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Keynote Speech by Lord Justice Brooke

"IT and the Courts of England and Wales: the next Ten Years"

Last May I went to a conference for judges in Washington. There were about 40 of us there, drawn from a dozen different countries, including England & Wales, Scotland, Northern Ireland and the Irish Republic. The first day of the conference was given over to IT matters. It was held in a courtroom in Maryland which was equipped with masses of up to date IT equipment, and we received interesting presentations from judges in Singapore and the United States about the progress they are making in those two jurisdictions towards paperless courts. For reasons I will explain, we are quite a long way behind those two countries, but we are making determined efforts to try and catch up. This is the story I have come to tell you today.

First, I must tell you where we are now, and how we have got there. In England we do not have a Ministry of Justice, with masses of resources at its command. The Lord Chancellor's Department, which supports the courts, is a small department, and over the last ten years its credibility with the Treasury was damaged because of the way that unbudgeted Legal Aid expenditure went on soaring. I believe that expenditure on IT suffered as a result. We have certainly not seen any of the imaginative forward investment in IT which other comparable countries have experienced. In America, for instance, the federal judiciary run the federal courts, and in 1990 the Senate voted them US \$70 million to undertake a programme of computerisation in the court process.

In England the emphasis up till now has been on back office investment. To justify IT expenditure on capital projects, the department had to prove the likelihood of savings in the short-term future, and this meant the introduction of computer systems to carry out more efficiently work processes which had until then been carried out manually by clerical staff. The three best-known examples of this were CREST, a back-office system for Crown Court staff which was designed in the late 1980s and rolled out into all our Crown Courts about six years ago; the Summons Production Centre at Northampton, which provides a central computerised service for bulk issuers of default summonses for debt collection; and CASEMAN, a system rolled out last year to help with back office functions in our county courts. Not nearly as much attention was paid to the needs of front-office staff, by which I mean the judges and their support staff in court, or to the needs of court users, apart from the big battalions like British Gas or the water companies. It was all very depressing, as we watched other countries race ahead in the provision they made for their judges, but year after year we would be told the money simply wasn't there.

There was one glint of hope in all this. In 1990 the Head of the Court Service invited the Deputy Chief Justice to help them explore ways in which computers could be used to assist judges and a small, broadly based, group of judges, of which I was a member, was formed to examine the possibilities. We called ourselves JSCIT, the Judges' Standing Committee on IT. Lord Justice Neill was our chairman, and we drew our members from each of the three strands of the judiciary: the Supreme Court judges (about 150 on today's figures), the circuit judges (about 550 of them) and the district judges and Masters (about 350 in all). Though each of these groups of judges had their own association, or council, the demands of IT, like the demands of judicial training, brought them together to form a single body, created to look at the needs of the judiciary as a whole.

We were assigned a very small, but splendid, support staff - I think in the early days we had one tenth of one civil servant's time and two tenths of another - and we were given the funds to engage a consultant, Peter Hardie-Bick, whose job it was to talk to a lot of judges and to report back to us and to the Court Service on the way in which the provision of computers to judges could help us to do our jobs better. Of course, for the real IT enthusiast, there was no limit to the ways in which he or she might think a computer would be useful, but we had to be thoroughly practical. There was not much money about, and we had to have in mind the enthusiastic beginners as well as the old IT lags.

Peter Hardie-Bick's report, delivered in 1992, was very positive. In addition to a word-processing function, he identified a communications function as being one whose possibilities we should explore. Judges do lonely jobs; a lot of them are

on the move from court to court, with quite limited library facilities available, and some high court judges have to be away from home on circuit. A laptop computer, supported by a standard word-processing package and some fairly basic communications software could make a lot of difference in the way we did our jobs. Even in those days, a few brave souls used laptop computers for note-taking in court, although when one QC (now an appeal court judge) joined us on the Bench and was unwise enough to ask if he could go on using his laptop on the Bench in the same way as he had used it in a big government inquiry he had just finished, he was told magisterially that it would not be appropriate for a high court judge to behave like this. It took us six months to sort that little problem out satisfactorily.

