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The Criminal Courts and the Citizen

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ABSTRACT

Moving away from some of the negative applications which the law commonly associates with the Internet (such as the trafficking of pornography or "cybercontempts"), this paper attempts to explore more positive ways in which Information and Communication Technologies in general and the Internet in particular can be harnessed in the cause of the justice process. It is discovered that there is increasing interest in ICTs on the part of the relevant government departments, and the actual and potential impact of Internet usage by the courts is explored under the following headings:

- a better working system for the servants and the "customers" of public justice through improvements in the quality of the process.
- benefits to the outcomes of justice, including boosting the denunciatory function of justice
- active public participation in the justice system
- education of the more passive wider community
- an alternative forum for dispute resolution

Consideration is also given to the efforts of "outsiders" who are seeking to make use of the Internet in regard to legal matters.

The Criminal Courts and the Citizen

Introduction and setting

At its core, the criminal justice system involves information networks applying their expertise in response to inputs from agencies within the system and from the public at large. Although one traditional product of the system might be the prison mail bag, the assembly line of justice is more about the manufacture of intangibles such as guilt or innocence rather than consumables. This emphasis upon information generation, processing, transmission and networking makes the process particularly appropriate for the application of information and communications technologies (ICTs). The technology can potentially improve both the qualitative and quantitative aspects of the system's capacity.

In reality, the application of ICTs in courts processes within England and Wales has made relatively slow progress, not only because of the usual cultural, political and financial obstacles, but also because of deeper concerns about the negative impacts of ICTs. They relate to the fact that the new channels of communication provided by the Internet easily transcend national boundaries (though are

not universal), and this transnationality is one feature which marks out the Internet as different at least in degree if not in kind from pre-existing mass media. Another important feature is instantaneity, which both increases the likelihood of unreflected speech and at the same time decreases the opportunity for regulatory intervention. Perhaps the other accentuated characteristics are multiple linkages, ease of access, low establishment costs and interactivity, all of which tend to blur the distinction between publisher and audience so that users can easily switch between either mode. The effect is the encouragement of amateur legal commentators who are not versed in media law whether contempt, defamation or otherwise. The values affected involve both free speech and fair trials. On the one hand, there are individual and collective interests in freedom of expression. That there is a free speech interest, especially based on the argument from democracy, in what happens in the courts cannot readily be denied since it arises in at least three ways. First, courts are a fundamental state responsibility as they dispense state laws and justice. Next, there may be added public interest in discussion where the state is one of the litigants, as usually it is in regard to criminal prosecutions. Thirdly, even litigation brought between private litigants may air matters of public concern. On the other hand to these pressures towards publication and discussion lie the individual and collective interests in upholding the fairness of trials and respect for the judicial system in general, both of which may be damaged by unregulated speech.

The accentuation of the negative impacts may now be on the decline, and a more positive attitude to ICTs was much in evidence in the recent Lord Chancellor's Department's *Consultation Paper: Resolving and Avoiding Disputes in the Information Age*. The official view, at least in regard to the civil courts in England and Wales, is 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. No one will be exempt from these changes."

These sentiments are expressed not in connection with government administration, industry or education, favourite targets for governmental ICT strategies, but in connection with the sedate and conservative courts system. On closer inspection, this technological pull is not entirely new but began as long ago as the *Roskill Report on Fraud Trials* in 1986. Much of the recent attention has been focused on the civil process, notably by the *Woolf Report*, which expresses the belief that ICTs will not only streamline existing systems and processes but will also become "a catalyst for radical change as well."

The reasons for singling out for special attention fraud trials and civil process are not hard to discern. Civil process is traditionally more paper and dialogue based than criminal justice, so there is greater room for the intervention of ICTs. Fraud trials involve complexity both of evidence gathering and presentation, as well as contexts which might be very unfamiliar to the person in the jury box. Yet, there are still pressures to apply ICTs in more run of the mill criminal cases. There is concern for the treatment of defendants and increasingly victims - delay and confusing or aggressive treatment at trial are considered to be unacceptable. Above all, perhaps, there are concerns about costs. The courts are subjected to the New Public Management precepts just as other "services" of government.

Having marked out as the territory of this paper positive rather than negative Internet impacts, and criminal rather than civil courts, the third aspect of the delineation is to distinguish the use of ICTs generally from the relevance of the Internet. ICTs aside from the Internet have certainly made a major impact on criminal justice, though there is still room for further improvement. The Lord Chancellor's Department's *Consultation Paper* sees ICT support for court processes as assisting with multi-media electronic filing and presentation, case management unified between agencies, and litigation support systems.

