The use of technology in the courts: Leeds University: Lord Justice Brooke, Vice-President of the Court of Appeal and Judge in charge of Modernisation

In this paper I will describe the extent to which applications of modern technology are now being used in the courts of England and Wales, the substantial modernisation plans that are currently being implemented in some of our courts, the way our courts are now publishing more and more of their judgments on free access websites, and something of a vision of the future.

I have been personally involved in developments of this kind for 18 years. I chaired the Bar's first Computer Committee in 1985, and I helped Lord Justice Neill found ITAC (the Information Technology and the Courts Committee) in 1986. I have described elsewhere all the obstacles we encountered over the years in our efforts to persuade Government to take the modernisation of the courts more seriously. Between 1992 and 2001 I was the President of the Society of Computers and Law, and since 2001 I have been the Judge in charge of Modernisation, reporting directly to the Lord Chief Justice, with a place on the Court Service's Courts and Tribunals Modernisation Programme ("CTMP") Board.

The story up to 2000

Prior to 2000 not very much had happened. Back-office systems called CREST and CASEMAN and FAMILYMAN, which linked dumb terminals with a central database at each court, had been installed in all the Crown Courts and in all the county courts to help court staff handle routine 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, and a further 120 judges were given the communications software to instal in their private PCs. Apart from a few freestanding back office systems in specialist courts, and a communications system for civil servants (whose headquarters offices were nicely networked), that was about all.

The courts were not totally devoid of technological assistance if the size of an individual case warranted it. From time to time during the 1990s evidence was 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 enabled the operator to highlight those features which a party wanted the jury to see, such as a signature, or the manuscript writing on a document.

In the early 1990s a judge at the Bristol Crown Court was provided with Livenote assistance in his court for a year in a pilot project. He felt he was going back to the age of the quill pen when the pilot period ended. Any judge at a Livenote trial would receive ad hoc training from the contractors' staff in order to enable him to use the equipment. Most of them learned they could dispense with taking a note, because they could highlight and cut and paste the passages in the transcript they wished to note up, and when they became versatile in using Livenote, they could make an electronic note of all the references to a particular topic as the case went on. This was invaluable when they came to sum up or deliver judgment. Anecdotal evidence consistently suggested that it took 15-20% off the length of a trial, and the fact that the judge was not taking a manuscript note enabled the proceedings to flow more smoothly.

I was due to conduct a Livenote trial at Leicester shortly before I joined the Court of Appeal seven years ago. By that time the technology was very well-tried and popular, and I was looking forward to trying it myself after having spoken about it so much. The defendants, however, pleaded guilty, and the trial did not take place.

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The Crown Court Programme

Since 2000 different applications of technology have been tested in our criminal courts in a more systematic way under the umbrella of what was originally called the Crown Court Programme and is now the CTMP. A standard specification was also prepared which showed what would be required by way of cabling and wiring and hardware if our Crown Courts were to be equipped to receive any reasonably foreseeable applications of modern technology suitable for court use.

Different courts were selected as the testbed for pilot projects. In some cases one or two courtrooms at a centre received the necessary wiring and cabling. The Snaresbrook Crown Court centre in North-East London, by contrast, was fully wired and cabled at a cost of over £1 million for the experiments that were to be conducted there. The pilot projects included Electronic Presentation of Evidence ("EPE"), digital audio recording ("DAR"), video-conferencing, and the electronic delivery of information about the progress of a Crown Court trial (the "XHIBIT project"). More recently there has been a pilot "Virtual Plea and Directions Hearing" ("Virtual PDH") project at a Crown Court at Manchester, and a pilot "secure e-mail" project involving different criminal justice agencies in Essex. The police have also been concerned with a project for showing the entire video-tape of a witness's interview in court, but not much progress has yet been made there, so far as the courts are concerned.

I will say a little now about each of these projects.

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Electronic Presentation of Evidence (EPE)

Between 2000 and 2001 the necessary equipment was installed in a courtroom in nine different Crown Court centres. In some of the selected trials the defendants pleaded guilty. In another the trial judge refused to allow the prosecution to use the equipment because he feared that it might lead to an unfair trial. Sufficient experience was gained from the other trials, however, for a thorough assessment to be made of the equipment's value: a report is expected soon. It is already obvious that juries like this kind of presentation, and its use saves a great amount of court time. One judge recently reported that a trial anticipated to last into the New Year was likely to be completed before the end of November, and that the use of EPE had contributed significantly to the more efficient conduct of the trial.