The Hardie-Bick report gave us the necessary leverage to obtain money for a pilot scheme, embracing twenty-five different judges, to try out the possibilities. In those days we did not think we needed to be very ambitious, and in any event the money wasn't there. We started with WordPerfect 5.1 for DOS, which was the system the Court Service was using at that time, and a communications system called FELIX, which furnished a variety of different open and closed conferences, a messaging system which included the capacity to send files to and fro, and a facility for posting longer files in the files sections of a conference, available for drawdown by any judge who was interested in the subjectmatter. Judges were supplied with laptops with a 186 Central Processing Unit, which seemed at the time to be powerful enough for any foreseeable judicial future.

The project as a whole was called JUDITH - Judicial IT Help, or something like that - and it was run by a small but very enthusiastic Project Board, headed by Judge Michael Mander, of the Shrewsbury Crown Court, who had been attracting a good deal of publicity for himself by his versatility in conducting jury trials with the help of his laptop rather than a judge's notebook. By this time, we were getting a bit more than three tenths of a civil servant to help us, and Siemens Nixdorf and a company called LIX (for FELIX) were selected as the project's suppliers and helpdesk supporters.

The pilot was a success, and with the help of a convincing business case (it convinced us, anyhow), in 1993 JUDITH chopped off the head of the Holofernes of Treasury opposition, and we were allowed to expand the project to include 300 more judges over a 3-year period. This was a big advance, and in the event the 300 judges were all supplied well within that timespan. In addition, we were allowed to buy 120 more powerful Pentium desktop computers, equipped with Windows software and CD-Rom drives, with Word for Windows as the word-processing package, to which the Court Service had now changed. These were supplied to computer-literate volunteers who thought they could cope with this equipment without training support, and this freed up most of their laptops for redistribution to judges on the waiting list.

Towards the end of 1995 we were running into difficulties. The project had been a huge success, so far as judicial enthusiasm was concerned, and we had a long waiting list. But certain problems were already very evident, and the government made it clear, quite understandably, that they would not take things any further forward without a new consultants' report, and a business case, based on the consultants' recommendations, to justify further expenditure. At the same time the Court Service was having to turn to the Private Finance Initiative ("PFI") to support investment like this, and the whole of 1996 was taken up with the consultants' investigations and also the tendering process to identify the new PFI supplier.

In the meantime about 100 non-JUDITH judges who had their own computers were being supplied with the FELIX software and a modem. By this time FELIX for Windows had been developed for Windows users, and WordPerfect 6.1 for DOS was supplied to the JUDITH judges who still had their original laptops. By the end of 1996 about 380 judges had their JUDITH computers, and there were another 200 on the waiting list.

Joyce Plotnikoff and Richard Woolfson acted as our consultants this time, and they provided one report on the Project itself, and a quite separate report on the possibilities for the future. At one level JUDITH had been an immense success, as was evident from the enthusiasm of everyone whom they consulted during their study. Richard Susskind, who watched the whole thing from the sidelines, commented to me last year that because of judicial enthusiasm JUDITH had succeeded in spite of itself. By this he was referring to the lack of attention which had been paid to the need to resource it properly, particularly from a training perspective. Because funding had been so limited, we had felt that we had to give priority to equip as many judges as possible from such funds as we had. Such training as occurred was provided by judges themselves.

The consultants said that everybody, judges and civil servants alike, with whom they had discussed the project had felt it had made a significant positive contribution. Descriptions of it included the words "resounding", "brilliant" and "tremendously valuable". They reported, in unqualified terms, that the achievements of the project to date had been impressive. Two innovations which potentially had wide application in both the civil and criminal process were the use of their computers by some judges to generate copies of their orders and directions in court and to distribute them to the parties on the spot, and the use of computers to expedite the process of releasing cases from a High Court judge to an experienced circuit judge (called a Section 9 judge). They also reported that the arrival of FELIX had had a profound effect on judges' ability to communicate with each other, particularly in the provinces.

When I read this, I expressed the cautious view to the Court Service that it would be unwise to conclude from the success of JUDITH, which flowed from the infectious enthusiasm of the most computer-literate members of the judiciary, that it would necessarily be easy to replicate this success when the use of computers was spread more widely, unless access to the technology was made a good deal simpler and a lot more attention was paid to the need for training.

