

AN END TO PAPER?

Paper mountains in court are set to be downsized, says Lisa Burton

Imagine a scenario of a trial in which counsel, at the touch of a notebook computer, displays more or less instantaneously, a page on screens around the courtroom, which he or she has called up from a central database of the document images (like an electronic photograph of each page). Once the page is displayed, counsel uses the notebook to navigate through sections of the document to enlarge, highlight in colour, underscore, or display two pages. This scenario isn't far from reality and I would be surprised if you had not heard of this electronic presentation of evidence (EPE) before, even if you haven't used it yourself.



More than just a foothold

But take a step further with me and peep over the rapidly-approaching horizon and fly, drive or walk with counsel as he or she recreates the site or crime scene on the screens, possibly with sound effects or commentary, much in the same way as estate agents take prospective buyers through new apartments via the Internet. Many younger members of the bar, or those who are parents, will also be familiar with the visual impact of computer games and their variable player point of view. Nearly all of us are computer literate now, so juries too are already comfortable with graphic displays and visual aids. Fanciful to suppose all of this will be commonplace soon in our courtrooms, or should I say eCourts? Well no, actually. *Prima facie*, the technology already works and nearly all of it can now be bundled up into a portable package and used in every courtroom in the country. In my opinion eCourts, having gained a foothold over the last few years, are poised on the threshold of widespread use – the dam is about to burst.

In passing, think of just one added blessing: counsel no longer having to trudge up Fleet Street or Old Bailey followed by sweating pupils, clerks, and solicitors, laden down with mountains of ring binders on their way to the eCourt. CDs and online or wireless connections between the courtroom and chambers will save many an aching legal back – incidentally security fears about wireless are completely unfounded.

Long before the case might come to the any eCourt, defence counsel will have made cost-effective use of his or her time in an electronic disclosure suite, reviewing the evidence, as is shortly set to happen in one of the country's biggest and longest

running cases involving documents containing about ten million pages.

EPE was first used in the UK in the early 90s. Simply by calling up the pagination reference of the page required, images were displayed on screens around the court within one to two seconds, at least 75 times faster than the an average of two and a half minutes it takes a jury to locate the relevant lever arch file and turn to the correct page, paragraph and line, with inevitable loss of concentration to counsel's argument.

Lord Saville was widely quoted as enthusiastically endorsing the performance of the eCourt solution in the Bloody Sunday Inquiry, which started in 1998 and is currently drafting its final report. Lord Saville considered that the Royal Albert Hall would only just have had the capacity to house the inquiry had it been paper-based and that it would have taken at least ten years to complete. His view was that technology enabled a truly public inquiry that was 'spectacular' in its simplicity to portray the multifarious facts. Impressively, the Bloody Sunday Inquiry suffered less than half a day's downtime. A picture depicting the site in 1972 provided a 'bird's-eye' camera view from just about any angle. The witness could 'take a walk down memory lane' with Lord Saville, his fellow judges and the entire court as part of giving evidence.

At a recent seminar held jointly by my company, Legal Inc, and Fujitsu Systems, Wood Green Crown Court Judge, Peter Ader, said that cases using a new type of electronic presentation of evidence (EPE) system could cut up to a third off time spent in court in London this year. Mark Lucraft, a fraud law barrister at 18 Red Lion Court, thought, perhaps more importantly, eCourts could provide a better quality of justice because evidence in complicated financial transactions, which form the backbone of some fraud cases, can be more easily and read-

ily explained to a jury. Even those taking a more cautious view, such as Neil Dooley, Senior Solicitor at City firm, Lovells, expected to see more of this technology in courts over the next few years, albeit gradually, driven by cases where most of the documentation was generated electronically.

Complex fraud trials

Large complex frauds are just 2% of the criminal case traffic. The Crown Prosecution Service has, in the past, not been able to justify the cost of eCourt technology to present a simple, short case. But of the 98% of cases processed through the courts, a much higher proportion now relies on digital evidence in the form of CCTV and film footage. The Department of Constitutional Affairs recognises the

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benefits of eCourts, particularly in regard to public confidence in dealing with vulnerable witnesses and the current successful live video linking from court to prison is proven to make formidable savings on the public purse.

I am confident that the demand for eCourts won't rise gradually; rather it will rise as rapidly as the sheer volume of electronic evidence is currently mushrooming. Take one practical example: why restore emails from backup tapes - itself a potential dispute between parties over costs - only to print them all out for court bundles? Our IT-driven business and private lives are generating about 35bn emails a day, and rising. It is difficult not to think that in the future it will be only a minority of trial cases which do not use eCourts!

As always, the law is slow to change, although 2005 saw some

significant, practical advances in support of legal changes across the profession, both in a civil and criminal context.

A key achievement in the civil arena was the Litigation Support Technology Group's (LiST) draft Practice Direction for Use of IT in Civil Proceedings (www.listgroup.org), which was finalised and submitted to the DCA in the summer of 2005 for formal review and adoption.

Usefully cross-referenced and with Internet links to the Civil Practice Rules (CPR), the Practice Direction encouraged parties to reach agreement on the use of technology for document disclosure purposes and final presentation at court. It is clear in providing a basis of charging for, or sharing the cost of, the provision of electronic copies of disclosure documents and promotes the use of agreed formats and fields.

A protocol (Control and Management of Heavy Fraud and Other Complex Criminal Cases (www.dca.gov.uk) issued by the Lord Chief Justice in March 2005 provided clear instructions to prosecutors: It was no longer acceptable to invite defence parties to take the 'key to the warehouse' of unused material. He acknowledged that in trying to meet legal obligations there was a risk that the "problems of disclosure are intractable and have the potential to disrupt the entire legal process".

Recognition by the Lord Chief Justice and the Attorney General that a case can become completely de-railed by the sheer size and unmanageability was well received by prosecutors of large complex fraud and customs cases who, like commercial and litigation civil practitioners, are more likely to deal with millions of emails on servers seized under a search warrant than paper documents.

eCourt technology is not cutting edge: a typical solution often consists of a series of screens simultaneously displaying the evidence housed on a central server. The

system is usually operated by an independent third party who will act on counsel's command in calling up the correct exhibit. Counsel will need to expand his or her advocacy skills to ensure convincing presentation of evidence using eCourt technology. However, no amount of technology will assist a poorly prepared case and indeed, the danger for eCourt users is that technology can actually *compound* problems, if the evidence is in a mess and the case team has not given enough thought to the business processes and workflow in finding, storing and organising their evidence at the outset.

Recently Fujitsu and my company, Legal Inc, launched the UK's first portable electronic courtroom system, *eCourt Blueprint*, which can service up to 96 concurrent users in any courtroom in the land. Using a laptop, counsel can deliver a simple PowerPoint presentation to all, or a selected number of screens around the courtroom. Alternatively, the system can provide multi-media display, display pre-ordered evidence via virtual folders, and call random documents to display within a second. It can provide subtle, but state of the art high tech audio and simultaneous live video links. It will also capture and playback digital audio media – synchronising document display with live video feeds either in court itself or from a remote source, for example via video or Internet links.

A deluge of briefs

Counsel who master the presentation of visual and audio electronic evidence, using this sort of technology, and understand the importance of digital case planning and the benefits it can bring in reduced time and costs, could well find another dam bursting. And this one will bring briefs flooding to their door. ❖

Lisa Burton is a director of leading legal technology consultancy, Legal Inc, whose clients include a number of prosecution services, public bodies and law firms. Please see www.legalinc.co.uk for more information.