Alternative Uses For Litigation Support Techniques

by Elizabeth Broderick

Introduction

It is only during the last five years that lawyers in Australia have considered the application of computers to litigation. Gradually computers are emerging from their traditional back room roles of accounting and word processing where for many years they have merely replicated many archaic manual systems of office practice. For a firm that is not computerised or only minimally computerised, even having a computer in the back room will lead to an increase in productivity. However, for the majority of firms the major benefit is to be obtained from bringing terminals on to the desks of all legal staff. To obtain maximum productivity gains, firms must aim to increase the use of computers by their lawyers rather than use by support staff. The provision of new services to lawyers such as computerised litigation support will assist in obtaining this increased fee-earner productivity.

In this article I discuss the use of computerised litigation support techniques in other practice areas of the firm. The comments I make are applicable to large and small firms alike. Your aim should be to repay your investment in technology through an extended role for it in your firm. At this time, when the majority of law firms are experiencing at best only minimal growth, and perhaps in some firms even negative growth, there is increased pressure to budget and justify expenditures in the technology area.

Blake Dawson Waldrons's Approach to Technology

Before I begin to discuss the transfer of technology, let me give you some background to our firm and our approach to technology. Blake Dawson Waldron evolved from a merger between two principal law firms in 1988: one Melbourne based firm, Blake & Rigall, and one Sydney based firm, Dawson Waldron. The merger resulted in more than 1,000 staff with offices in all large Australian cities, PNG, London, Singapore, and associated offices in Jakarta and Vanuatu. At the time of the merger we had three 'old' computer systems (Datapoint, Wang and Convergent Technologies). It quickly became apparent that we needed a single uniform approach to technology.

Over a period of approximately one year, a full evaluation was carried out and it was decided that these old systems should be replaced by one new client/server based system. The hardware chosen was a Macintosh front-end (Macintosh workstations) and a Unix back-end (Sun/Fujitsu Unix servers). With this new distributed system we have the ability to work with a whole range of software and the opportunity to apply the techniques we have learnt in computerised litigation support to other areas of practice.

Like most large firms, BDW is divided into practice groups. These groups include the traditional areas of legal practice such as litigation, banking and finance, corporate and commercial, property and industrial and intellectual property. In addition to the traditional practice groups, a technology based practice group has been established. It is named the Legal Technology Group and together with the Computing Services Group is responsible for the provision and use of technology by all offices of the firm. The Computing Services Group is responsible for the technological infrastructure (i.e. the provision of hardware and software, system maintenance, database administration and training) while the Legal Technology Group's brief is to broaden the range of legal services BDW can offer by developing legal services which utilise substantial and specialised technical support. Computerised litigation support is an example of such a service.

Know Your Environment

Before you can consider the transfer of techniques developed in your litigation support area, you must identify the current level of technological achievement within your firm. A recent telephone survey conducted by the NSW Law Society suggests that an increasing number of lawyers have access to a computer somewhere in their office. The Law Society found that 38.5% of the 711 lawyers contacted had access to a computer or workstation on their desk, 40.8% had access not at their desk but elsewhere in the office and that only 20.7% of respondents had no computer access. When asked 'How often do you use a terminal or workstation?', 58% replied 'Every day / most days', 10.3% replied 'at least once a week', 8.9% replied 'from time to time', 9.6% replied

'rarely' and 13.3% replied 'never'. Hence the emerging trend is towards lawyers having access to computers.

At what stage are you? Are you at the stage where automation is new and you are still trying to promote technology through a few technological evangelists? If this is the case, then it may be too early to talk about transferring litigation support techniques to other areas, and you may be best to concentrate on computerised litigation support where it is widely recognised that the use of computers gives rise to a level of effectiveness which is rarely approachable by purely manual means.

Or are you at the stage where technology has been widely accepted as the status quo, where lawyers without computers feel ill-equipped to conduct their practices and where your firm is investing a large amount of research and development into automation techniques to increase lawyer productivity? It is most likely that if you are well entrenched in this phase then you have already discovered that the skills developed in computerised litigation support can be easily and profitably transferred to other areas of your firm.