The consultants' study also identified a number of concerns which had been obvious to us for a very long time. The first, and most important, of these was the need to provide resources for training. The JUDITH Project Board had never been resourced for training judges (some of whom had very limited computer skills) in a properly structured and professional way. Another criticism related to the lack of structure or focus to the project, which was again inevitable owing to the comparative lack of staff to support the judges who were running it. There were also problems created by the wide variety of different applications which individual judges added to their systems (again, fairly inevitable given the comparatively basic equipment with which they were provided and the unstructured environment in which they were operating), and problems connected with the use of helpdesk support, lack of user discipline, the lack of motivation of some of the judges to whom equipment was initially issued (which led to its non-use), and a number of different types of concerns about security.

Quite a lot of the computers allocated to the project in its early days were by now incapable of being upgraded, and they could be treated for all practical purposes as obsolete. The power and capacity of the Pentium desktops provided a much clearer indication of the likely scale of judges' computer needs in future.

In addition to their recommendations on training, the consultants recommended unequivocally that funding should be made available to provide access to computers for all judges who wanted them. They also made a number of connected recommendations about the way in which the project might be brought under tighter control in the future, to meet the concerns they had identified.

One problem we have, which was not fully identified in the consultants' first-rate reports, is that judges are not deskbound office workers. They spend a lot of their days in court and they use their computers for their judicial jobs at home a great deal in the evenings and at weekends. Any forward planning had to take considerations like these into account. Of the 79 judges who answered a survey sent out by the consultants, 27 said they used their computers in court, 69 in chambers, 9 in lodgings, 11 while travelling and 71 at home: these figures are not, of course, cumulative. 81% of them said they made use of the portable nature of their machines. One very skilled district judge has said that for his work the three main requirements, so far as a computer is concerned, are portability, compatibility and adaptability. In other words, a future based on a "dumb" terminal, with information downloaded from a central processor, might have some application in commercial situations but it was unrealistic for judges.

At the end of their Futures Study, which described the way that technology might be harnessed in aid of judicial services in future, the consultants said that the challenge now was to create the organisational structures to realise their vision of the future. There were, however, some fundamental issues which had to be resolved first. Who should speak for the judiciary and how could they represent the whole range of judicial opinion within a single coherent view? What priority would be given to judicial needs in planning the IT future given that the funding must come out of the Court Service budget? How would the needs of the legal profession and the other justice system agencies be taken into account?

They pointed out that in an integrated approach the services to be provided would have to be costed and prioritised according to the benefits they delivered to the justice system as a whole. These benefits might be in the form of cost savings or speedier case processing, but they might also result from improvements in the quality of justice. They said that any discussions must encompass, in particular, the ways in which judges could work more effectively with court and administrative staff. They should also take account of good practice encountered during their study, and the court library services and the Judicial Studies Board would have to be included among those who were consulted. They said, correctly, that integrating these different strands into a coherent strategy would require an understanding of the court environment, the judicial function and the technological options.

The JUDITH Project, and the consultants' two reports, provided one set of building blocks. Another was created when the Court Service was floated off as a semi-independent agency with much more overt business-orientated objectives, and EDS emerged as their PFI supplier. Last May the Court Service, with EDS's help, completed a scoping study report in which they identified a number of different projects as possible candidates for computerisation. They also commented on the cost-saving potential of each project. The likely needs of the judiciary were identified in very general terms in this report, and an indicative cost of £5-10 million on a rolling basis was mentioned, although no attempt was made to identify cost savings in this particular context.

Since then there has been an enormous amount of progress. We now have a small representative group of judges, headed by Lord Saville, which meets relevant Court Service directors very regularly in a forum called JTG (the Judicial Technology Group), and EDS staff also join us there from time to time. While a number of projects are going forward

which have very obvious cost-saving potential, resourcing the judges and front-office staff of the courts is now progressing, side by side, within two different planning time-frames, one of 0-1 years and the other of 0-3 years. A longer vision (of 0-10 years or more) is now being taken by two other groups which have recently been formed, one for civil justice and the other for criminal justice. Sir Brian Neill, who has now retired, represents the judiciary on those groups, because Lord Saville is now rather committed with other things.