The Lord Chancellor's Department has stated its ICT policy towards magistrates' courts as follows:

"The Department is committed to the provision of standard computer services for use in all magistrates' courts. These services will be provided through partnership with the private sector under PFI. The main contract is due to be signed in June 1998. The ICT services will support the efficient operation and performance of magistrates' courts and enable a more effective means of delivering information across the criminal justice system."

To date, the Magistrates' Courts Standards Systems (MASS) has achieved limited interconnectivity. As a result, the influential *Narey Report* continues to express concern about delay at this level and recommends electronic data transfer between CPS and police as an important reform.

In the Crown Court and Court of Appeal (Criminal Division), the Court Service has a more developed ICT strategy maintained by its Information Services Division which is under the control of the IT Sub-Group of the Court Service Management Board (CSMB). The content of the strategy is informed by meetings with the judiciary, through the Judicial Technology Group (JTG) and with other interested parties through the Information Technology and the Courts Committee (ITAC). Future development is to include "...electronic communication with the professions and the public, with more information being provided both through the Internet and through suitably managed and secure access to Court Service systems." Applying these ideas to specific courts, most attention has been paid to the Crown Court, where the CREST system (an office program for back-room staff) dates from 1991 and has been upgraded as part of the CCS contract.

The effective interfacing of ICTs within different legal process agencies represents a major challenge, both in civil and criminal justice sectors. The task in regard to the latter has been entrusted to the Committee for the Co-ordination of the Computerisation of the Criminal Justice System (CCCJS). But its operation is far from comprehensive. For example, the development of police data handling systems, by far the most important in the criminal justice system, has never been within its clear purview and is now the province of the distinct Police Information Technology Organisation (PITO).

Turning from ICTs mainly in court administration to ICTs in trial process, the Lord Chancellor's Department's *Consultation Paper: Resolving and Avoiding Disputes in the Information Age* sees technology for judges as including:

"...document creation, electronic communications, document management, retrieval of external information, internal information resources, case management, courtroom technologies, and promulgation (putting their decisions on the Internet and on a judicial Intranet)"

Thus, after years of neglect and underinvestment, the "front-office" judicial staff have been issued with around 420 personal computers by the Court Service to judges from 1996 onwards under the JUDITH ("Judicial IT Help") project, though there seems to be no plan to assist the 30,000 or so magistrates. Access to ICTs is meant to confer a host of benefits for the judiciary. It allows the efficient accessing or inputting of data in the courtroom, including the taking of benchnotes from which directions to a jury, a judgment or a sentence can be compiled, dramatised by Judge Ito in the OJ Simpson case. A further important task identified for judges is the proactive formulation of case plans and their execution. Even the humble personal laptop computer can facilitate easy access to court documents from home or while on circuit. Litigation support technologies include document indexing, review, search and full text retrieval and document image processing to assist with discovery and trial.

Yet, the results so far are mixed and the Lord Chancellor's Department's *Consultation Paper* recognises two problems:

"The first is that not all judges who want technology have yet been equipped, although plans are in hand to overcome this shortcoming. The second is that many judges will not want to use ICT even if

it is available. There is scope here for firmer targets. It could be stipulated that, within five years, every judge in the land is expected to use IT in his or her daily work."

Whether this big stick materialises remains to be seen. It is in any event be disappointing to hear that the judiciary may be forced to take up ICT strategies on the government's terms. The channel of communication provided by the Internet could be an important safeguard for independence - allowing the judges to explain themselves to the public without the spin of government or even the self-serving interests of the media interfering with the message.

Even if not all judges are self-motivated to take up ICTs, there may be pressures from other court users which force them to keep pace. For example, there is an increasing use of ICT by solicitors and barristers and the possible linkage of courts to professions as already envisaged by the Court Service:

"...in due course, appropriate information on the Court Service Intranet should be opened up to the professions and the public, once data protection and security issues have been resolved. Electronic data exchange services will be developed and piloted with the intention of providing better communications with court users, the legal professions and other Government agencies. As we make it possible for documents to arrive in courts in an electronic form, we expect to move towards the "paperless office", and this will require the development of new electronic document management and records management systems."