Last 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 an excellent computer operator in court, who would call up each imaged document when counsel identified it by number. It would then be instantaneously available on all the small screens in court (including one for every two members of the jury, and one for the defendant in the dock). If a new 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.

No more money will be provided by the Treasury to the Court Service during the next three years to enable the courts to provide any of the hardware needed for EPE. However, once a Crown Court centre has been equipped with a modern IT infrastructure, there is no reason why a prosecuting authority should not instal the hardware into a networked courtroom if it believes that this would lead to the more efficient conduct of a major trial. I know that a number of prosecuting authorities are now preparing a protocol governing the use of EPE in criminal trials.

EPE is often used alongside Livenote. 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 Lady Justice Smith.

At present 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 all our courts receive a modern IT infrastructure. The US evidence as to the great value of visual presentation of evidence seems to be all one way.

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Digital Audio Recording (DAR)

DAR is now being tested on a pilot basis at three Crown Court centres. The equipment was expensive, partly because the Court Service could not obtain satisfactory quantity discounts for such a comparatively small order. The Treasury has already declined to provide any more money over the next three years for any more extended use of DAR. It seems likely that in due course our courts will go over to DAR as a recording medium, for its efficiency savings are obvious, as are its benefits in other respects.

A Tasmanian judge told me recently that in Tasmania a trial judge's sentencing remarks are recorded by DAR and immediately sent to a transcribing centre by telephone. The judge will then approve the transcript, which will be published before the end of the court day. This obviates a lot of the misreporting of sentencing remarks that goes on in every jurisdiction. It also makes the judge's sentencing comments immediately available to the criminal justice agencies who are concerned with handling the convicted defendant after he or she has been sentenced.

At Snaresbrook 20 courtrooms have been fitted with "whispering witness" technology as part of the DAR experiment. This is proving very successful, particularly in sex offence trials where shy witnesses with soft voices are no longer required by judges to shout out the intimate details of the way the defendant treated them. I hope that a way may be found to retain this technology and to extend its use to all our courts even when the current DAR experiment is at an end, since the Government has so often expressed itself concerned about the way in which victims of crime are treated when they come to court.

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XHIBIT

In September 2001 a new information system called XHIBIT was launched at the Chelmsford Crown Court. This system was developed with ministerial backing 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, and its eventual result. 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 the courtroom. 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 in the jury assembly area, 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. Next month an enhanced version is due to go live at the Snaresbrook Crown Court. Experienced Crown Court judges see great potential value in the new version. The sentence of the court will, for instance, now be immediately available to everyone with an interest in the case long before the security van delivers convicted prisoners to the prison at the end of the court day.

Early experience with XHIBIT revealed that there was no single protocol for the contents of a court log. Its content varied from court centre to court centre, and often from court clerk to court clerk. In future there

will be a standard format, and because it will be printed and not in manuscript form it will become a much more efficient management tool.

I recently attended a talk on "The First Night in Holloway Prison". A researcher described the disorderly confusion which regularly accompanied the arrival of a prison van at Holloway in the early evening. She said it would make a great difference if modern information systems could alert a prison to the number of prisoners it was due to receive, and who they were, some time before they actually arrived. XHIBIT 2 ought to meet this need, provided that prison staff get into the habit of accessing the feeder courts' websites at the appropriate time.

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Video-conferencing

In criminal courts video-conferencing is being increasingly used for links with prisons. A successful pilot experiment involving three magistrates' courts and one Crown Court and their local prisons led to this facility being extended to 170 magistrates' courts throughout the country in 2002. This year 28 of our Crown Court centres, including the Old Bailey, will be fitted with the equipment.

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 of any age were permitted to give evidence in a criminal court by a video link, and a lot more equipment has now been installed in our courts for this purpose.

Experience has shown, however, that unless the equipment is very good, the evidence of a witness over a videolink for the purposes of a trial does not have nearly the same immediacy as when the witness gives evidence in court. Criminal judges, for instance, believe that juries acquit in cases where they might well have convicted if they had actually seen the complainant child witness give evidence from the witness-box.