In the short-term, the Court Service has resolved that every full-time judge who wants one should be supplied by an appropriate modern computer, equipped with Word for Windows and FELIX for Windows and a CD-Rom drive, and backed by proper training and technical support. I would like to think that this ambition could be accomplished within two years. Priority is being given to those on the JUDITH waiting list. Very recently 25 of them have been picked for a pilot project, in which particular attention will be paid by EDS, the Court Service and the Judicial Studies Board, to the type of training the judges will need. It is planned to provide four days training, at different times, for complete novices, and two days training for those who have already had quite a lot of experience.

Once this pilot project has been completed and evaluated, there will be a roll-out for the remaining 170 judges now on the waiting list. Attention will then be paid to the needs of new judges and of those who have been using the old JUDITH 186 CPU laptops. Alongside this there will be a pilot project to explore the possibilities of giving judges access to the Internet through a number of firewalls, and five judges are being picked as guinea-pigs for this purpose. There is already intense interest in this new development. Laurie West-Knights, the barrister vice-chairman of the Society of Computers and Law, has given four one-hour demonstrations of the legal resources now available on the Internet to groups of Supreme Court judges (and their clerks) at the Royal Courts of Justice since last November, and over 30 people attended each demonstration. House of Lords judgments have been posted on the Internet for nearly 18 months now, the new Court Service website looks most promising, and in the very near future Smith Bernal, the official shorthandwriters, will be making available on their free website all the approved judgments from the two divisions of the Court of Appeal and the Crown Office List going back to May 1996. From now on, all such judgments will be posted there a month after they have been approved. You will be able to get them even more quickly through a subscription service.

At the same time as all this is going on, two different groups of judges are helping the Court Service plan the systems they will need when Lord Woolf's civil justice reforms come into effect next year and when judges will be taking a much more proactive role in managing the progress of cases. Partly by an accident of history, these two groups are adopting different techniques, but once again we are looking not only at what can be achieved in a comparatively short timespan, but also at where we hope to be going in the medium-term and long-term future.

The first of these groups is made up of four district judges, two circuit judges and a Queen's Bench Master. Most of these judges have got a great deal of practical IT knowhow, and the group was originally set up to ensure that judicial needs were being properly taken into account when the CASEMAN project in the county court was reaching its final stages before roll-out. Bitter experience has shown us that with the best will in the world IT systems designers do not always understand the detailed ramifications of the court process. Recently this judicial group identified a problem when a judge had made three different costs orders, and the order production system had been designed to produce only one costs order per case. It had not been realised, for instance, that a court might make one order for costs *inter partes*, and another order for the legal aid taxation of the losing party's own costs.

This group has now moved on to examine the different documents being produced by Court Service staff in anticipation of Woolf. There is, for instance, a Plain English Guide which is intended to set out the user requirements with pinpoint accuracy, and then an Output Based Specification which descends more heavily into IT-speak to describe what the system should be producing to meet those requirements. This is very much bottom-up stuff, being developed from CASEMAN, which was a pretty basic system, and because it was not drafted by lawyers (let alone judges) it does not always start in the way a judge would be analysing his or her needs. This team - and its Court Service counterparts - are faced with the difficulty that they are working towards a moving target, as the Rules Committee, which has the gargantuan task of approving a completely new set of Civil Procedure Rules, is not expected to finish its work for several months.

This work is taking up a massive amount of judicial time. The group started by being allowed time off to attend meetings in London, and were otherwise being expected to study all the documentation and liaise with each other by E-mail about it in the evenings and at weekends. It has now been realised that they must be released during court hours to do this work if their health or their family lives are not to collapse, and we are having continuing discussions with the Court Service about the amount of judge-release time which will be needed for this purpose. The other, smaller, judicial group was formed three months ago. This is made up of two high court judges and two Supreme Court Masters, one of each from the Queen's Bench Division and the Chancery Division, whose job it is to set out the judicial requirements for the procedural judges who will be handling heavy multi-track actions in the High Court, and particularly at the Royal Courts of Justice. Although this group is being advised by Richard Susskind and by a very newly appointed high court judge who has an immense amount of IT knowhow, they are deliberately adopting a top-down approach. In other words, they are setting out the judicial requirement themselves in plain English, and then leaving it to Court Service staff to translate

what they want into the language of Plain English Guides and Output Based Specifications, although, in liaison with the other group, they will of course be checking these for accuracy in due course.

