THE USE OF TECHNOLOGY IN THE COURTS

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I last came to Dublin to talk about technology in the Courts in 1998. By that time not very much had happened in my jurisdiction. Back-office systems called CREST and CASEMAN had been installed in all the Crown Courts and in all the county courts to help court staff handle court business more efficiently. There was also a computerised bulk process centre at Northampton which handled the claims of a few very large creditor companies by helping them to issue, process and obtain default judgments electronically. The gas companies would use it, for example, when people did not pay their gas bill. So far as the judges were concerned, a judicial technology project called JUDITH provided about 400 full-time judges with laptop computers and software, including communications software, to go with them. Apart from a few freestanding back office systems in specialist courts, and a communications system for civil servants, that was about all.

Towards the end of 1998 sanction was obtained for the provision of 1,000 modern laptop computers to judges. The specification was superior to that of the old JUDITH laptops, and on this occasion the arrangements included the provision of three days' initial training for every judge, unless it was obvious that this was not needed. Windows NT and Word 97 were the main features of the new specification, together with an upgraded version of the communications and conferencing software we had used since 1993 and a CD-ROM drive. Sadly, no provision was made for follow-up training for novices, and about a third of our judges have still not advanced very far in IT skills. A big IT training programme is being planned for next year.

These 1,000 PCs were delivered between January 1999 and July 2000. By this time the approach of the Human Rights Act led to arrangements by which we were provided with Internet access by way of a specially designed portal. By this means judges, wherever

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they were sitting, could access the database of judgments of the European Court of Human Rights, and also a very large volume of case-law and statutory material. This development excited the interest of many judges who had not previously chosen to join the scheme, and approval was given for the provision of a further 200 JT laptops. Since then, arrangements have been made for the surrender of laptops by judges when they retire, and for the provision of JT laptops, together with initial training, to new judges soon after they are appointed to the bench.

At one time the Court Service thought they could deliver IT case management systems at the same time as Lord Woolf's civil justice reforms. The then Head of Civil Justice, Sir Richard Scott, believed strongly that the reforms should not be implemented until IT systems were in place to give the procedural judges the support they needed if they were to maintain effective judicial control from the centre. This wish was never susceptible to fulfilment. For one thing, the new rules and practice directions were forever being changed, and IT systems designers need a period of stability in which to do their work. For another, there was insufficient know-how available on how to design an intricate set of new systems without the risk of a very expensive failure.

I am bound to say that those of us who knew a little about IT were becoming increasingly anxious about what might happen. The systems that were being designed could not possibly have supported the more sophisticated modern systems that were bound to be needed in future. We feared that designers might be planning another one-storey building, like CREST and CASEMAN, with shallow foundations on which nothing could be built on top. Our vision was of a 12-storey building, in which an electronic court file, serving the needs of the trial judge, would in due course take pride of place.

Eventually the Government decided to implement the reforms on 26 April 1999 without waiting for the IT systems to be put in place. Minor enhancements were made to the existing (wholly inadequate) systems, and for a short time additional court staff were allocated to help with the increasing load of paper. In the Central Office at the Royal Courts of Justice, for instance, case files had to be created for the first time since those courts were opened in 1882. The paper

mountain then grew and grew.

In the event, it turned out to be a wise decision to implement the reforms without waiting for the IT. In April 1999 the Court Service Board, led by a new chief executive, bravely decided to stop all the development work and to devote their energies instead to some fundamental thinking about the way the civil and family courts should be delivering their business, and the role IT should play in it. This decision was undoubtedly correct, but it created a situation in which those courts faced very serious difficulties because the judges applying the new procedural rules did not have the IT support they badly needed.

By now it was generally accepted that the delivery of justice to the citizen in the modern world needed the support of integrated IT systems. Initially the Court Service set out to deliver these systems piecemeal, with one set of arrangements being made for the criminal courts through what became known as the Crown Court Programme, and another set of arrangements being made for the civil and family courts. It was now taken for granted that there would be proper judicial involvement in all this planning.

