Quo Vadis: Document Assembly Software

• *Peter C. Hart*

Introduction

Explaining document assembly software to lawyers is like telling them about heaven—it's where they want to go, but not just yet. There is something fundamentally appealing about document assembly. Who doesn't want to be more productive, to have better access to expertise and to do less clerical production work. But all this housekeeping will have to wait until we're caught up with client work. Then we'll have some time...

As one of the early developers of document assembly software, I appreciate its good points. I know lawyers who are continuing to reap immense financial benefits from using it. Although I will make some critical observations to point out areas future software may address, I have nothing but the highest regard for existing document assembly software, including the products I have developed. I know of no reason why someone shouldn't buy an existing product, use it for what it was designed to do and enjoy the benefits for many years. However, one way to anticipate the future is to look at the problems of today and consider how newer technologies may create a different kind of software for document assembly-one that may even co-exist with the current software.

Change and Recursiveness

Law is recursive. It is in a constant state of change and builds itself up with each iteration. The outcome of a court case is based on previous cases. The new case will then serve as a precedent for deciding other cases. A document is drafted by modifying an existing agreement to suit the instant facts. The new document may then be used as source for future documents.

Lawyers, judges and legislators apply the law to a set of facts to deal with those facts and as a by-product, extend the law for similar facts.

Document assembly software is used to merge a form with facts. The form has blanks or placeholders for facts and may have many conditional branches to anticipate various classes of facts. The software steps a lawyer through the process of applying the form to the client's fact situation. The assumption behind document assembly software is that the form is static relative to changing facts. However, in my experience only a small fraction of the documents produced by lawyers satisfy these condition. Due to constant change within the legal environment, the cost of constructng and maintaining a form quickly exceeds its economic half-life.

Lawyers are under immense pressure to get their clients work done. No matter how much a lawyer may want to polish an agreement done for a client into one that might later serve other clients and make the lawyer more productive, there just is no time for such speculative housekeeping. The minute one task is done, the pile of unfinished client work demands attention. There is always client work to be done - and client work takes precedence over housekeeping.

> *There is room in the legal profession for document assembly software that assumes that law, facts and forms are constantly changing and that lawyers have little or no time to invest in creating and maintaining forms.*

The solution may be in making document assembly more recursive just like law is made and maintained. Lawyers need tools to identify, retrieve and refine the most applicable forms for a given set of facts and then, without further work, place the refined form, together with the lawyer's comments, with other re-usable work product in a library of forms.

Knowledge Leveraging

When a lawyer first starts to practice, there is a real need for published forms. Over time, the

lawyer accumulates a set of forms, precedents, sample clauses and a few memos of law that the lawyer is thoroughly familiar with. They incorporate the lawyer's preferences and focus on the kind of issues the lawyer deals with regularly in serving clients. These forms incorporate a good deal of the lawyer's expertise and make the lawyer more productive and valuable. Yet, to others, they are of limited use and not very accessible.

Knowledge "leveraging" has long been associated with document assembly. It involves encoding legal expertise so that it can be shared with others. New technology will enable future document assembly software to make great strides toward this goal.

Delegation

The practice of law involves a good deal of clerical work. Advances in general office automation will enable lawyers to delegate more of the clerical work to computers rather than staff. The storage, retrieval, production and quality control aspects of document assembly will be managed by computer programs. Document assembly software will become an important part of an integrated suite of law practice automation applications. Whether out of necessity or desire, lawyers will become much more involved in operating the computer.

Responsibility and Control

Lawyers take their responsibilties seriously. They're expected to get things right. Much of law is adversarial and not too forgiving of oversights. Not surprisingly, lawyers are reluctant to give up control over the work for which they are responsible.

With greater computing power available, future document assembly software can be more accommodating to this requirement. Current document assembly software passes too much creative control from the person requiring a document to the computer software and to the author of the template. Instead of the user initiating and controlling actions, the software acts and the user merely reacts within a limited set of options. Too often the computer "takes care" of the user, offering only those alternatives that are judged "good"" for the user or that "protect" the user.