The application of ICTs to the litigants in court could include the presentation and computer aided transcription (CAT) in real-time of evidence. Technologies could also be used to facilitate the evidence-giving of litigants, for example, to screen juries or witnesses through video-conferencing or other linkages. This form of testimony is allowed in some circumstances under section 32 of the Criminal Justice Act 1988, and the use of ICTs can bring enhanced scrutiny to the process, though does reduce the courtroom's atmosphere of solemnity and threat which are part of the pressure on the witness at least to take the proceedings very seriously, if not to tell the truth. The requisite technology has been installed in a number of Crown Court centres.

Having now set out the technological architectures and cultures which apply to the criminal justice system and especially its courts structure, attention will now be turned to the impact of the Internet. The examination in this paper is split into two parts: actual and potential usage by the criminal courts themselves; and actual and potential usage by "outsiders" in relation to criminal court processes.

Actual and potential Internet usage by courts

From the viewpoint of court administrators, judges and other legal professionals, the online court can perform a number of very valuable functions. These will mainly revolve around providing a better working system for the servants and the "customers" of public justice through improvements in the quality of the process. There are also possible benefits to the outcomes of justice, including boosting the denunciatory function of justice. Other possible uses are directed more at the public, such as allowing active public participation in the justice system and educating the more passive wider community. Finally, the Internet may provide an alternative forum for dispute resolution.

Improvements in the quality of the process

This objective is not just confined to the eradication of undue delay but also seeks to bolster the knowledge base of lawyers and the ways in which experiences can be shared. Of relevance here is the JUDITH project mentioned earlier, which is to allow access to the judicial communications network known as FELIX, which comprises open and closed conference facilities, a messaging system including the ability to transfer files. The provision of word processing, email and

conferencing facilities has been agreed between the Court Service and the Judicial Technology Group (JTG); it is also planned that a pilot project to evaluate the benefits to the judiciary of using the Internet will be taken forward. This work will form part of the Government Secure Intranet (GSI), which will eventually replace the role of FELIX in providing email and conferencing facilities for all judges. So, all judges are to receive computers, and training is to be offered in consultation with the Judicial Studies Board. ICTs in the hands of judges could also allow access to new knowledge as well as the sharing of it. One example might be a greater reliance upon legal research through LEXIS. This could eventually lead to an adjustment to the style of judgments, which become more dependent on reasoning and less on the inherent wisdom, pragmatism and authority of the judge, an approach which ties in with the expectation of the Lord Chancellor Irvine in human rights cases, where teleological reasoning is expected to play a greater role. It is possible that what counts as precedent could also change. Internet technology allied to other forms of ICTs could ensure that most cases from Crown Court upwards could be recorded and reported.

Another form of knowledge-based development could be the use of local area networks to create localised guidelines and practices, for example in regard to sentencing. These might be especially relevant to magistrates courts, though the new managerialism has often been an excuse for the stifling rather than encouragement of local initiative.

The ultimate achievement of ICTs would be the replacement of the judge with some kind of expert-system software which reaches smart decisions in response to the input of sets of data facts. It has indeed been suggested that the development of information technology will have profound impacts upon how legal professions deliver their services to clients and potential clients. As legal information becomes readily accessible, it is said that the role of the lawyer will become less the demonstrator of legal texts or dispute resolver and more legal risk assessor and knowledge engineer. There may be at least two flaws to this thesis. One is that the inherent complexity and open texture of many laws mean that mere accessibility and knowledge do not, without the training of a lawyer, allow sound interpretation according to legal science. Law in the real world is not about "rule-based, deterministic decisions" but is an interpretative life science which requires weighting and judgment between values based on moral precepts. Given this normative setting, it seems most unlikely that any Internet-based program could either achieve the subtlety required or avoid undue legal conservatism by always settling in conventional terms. The other doubt is whether the law is, or will ever be, electronically available to the citizen in the street. Such an objective is very difficult to achieve, given the rapidly and constant changing composition of law, especially in a common law, uncodified system.

As well as impacts on justice professionals, the Internet could be used to reach out to a wider clientele and in that way improve the provision of justice within the system. Lord Woolf certainly saw this potential of ICTs:

"...technology could provide the basis for information systems, available in court building and other public places, to guide the public and court and legal matters....Given the projected level of usage of the World Wide Web, this should be one of the preferred means of delivery of information for the public. Additionally, I am impressed by the idea of using more general community information systems for the delivery of legal guidance."

