The Criminal Courts Online

Clive Walker

(extracted from *Criminal Justice Matters* no.58 Winter 2004 / 05, pp.32-33)

Information in, cases out

At the core of the criminal justice process lies an emphasis upon the generation, processing and transmission of information and its networking across agencies. These features render the process remarkably appropriate for the utilisation of information and communications technologies (ICTs) (see Walker, C., "Criminal justice processes and the Internet" in Akdeniz, Y., Walker, C., and Wall, D., *The Internet, Law and Society* (Longman, Harlow, 2000)). In response, the policy line from the Department of Constitutional Affairs (formerly the Lord Chancellor's Department) sounds very positive. As long ago as 1998, it pronounced that: 'There can be no doubt that we are moving rapidly into the information age, into an era where a rich body of technologies will transform our lives, bringing changes as fundamental as the Industrial Revolution brought to society in the 18th century.' (*Consultation Paper: Resolving and Avoiding Disputes in the Information Age).* Yet, in practice, the application of ICTs to the criminal courts within England and Wales has made relatively slow progress. The obstacles include not only entrenched professional cultures and financial hurdles, but also deeper misgivings about the negative impacts of ICTs such as "trial by media".

This paper will outline the developments which have occurred or have failed to materialise and will seek to identify above all what might be said to be transformative - of practices, attitudes or law.

Technology for the court bureaucrat

To date, the most important (and most costly) applications of ICTs have occurred in court 'back-offices', driven by several policy doctrines, especially New Public Management, with its emphasis on performance indicators such as waiting time and unit costs. The result has been a blizzard of acronyms.

For example, in the magistrates' courts, the Libra system was devised at the end of 1998, including preparation of cases, listing, notifications, on-line access during hearings and accounting for fines as well as some information exchange between courts and other criminal

097\cycrm-cjm, © Clive Walker, 2004

justice agencies. In the Crown Court, the CREST (Crown Court Electronic Support System) system dates from 1991 and encompasses: CDMIS (Central Determinations and Management Information System), which allows for automatic calculations for example in relation to legal aid and costs taxation; programs in relation to jury summoning and management (JUROR); and a case management project (CREDO). In the Court of Appeal (Criminal Division), there is CACTUS (Criminal Appeals Case Tracking User System).

The results have been dispiriting (see National Audit Office, New IT Systems for Magistrates' Courts: the LIBRA project (2002-03 HC 327)), so the post-Auld Report unified courts structure is already planning replacements. One important aspect of ICT work which has proven acutely troublesome is the linkage of criminal justice agencies. The Home Office has realised that 'making the best possible use of IT is fundamental if we are to have a modern, joined-up system that delivers fast, effective, justice.' (Criminal Justice for All, Cm.5563, London, 2002, para.9.45) But the effective interfacing of ICTs within different agencies represents an enormous challenge. Not only are technical difficulties, but there are sector jealousies as well as more edifying concerns for the ethics of data processing. Successive bodies have sought to achieve the objective, the current incarnation being the Criminal Justice IT (CJIT) programme, set up in 2002. It oversees the development of a number of programmes, such as XHIBIT (Exchanging Hearing Information by Internet Technology), plus the hugely ambitious CJS Exchange whereby common case information is to be shared, including with the police who are otherwise within the province of the distinct Police Information Technology Organisation (Police Act 1997 Part IV).

Aside from agency networking, another site of resistance has been at the level of the judiciary. Projects such as JUDITH ("Judicial IT Help") and then FELIX, which comprises open and closed conference facilities and a messaging system (now subsumed within the Government Secure Internet programme), depend upon the willingness of the judges to use computers. Negatives attitudes are no doubt breaking down in time, and these trends are very much encouraged by the Judicial Studies Board, which makes valuable information available through its web-site. Here we encounter the possibilities of profound implications for the nature of judgments, which should become more dependent on reasoning and less on the inherent wisdom, pragmatism and authority of the judge. What counts as legal precedent is also shifting. ICTs can ensure that most cases from Crown Court upwards are recorded and reported. But the prospect of a judicial free-for-all in which the most Herculean dispenser of justice can outstrip any colleagues of higher rank and in which the choice is between thousands of precedents rather than those officially reported has set alarm bells ringing. In *Michaels and Michaels v Taylor Woodrow Developments* ([2001] Ch. 493), Mr Justice Laddie expressed his concern that computerised databases of court cases would raise legal costs both through pre-trial research and trial elongation and emphasised the need for leave to cite an unreported case.