Document assembly software cross-examines lawyers. This is a turn-off. Nobody likes to be cross-examined—least of all lawyers. Sometimes the less than enthusiastic reception given to document assembly software by lawyers is blamed on the "not invented here" syndrome. I believe this diagnosis may obscure what needs to be fixed. The legal profession is telling software developers that the lawyer who needs to draft a document is likely to know more about the instant situation than an expert who prepared a template for general application. Although practicing lawyers routinely consult the experts they are not prepared to delegate this responsibility to the experts. In our system of law, we favour the trier of fact over the court of appeal. We hold lawyers responsible for applying the law and not authors.

In my view, document assembly software for the future will engage lawyers more. It will provide access to an open world of expertise within which the lawyer may exercise intellectual curiosity and control. The software will guide a lawyer through a rich world of information, help to refine it, anticipate what may be appropriate and take care of the production aspect of a choice made by the lawyer. The software will enable lawyers to change their minds, go back, jump ahead or engage in a side trip.

A Dry Pump

At the beginning of the 1980's I set out to show that a personal computer could be a significant professional resource for a lawyer. Fired up by Jim Sprowl's ABF Processor and by day-long visits to Ray Bishop's wonderfully automated law practice in Ann Arbor, Michigan, I focussed Legalware's development team on document assembly with the hope that document assembly software would do for lawyers what spreadsheet software did for accountants. Today, there is lots of evidence showing that personal computers *can be* powerful tools for assembling legal documents. There is an abundance of affordable software with every imaginable *feature. Yet, the software available* has *hardly* made a dent *on the* productivity of the legal profession. What's missing?

Document assembly software is like a pump without water. A community of brave developers has been working *hard* to engineer better pump

engines to make the engines easier to operate and maintain. But that's not going to get a dry pump to work. We need water. So, certainly if document assembly software is to have a future at all, it must provide lawyers with access to rivers of information.

Fortunately for the legal profession, legal publishers have the large reservoirs of information lawyers need. Document assembly software of the future will tap into these reservoirs and make refined and structured information available on the electronic desktops of lawyers.

I like the pump and water metaphor because the recursive nature of law has some of the qualities of the water cycle. So document assembly should similarly *be self-replenishing*. And like a good quality pump, *document assembly software should also be self-priming*. From the first time a lawyer uses document assembly software, it should produce not only a document for the instant matter but, with no additional effort, also a re-usable information resource for future documents. The reservoirs of information will be replenished by practicing lawyers structuring and restructuring the information to produce documents for the ever changing fact situations of their clients.

Conclusion

By the end of this decade, integrated computer platforms will provide lawyers with access to immense amounts of information and expertise together with the tools for exploring, sorting, refining, extending, analyzing and applying the expertise to the facts at hand. The practicing lawyer will be in control of what expertise to follow and what to change or to reject—and in what order to proceed. It seems to me that that is pretty much how lawyers draft their documents today.

The key to the acceptance of document assembly software, I believe, lies in using the computer to help make the existing process work better. There is lots of technology around to help us. ∎

≣From the Editor's Desk:≣

Mr Peter Hart LLB.BA will be in Australia for the second week of June. Details about his lectures appear on page 14 and in the enclosed flyer.

International Event Calendar

FOSE
March 5-7
Washington Convention Center
Booth S1267
Washington, DC
Speaker: Audri Lanford, CEO
Session: Getting Digital
Imaging/Optical Disk Systems to Work

Technology in the Law Practice
March 14-16
Hyatt Regency Hotel
Booth 412
Chicago, IL
Speaker: Roger London, MDL
Topic: Optical Image Retrieval:
Cost-Justification Case Studies
Time: March 15, 5-6pm

AIIM
April 30-May 2
Washington Convention Center
Booth 623
Washington, DC
Presenter: Copy General, an
MDL-authorized service bureau
Topic: Image Processing in the
Legal Environment
Time: May 1, 10.45am

Imaging Seminars
May 22, 9am
June 5, 1pm
Micro Dynamics
Silver Spring, MD
Contact: Beth Farrell
(301) 589-6300

Users' Group Meeting
August 5
Boston, MA
Contact: Jean Batty
(301) 589-6300

MacWorld Expo
August 6-9
Boston, MA