In its early days the projects within the Crown Court Programme were quite modest. They involved testing the capabilities of electronic presentation of evidence ("EPE"), digital audio recording, and video conferencing within the Crown Court setting. Plans were also prepared for the IT infrastructure needed by a modern Crown Court. Three circuit judges with great experience of criminal justice were on the boards overseeing these projects.

So far as civil and family justice was concerned, the new Court Service review threw up some challenging ideas about the way that local justice should be administered in future. Our civil and family court system has grown up and developed in a very haphazard way since a network of 497 county courts was first introduced in 1846. The number has now been reduced to about 220, but there has never been much strategic thinking about the optimal location, or the essential function, of these courts.

The review compelled us to think whether our civil and family courts were in the right place, and whether they were all accessible by public transport. Were all the functions they performed a

necessary part of the functions of a court? Could their advisory role be performed more effectively, and inexpensively, by other means? Were the links between the family jurisdictions of the magistrates' courts and of the county courts working sensibly? How should the courts in the Royal Courts of Justice complex relate to the other civil and family courts in the Greater London area and beyond?

Then there were questions about the judges. There are now far more judges in the lower levels of the judiciary than there were 15 years ago. Judges are an expensive resource: far more expensive than the staff who serve them. Were we really making best use of judges' times and skills? A clear message emerged that judges were spending far too much of their time sorting out muddled court files, or waiting for the information they needed, or doing things that could be done just as well by court staff or by technology. One then had to ask whether court staff were being provided with the training and the technology they needed and what could be done to improve job satisfaction, for staff and judges alike, throughout the court system.

All these early questions threw up another set of questions. What are the best ways in which information and communications technology can help judges and court staff? How can judges obtain secure electronic access to court files and lists and diaries so that they can manage their cases more effectively? What is the future of tele-conferencing and video conferencing and e-mail conferencing? What about voice-activated word-processing? On the back office side of things, how much court information can be sent to a central databank (which does not take up expensive space in a prime downtown location), to be called up by judges and court staff when needed? What are the confidentiality problems over public access to electronic court files? How much time and money will be saved if information is stored electronically and not manually? What are the implications for staff morale and motivation?

During the course of 2000 I joined the Court Service's Modernising the Civil Courts ("MCC") Programme Board. A senior judge had never previously been appointed to an executive board of this type in my jurisdiction. It was symbolic of an immense culture shift. My appointment stemmed from a request made in June 1999 by Lord Bingham, when he was Lord Chief Justice, that judges

should be brought closer to the centre of the Court Service's decision-making processes.

During 2000 a number of pilot projects were started in civil courts, along the same lines as the pilot projects in the Crown Courts, but with not nearly as much money behind them. Early in 2001 a public consultation paper sought views on the way the Court Service's thinking was moving. The response to this paper was very encouraging.

In August 2001 a representative judicial working group published a report called "The Judges' Requirements". They described at the outset some of the problems every judge in the country faces every day. The list began: "Insufficient staff – high staff turnover leading to the use of inexperienced staff – missing or chaotic files – court orders take too long to be drawn and are often drawn incorrectly – lack of proper administrative support for the judiciary". Later on in the list they said that very few members of court staff had real IT expertise, and that there was a chronic lack of funds even for basic equipment. Senior Court Service managers did not disagree with the broad thrust of this analysis.

These judges concluded that there was a pressing need for common computerised information systems to be introduced as soon as possible across all the civil and family courts in England and Wales. They added that these common information systems should extend to criminal business. They also described the need for our administrative tribunals to benefit from this common approach. In a very important part of their report they described the four interlinked systems which lay at the heart of their proposals: the electronic case record; the electronic case management system; the electronic diary; and the electronic file.