I have already described how the challenges of IT have forced the different levels of the judiciary to work together for the greater good of every judge in the country. The work I have just been describing illustrates two further developments: the need for some judges to be released from court work to help to prepare these new IT systems, rather like the administrative judges who are so common on the other side of the Atlantic, and the need for senior judges to work very closely alongside senior Court Service directors and staff to plan the IT future of our court system in a collaborative way. Quite apart from the JTG meetings, both Lord Saville and I have been having meetings with Ian Hyams, the Court Service's IT director, at least once a month since JTG was created last October. Lord Saville has tended to look after the longterm scene, while I have concentrated on planning the next three years. We expand these meetings from time to time. Two months ago the two most senior representatives of EDS in England, along with their Court Service contract manager, visited my room in the law courts for a very valuable tripartite discussion about the way in which things might be moving over the longer term.

I have already mentioned a two-year vision, in which every English judge who wants one will be equipped with a computer which he or she has been trained to use. Within three years, if not before, I would like to think that a Court Service Intranet, embracing the whole of the Court Service and the whole of the judiciary, will be in place. Although gaps in the Intranet will be made up by telephone links, much more electronic cabling is at present needed in our courts, particularly in judges' rooms, and the necessary preparatory work is already underway. During the last long vacation over a million pounds were spent on installing backbone cabling in the Royal Courts of Justice where I work. I hope that work may be finished in six months time, before the new legal year starts in October. Once an Intranet is in place, FELIX will be a thing of the past, and we will have an up to date communications and messaging system, backed by all the necessary closed conferences we need, not only to assist in communications between judges, but also in communications between judges and court staff, and vice versa.

In January the Court Service approved an IT Strategy Document to which Lord Saville and I were encouraged to make a major contribution when it was in its final draft stages. We are both satisfied that in its final form the document reflects the strategies we have jointly agreed through the new JTG framework. Parts of it we might have written ourselves: perhaps we did. We will also be involved in monitoring progress towards achieving these strategies, so far as judges' needs are concerned, on a year by year basis, while helping to rewrite them each year to reflect new visions and the benefit of new experience.

The Court Service is now engaged in preparing an equivalent Information Strategy, for which it has again promised to engage in a genuine consultation process with the judiciary and other court users. Last October their library and information department was brought under the direction of their IT director, a move which reflects modern realities and which will make it very much easier to plan to meet future information needs, as Joyce Plotnikoff and Richard Woolfson recommended, in an integrated way. At the moment judges with CD-Rom drives are being supplied with regular updates on CD of the Supreme Court and County Court Practices - the White Book and the Green Book, the All England Reports and Archbold, and every judge on FELIX can access the summaries of very recent decisions produced by New Law Publishing. I am sure that we will be moving towards a future in which greater reliance is placed on on-line legal database services than CD-Rom technology.

Because we are planning in three different timeframes at once, we have not lost sight of the vision of the paperless court which is round the corner in Singapore and in some American jurisdictions. For the time being, one step at a time is enough for us. The first stage will be to establish back-office case-tracking systems which procedural judges will be able to access from computers in their rooms or chambers. Then we will move on to judicial case management support systems, which will enable judges to obtain the information they need for effective judicial case-management by IT rather than manual means. Over the horizon are document management systems, by which the papers in a heavy case or a heavy appeal will be supplied on disc or CD-Rom, and judges will be able, by use of hypertext links and appropriate search facilities, to find their way round the papers, and the relevant cases and statutes, far more quickly than they can do now. And then we will be moving to a world where sophisticated court users will be filing their pleadings and affidavits and skeleton arguments on-line, and court staff will be scanning those documents, when produced by other court users, into the court system, so that they will be instantaneously accessible to every judge or member of the court staff who needs to have access to the court file. Eventually, we may move to a world where no document at all arrives at court in hard copy, but that world is still some way down the track and I am not sure if I will live to see it.