In a criminal context the use of video-conferencing attracted widescale publicity when it was used at some of the early formal hearings in the Soham murder case. Peterborough Crown Court did not possess the equipment. The circuit judge therefore conducted the hearings in the local magistrates' court where there was an established link with Holloway Prison in North London. The use of the link saved the expense involved in arranging police escorts from a number of different county forces to accompany the prison van from Holloway to Peterborough for the short hearing. It also avoided the disorderly scenes, requiring a significant police presence, which had occurred en the defendant arrived outside the court for the original hearing.

In September 2002 one of our new judicial advisory groups published a paper which described the value of this technology in detail. It 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. It is, in my view, particularly important that attention should now be paid to the quality of the equipment being used for criminal trials, even if better equipment may cost more money. I will say more about video-conferencing when I describe what is happening in our civil and family courts.

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The LINK Project

I have been describing so far the fate of the various initiatives in the criminal courts which began in 2000. During the same period what is now described as the LINK Project was being developed. The Court Service has now been allocated enough funding by the Treasury to enable it to instal a modern IT infrastructure in all the country's Crown Court centres. Where civil and family courts are located in or near the Crown Court centre, they will also be included in the programme. I have already mentioned Snaresbrook. The work at Leicester was completed in February, and the court centres at Doncaster, Coventry, Chelmsford and Birmingham (Crown Court) should be fully equipped in the next three months. During the summer holiday

the Old Bailey will also be completely wired and cabled.

The installation of a modern IT infrastructure in the courts is an essential early stage of any court modernisation programme. This project is scheduled to last three years, and the programme takes fully into account the needs of the judiciary as well as the needs of the court staff who serve them. IT will now come into the courtroom and into the judge's chambers. It will not be restricted, as so often in the past, to the court's back office.

This programme, which is likely to cost about £160 million, is merely a small part of a much larger £1.1 billion programme of investment in criminal justice IT over the next three years. The allocation of these funds is made centrally, ultimately by the ministers who represent the three departments of state who are concerned with criminal justice. The bulk of the money will be spent in improving the IT systems of the other criminal justice agencies, particularly the police and the Crown Prosecution Service. The roll-out of XHIBIT, if the second version proves to be a success, will also be funded from this source.

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Criminal Justice Exchange

There is now a new Criminal Justice IT agency, headed by a Director-General recruited from IBM, which is responsible for the secure e-mail project and also for a project called Criminal Justice Exchange. This will furnish the platform for the exchange of information relating to criminal proceedings between the different agencies. The agencies which represent Government will be able to correspond with each other behind the firewalls of the Government Secure Intranet, and one of the tasks of this project will be to ensure that barristers and solicitors in private practice can also obtain access to the information they need. Even if the information (for instance a witness statement or an indictment) is made available for the purposes of a case on the website of the agency which produced it, the judiciary is anxious to ensure that all the documents in a case are eventually archived in a single electronic store, so that they can be made available, for instance, to an inquiry by the Criminal Cases Review Commission many years after the trial, and any subsequent appeal, has been completed.

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The Virtual Plea and Directions Project

An early experiment with the possibilities of the Internet for the exchange of information has been the Manchester (Minshull Street) Virtual PDH pilot. This has had a life of its own. It was originally devised within the Home Office but was then transferred, with funding sufficient for a single pilot project, to the Court Service. It provides a vehicle for the conduct of plea and directions hearings on-line in cases committed to that court by the Stockport Magistrates' Courts. I think that about 140 different users (barristers, solicitors, court staff and the judge) have access to this closed website for the cases with which they are concerned.

The funding enabled the project manager to travel to the different offices or sets of chambers and teach the users how to use the system. They can correspond with each other about the case in conditions of complete confidentiality, and they will also furnish the requisite information to the judge for the purposes of the directions he is to make. The parties will have been told of the date and time when the judge will give his directions on line, and they will be at liberty to furnish the necessary information up to that time. In April publicity was given to the fact that the judge gave certain directions in a case online when he was on a holiday abroad.

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Technology in the Civil and Family Courts

At one time the Court Service thought they could deliver IT case management systems in April 1999 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 of 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 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 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.