In a speech I made towards the end of 2001, I described the central message of this report in these terms:

> Court administrators know all about the back-office problems. We judges know all about what I will call the 'front-office' problems. Under court modernisation, the front office and the back office will be jointly networked for the first time. If at the end of a hearing, the judge

> wants to fix the next appointment for a hearing, he will be able to call up the diary system from his computer on the bench and fix a new date there and then. In Appendix 5 of their report the five judges gave three worked up examples of how this provision would enable them to provide a much better service for litigants.
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> In one of these examples, a five-day case settles unexpectedly a week before the hearing date. The electronic diary is then used to interrogate the system to see if there are any over-bookings at that court or at neighbouring courts to fill the judge's list. Three possibilities are identified. E-mail messages are sent to the solicitors in each case to ask whether the cases are still effective. When told that they are, the system spots that there is a disabled litigant in one of them, and earmarks a ground floor courtroom for that case. The system can also check that the new cases will be assigned to a judge who is appropriately qualified to hear them. The court diary arrangements are updated to show the new listing arrangements. The parties' solicitors are then informed by e-mail of the new arrangements.
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> At present every step in that process is done slowly and inefficiently by telephone and a card index system. In a modernised court every step could be taken automatically. Alternatively, some of these steps could be made subject to judicial decision, or the decision of a court administrator of appropriate seniority. If a more senior judge has to be involved, his authority can be sought and given electronically from the faraway court at which he is sitting. All of this is light years away from the present ways of doing these things.

In the meantime, and partly driven by the logic emerging from the judges' work, the different strands of the Court Service's modernisation plans were being woven together into what became

known as the Courts and Tribunals Modernisation Programme. Lord Woolf, now Lord Chief Justice, gave me the formal title of "Judge in charge of Modernisation", with the authority to speak on behalf of all the judges of England and Wales, and the new Programme Board met for the first time in the early summer of 2001. It had been allotted about 160 million pounds for the 2001-2004 period. One of its early tasks was to prepare the case to the Treasury for the funding needed to drive the modernisation programme forward between 2003 and 2006.

Judicial involvement in all this planning was achieved by the creation of five new judicial advisory groups, each dedicated to a different aspect of the programme: training and knowledge management, hardware and infrastructure, in-court technology and so on. Two large 24-hour judicial conferences (the second led by Lord Woolf and the other Heads of Division) were arranged to achieve a measure of judicial 'buy-in' to the programme, and in February 2002 the 30 (or so) members of the new advisory groups met for an all-day seminar, in order to understand how the work of their group fitted into the wider picture.

I have described another part of the programme in these words:

> An important part of the new strategy is concerned with handling much more of this undefended back-office work electronically. Many more actions will start electronically, and will be dealt with electronically unless and until resistance is shown. At that stage the electronic file will be sent electronically to a place where staff and judges will also handle it electronically.
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> We are also now starting to test what is called e-filing in pilot schemes. There has been a lot of American experience with this. The essence of it is that anyone will be able to issue a money claim from his home computer or his business computer. He will pay the fee and send the claim off electronically to the Court Service at any time of the day or night. The Court Service will then

> authenticate and issue the claim, so that many more people and businesses will have the benefits now only available to major creditors. This will take quite a load off court staff.

A few pilot schemes involving court technology were by now under way. The PREMA project, an early experiment in electronic communications with a court, was launched at Preston in the spring of 2001. The only court-based IT equipment at that large centre consisted of the networked dumb terminals used for CASEMAN and CREST, and the judges' standalone laptops. The MCC programme provided funding for four networked PCs. Solicitors could now correspond with the court by e-mail for a variety of simple applications. In the event the service has been greatly under-used so far. One local firm of solicitors were enthusiastic users of PREMA, and within eighteen months three other firms had each used the service more than ten times. In general, however, there was the same cultural reluctance to embark on the unknown as has characterised English lawyers' approach to most technological innovations over the last 15 years.

It may well be that this service will become more popular once it can be used for a wider range of solicitors' work. It is surprising, however, that the value of arrangements whereby solicitors can obtain a consent order releasing their clients' funds in less than two days as opposed to 20 (under the current manual arrangements) has not become more widely appreciated.

In September 2001 a new information system called XHIBIT was launched at the Chelmsford Crown Court. This was developed as a result of discussions between the different criminal justice agencies, all of whom have an interest in knowing the progress a Crown Court trial is making. Witnesses need to get to court at the right time, police officers who have to give evidence should not be taken away from their other duties for too long, those who are concerned in the next case in the list have an interest in knowing whether the current trial is running to time, and so on.