However, if you have the hardware and the software and you have mastered the techniques associated with computerised litigation support then you are at the right stage for the transfer of litigation support techniques.

Large Firms Versus Small Firms

The shift from large centralised processing to distributed systems with personal computers as the preferred workstations has meant that it is now possible for smaller firms to achieve the same or in certain circumstances a better quality of computer support for legal practice.

From my experience it is often the smaller firms that are originating and adopting the cutting edge technologies and software. 'As the appropriate use of computer technology results in a substantial increase in the productivity and capability of an individual or a team, [computer] systems can prove to be great equalisers between organisations with unequal resources.' [1]

Some of the benefits that will flow from the transfer of computerised litigation support techniques will be purely qualitative such as increasing the effectiveness of an argument or a letter of advice. Although it is difficult to bill a client for this type of benefit it may give the firm a strong marketing advantage and assist the firm in retaining their clients.

What is Computerised Litigation Support

Litigation, like other complex projects, needs to be planned and managed from the initial stages. The easiest and most cost effective assistance comes from developing databases to hold both background information and evidence necessary for the running of a case. This involves the construction of databases to record details or in some cases the full text of the documents (as images) relevant to the litigation, and the establishment of full text databases for pleadings, witness statements and transcript. Other computer assistance includes:

◆ project management or scheduling software to assist in the planning and management of complex litigation;

◆ graphics software for the reconstruction of events;

◆ spreadsheets to calculate potential damages awards and to pre-

dict the effect on the overall outcome of a change to one variable - to run 'what if' situations; and

◆ access to third party databases such as INFO-ONE or gateway connections such as LINK to assist in researching the issues involved in a particular case.

Transfer of Techniques

Computer support means different things to different users. For example, computer support for a litigator means a system that assists in the management of large document cases by generating lists of discoverable documents and lists of documents relevant to particular predetermined issues. For a barrister it means a tool to quickly analyse and retrieve passages of evidence. On the other hand, computer support for a banking and finance lawyer means a document drafting aid or a tool that can facilitate access to relevant case law. Similarly computer support for a commercial lawyer may be a tool that organises documents reviewed for a due diligence investigation or allows access to a database of transactional precedent documents. The common link in all these systems is the need to organise and reuse information. Lawyers are essentially information workers.

The techniques associated with designing, implementing and preparing manuals for a document control database for litigation are techniques that can be easily transferred to the establishment of opinions and advices databases, databases for commercial investigations, and databases for the analysis of complex legislation.

When lawyers or computer professionals are involved in computerised litigation support they acquire

certain skills. They acquire the ability to:

◆ analyse and specify the requirements for a computer based solution;

◆ innovate and design at a high level, computer based solutions. This is particularly so when lawyers are performing the design. They know the output that is required for the successful completion of a matter and hence the information that must be stored;

◆ implement a computer based solution in a commercial environment;

◆ effectively manage resources, both personnel and equipment in large projects;

◆ maintain systems;

◆ train market partners (eg. solicitors, barristers and clients);

◆ document systems in a way that can be understood by lawyers;

◆ market their systems both within the firm and to clients; and

◆ institute sound computer practices such as backup.

In fact these skills are common to the successful implementation of any computer system. So why limit your firm's involvement to computerised litigation support? For these techniques to be effective in other areas, firms must identify areas of legal practice where reasonably standard information is accessed often or where an informal approach to current tasks is causing difficulties.

Identifying Areas for Transfer

Lawyers and computer professionals involved in systems development should ask questions such as:

Is the information of a particular type e.g. can the information be broken down into standard categories?

Will cross referencing make the information more accessible?

Will the information be used regularly?

Can the information be stored on computer more efficiently than in manual systems?