Technology for the people

One might conceive 'the public' of relevance to the criminal courts as falling into two categories. One group is those who are involved in proceedings - defendants, jurors and witnesses. The other category might be the good citizens (plus the media on their behalf) who take an interest in what is being transacted in courts on their behalf.

As for the first category, there is growing activity, though as much for the benefit of 'insiders' such as prosecutors, as for outside, less willing participants. For example, the digital marshalling and graphic representation of evidence can help enormously in complex cases, such as serious frauds. A second application of ICTs has been in connection with the evidence-giving of litigants, for example, to screen juries or vulnerable witnesses through video-conferencing or other linkages, as encouraged by the Youth Justice and Criminal Evidence Act 1999, Part II. The Court Service depicts such technologies as being a core element of its programme (Court Service, Annual Report 2003-04, 2003-04 HC 788, p.11), and it has also provided on its web-site some useful guides for jurors and witnesses.

The use of ICTs in litigation raises many apprehensions. It calls into question the basis for fact-finding and truth-finding in an adversarial process. The court has traditionally provided an ordeal to ensure that proceedings are taken seriously and that there is pressure to be truthful. Will this be achieved in the more soothing context of having to look into an impersonal camera, being asked questions by a dressed-down barrister, and in a court ante-room rather than a foreboding court-room? Where reconstructions have been constructed on computer, such as of murders or road accidents, further questions are raised about the fairness of pre-trial disclosure and the disparate financial muscle to indulge in such gadgetry.

Another possible facility which raises concerns is the deployment of ICTs in the furtherance of naming and shaming. A vision of this policy in action is the public notification pages of the police of St Paul, Minnesota (<http://www.stpaul.gov/police/prostitution.htm>), which is billed as a "direct response to the fears, anger and demands expressed by law-abiding men and women". Other conceivable offence types which might be treated in this way include shoplifters and child sex offenders, whose photographs are already circulated by police forces and also fine defaulters. The idea is catching on. While the proposal of the Essex Police to publish the name of Brentwood's public enemy number one was halted by injunction, naming and shaming has next been taken up by at least one local authorities (Brent) to enforce exclusion zones or curfews under Anti Social Behaviour Orders (*R (Stanley) v Commissioner of Police of the Metropolis* [2004] EWHC 2229 (Admin)). One might predict that the cheapness and quickness of the Internet will encourage further initiatives of this kind.

There are several ways in which ICTs could facilitate engagement between the courts and the public at large. The public could be encouraged to be more actively engaged, such as magistrates, despite the professionalisation of, the criminal justice system. However, a more likely ambition is educating the passive wider community. One way is through the provision of source information. One might suppose that the accessibility of the law would be a prime governmental goal, but it is far from a reality. The Court Service has Internet pages (<http://www.courtservice.gov.uk/>) with a scattering of court judgments, but most case transcripts are only available on commercial terms, while the listings of Acts of Parliament at <http://www.hmso.gov.uk/acts.htm> are neither comprehensive nor consolidated.

Otherwise, there is little evidence of enthusiasm to "change the distance between the Court and the public." (Katsh, M.E., *Law in a Digital World* (Oxford University Press, Oxford, 1995) p.163). There is no equivalent to the seemingly inviting and egalitarian web pages of US courts such as the People's Law Library of Maryland (<http://www.peoples-law.com/>) and Law for Kids in Arizona <http://www.lawforkids.org/>. Probably the most extensive UK court web pages are those of the Northern Ireland Court Service. More

generally, web-casting could third way in the debate about televising or not televising. Technology offers the possibility of real time transcription which can then be published to a wide audience at low cost and wholly under the control of the courts. A rare British example is the appeal in the Lockerbie case, which has been televised and web-casted (<http://news.bbc.co.uk/hi/english/world/newsid_1766000/1766508.stm>).

In common with its application in other "political" settings, the Internet has been both under-utilised overall and mainly confined to one-way information transfer rather than two-way communication. There is, of course, some benefit in information transfer in this way. Internet technology allows the disembedding of time and space, so that, for example, knowledge which was once the preserve of an exclusive gatekeeping profession such as lawyers can be made more widely available even to those who do not attend courts or law libraries and can be made available instantaneously. The virtual legal community is far less bounded than its physical counterpart and could provide a forum for taking soundings on judicial policies and performance as well as providing more committed and informed lay participants within the process. To date, like many other parts of the "New Labour" reform agenda, there is much more evidence of modernisation than democratisation.

Professor Clive Walker
✉ **School of Law**
University of Leeds
Leeds LS2 9JT, UK
☎ **(+44) 113 3435022**
💻 **law6cw@leeds.ac.uk**
🌍 **www.law.leeds.ac.uk/**