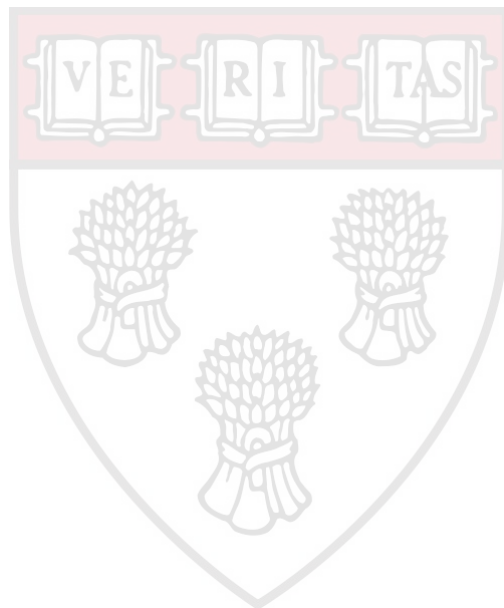


HARVARD JOURNAL OF LAW & TECHNOLOGY

*Harvard Journal of Law & Technology Occasional Paper Series — February 2013**

A Decision Space for Legal Service Delivery

By Marc Lauritsen



* The *Harvard Journal of Law & Technology Occasional Paper Series* is an online-only component intended to showcase thoughtful and innovative writings on a wide variety of subjects related to the law and technology field. These pieces are reformatted for consistency, but otherwise undergo no editing or cite-checking by the members of the *Harvard Journal of Law & Technology*.

I. INTRODUCTION	1
II. HOW MIGHT THIS WORK?	2
A. USE BY PROGRAMS.....	5
B. CLIENT COUNSELING	5
C. CLIENT AND SELF-HELPER DECISIONS	7
D. PUTTING CHOICE SUPPORT ON THE GRID	8

I. Introduction

Recent technology initiatives have supplied power tools for a variety of tasks widely found in legal work, including communication, gathering of information, management of events and deadlines, and preparation of documents.¹ One pervasive activity that has thus far received little explicit technological attention in the nonprofit legal services context is *decision making*. Individuals and their advocates face a myriad of choices in nearly every legal matter, and legal aid programs confront vexing decisions about technologies, policy, and other organizational issues.² A unified online resource – a ‘Decision Space’ – could be fielded to support a wide range of such decisions.

For many decisions there’s a wealth of data and opinions about options. Unfortunately, we lack good tools to help us sort, filter, and balance considerations. As a result, people often evaluate options in an ad hoc fashion and neglect important information. They base decisions on outdated or incorrect information. They misunderstand the competing views and perspectives of fellow decision makers, advisers, and would-be solution providers.³

Gathering information about options is easy; the challenge is what to do with that information. Decision Space would be an online system for sorting options, and for managing the processes by which people rate and rank them.

A web-based tool for collaborative deliberation about choices would ideally leverage interactive modeling and social production techniques. Such an approach would move the decision making process from pencil and paper, or spreadsheets and email, to a dynamic system that supports collaboration among decision makers and helpers. Decision Space would help individuals and organizations take relevant factors into account as they seek to make optimal decisions.

¹ While applications of information technology to nonprofit legal services practice has received a lot of attention in the popular press and informal media, and more recently, on the Web, there has been relatively little scholarly or academic coverage. For two exceptions, in different eras, see Lauritsen, *Delivering Legal Services with Computer-based Practice Systems*, 23 *Clearinghouse Review* 1532 (April 1990) and Staudt, R., *All the Wild Possibilities: Technology that Attacks Barriers to Access to Justice*, *Loyola of Los Angeles Law Review*, Vol. 42, p. 101, Summer 2009. For an overview of initiatives funded by the Legal Services Corporation Technology Initiative Grants program, see <http://tig.lsc.gov/> (last visited July 30, 2012).

² Legal aid programs have always operated under conditions of great scarcity. See e.g. Paul R. Tremblay, *Toward a Community-Based Ethic for Legal Services Practice*, 37 *UCLA L. Rev.* 1101 (1989-1990) and Bellow and Kettleon, *From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice*, 58 *B.U.L.Rev.* 337 (1978).