There are three main factors to consider when developing an electronic database in areas other than litigation support. The information that you are considering computerising must comply with the following requirements:

◆ The information will be used again. To meet this criteria the information must be accessed regularly. It is not cost effective to hold large amounts of information on-line if that information is not accessed regularly. While this sounds obvious it easy for a solicitor to get carried away with the idea of setting up a database for information which will not be useful or used;

◆ The information cannot easily or efficiently be remembered or maintained using manual systems. Specialist legal databases are of most use in situations where there is 'information blowout'. This may occur because of a legislative change placing new responsibilities on organisations or their employees. It is important to keep abreast of new legal developments with a view to identifying new areas which will benefit from the application of technology;

◆ The information is more suited to being stored in a database than in another computerised form.

There are many forms in which information can be stored on computer and the skill is in providing the most effective method of delivery of this information to lawyers.

There are two methods that will assist you in identifying areas of legal practice that will benefit from computerisation. They are: first, to involve lawyers in the decisions about technology and to use a combination of lawyers and computer professionals to be responsible for the implementation of the systems. This will have the effect of promoting technology within your firm and will encourage lawyers to become more computer literate. The second method is to educate the junior lawyers and new starters from the beginning. For example, each year we have three junior solicitors who spend a four month secondment in the Group. This has the advantage that when those solicitors move back in to other practice groups, they are constantly on the look out for new areas of law requiring computer assistance. They are our representatives in the field.

Review of Systems Established in Other Practice Areas

It is not sufficient to design a computer based solution for another area or group and then for the person with the computerised litigation support skills to cease having any continuing involvement with the system. In groups other than litigation, it is likely that the lawyer commissioning the database or other computer solution will have a limited understanding of its uses and limitations. It will therefore be necessary for the designer to explain what information can usefully be stored in a database and to make suggestions as to alternative means of controlling in-

formation where a database would not be useful.

The major problem following the placing of a system into production is maintaining the integrity of the data. The integrity of the data will be all important. For example, if peoples names are entered into a database they must be entered in a very structured manner e.g. 'Broderick E.', rather than 'Liz Broderick'. The data collection is best performed within the group, however the need for standardisation of data is often not appreciated by the lawyers commissioning the system or the delegate in the group responsible for the data entry. It is difficult for a person from a non-computing background to appreciate the importance of standardisation of data. In these situations a periodic review of the system should be performed by a person with litigation support skills.

From the techniques developed in computerised litigation support, it will be apparent that the continuing management of the database, clear user documentation and training are also important steps in a successful implementation. As noted above, these steps are even more important in a group that does not already have a heavy reliance on computer support. It is important for the computer professionals / lawyers with the litigation support skills not to become too involved in the day to day maintenance of these systems. To do so, is too consumptive of resources. Their resources are better spent in the periodic review of systems operating in other groups and some additional training of users in those practice areas.

Conclusion

The transference of skills developed in computerised litigation support to other areas will result in:

◆ a firm wide increase in computer literacy;

◆ a more efficient allocation of resources. The personnel with the litigation support skills will not be reliant on a single group for technology referrals;

◆ less duplication of effort by different individuals within the firm;

◆ for large firms the implementation of national protocols will assist in ensuring a national rather than group based approach and ensuring quality control;

◆ increased lawyer productivity;

◆ a marketing advantage by having a broader base of legal services; and

◆ development of a resource of skilled personnel who can assist in the firm's own information technology strategy.

Firms who are investing in information technology should not limit their investment to the use of computers in litigation. They should consider the transfer of their knowledge and techniques to other areas of legal practice where the organisation of and need to reuse information is paramount. ✍

Elizabeth Broderick is a Senior Associate and Head of the Legal Technology Group at Blake Dawson Waldron, Sydney. This is an abstract of her presentation to the Association of Litigation Support Managers on 14 August 1992, in Melbourne.

Footnote

[1] Advanced Information Systems for Lawyers by V. Mital & L. Johnson, Chapman & Hall, London 1992 p9.