themselves are energetically and creatively engaged in transforming how they work through more powerful tools.

Working effectively through the appropriate use of technology is a “best practice” that deserves greater recognition. Getting the best results for your efforts should be a concern of all who aspire to be reflective practitioners. And even more of a concern for those who no longer pay much attention to their work methods.

Delivery Systems

Deciding where and when to deploy which technologies is an exercise in systems thinking. On an abstract level, the legal services delivery system somehow decides what legal work will get done, for whom and by whom. It also decides how that work gets done. Right now it seems that most legal work is done by legal professionals (rather than self-helpers), and largely without significant law-specific automation. It is clear to me that much more legal work could be done with the same human and financial resources by taking greater advantage of such automation, including tools that enable more widespread and effective self-help.

Interestingly, the very availability of certain tools can radically change the equation of what services can and should be provided by and to whom. In other words, entire lines of services and constituencies not now being served may turn out to be the places in which new resources would have the greatest impact. (From a practical political standpoint, though, it is probably wise to accept the present configuration of service delivery, and find optimal entry points there for new forms of automation. Do not pick fights you do not need. Start with work that is already being done.)

What is a session with an intelligent form worth? How long would it take a knowledgeable human to accomplish the same thing? In terms of lawyer or paralegal time, the work being done by the NPADO server in an average session is probably equal to at least a half hour. At that rate, just a few thousand sessions per month would be equivalent to the effort of a dozen legal professionals. Are we acting responsibly if we could achieve results on that order for a tiny fraction of the cost of those professionals, but fail to do so?

Toolmaking

Similar considerations apply to those of us in the business of developing tools that others use to do legal work. There are a plenty of “toolmaker” tools and techniques that make our own work more effective. And with each project we face the implicit calculus: what documents, what depths and forms of automation, will deliver the most bang for the buck of my programming work?

In the legal services document assembly world, we now have several resources to enhance our collective effectiveness:

- A listserv through which expertise can be shared and solutions non-reinvented
- A compilation of programming conventions and best practices

- A contributor’s portal through which to access and “borrow” related templates

Those whose very work is largely “working on the work of others” should be especially vigilant about setting good examples.

Waste Not

We appropriately look askance at some forms of reinvention and redundancy. It seems wasteful to have people re-creating forms that someone else a county (or office) over just created; to have legal research done from scratch that has recently been done by someone else; to have three different software systems for sharing briefs, or assembling documents; to have people doing things that can be done better by machine. Needless duplicated personnel, content, or functionality can all bleed scarce resources.

Of course, there can be good as well as bad forms of these things. Some redundancy in systems provides important hedges against unexpected failures. Sometimes reinvention results in better inventions! Overlaps of responsibilities can ensure continuity when personnel change.

But the key is not to tolerate, let alone promote, reinvention and redundancy thoughtlessly. Especially when we have severely limited resources with which to respond to overwhelming needs.

The Price We Pay

Many lawyers lead lives of quiet desperation. Work is made up of long stretches of boredom and drudgery, punctuated by periods of frantic activity, and only occasionally, of “flow” (that blissful state of full engagement in a work task documented by Mihaly Csikszentmihaly).

Wastefulness imposes many kinds of penalties: long hours, mindless repetition, stress, squandered resources, unsatisfactory results.

Much of what lawyers continue to do “by hand” (and “by head”) is better done by machine. Those who recognize that should not apologize for pointing it out. Only a very small percentage of what can appropriately and cost-effectively be done by our non-biological assistants is so done.

I have heard it said that “lawyers who can be replaced by computers, should be.” (In other words, if you are no better than a machine, maybe you belong in a different line of work.) Few if any will be any time soon. But we will see an accelerating trend toward the delegation of routine knowledge tasks to machines.

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Many lawyering tasks can and should be automated. Those lawyers who persist in wasting effort on mechanical tasks will deserve little sympathy as circumstances turn against them.

I count myself among those who believe the world needs more lawyering—effectively done, appropriately delivered, fairly distributed. Despite our inefficiencies, most lawyers do a lot of good work, and many live happy and prosperous lives. Just think how much better things could be for us and our clients if we were not quite so wasteful.

- 1 Marc Lauritsen, president of Capstone Practice Systems, has worked as a poverty lawyer, taught in and directed the clinical program at Harvard Law School, done path-breaking work on document automation and artificial intelligence, and been an executive in several startups. He is a leader in international law and technology organizations and co-chairs the American Bar Association's eLawyering Task Force. Marc may be reached at *marc@capstonepractice.com*.