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The future of the Civil and Family Courts: the consultation process

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 was 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 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.

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The Judges' Requirements

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.

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. Email 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.

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."

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The structure of the planning team: judicial involvement

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 the integrated 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 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. (These have now been reduced to three, now that the early planning phase is over). 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 thirty (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. Since then, we have decided that the whole group should meet in one place at least three times each year.

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.

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."

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The PREMA Project

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, and progress is now being made towards that goal. 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.

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Video-conferencing in Civil and Family Courts

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 one family case, a wife was not prepared to be in the same town as her violent husband. A videolink was used, and a contentious issue about the children was resolved in this way. In another case a severely disabled witness was unable to travel from Edinburgh to Cardiff: he gave evidence from Edinburgh University by videolink. In a third case, the cost of taking evidence from a witness in Australia was reported to be only £80. In a fourth case a judge approved a settlement where a teen-age girl involved in a car crash had gone to live in Hong Kong. He viewed the scarring and spoke to the girl and her father over the video link. A net saving of £6,000 was reported in a fifth case because the witness was able to give evidence from Malaysia, and did not have to travel to England.

Although the Treasury has now allocated no new money for video-conferencing equipment in civil and family courts, strenuous efforts are now being made to make the best possible use of what we have. This will include using the equipment in criminal courts when it is available for other use.

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Money Claims On-Line

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. A year later the service was extended to enable defendants to respond on-line, and the use of this valuable service is steadily increasing. Development work is now being done in connection with a possession claims service on the same lines, for use when tenants or mortgagors are in arrears with money payments.

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The Walsall Business Centre Project

At Walsall, in the West Midlands, the Court Service is developing a pilot business centre close to the county court. I visited it in September 2002, when all that was visible there were large stretches of unoccupied carpet and about thirty networked workstations, with access to 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. It was originally intended that in due course this pilot centre would also take over the business functions of some neighbouring county courts, including the big civil justice centre at Birmingham as well, but at present the team at Walsall are trying to resolve difficult technical issues arising out of the fact that the CASEMAN and FAMILY MAN databases are restricted to a single court centre, and are based on obsolescent technology which its manufacturers no longer support.

An important part of the plans at Walsall and elsewhere 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 the early experiments basic Microsoft products will be used to provide this functionality because the Treasury has not provided the money needed to produce systems that are truly fit for the purposes of the courts.

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 15th July 2002 the Government published its spending plans up to April 2006. As I have already described, very large sums of money have been earmarked for IT in the criminal justice system, and 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.

But 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 still do not know exactly what money will be available to us for the next three years. I am fairly optimistic that we will be able to make a good deal of progress, but not nearly as much as the situation demands.

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Computers for Judges

It would be wrong if I did not say something about the extent to which judges in England and Wales are now making use of computers. We are at present at something of a transition stage.

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 a CD-Rom drive and an upgraded version of the communications and conferencing software we had used since 1993. Sadly, no provision was made for follow-up training for novices, and about a third of our judges had still not advanced very far in IT skills by the beginning of this year. Our Judicial Studies Board is now conducting two-day courses for every judge whose IT skills fall below some fairly basic competences, and a lot of judges have applied to join these very popular courses.

The original 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 they were sitting, could access the database of judgments of the European Court of Human Rights, and also a very large volume of caselaw and statutory

material, including the whole of the official Law Report series going back to the 1860s.

This new 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. The specification of these laptops has been enhanced from time to time.

We are now engaged in planning the arrangements for the judiciary within the new networked court scene. At the Leicester Crown Court every judge's bench in court and every judge's room was due to be fitted with a networked desktop computer, although I understand that the use of a computer on the Bench in the criminal courtrooms there is proving contentious, because its presence tends to obstruct the judge's sight-lines. (When I visited a court in Victoria last month I saw that the level of the working table on the Bench can be lowered in order to obviate this difficulty).

We are at present discussing the extent to which judges should also be supplied with laptop computers, because so many of them now use computers for judicial business in many different places (including their homes). Work is also quite far advanced towards specifying the requirements for the new portal provisions that should be put in place for the full-time and part-time judiciary to enable them to receive a significantly greater volume of legal information online in as user-friendly a way as possible.