³ See e.g. Brest, P. and Krieger, L., *Problem Solving, Decision Making, and Professional Judgment: A Guide for Lawyers and Policymakers* (2010), Kahneman, D., *Thinking, Fast and Slow* (2011), and Lehrer, J. *How We Decide* (2009)

II. How might this work?

We already have the means to produce procedurally coded applications for algorithmic decisions using familiar tools like A2J and HotDocs⁴. Decision Space could incorporate these, as well as expert system tools such as the Neota Logic Engine⁵. But it will also require techniques and technologies that facilitate collaborative deliberation.

“Choiceboxing” is a method developed by the author that helps people quantify and qualify options to reach more carefully considered decisions when selecting from groups of alternatives. It involves creating and sharing an online representation of a choice – one that functions like an intangible device.⁶

Users identify possible options (for example, the three most likely case management systems under consideration). They identify the factors in terms of which their options differ (for example, ease of use, price, and technical support). Each factor is weighted to indicate relative importance. (For example, ease of use might be the most important consideration, with a weight of 5, but technical support might be less of a concern and be weighted 2). Then each option is rated with respect to each factor.

Based on ratings and weights, scores can be computed, which reflect the relative goodness of options in ways that can be combined across all factors, and across different perspectives. For example, the price of items may range from \$300 to \$3000, and their ease of use may be judged on a scale of 1 to 5. For the respective contribution of ratings on these factors to contribute to total scores only as much as those factors are explicitly weighted – and not be affected by the units in which they may happen to be measured – they both are converted to a common scale, such as percentage of optimality, or units of goodness.

Weighted scoring is an ancient technique, albeit infrequently used by nonspecialists.⁷ Embedding it in an online environment that supplies intelligent guidance and exploits interactive visualization and social production techniques would promote greater usage.

Choiceboxing allows for multiple stakeholders to be more effectively engaged in a decision making process. There are choosers, helpers, and suppliers. (Deciders, guiders, and providers.) The system:

⁴ See <http://www.a2jauthor.org> and <http://www.hotdocs.com/>

⁵ See <http://www.neotalogic.com/>

⁶ For a fuller explanation, see the ‘Choosing Smarter’ chapter in Lauritsen, M., *Lawyer’s Guide to Working Smarter with Knowledge Tools* (American Bar Association, 2010)

⁷ See, e.g., Utpal Bose et al., *Multi-attribute utility methods in group decisionmaking: Past applications and potential for inclusion in GDSS*, *Omega*, Volume 25, Issue 6, December 1997, Pages 691–706.

- Provides a place for participants to record, update, manage, and share important information about a choice in progress;
- Prompts choosers for information about their goals and circumstances that are relevant to the choice;
- Suggests options, factors, ratings, resources, actions, and other things that choosers may find useful to weave into their choice in progress;
- Provides a single source of information that participants can be directed to, minimizing duplication of effort and inconsistencies in describing the choice;
- Lets participants see the whole developing picture, including input from others, minimizing reinvention and conflict.

As a result, points of consensus can be noted. Areas of disagreement can be highlighted. People can suggest that their colleagues explain or reconsider ratings or weights.

While aspects of this functionality can be achieved using desktop software or online resources like Google Docs⁸, there is not yet a comprehensive framework of resources for collaborative deliberation that is optimized for the nonprofit legal services community's use.

Choiceboxing systems promise benefits such as the following

- Transparency of options, factors, and perspectives
- Visibility and persistence of reasoning
- More confidence in result
- More effective advice giving
- Less repetition and 'getting ready time'
- Improved client and advocate satisfaction
- Earlier detection of issues or problems
- Greater cost-effectiveness

They help people answer questions such as

- What do I need to know and do to make a good choice?
- What are my options? (Have I missed any good ones?)

⁸ <http://docs.google.com>

- What factors should I pay attention to? (Have I missed any important ones?)
- Which factors are most important?
- How do the options compare on the important factors? (features and ratings)
- How significant are the differences? (scores)
- How does everything stack up? (What's the balance of tradeoffs?)
- Where can I get more information? Who can help me? (to find more options, factors, ratings, opinions, reviews ...)