The Court Service already produces Internet pages with organisational and policy information and a scattering of court judgments. Another current source of information on the Internet is Smith Bernal, the official shorthandwriters, who are 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. Following review, it is proposed that all Court Service related material will eventually be available on the Court Service site. As far as LCD is concerned:

"Future plans include providing Daily Lists from other divisions of the High Court, and increasing the number and variety of judgements available on the site. It is also intended to put onto the site a large number of the most commonly used court forms and information leaflets, which would help small businesses, the professions and organisations such as Citizens Advice Bureaux.."

However, these grand plans also cause concern, as the Court Service has admitted that "there has been no clear policy for co-ordinating publication of information...and this could lead to more fragmentation and an undue drain on Court Service resources."

The Court Service does envisage the eventual use of intelligent kiosks to provide members of the public with a simple interface for requesting and providing information. In this way, "Kiosks are expected to support business strategy by improving the quality of service offered to the public and by reducing the level of routine and repetitive work being carried out [by court staff]." Members of the public and lawyers should be able to obtain or file court documents through the Internet which could be utilised for electronic data exchange. All these possibilities are strongly endorsed by the Lord Chancellor's Department's *Consultation Paper: Resolving and Avoiding Disputes in the Information Age*. In this way, the law could become more available to the "latent legal market". This will leave private lawyers to cater for the wealthier sector of the legal needs market, though the implications of opening up in this way may be both palatable and unpalatable. Certainly, such an approach would eventually have radical impact on what constitutes "the court", since in the future:

"The marketplace for virtually all goods and services, including justice, [will be] the network itself, cyberspace. The courts' physical forums [will be] steadily, inexorably disappearing."

Other jurisdictions have already started along this path. They include in Arizona "QuickCourt", which is an interactive multimedia computer system found in court and public library buildings that offers information and instructions to litigants and produces legal documents for use in court cases.

The denunciatory function of justice - naming and shaming

The advent of a policy of naming and shaming, whether with felons, failing schools or ineffective hospital surgeons, can offer yet another facet for Internet use. In the case of the criminal justice system, changes of policy have so far been related to the readier identification of juveniles and young persons. In addition, police forces in a number of localities have also sought to encourage publicity for certain categories of adult offender, such as those involved with prostitution. These are often relatively low level offences, which might otherwise escape the attention of newspapers. But the posting of names and photos on the Internet, a record which certainly lasts longer than a newspaper and reaches a much wider audience may be a further disincentive to transgression. An example of this policy in action is the public notification pages of the police of St Paul, Minnesota, which even includes arrestees, and is billed as a "direct response to the fears, anger and demands expressed by law-abiding men and women".

Active public participation in the justice system

The conflict between community involvement in, and professionalisation of, the criminal justice system provides the organising theme for this topic. This conflict has become particularly acute in England and Wales, where trends of specialisation, technological sophistication and managerialism have tended to marginalise the role for lay persons within the environment of criminal justice.

These trends can be evidenced by diminished lay involvement in the judiciary, for example, through an increase in professional ("stipendiary") magistrates. Lay involvement in trial process, focused on the role of the jury, also seems to face official hostility in the UK. For example, there are also

concerns about the viability of juries in dealing with complex frauds.

Problems such as these could be eased by informational campaigns which could include the medium of the Internet. Thus, it would help if the public was more familiar with the local courts and their processes. Becoming a juror or a magistrate might seem less extraordinary or difficult. In regard to the magistracy, a broader knowledge in this way might also avoid the "self perpetuation" of particular social strata, especially the middle class who "provide the backbone of the Bench and form its dominant culture". It is part of the characteristic of local justice at magistrates' court level is meant to be the accessibility of the local court house. This accessibility is diminishing as court-houses are closed. But if the physical entity becomes more remote, its virtual presence can become more readily accessible and to a potentially greater audience than the relatively few members of the public who have ever bothered to sit in a public gallery. The two can be linked - the Internet could be used to advertise open days in the physical court buildings.

In summary, the Internet could become the virtual welcome mat for the public. It could provide citizens a history of the court, details of its location, pictures of judges and personnel, audio clips of welcome and explanation and, above all, an invitation to participate.

Educating the passive wider community

The courts may be the third and least dangerous estate, but they are nevertheless part of the state and it behoves all democrats to take note of what is being transacted in their name. So, how far can ordinary citizens inform themselves as to the courts and their business and personnel via the Internet? Potentially, the answer is a great deal, but the reality falls far short of that point.

