# Choice Management: Techniques and Tools for Making Better Decisions

**By Marc Lauritsen**
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Lawyers and technologists spend lots of mental energy dealing with choices. We ponder these choices, pose them to others, and participate as advisers and advocates. While often quickly resolved, choices permeate our business and personal lives. By many accounts they are becoming more frequent and complex. Periodically, some choices become the focus of prolonged deliberation and debate. Unfortunately, many law firms and corporate legal departments don't use technology creatively or aggressively to support an activity as ubiquitous as decision making. In this TechnoFeature article, consultant Marc Lauritsen who builds expert systems and helps law firms implement sound decision-making processes explores techniques and software tools designed to help you make better choices. If you've never heard of "choice management" before, Marc will help get you started in this important new discipline.

## INTRODUCTION

When you face a tough decision, what tools do you reach for? Pen and paper? Whiteboard? Excel? Email? Google?

Think for a moment about how you and others you've observed make decisions. What's the process usually like? Which technology tools do you use? Does it make a difference if it is a personal or business decision? A legal or technical decision? If it involves other people?

I get the impression that most of us are woefully unsystematic and

tech-challenged when it comes to decisions, despite it being among the most consequential activities in which we engage.

(I use "decisions" and "choices" interchangeably here, even though the latter are better understood as a special kind of the former.)

Human decision making has long been a focus of behavioral psychologists and game theorists, with enormously rich literature to show for it. For a good recent example, read *Making Decisions Based on the Preferences of Multiple Agents*. For a more popular account of the issues, see *The Art of Choosing* (2010) by Sheena Iyengar.

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I've become so fascinated with choice making as a phenomenon, and ways in which technology can improve it, that I started a side company (All About Choice — no public Web site yet) several years ago to pursue one potential solution, sketched at the end of this piece. I'm also increasingly taking on consulting engagements with explicit decision process support dimensions.

## LITIGATION EXAMPLE

One conclusion I've drawn from reading, talking, and musing about decision making is that the issues and opportunities have little to do with the particular context. In other words, there are underlying commonalities that transcend choice categories. But to warm up, let's consider a familiar example: litigation practice, which is rife with decisions.

Some litigation choices present themselves pre-filing:

- Whether to file.
- Where to file.
- Who to sue.
- What claims to assert.
- What relief to seek.

Other decisions present themselves along the way, such as:

- What forms of discovery to pursue.
- What motions to file.
- What arguments to make.
- Which witnesses to call.
- What evidence to present.
- What offers of settlement to make or to accept.
- Whether to appeal, and on what grounds.

All of these decisions typically involve careful professional judgment, a delicate balance of considerations, and high quality attorney-client communication. Lawyers pride themselves on their ability to handle complex decisions, and to counsel clients effectively to appropriate resolutions. Technology has generally taken a back seat,

perhaps appearing in the form of email and word processors. Many lawyers are reluctant to go beyond legal pads and white boards for these kinds of issues. But there are other decision-support technologies worth considering.

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### GATHERING STORM

One thing we surely don't lack are means of gathering information and opinions pertinent to a decision. Say you're considering a new piece of technology. A few minutes with Google or Bing can yield hours of eerily relevant material. Queries on an email discussion list will often produce options, considerations, and viewpoints. If vendors or other interested parties are involved, they will happily shower you with literature and demonstrations.

What we do seem to lack are good tools for filtering through and sorting our options, and for managing the processes by which we rate and rank them. We can use word processors, spreadsheets, outliners, or "mind mappers" to collect and document relevant considerations, but they aren't of much help in reaching conclusions.

Let's consider four kinds of tools that help more directly with the ultimate act of selecting.

### BY THE RULES

Sometimes there's a reasonably clear formula or algorithm for figur- ing out which of a set of options makes most sense (or is required.) For example, whether you should file the long or short financial state- ment form in a divorce proceeding. Or whether you need to pay the al- ternative minimum tax for US fed- eral income tax purposes.

When formulas or rules are in- volved, applications programmed to ask the right questions, ac- cept inputs, and compute results can assist decision makers. Most document assembly engines, for example, have more than enough power to perform those tasks as part of an intelligent questionnaire, whether or not any document per se needs assembling. Likewise you can use scripting tools used for Web site development to model decisions that are rule-governed, and take users down the appropri- ate path in a decision tree.

