

Computers in Court Trials - Is Australia Leading the way?

by Chris Priestley

The law is often accused of lagging behind the rest of the world in dealing with the problems caused by a rapidly changing society. This has never been more true than in the field of computer technology. Court room procedures traditionally involve the personal appearance of all parties for extended periods of time and massive paper-shuffling. They have resisted most attempts to take advantage of new technology, except the photocopy machine.

The winds of change are blowing. A recent Australian Institute of Judicial Administration¹ (AIJA) review of technology in the courts concluded that Australia was in line with the rest of the world in taking the first steps towards technology, but there was as yet, no universally accepted best practice model.

Technology can save thousands of dollars in court costs. A major criminal fraud trial in New Zealand (involving the Equiticorp group of companies) was finished three and half months short of a predicted nine months duration. This reduction was achieved through use of document control software, imaging and free text retrieval programs.

Reduced court times mean big dollars to clients and to legal firms as well as a reduction in delays in the court system. With legal charges based on time and top Queen's Counsels charging as much as \$8,000 per day, shorter trials can save thousands.

In recent times court cases have become more complex. Many lawyers are now coping with the debris of

the excesses of the 80s when complicated corporate arrangements generated millions of documents. Unravelling them in the interests of creditors and for the State and Federal fraud investigators has stressed an already overburdened court system.

One case now before the courts is rumoured to involve an estimated two million documents. The Court Book alone is expected to reach 60,000 pages. If lawyers and judges are not to be left bewildered, they must find alternate ways of tackling the tasks traditionally done with the aid of manual paper systems and teams of clerks.

The good news is that technology is available to meet the challenge. The conclusion of the AIJA report that there is no readily available system is already obsolete. There is an emerging group of sophisticated litigation support products.

Trial lawyers need technology support in four areas: searching and retrieving text, document control and classification, effective storage, and access to legal precedents, Acts and other reference information.

Courts may also make use of remote video-conferencing to hear witness testimony. According to the AIJA report, the most systematic attempts to exploit technology have been made by the South Australian and Western Australian court systems. Documents and transcript are loaded into relational databases and are searchable with predefined criteria including exhibits, litigation topics and events, transcript summaries and

some free transcript searches. The LIS system in South Australia relies on ORACLE and several trials in Western Australia have been conducted using TITAN.

Computers in court rooms

Computers rarely make it into the court room. The few examples of computer use do more to underline the paucity of funds allocated to court modernisation than show any significant improvement in court procedures from technology. Courts are just not funded to keep up with the latest technology. Since they cannot afford to join the game, courts have tended to respond to large cases by waiting for parties to take over the task of large scale data management.

The parties responses have typically involved big computers, the large capacity mainframes and reliance on Information Technology managers and centralised programmers to make the software decisions. Wang, IBM, Vax and Unix solutions are all typical of this genre. The main frame options have been expensive and have not provided a satisfactory solution for all users.

Over the last five years, computer installation patterns have changed dramatically. The trend has been to install PC based LANS (Local Areas Networks) and put more control in the hands of the users. When users control documents and build their own libraries they can get better individual support from their computer but, central management of the

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documents can become chaotic. Current thinking is to combine the flexibility of a LAN and distributed processing but impose some structure through the use of servers and new software based on a client server model. This has the advantage of rationalising shared data.

The test case - how big is big

The biggest case so far in Melbourne occurred last year in the Supreme Court. There were over 60 parties involved, and so many lawyers that some had to sit in the jury box. The lawyers used a mixture of technological support systems, sponsored by the various major firms involved.

The experience highlighted problems with court room computer use:

- How little flexibility was available from large databases running on mainframes
- The length of time taken to send a message back from the court

room to the firm asking for mainframe searches. A quick fix solution, installing telephone lines, added another level of complexity. Connecting to the mainframe via modem is still considered a black art even by the most experienced computer operators.

There were also problems during cross-examination. One barrister said, 'We must have something that is simple to use because the court room is a stressful place. Fiddling around trying to get something to work can be a real problem during cross-examination or if being pressured for an answer as instructing solicitor. Those embarrassing silences while papers are being rifled and filing cabinets opened and closed can be deleterious to the presentation of the evidence, particularly if it is a long trial and legal nerves are frayed.'

A barrister acting for the Bank of Melbourne, however, relied on his trusty Macintosh portable and by using a text retrieval engine called *Total Research*² and a database *Claris FileMaker*, became the source of court information for all the barristers.

That this approach was effective underlines the fact that simplicity, portability and flexibility are more important than the raw power provided by mainframe solutions. Lawyers need an elegant solution which is mouse driven, quick, able to manage large amounts of portable data and has a high degree of program integration. The emphasis on simplicity and elegance is driven by the demanding nature of the court environment. Lawyers need to be able to find anything at any time and should not need to worry about choosing a precise field because the software limits their capacity to search. The new products should all

be designed to meet these imperatives.

Uniformity - the next challenge?

The AIJA report recommended setting advisory standards for the use of various products in courts. This is commendable but, given previous attempts to standardise in any industry, let alone the law, it is doubtful whether this approach will bear fruit in the shorter term. There is also the difficulty of most barristers not wishing to give their opponents an advantage in having access to similar software.

The attempts by courts to impose standards for software to be used in the courtroom will inevitably founder on the pace of technological change. Standards never keep up with the best available solutions. Today's agreed standard becomes tomorrow's straight jacket.

People have to understand that computers are becoming just like biros. Trying to enforce a particular brand is not on. By the time standards are agreed I am confident that technology will have overtaken them and new technology will have made available solutions which are now unimaginable. ☞

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Footnotes

¹ Greenleaf G & Mowbray A *Information Technology in Complex Criminal Trials*, Australian Institute of Judicial Administration Incorporated, Carlton South, Victoria 1993

² Total Research and the products described in this article were written by Chris Priestley and others and are marketed by LAW2000 226 King Street, Melbourne, Victoria (03) 642 4022. A Windows' version of Total Research is expected in the new year.