In this talk I have concentrated on fairly basic stuff. We are bound to see the development of video-conferencing and telephone conferencing from courts or chambers or judges' rooms as these technologies become cheaper and easier to use. In a world where the lay user of the courts is becoming more and more dismayed at the delays and costs involved in court proceedings, it is absurd to bring lawyers and their clients long distances, or to have to wait while everybody involved in a case can be all together in one place, if certain types of court business can be achieved more efficiently at long distance. At present there is a good deal of cultural resistance to change, but when solicitors start to learn that they

will not get their costs allowed, even on a solicitor and own client basis, if they use old-fashioned ways of conducting court business, perhaps that resistance may start to melt away. Judge Tony Cotter, the chief administrative judge of the US Nuclear Regulatory Commission, who hosted our IT session in his courtroom in Maryland last May, told us that he expects to conduct an 18-month inquiry into the licensing of a nuclear waste dump in the Nevada desert entirely from his courtroom, with evidence being given by videolink from every state in the Union. He also told us of his belief that video-recording, which is not so labour intensive, may well be the courtroom reporting technology of the future.

In England the Court Service is planning to explore the benefits of a variety of different technologies to support the hearing of cases in the courtroom. This initiative, which will be known as "Courtroom of the Future", will provide for the careful evaluation of different technologies in a controlled environment. The Court Service will call on EDS to help with this initiative as appropriate. The LiveNote system of court reporting, where the judge and the parties have a running record of the evidence available to them within seconds of it being given, has already proved itself, and it is in increasing use in major inquiries, and in major civil litigation and criminal trials. In the recent Maxwell trial, which was conducted in a very wide modern courtroom, Press and public also had access to two monitor screens, one of which showed the witness's face when it was not being used to display a document being shown to the witness, and the other was being used to show the LiveNote transcript. Now that E-mail is much more popular, it is possible to use it to receive witnesses' proofs of evidence and parties' written representations in public inquiries. It is also now possible to make the inquiry transcripts available for all the world to read on an Internet website, as is currently happening in the case of Lord Justice Phillips's BSE Inquiry.

And now I have moved on to the need to bring court users into the network of systems servicing the courts. A lot of work has been done on this in other jurisdictions in developing common standards and protocols for the exchange of information electronically, and I know that the two longterm planning groups which I have mentioned will be addressing these issues. Ideally the Court Service and judicial Intranet (and all the different closed conferences which it would contain) will become the inner circle of three concentric circles.

The middle circle would include not only members of the other agencies who do business with the courts - police, probation, prison, the Crown Prosecution Service, justices' clerks and the magistracy and so on - but also 10,000 barristers, 60,000 solicitors (and their 200,000 supporting staff), and a whole mass of people and organisations who need to do business with the courts and to have the opportunity to do so by a convenient electronic means. Appropriate controls would have to be devised to enable them to pass information to those within the Intranet, or to obtain information from within the Intranet, on payment of a charge, where appropriate, to be extracted and receipted electronically.

Most lawyers would like access to a secure electronic mail service, and unless an integrated approach is adopted, such services will just grow up haphazardly. The user will then have to move from one communications system to another for different purposes. This would be awkward and unnecessarily time-consuming. Standards will of course have to be created, and a system of certification devised to ensure the accuracy, authority, and integrity of the information which is being supplied. The cost of creating the networks could be recouped from the charges levied for their use..

The third circle would embrace members of the general public, to whom legal information (for example, in the form of systems containing legal guidance that are available through information kiosks) will be much more accessible once these new means of communication are available. Here there will not normally be the same need for security controls, since the information will be available for all who wish to have access to it, although there is no reason in principle why charges should not be made for some types of information, since costs will be incurred in providing it. I understand that the Court Service is already engaged in discussions with some local authorities about pilot kiosk projects, and the demand for these services is bound to grow. What is already being posted on the brand new Court Service website in terms of the reproduction of simple leaflets for users of County Courts bodes very promisingly for the future, particularly when more and more of will be able to access the Internet from our digital television sets at home..

I will finish by going back to where I started from. In England and Wales we are at present a long way behind other comparable jurisdictions in the use we are making of IT in the courts. Catching up will not be at all easy, but because we have been slow starters we can learn from the mistakes of others, as well as from our own mistakes. I believe that over the last six months, with a very impressive amount of help from the Court Service and the Lord Chancellor's Department, we have put in place a form of integrated planning machinery which bodes very well for everyone who is impatient to see greater use made of IT in our justice system. The future looks distinctly bright.