Consider, for example, the availability of the basic building blocks of the law - the statutes and cases. Lord Woolf complained of the "allegedly excessive costs" levied for permission to reproduce primary legal source materials such as statutes. Since 1996, the position has significantly improved. Some statutes are now available - from 1996 onwards - in the web site of the Stationery Office. But pre-1996 statutes are not available, and the presentation of contemporary individual statutes in this segmented way is of limited value. It takes no account of important factors such as commencement dates, secondary legislation, later amendments or case interpretation. As for case reports, House of Lords judgments have become officially available, plus a scattering of selected cases from other tiers of the court structure. Smith Bernal allows access to others, though this is a private site and not well advertised. Official concerns about copyright seem to be diminishing, but there is still no deadline for an official comprehensive and consolidated statute book, despite the plans for its birth around 1992. Much more ambitious systems exist elsewhere, including, for example the Australasian Legal Information Institute (AustLII), a jointly operated "research infrastructure facility" of the Faculties of Law at the University of New South Wales and the University of Technology, Sydney.

With these precedents in mind, it is obvious that, in England and Wales too, the Internet could "change the distance between the Court and the public." An altered stance may in any event become necessary with the passage of the Human Rights Act and the further juridification of political and social life which means that "the judicial system will serve as a forum for civic discourse about the norms and values that underlie those disputes and will play a significant role in building or reshaping the social, economic, and political institutions involved in them." In this way, technology and modes of communication can be (re)constitutive of the nature of the institution, including by encouraging a wider range of evidence and advocacy becoming relevant at trial. Admittedly, the Internet might not be the only way of achieving the goal of reaching out to a passive and ignorant public. An alternative is shown by the American-based cable channel, Court TV which commenced operations in 1991. This tends to give greatest prominence to current reporting of well-publicised cases, especially those being reported on the cable TV side of the operation and so does not present an entirely balanced picture of life in the courts. Yet, the prospect of a United Kingdom equivalent seems remote. Successive senior judiciary have turned their face against televising of the court proceedings.

Nevertheless, the judges have recognised the value of having some channel of communication within their own grasp, and the Internet could afford access directly by the public to such information. Indeed, the Internet could provide a third way to the debate about televising or not televising. The technology offers the possibility of real time transcription which can then be published to a wide audience at low cost. This strategy has several advantages over live broadcasting (assuming livecasting is not utilised). It avoids the perceived intrusiveness and distraction of television. The emphasis is on what is said in court rather than, say, the colour of the defendant's eyes or the shortness of the prosecutor's skirt. The text (or at least the site) could also be linked to wider legal information which could provide explanations of terms and processes in more general terms. The second advantage is cost. Specialist television channels such as CourtTV would probably not be viable in the UK since there is not sufficient volume of cases of interest to the public. It is notable that the Parliamentary Channel likewise failed to survive as an independent operation.

An alternative forum for dispute resolution

There is great interest in alternative dispute resolution on the civil side. Almost as strongly in the criminal process, the victim support movement has prompted the questioning of traditional adversarial justice which is seen as often exclusionary from the point of view of the victim. In any event, boundaries between civil and criminal are breaking down. Here again, the Internet may provide a possible model which can transcend the simple replication of traditional paper-based processes in a computerised environment. In this way, "the courtroom [becomes] only one component of a much greater dispute resolution system", all served by the same technology. Perhaps the best known example is the Virtual Magistrate. Another such organisation, also starting in 1996 and also free of charge, is CyberTribunal, based in the Centre de recherche en droit public at the University of Montreal.

These initiatives, which admittedly more often substitute for a Sysop's decision than for formal litigation, have had limited impact. The Virtual Magistrate scheme was unable to find ISPs who would include resort to binding arbitration in their customer contracts, and parties would not agree to be bound in this way after a dispute had arisen. Similarly, CyberTribunal found it difficult to bring respondents into an ADR procedure, but there is some hope that the concept will be taken up by "CyberMerchants", as commerce on the Internet and disputes arising from it becomes more common. One must assume that, until then, complainants can more often than not obtain satisfaction in terms of their private interests from either commercial Sysyops (in terms of disputes about libel and other forms of offence) or can act through normal consumer channels in regard to purchases.