Joint teams of Court Service staff and judges are now devising ways in which they can make the best possible use of the Microsoft products that are currently all that is being supplied. I have already mentioned diary systems. Templates for handling simple routine judicial business are also being developed, and a team of district judges has produced a Civil Directions template which is already in popular demand. All this development work should enable the judiciary to become more familiar with the use and value of IT in their daily work. It is no substitute, however, for the proper software systems that are so badly needed if our courts are going to be able to emerge from the doldrums and hold their heads high in comparison with the excellent courts that are now a so familiar sight in the overseas courtroom scene.

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Publication of judgments

I will finish by saying something about our arrangements for publishing judgments of the courts on-line. It has been a long struggle to get to where we are now. I am excluding the judgments of the House of Lords and the Judicial Committee of the Privy Council from what I will be writing, because the much smaller volume of cases they both handle are published on their separate websites without any of the difficulties which I will be describing.

A significant advance was made in August 1999. The Court Service had previously allowed the official shorthandwriters to charge a substantial fee for the work they did in connection with judges' reserved judgments, even though these judgments were issued in written form by the judges' clerks (or the judges themselves). The official shorthandwriters merely tidied them up (if they needed tidying) and placed their name on the title sheet. They were also allowed to assert a copyright entitlement over republication.

These practices were ended under a new contract which came into effect that month. The most important judgments of the Court of Appeal and the High Court, by and large, are reserved judgments, and we were now free to publish all these judgments free from any private copyright entanglement. An important element of the new arrangements, however, was that we had to learn to produce our written judgments more efficiently and in a common format.

This was very much easier said than done. Judges have no particular know-how or interest in desktop publishing. Their clerks come from a variety of different backgrounds. Many of them had a first career in the armed services or the police. Typing skills are just one of the many elements of their heterogeneous job description. Furthermore, in those days the Court Service was providing one form of software to the judges, and a different form of software to their clerks. Such support services as existed came from different

sources. There was not much money for IT training, either. There was also no network, so that floppy disks had to be carried around from office to office, with all the risks of virus infection that this practice carried with it.

Somehow or other we found solutions to most of these problems. Our IT staff devised a judgments template which could be used both by a judge (using Word 97) and by his/her clerk (using Word 96). They found ways of stripping out redundant Microsoft coding when the script was converted to rich text format ("rtf") or hypertext mark-up language ("html") for the purpose of publishing a judgment on the world wide web. The development of this template was in itself was a difficult problem, as we did not have the funds to hire an expert consultant, and some of the early versions of the template inevitably produced glitches which drove some of our clerks to abandon its use in despair.

During the year 2000 there was still a good deal of resistance in high judicial places to the idea that paragraph numbering should be introduced into our judgments. This impasse was broken when Chief Justice Michael Black, of the Federal Court of Australia, addressed a meeting of senior judges in London in July of that year. He explained how in Australia, too, the judiciary had had to travel through a similar pain barrier. Now that they were through it, they could all see the value of the new arrangements. This has been our experience as well.

In January 2001 the Lord Chief Justice, with the agreement of the other Heads of Division, issued a new Practice Direction, which explained the arrangements for neutral citation and paragraph numbering which were being introduced with immediate effect. The House of Lords and the Privy Council followed suit. During this first year, we could only issue neutral citations for judgments handled by the official shorthandwriters. Within 12 months we had made arrangements for the High Court, too, to have its own citation system. A further Practice Direction was issued in January 2002 which explained the citation system we had adopted there.

We have not yet solved all the problems, because there are still some types of judgments over which private firms of transcribers assert copyright entitlements, and these we cannot publish immediately. This state of affairs produced an odd result during 2002 when Lord Woolf gave an oral guideline judgment on sentences for robbery involving mobile telephones. The Press and politicians were commenting on his judgment without having access to the words he actually used. If they had been able to read his judgment in full, they would have expressed themselves differently. On the other hand, if he had delivered a written judgment, nobody would have had any excuse for misrepresenting him because the judgment would have been available to everybody on the court website.