Decisions accordingly are ones in which it is more likely that there has been

- Consideration of all relevant options
- Consideration of all relevant factors
- Consideration of all relevant interests and perspectives
- An open, respectful process
- Appropriate focus and weighing

By providing a medium through which people facing common choices can organize their thinking and tap into the codified know-how of others who have faced similar choices, a Decision Space would make decision processes more efficient, less error prone, and more satisfying. Reinvention would be reduced. Oversights and misunderstandings could be avoided or remediated. A useful analogy is LawHelp Interactive⁹, where processes of document preparation have been systematized into shareable and reusable templates, dramatically reducing the amount of work needed to prepare specific results, and making key knowledge more widely available. Similar improvements are possible in the area of decision making, where interactive models of relevant considerations for particular categories can be built, shared, and replicated. Moreover, going even beyond the 'virtuous cycle' of document assembly template collections, an appropriately engineered Decision Space can provide choice support facilities that get deeper and more useful as a side effect of being used.

Decision Space need not be a central website, or a single 'place' at all. While fueled by common software and shared knowledge-bases, choiceboxing sessions and artifacts can be accessed in a variety of contexts and configurations. Most processing would occur at the network edge.

⁹ <https://lawhelpinteractive.org/>

A. Use by Programs

Decision Space would help legal aid programs with a variety of technology decisions. For instance, stakeholders in a program evaluating case management systems could use Decision Space to define the key factors involved in choosing a new case management system (CMS), weight the relative importance of each factor, and then assess how well each CMS meets their criteria.¹⁰ The result would be greater clarity about which option best meets their program's needs overall, with supporting data. It could also be applied to major program-level decisions such as settling service priorities, assessing litigation options, or choosing a new executive director. It would help equip the legal aid community to make better, quicker, and less contentious decisions in many areas.

B. Client Counseling

An interesting application is to client counseling, especially around choices that involve balancing tests, which are endemic in legal analytical and strategic judgments.

Imagine that you are helping a nonprofit client organization decide whether to treat Mr. X as an employee or contractor for US federal tax purposes.¹¹ You go over the couple dozen factors typically taken into account by the Internal Revenue Service, and identify those that seem most significantly to cut one way or the other. You share the relevant regulations and cases with the client, prepare a memo, and/or discuss the situation on the phone or in person. But there is no clear 'right' answer. Reaching a conclusion involves trading off competing considerations and making a judgment call. Such weighing and balancing is hard to communicate well through text or conversation.

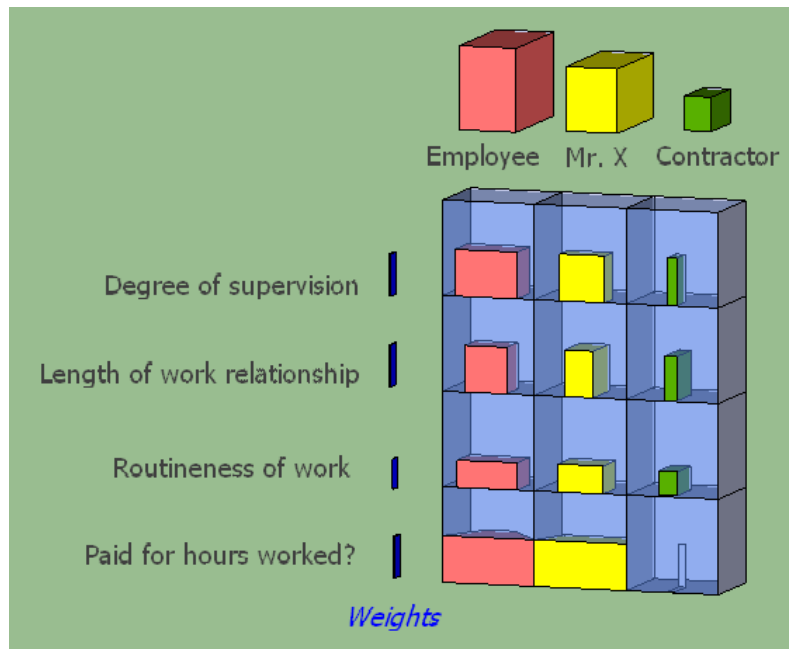
You might summarize your analysis by showing the client something like the following, in which Mr. X is assessed on key factors relative to a benchmarked illustrative employee and contractor. Not only is your characterization of the facts and weighting of considerations more transparent (and critique-able), including how they 'add up,' but the whole thing can be changed in real time as you discuss, e.g., how the IRS might look at the question. (Here a high score means that a worker mostly exhibits characteristics that point to him or her needing to be treated as an employee. There are formulas behind the scenes that normalize the various scales and perform weighted averaging. Only part of this choicebox is shown here.)