Breaking down the public-private divide along similar but more authoritative lines, the Court Service or the police could offer standard forms and advice for private mediation. In this way, the Court Service becomes multi-layered with different doors for different purposes (and possibly as importantly, at different prices). The Lord Chancellor's Department is sympathetic to these ideas on the civil side. But the avoidance of formal courts brings dangers. If courts, especially local courts, are to appreciate and reflect local concerns and outlooks, this almost certainly requires some public expression of the perceived culture of the locality. And there is value in the solemnity of the court setting in terms of truth giving and truth finding.

Overall analysis

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 exclusivist 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. As was said by the European Court of Human Rights in *Worm v Austria*:

"...the courts cannot operate in a vacuum. Whilst the courts are the forum for the determination of a person's guilt or innocence on a criminal charge..., this does not mean that there can be no prior or contemporaneous discussion of the subject matter of criminal trials elsewhere, be it in specialised journals, in the general press or amongst the public at large"

But this wider perspective tends to be lost in the New Public Management approach largely taken to date. Though the criminal courts have not yet been audited in respect of the application of the Internet, this task has been undertaken in regard to the civil courts. The aims of the Lord Chancellor's Department Consultation Paper, *Resolving and Avoiding Disputes in the Information Age* appear wide and balanced but there is ultimately an overwhelming customer-service orientation, which means that: "In the future, however, there is the possibility that IT will eventually enable legal service to change from being a form of advisory service to a type of information product." This runs the danger that the customer is king and will lead to even less being known to the public about court transactions and even less public involvement in the court process. The more the courts are conceived in terms of being a service at the behest of the private litigant, the more the consumer litigant will question the public aspects of the service. Conversely, the *Consultation Paper* expresses very little concern for the non-consuming but onlooking public. They are hardly recognised in the Paper and are problematic when they do fleetingly make an appearance:

"Future use of digital audio recording in courts opens up the prospect of the live, digitised sound from a hearing being transmitted back to a solicitor's office for study and research. In high profile cases an audio feed might eventually be made available over the Internet, or via a private service running over the Internet. This may also prove possible with video in the longer term, but this would raise even more issues than audio transmissions."

Actual and potential Internet usage by "outsiders"

The production of a more informed citizenry is as much the responsibility of that citizenry as it is of the state. So, how have non-state institutions taken up this challenge?

In the US, the populist 'LECTRIC LAW LIBRARY has the goal of allowing easy access to law-related information and products all free of charge. Overall the pages are often informative, lively, and engaging, though at the same time, the humour can be distracting and the coverage patchy, as the site often relies on web materials obtained from other sources rather than generated internally and systematically.

As for the UK, the British Council have produced a very short overview of the British legal system, but the only substantial attempt to use the Internet to engage with the public in regard exclusively to legal matters is a site entitled, UK Law Online, operated through the CyberLaw Research Unit of the Faculty of Law at the University of Leeds. This project, which commenced in 1997, took up as its main object the raising of public awareness, appreciation and understanding of the English, Scots and Northern Ireland Legal Systems by use of the medium of the Internet. The project has involved the creation of a world wide web site in order to educate the public as to the nature and impact of their legal system by providing complex legal information in a comprehensible way. Much of the material consists of explanations - the site goes beyond the provision of segmented primary data.

Some of the limitation of this private enterprise path to public legal education must be admitted. One pressing concern is lack of finance. The initial year was sponsored by the Hamlyn Trust, but that

income has now ceased, consequently the rate of progress must relent. Yet, despite the modest nature of the site to date, it does indeed serve a "latent legal market" of a kind predicted by Susskind. However, it is important to note that it acts in the service of democratic empowerment rather than commercial niche-marketing.

One would expect that major sponsors of legal education would be the legal professions. One would suppose that to inform the public of the rights and entitlements would be good for business if not the civic soul. However, the records of the professions is very disappointing in the United Kingdom. The General Council of the Bar makes no mention of any interface with the public, while the Law Society of England and Wales confines its education to a 500 word description of the English legal system, though it does perform a more civic role of law reform (though whether on behalf of its members or the public may be debated).

Conclusions

Before complaining about the lack of progress by the courts in taking to the new modes of communication, it is worth entering some caveats. One is to challenge the assumption that ICTs are bound to deliver the expected benefits. Their use in organisational change is unpredictable, as the social contexts into which they are inserted can profoundly impact on exploitation.