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Publishing judgments: the future

When I look back over the last five years, it is obvious that we have made huge advances. There is still, however, a lot of work to do. Once all the vestiges of private copyright entitlements have disappeared, the way will be open to publish to everyone electronically all the judgments of our courts and our appeal tribunals which we wish to publish. We will not wish to publish them all. A distinction must be made, for instance, between the Civil Division of the Court of Appeal and the Administrative Court (the part of the High Court concerned with judicial review and statutory appeals), where we are likely to wish to publish all the substantive judgments, and the Criminal Division of the Court of Appeal and the other parts of the High Court, where we are likely to leave it to judicial discretion whether a judgment should be published on the world wide web.

Once the new unified Tribunals Service is created, we will need to address similar issues there. I am convinced that the solution is to be found in adopting, so far as possible, common formats and common protocols, so that the job of automatic conversion from a word-processing format to a web-enabled format can be performed as effortlessly as possible. At the moment a lot of time is being wasted in manually unpicking codes before a judgment or tribunal decision can be published on the web.

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The British and Irish Legal Information Institute (BAILII)

The influence of the British and Irish Legal Information Institute (BAILII) is driving this work forward. In November 1999 I chaired a meeting at Chatham House in London at which Professor Graham Greenleaf of AustLII was the main speaker. It was a bit like a revivalist prayer meeting. There were people there from government and the judiciary, from both sides of the legal profession, from the academic world and the world of legal publishing, from the worlds of law librarians, consumer associations and advice centres. They came not only from England and Wales and Scotland, but from Northern Ireland, Ireland and the Channel Isles, too.

The mood of the meeting was unanimous. We all wanted to see in our islands the creation of an electronic legal information service like the one Professor Greenleaf had showed us, giving access to our primary sources of law, both statute and case-law, free at the point of delivery. A hundred thousand pounds was raised before Christmas to enable work to start quickly, without things getting tangled up in red tape and committees. We then formed a small steering committee to examine what could be done to make this dream into a reality.

In the meantime a pilot website called "www.bailii.org" was launched in Australia. This was almost entirely due to the efforts of the directors of AustLII. Andrew Mowbray built the databases, Philip Chung developed the interface and Graham Greenleaf generally encouraged and negotiated BAILII's development. They created a pilot site which included a lot of primary source materials that became accessible to everyone free of charge and free of copyright restrictions.

BAILII swiftly became the single largest free access law site for the United Kingdom and Ireland. It obtained 14,000 hits on its first day. Site watchers in early April 2000 saw the volume of English caselaw multiply more than a hundredfold overnight. This occurred when the official shorthandwriters generously made available free of charge to BAILII three years' worth of their archive of transcripts from the two divisions of the Court of Appeal and the Crown Office List.

BAILII became a registered charitable trust in December 2000, and in February 2001 we had our first trustees' meeting. In July we appointed our executive director, Joe Ury, and found our London home at the Institute of Advanced Legal Studies in Russell Square. We were now able to create a small website for "new cases" in London, but the database remained in Sydney, by courtesy of AustLII, until September 2002. Since then Roger Burton-West, who joined the BAILII team in July, has controlled the database from the London end.

At present BAILII loads onto its site all the caselaw and statute law it can get its hands on free of charge. On the site is the official shorthandwriters' archive of English High Court and Court of Appeal transcripts between May 1996 and August 1999. Privy Council and House of Lords judgments go back to 1996. For Scotland, Northern Ireland and Ireland the caselaw usually goes back to 1998 or 1999. In Ireland Supreme Court decisions go back to 1999, High Court decisions to 1996, Irish Information Commissioner's decisions to 1998, and Irish Competition Authority decisions to 1991.

BAILII's database of statute law follows much the same pattern, although UK statutes go back to 1988, Irish statutory material to 1922, and Northern Ireland statutes to 1495! A clutch of recent Irish Law Reform Commission papers is simply the harbinger of what is to follow, once BAILII possesses the necessary resources.

What of the future? The first £100,000 kept the dream alive until Joe Ury arrived. BAILII's trustees were then able to start spending money from the London end. During 2002 BAILII raised a further £100,000. With a steady state annual income of £100,000 (which has to be worked for) the trustees could maintain the present level of provision and improve its technical quality.