¹⁰ For an overview of the options and considerations typically encountered in this area, see *Selecting and Implementing a Computerized Case Management System: A Guide for Managers* (Colleen Cotter and Julia Gordon, 2004), at http://lsntap.org/CMS_Report (last visited July 31, 2012).

¹¹ For an introduction to the issues involved in such a determination, see Internal Revenue Service, *Independent Contractor (Self-Employed) or Employee?*, <http://www.irs.gov/businesses/small/article/0,,id=99921,00.html/> (last visited July 31, 2012).

Scores:	Rank: 1 92.00	Rank: 2 56.22	Rank: 3 7.78
	Illustrative Employee	Mr. X	Illustrative Contractor
Degree of supervision 1 - very little, 10 - high Weight 5	7	5	2
Length of work relationship (months) Weight 5	10	6	2
Routineness of work 1 - unique, 10 - routine Weight 3	8	6	3
Method of payment Weight 5	hours worked	hours worked	job

Of course, many people think better in pictures than numbers, so it's useful to have visualizations like the following available, in which employee-ness is portrayed as a sum of factor-specific volumes. (Widths in the factor rows reflect ratings, and heights the relative weights that the factors are being accorded.)



Imagine that a depiction like this could be directly manipulated and reconfigured as you ponder a choice, e.g. to add further considerations and perspectives (which can be represented as

separate rack-like layers.) And that you could draw upon collective wisdom accumulated from similar choices made by others.

This kind of tool is especially useful for groups, such as teams faced with decisions about legal technology. It also has dispute resolutions applications.¹²

C. Client and self-helper decisions

Boxes could be developed to help homeowners decide how best to deal with a threatened foreclosure, or help litigants evaluate tradeoffs between quality of justice, due process, predictability of outcome, cost, and timeliness when they have options in terms of dispute resolution processes. Once used in one context, the intuitive visual metaphor of comparing options based on how their associated pros and cons ‘stack up’ will be a familiar way to approach other decisions in a reflective and deliberative manner.

¹² See e.g. Lauritsen, ‘Boxing’ Choices for Better Dispute Resolution, ABA Dispute Resolution Section 2012 Spring Conference, Washington DC. (Paper available from author.)

D. Putting choice support on the grid

Here is how a choice support system might fit alongside existing systems for interviewing, informing, and document generation. Each system involves characteristic artifacts, components, outputs, knowledge focuses, technologies, ecosystems, and features.

	Interviewing and informing	Document generation	Choice support
artifact	interactive questionnaire or guided interview	template	choicebox
composed of	questions, guidance, logic	words, glyphs, variables, instructions	options, factors, assessments, preferences, ...
outputs/results	informed user organized data set	RTF and/or PDF document(s)	good decision documentation reusable knowledge
knowledge focus	what information should be gathered and provided given information already gathered	what words go where when	what options and factors may be worth considering in particular decision contexts
technologies	A2J, HotDocs, Neota, ...	HotDocs and/or other document assembly engine	A2J, Neota, ChoiceBoxer ¹³ , ...
ecosystem	LawHelp Interactive	LawHelp Interactive	Decision Space
distinctive features	dynamic questioning and guidance based on prior answers audio, video multilingual	custom documents based on supplied answers and programmed logic	collaborative deliberation interactive visualization shared knowledgebase social production machine learning

¹³ This is a working name for one implementation of the author's decision support system.