Conversely, their potential to achieve a powerful impact, bringing about the "dematerialisation" of court process, may not be as desirable as the advocates of change may pretend. The saving of the rain-forest by the advent of the paperless court file is one thing, but the abolition of "old style, face-to-face hearings", even on appeal or rehearing, is quite another. The point is not simply about how well testimony and real evidence can be effectively tested in a virtual setting, a point raised earlier. Rather, participation and observance are important rights which signify the autonomy of the defendant and the legitimacy of public oversight, as has been recognised under Article 6 and 10 of the European Convention. Equally, the idea that witnesses and the jury could operate more efficiently if dispersed (presumably to the costless site of their own abodes), not only raises vulnerabilities in terms of contamination by attention to extraneous evidence, intimidation and the insecurity of communications, but ignores the way in which personal interaction may assist in the verdict-making process. So, orality remains not just a "ritual" but a central feature of the adversarial process, both in court and in the jury room, and the distancing or dissolution of the court-house can be seen to result in the diminution of justice as well as a silencing of civic expression. In addition, the complexities and costs of the new technologies may threaten the equality of arms between prosecution and defence with the result that the latter may be unable to explore and expose the defects in the former's construction of events. Furthermore, the uncoordinated use of technology may confuse the jury and increase costs and delay. Conversely, linkages between different databases held by criminal justice agencies, as propounded by the inter-agency Committee for the Coordination of Computerisation in the Criminal Justice System, may threaten rights to privacy.

In terms of substantive goals to be achieved in England and Wales, what at first sight appears to be radically empowering policy developments turn out, like many other parts of the New Labour reform agenda, to be more about modernisation than democratisation. This may be true of development of ICT policy in general, and it certainly seems to be true of ICT strategy in the courts, as is reflected by the narrowly conceived principles on which the Court Service's overall strategy is based:

"...to modernise administrative procedures in the Crown Court and to improve links with all the other agencies involved in the criminal justice system. Improving procedures will result in much-enhanced efficiency and higher quality of service."

Without a single reference to accessibility, democracy, participation or even justice, this is the language of Arthur Anderson, not Thomas Paine. At a time when pressures are often for greater seclusion of the criminal process and certainly for greater technocratisation and managerialism, the

Internet could counter-balance some of the exclusivity of the process. It could provide concrete foundations for public debate and perhaps change that is even more radical and participatory than Lord Woolf and other commentators have predicted.

BIBLIOGRAPHY

Reading:

Katsh, ME, *Law in a Digital World* (Oxford University Press, Oxford, 1995)

Mander, M., The JUDITH Report (1993) 1 *International Journal of Law and Information Technology* 249

Raine, J., and Wilson, M., *Managing Criminal Justice* (Harvester, Hemel Hempstead, 1993)

Susskind, R., *The Future of Law: Facing the Challenges of Information Technology* (Clarendon Press, Oxford, 1996)

Walker, C., "Cybercontempt: fair trials and the internet", (1997-8) 3 *Oxford Yearbook of Media and Entertainment Law* 1

Walker, C., and Akdeniz, Y., "Virtual democracy" [1998] *Public Law* 489

Wall, D.S., and Johnstone, J., "The industrialization of legal practice and the rise of the new electric lawyer" (1997) 25 *International Journal of the Sociology of Law* 95

Widdison, R., "Beyond Woolf: the virtual court house" [1997] 2 *Web Journal of Current Legal Issues*

Web pages:

Acts of Parliament, <http://www.hms.o.gov.uk/acts.htm>

Court Service Information Services Division, *Information Technology (IT) Strategy* (<http://www.courtservice.gov.uk/itstrat.htm>, 1998)

Court TV, <http://www.courtvtv.com/>

House of Lords' judgments, <http://www.parliament.the-stationery-office.co.uk/pa/ld199697/ldjudgmt/ldjudgmt.htm>

ELECTRIC LAW LIBRARY, <http://www.lectlaw.com/>

Lord Chancellor's Department, *Consultation Paper: Resolving and Avoiding Disputes in the Information Age* (London, 1998), available at <http://www.open.gov.uk/lcd/consult/itstrat/civindex.htm>.

Lord Justice Brooke, "IT and the Courts of England and Wales: the next Ten Years", (13th BILETA Conference: "The Changing Jurisdiction", <http://www.bileta.ac.uk/>, Dublin, 1998)

Smith Bernal court transcripts, http://www.smithbernal.com/casebase_frame.htm

UK Law Online, <http://www.leeds.ac.uk/law/hamlyn/>

Virtual Magistrate, <http://vmag.vcilp.org/>