XHIBIT is a web-based system which depends on someone keeping a log of events in court. These events are then transmitted

instantaneously to the XHIBIT screen. By way of example they may include: prosecution opening speech; prosecution lay evidence; police evidence; defence evidence; closing submissions by the prosecution; judge's summing up; jury in retirement; verdict; sentencing. The information on XHIBIT is accessible on monitor screens in the public parts of the court building, and also on the website of the Crown Court. Text messages can also be sent to people who need to be warned when to attend court.

In due course XHIBIT was extended to two other Crown Courts in the Essex area. In March 2003 it is likely to be installed at the Snaresbrook Crown Court centre in north-east London, where a full IT infrastructure has now been installed, and where digital audio recording is currently being tested. If it proves satisfactory, it will then be rolled out in Crown Courts throughout the country.

For some time now, evidence has been presented electronically in very long criminal trials. Anyone visiting the trial of Kevin and Ian Maxwell, for instance, would have seen two monitor screens. The first showed the raw Livenote transcript scrolling up a few seconds after the witness's words were uttered. The other generally showed the witness's face (because it was a very large court), but when use was made of the facility to exhibit a document on the screen, everyone in court could read it, too. Zoom facilities enable the operator to highlight those features which a party wants the jury to see, such as a signature, or the manuscript writing on a document. Juries like this kind of presentation. Its use also saves an immense amount of court time. If any of the parties want the document printed and put in the jury bundle, this can easily be done. If they produce a new document, it can be scanned and displayed on screen immediately.

The possibilities of EPE are now being addressed in a systematic way. Nine Crown Courts were originally earmarked for trials of this equipment, and although some of the cases for which its use was planned ended quickly with pleas of guilty, an increasing volume of practical know-how has already been built up.

Under the MCC programme four civil court centres were equipped with video-conferencing facilities, and a few other courts paid for it out of their own resources. Experience is already

demonstrating its value for a number of different types of case. For trials it is being used where a witness is abroad, or is seriously disabled, or is a long way away from the court and it would be disproportionately expensive for him/her to travel there. For pre-trial hearings it is being used where one of the party's lawyers is a long way from the court where the hearing is being conducted, or where an urgent order has to be sought from a judge at a distant court.

In criminal courts video-conferencing is being increasingly used for links with prisons. A successful pilot experiment between four courts (including a Crown Court) and their local prisons led to this facility being extended to 170 magistrates' courts throughout the country in 2002. This technology has also been used for some time for the evidence of child witnesses and for foreign witnesses in criminal fraud cases. In July 2002 its use was extended when legislation was implemented whereby vulnerable or intimidated witnesses were permitted to give evidence in a criminal court by a video link.

Experience has shown, however, that unless the equipment is very good, the evidence of a witness over a video-link for the purposes of a trial does not have the same immediacy as when the witness gives evidence in court. Some criminal judges believe that juries have acquitted in cases where they might well have convicted if they had actually seen the complainant child witness give evidence from the witness-box. In September 2002 the relevant judicial advisory group published a paper which demonstrated the value of this technology, but advocated the adoption of a more strategic approach for developing its use in our courts, instead of the piecemeal arrangements which have dominated the scene so far.

An e-filing project called MCOL ("Money Claims On-Line") was launched in February 2002. An individual creditor could now obtain a default judgment and apply for a warrant of execution on-line through this service. Claims of up to a hundred thousand pounds could be issued against up to two defendants, and within six months 75 claims were being processed through this service every day. Plans are now in train to make it easier for solicitors to use the service, with monthly invoicing rather than insistence on the use of a credit card for each transaction, and to enable defendants to respond to the

claims on-line.

At Walsall, in the West Midlands, the Court Service is developing a pilot business centre close to the county court. In September 2002 all that was visible there were large stretches of unoccupied carpet and about thirty networked workstations, fitted with basic CASEMAN and Microsoft Office systems in a Windows environment. The purpose of this project is to test the concept of a business centre, separated in distance from a court hearing centre, which would deal with all the correspondence and accounting work of the court, and relieve the staff at the hearing centre from all their responsibilities other than those involved in assisting judges to hear defended cases. The centre is now open, and in due course this pilot centre will also take over the business functions of some neighbouring county courts, including the big civil justice centre at Birmingham as well.