We are in the process of making arrangements with the Court Service whereby all the transcripts of substantive judgments of the Civil Division of the Court of Appeal, both handed down and transcribed, will be posted on the Bailii website, with free access to everyone, as soon as they become available in an

approved form. This service was launched just before Easter, and it should include all these judgments going back to January 2003. I hope that all substantive Administrative Court judgments will be posted there, too, before the end of July, and that a decision will have by then been taken about the extent to which the judgments of the Criminal Division of the Court of Appeal will also be posted there.

But this is by no means the limit of our dreams, if only we had the money. We all believe passionately in the need to create a level playing field for access to all, free of charge, to our caselaw and statutes and other publicly available legal materials. It would make a huge difference, for instance, to those who provide advice on housing or social security benefits, asylum, tax or employment law, if they could be sure they could find the latest judgments from the Administrative Court or the leading appeal tribunals on the BAILII site.

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Publishing judgments: the role of the state

Throughout the whole of this story we have faced the difficulty that it is Government policy that the administration of civil (and, to a great extent, family) justice should pay for itself. The publication of judgments has very little to do with the normal service provided by the English Court Service or the Scottish Courts Service Administration to litigants who pay court fees in order to take forward their litigation. It is all about making the law of England and Wales, or Scotland, or Northern Ireland, or Ireland available to the people of these islands free of charge, preferably so that they can resolve any disputes they have without the need of paying court fees in litigation. When digital television is introduced, they should be able to access the law, if they want to do so, through their television set at home.

The extent to which taxpayers' money should be available for this new service of enabling everybody, rich or poor, to have free access to all the law on a website like this is a matter for Government as a whole and not really for the Court Service Agency or the Scottish Courts Administration. It may be that it will be best to go forward eventually with a mix of public and private money. The resolution of these issues lies ahead. The one thing that is certain is that we must never again allow private interests to obtain copyright entitlement over the publication of our judgments. Commercial publishers play an important role in developing more sophisticated electronic services for those who can afford to pay for them, but the publication of the raw text is a public asset, which modern technology enables us to make available to all alike.

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The electronic publication of judgments: the benefits and the disadvantages

The good side of all this is that we are creating a level playing field, and those of us who are interpreting the law in the higher courts are being supplied with up to date copies of unreported judgments relevant to the points we are deciding. This has been particularly valuable in the early days of the Human Rights Act, where we have so much to learn from each other. The law would be in chaos if our early decisions were being made in ignorance of what another court had been saying on the same point.

Another great blessing of modern technology is that when we post an important judgment on a website at the time we are handing it down in court, we know that it will then be communicated electronically throughout the country the same day to everyone who has a "need to know", and this does not only mean lawyers. In the second half of 2001 I was involved with cases like Callery v Gray and Sarwar v Alam, in which we were explaining the effect of the arrangements for success fees and after the event insurance which have taken the place of legal aid in personal injuries litigation. On each occasion I know that our judgments were sent electronically through a lot of different information networks on the day they were delivered.

This does not only mean that people immediately know what the law is. It also means that press comment is more likely to be accurate, because we are treating the Press like adults. We often publish a short Press

Notice the day before an important judgment is delivered, and with the judgment we issue a short summary, or an index, to make it easier for the Press to see what the judgment is all about.

The bad side is that we often suffer from information overload. Cases are cited to us which decide no new point of law, and which merely illustrate the application of familiar law to a new set of facts. We published a practice direction last year to try and bring things under some sort of control, but very often lawyers can't recognise a principle of law when they see one. We are getting steadily more and more overloaded with citations of cases which frequently don't help us in the task we have got to do, but which just add to the paper we have to read. This, too, is a problem with which we must continue to struggle, but we are quite sure that the solution to it does not lie in a return to the bad old days when important unreported judgments were available only to the few.

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Some concluding thoughts

It has been interesting to live through the last 18 years, and to see the way in which very clever people and mighty institutions have gradually woken up to the value of introducing technology into our court system. We have still got a long way to go - my recent visit to courts in Singapore and Australia was a very sobering experience - but there is now far greater awareness of the possibilities which technology opens up for us all. I cannot believe that the history of the courts in the next 18 years will be as littered with stop-go (usually stop) decision-making as it has been during the last 18. I will be very interested to watch the future, even if I may not be directly involved in these matters for very much longer myself. It has been a fascinating story.

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