### SETTLING THINGS ONLINE

When the rules or facts are in con- tention, and parties find themselves in an incipient or full-blown dispute, they may not think of themselves as involved in a common "choice," but eventually they or some decision maker has to reach conclusions that will affect them all. A relatively new resource for such combatants is online dispute resolution (ODR).

ODR is a vast subject, with centers and practitioners around the world. The National Center for Technology and Dispute Resolution is a great entry point into this field and its de- velopments.

One form of ODR dispenses with hu- man "neutrals," and involves parties interacting with a software system that effectively serves as a trusted intermediary. With adequate assur- ances of confidentiality, and cleverly structured offer and counter-offer mechanics, some disputes can be quickly settled. If such systems achie- ve widespread adoption, our litiga- tion system could look a lot different.

Two illustrative commercial online dis- pute resolution services providers are SmartSettle, which claims to be "the world's only secure eNegotia- tion system using patented optimiza- tion algorithms to achieve fair and ef- ficient solutions that are truly Beyond Win-Win" and CyberSettle, which characterizes itself as "the world's #1 online settlement company." Square- Trade was a major player until a cou- ple years ago, handling many eBay disputes, but is now in the indepen- dent warranty provider business.

I've been impressed with Fair Out- comes, which offers several inno- vative approaches, backed up by thoughtful papers. One strategy it leverages is to enable one party to deprive another of reasons not to engage in good faith bargaining.

### PLAYING THE ODDS

If you need or want to go beyond home-grown spreadsheets for un- derstanding or presenting the likely outcomes, costs, and benefits of different litigation and settlement strategies, take a look at special- ized risk analysis software. Two packages illustrate what's available in the legal context.

TreeAge Pro from TreeAge Soft- ware helps you build decision trees, influence diagrams, and oth- er models to analyze problems that involve uncertainty.

PrecisionTree is an add-in to Mi- crosoft Excel that performs similar functions.

In these kinds of systems, deci- sions, chance events, and end re- sults are represented by nodes and

connected by branches. The resulting tree structure has a "root" and various "payoffs" on the leaves. By specifying estimated probabilities of events and their associated costs or benefits, you can compute net payoffs of particular branches at any part of the tree.

When your primary concern is with thinking through probabilities and predictions, risk analysis software can be of great value. We humans are notoriously bad at understanding cascades of probabilities.

**BALANCING ACT**
Another form of decision support software is more focused on juggling pros and cons than on managing uncertainties. Such software helps to characterize the advantages and disadvantages of options being examined, and assists in balancing the inevitable tradeoffs. Once you get beyond two choices, or beyond a couple factors that 'cut' in different directions, it can be hard to do the balancing effectively with the unaided mind. When multiple decision makers are involved, or you need to document and justify your decision, software that helps you record and massage your evaluations and relative priorities can make the process much more satisfying and effective.

One illustrative player in decision support software of this kind is Expert Choice. It now offers a Web-based solution called 'Comparion Suite,' which helps you define goals, structure your decision, assign roles, and collaboratively deliberate.

My own work in this area has centered around a methodology I call "choiceboxing," which involves expressing the options, factors, and evaluative perspectives at play in a decision in an imagined three-dimensional box that you can manipulate and share online. The "Choosing Smarter" chapter in my just-published book, *Lawyer's Guide to Working Smarter with Knowledge Tools* (American Bar Association, 2010), covers the basic ideas.

**CONCLUSION: CHOICE MANAGEMENT**
We're familiar with document management, project management, knowledge management, and change management. My instinct is that many of us would do well to pay more attention to choice management. So many of our decisions involve ineffective, even painful, processes, and produce suboptimal results. Law firms and corporate legal departments should exploit the above technologies and more for better processes and outcomes. They can ensure that you consider all relevant options and factors, that all stakeholders have had an opportunity to be heard, and that there's a rationale which stands up to scrutiny.

But tools are just a start. Choosing well is hard work. It can be made easier by shared knowledge and social support.

My own emerging view of an ideal choice management system involves a rich online environment that leverages interactive visualization and social production ("crowd sourcing") within a Wikipedia-like repository of codified knowledge that learns as it is used. A public such system could draw sustenance from a vibrant ecosystem of sponsors and contributors.

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In most decision contexts there is a critical mass of "providers" and "guiders" who recognize their enlightened self interest in having "deciders" make informed, autonomous choices. And plenty of choosers who will happily leave a legacy of guidance for fellow choosers if fair, secure, and effective mechanisms for doing so are at hand.

Whether such a system will first emerge in the legal arena or elsewhere remains to be seen. But that's a story for another *TechnoFeature* …

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