An important part of these plans involves the creation of an electronic diary, accessible to judges and court staff alike (except that the private parts of the judges' diary will be barred from general access). In this early experiment Microsoft products will be used to provide this functionality.

In May 2002 I delivered a public lecture about our modernisation plans. During the course of it I said:

> Far and away our greatest need is to introduce software systems which will enable court staff and judges to manage court business better in the civil and family courts. Today the courts are not networked. CREST and CASEMAN link dumb computer terminals with a court database, but we are miles behind most government departments and modern private sector businesses. Our aim is to lop off the business sections of the civil courts, and to enable those courts to concentrate on their real purpose: hearing defended cases. The back-office business will be diverted to new business centres, linked to the courts by IT. The first of these business centres will start on a pilot basis in the Midlands this autumn.

> In the autumn we also hope that testing will have begun for the new software systems we will use in future in all our courts. At present we rely on paper filing systems. It is not always easy to retain and motivate staff when files go missing, or get into a muddle quite so often. Nowadays court users have every reason to complain about some of the delays and inefficiencies that occur. Once modern software is in place, court staff and judges with case-management responsibilities will be able to handle cases far more efficiently before trial than is possible today. A modern electronic diary and listing system will enable trial dates to be fixed more quickly and judges' time to be more effectively used.

Unfortunately, the Treasury decided not to back these plans for the time being, at least. On 15 July 2002 the Government published its spending plans up to April 2006. Very large sums of money have been earmarked for IT in the criminal justice system. Within the next three years IT infrastructure should be installed in all our Crown Court centres. Attention has also been paid to the need for information to flow more easily between the different agencies in the criminal justice system. We are likely to face problems at first in handling criminal business much more efficiently in networked courts, because we do not yet have the money to pursue our plans for 'enabling applications'.

So far as our civil and family courts are concerned, we are at present engaged in working out how we can best make progress over the next three years without Treasury backing on the scale for which we had hoped. We will not know until the end of the year just how much money will be available to us for the next three years. I am quite optimistic that we will make a good deal of progress, and then in 2004 we will be back at the Treasury asking for more.

We have learned a lot since I was last in Dublin talking about the courts and technology four years ago. Although our plans have been slowed down for the time being, I am quite sure that they point the way to the future. And we have ensured that this time the judges are at the centre of the planning. Last year we agreed a judicial IT

strategy with the Court Service. I mean to ensure that that strategy is delivered, however long it takes.

ADDENDUM

Since preparing this description of the English scene, I have discovered a letter I received from Mr. Justice Murray two months ago in which he invited me to address a number of practical issues. I will give brief answers to those questions now, and will be happy to expand on them at the conference.

> 1. We have one or two pilot projects under consideration with the ultimate objective of introducing technology into the trial courtroom. From the judge's point of view is there a benefit in practice from the way he handles or conducts court proceedings or do the advantages lie rather in the more efficient or quicker disposal of cases?

The two most familiar uses of technology in the courtroom, apart from the judge who takes a laptop into court for his note of the evidence and counsel's submissions (a not uncommon sight in English courtrooms today), are the use of a Livenote transcript and the presentation of evidence by electronic means ("EPE"). I am excluding video-conferencing from these answers.

English judges tend to be enthusiastic about both these forms of assistance. Some years ago a judge at the Bristol Crown Court, Judge Peter Fallon QC, was provided with Livenote assistance in his court for a year in a pilot project, and he felt he was going back to the age of the quill pen when the pilot period ended. The judge at a Livenote trial is trained to use the equipment. Most of them learn they can dispense with taking a note, because they can highlight and cut and paste the passages in the transcript they wish to note up, and when they become versatile in using it, they can make an electronic note of all the references to a particular topic as the case goes on, which is invaluable when they come to sum up or deliver judgment.

Anecdotal evidence consistently suggests that it takes 15-20% off the length of the trial, and the fact that the judge is not taking a manuscript note enables the proceedings to flow more smoothly.

In June I went to Blackfriars Crown Court in London to watch an hour of a VAT fraud trial in which EPE was being used by the prosecution. There was one excellent computer operator in court, who would call up the document in question when counsel identified it by number, and it would be instantaneously available on all the small screens in court (including one for each two members of the jury). If a document was produced by one of the parties, it would be immediately scanned in and displayed electronically. I spoke to counsel, the judge and court staff, and it was evident that everyone was delighted by this service, which again enabled the trial to move much more smoothly – and more quickly. The jury liked it a lot, and it made their task much easier.

Lord Phillips, the Master of the Rolls, had both these technologies at hand when he conducted the Maxwell trial, and they are now a regular feature of the big inquiry – such as the Bloody Sunday Inquiry conducted by Lord Saville and the Shipman Inquiry being conducted in Manchester by Mrs. Justice Smith.

> 2. Is such technology of equal benefit in respect of civil trials or criminal trials, or is it mainly the latter?

Both. In practice, Livenote transcripts are more frequently used in major civil trials or arbitrations, because the parties in major civil litigation appreciate its value and can afford to pay for it. It tends only to be used in very big criminal trials, because both sides are publicly funded, and cost considerations tend to suggest that it only achieves real benefits (in comparison to its cost) with longer trials.

EPE tends to be used more frequently in criminal trials. I suspect this is only because civil courts are not very well equipped now to receive the equipment, but this will change over the next ten years as our courts receive a modern IT infrastructure. The US evidence as to the great value of visual presentation of evidence is all one way.

> 3. Is it necessary to provide experts to assist the parties in the use of technology in the courtroom?

The contractors who produce the Livenote transcript train the parties and the judge in its use as part of their contract, and are available if anyone needs further help. Counsel who presents EPE evidence needs prior training, and there has to be an operator in court to call up the evidence and to scan documents (if this service is available). There is very little for the judge to have to learn, I think.

> 4. In the case of criminal trials one can perhaps more readily expect the prosecution, being state funded, to prepare and present the evidence in accordance with the requirements of the technology used by the court. Is such technology used in civil cases, and if so does it cover pleadings and documents and how are solicitors or counsel required to comply with procedures or protocols for the use of technology?

As my paper suggests, our ultimate ambition is to achieve an electronic court file. In the paper "The Judges' Requirements", which is available on the Court Service website, the judges set out their requirements, which have largely been accepted (in principle) by the Court Service.

In practice, in any major civil litigation, each side's solicitors will have their own electronic litigation support system, which will contain all the documents in the case, including the pleadings and images of the documents. Disclosure (formerly discovery) will often be transacted electronically. It is in everyone's interests that each side should comply with a protocol for the orderly conduct of the litigation, and the judge will make appropriate case management directions to ensure compliance, and to penalise non-compliance (in costs, a higher than normal rate of interest, etc). I was a member of the Court of Appeal in *Morris v. Bank of America*[1] which gave guidance about the importance of assisting the judge if the parties were using electronic aids in a huge case, and the Chancery Guide

[1] [2000] 1 All E.R. 954 (C.A.).

(also on the Court Service website) gives some practical guidance about all this.

> 5. More generally, one has found that IT experts are in favour of computerising anything, including courts as if it was an end in itself, whereas the actual users of technology look for real or practical benefits in the carrying out of judicial functions.

It all depends on who is master, them or us. In my philosophy, the judge must be master, and I think the English experience over the last 12 years (which embraces the Woolf reforms, which give the judge a much more central role than ever before) has taught everyone the judge must be master. I may be an unsuitable witness to answer this question, because I have been proselytising for greater attention to be paid to the merits of well-designed applications of modern technology in the courts for seventeen years now. We, too, went through a long period when spending decisions were taken at a comparatively low level, and were often dictated by the marketing skills of the particular computer supplier, however unsuitable his product might be for practical use in the courts. I think, on the whole, we have got through that period. The Internet has been a great leveller, since it is infinitely easier to avoid the incompatibilities of the past if everyone used web-based technology (as is used in the EXHIBIT system I mentioned in my paper).