DINNER/DISCUSSION SUMMARY

"Can technology transform the justice system?"

Held at the Royal Society, 6 Carlton House Terrace, London SW1Y 5AG
Tuesday 11th December, 2001
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Baker Tilly
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In the Chair: **The Rt Hon The Lord Jenkin of Roding, Chairman**
The Foundation for Science and Technology

Speakers: **The Rt Hon the Lord Justice Brooke**
Lord Justice of Appeal
Dr Mike Lynch
Chief Executive Officer, Autonomy Systems
Michael Wills MP
Parliamentary Secretary, Lord Chancellor's Office

Lord Justice Brooke said there had been significant progress in equipping the judicial system with IT since the dark days of 1991, when the Foundation first discussed IT in the courts, but there was still an immense task ahead. The courts were miles behind the rest of the public sector, let alone the private sector, in use of IT. No courts were networked; there were few stand alone systems; the training of judges and administrative staff – many of whom were inexperienced - was wholly inadequate. The paper published on behalf of the judges in August had made this clear, and demonstrated the huge costs and delays that failure to use IT properly in the courts was causing. The problem was resources: spending money on justice rather than health, education or law and order, was a low priority for politicians, whose dogma was that funding for the courts should come from litigants themselves – a view that was unique to this country. However the scope for the use of IT was enormous – settling undefended cases; providing common information systems for criminal and civil work; electronic file and diary management; video conferencing; e-mailing; evidence by video link; audio recording. Only full use of technology could change the dismal record of delays and inefficiency and disproportionate cost in the justice system. But US experience showed that successful installation of IT needed strong judicial leadership; IT literacy for all those concerned in the system; knowledge management; and the ability to accommodate those who, whether through IT illiteracy or other reasons, might feel themselves excluded.

Dr. Lynch stressed the need to fit technology into a wider context. IT replaced the community-based knowledge, which had now disappeared. It did not stand on its own, or seek to replace the decisions which only individuals could make, but it was an invaluable source of information, enabling decisions to be made more quickly and cheaply. The fingerprint-matching scheme was a good example – it matched not one, but 50 likely fingerprints out of thousands to those of the suspect: the expert then had to make the decision which of those 50 was the match. He outlined the concept of unstructured content management, whereby the computer could capture information from a much wider range than from a database. But the technology must be user friendly: it must produce outcomes that were usable, which meant shrinking large volumes of information into a small amount that the user could absorb. The court room applications were many – research, case law linking, materials linking and searching, searchable transcripts, judgement delivery. But the return on investment must always be calculated – time saved must be set against additional resources needed to work the system. IT failures were often due to the system being too expensive to run; or not integrating with existing systems; or not exploiting "tacit knowledge"; or providing too general or too extensive information. While it is essential to exploit technology, the outcomes are always uncertain, frequently unexpected and often fewer and more limited than planned.

Mr. Wills drew an analogy from the effect of IT on a politician's life on what might be the effect on the justice system. He said that the use of E-mail had significantly affected the relationship between an MP and his constituents. Where once one got a dozen letters on an issue and could judge their provenance and weight, now one got hundreds of E-mails, because constituents and pressure groups found this form of communication so easy to use. The MP had to take account of public opinion in a way he had not done before, because it was now being communicated to him. The Burkeian view of the representative role of an MP had been killed. He accepted that much more extensive use of IT in the justice system would bring great benefits, and he was struggling to make available as much extra funding as was possible. He had been impressed by the use in Brazil of electronic aids to make instant decisions in traffic cases, and in blind bidding. But such uses raised wide issues. Could justice be done instantaneously, without pause for reflection? What happened to the presumption of innocence? What about the visual impact of seeing and hearing a witness? The basic principles of the justice system – fairness, thoroughness, consistency, and acceptability – must be preserved. The problem was where the balance lay in applying IT – where did the danger of eroding these principles exceed the undoubted help it could give?

Many of the speakers in the following discussion emphasised the great inefficiencies in the existing system, and the urgent need for substantial additional resources to bring greater use of IT into the justice system. There was a real danger that inefficiencies in the justice system could undermine the acceptance of the rule of law – a danger apparent in some east European countries. Speaker after speaker spoke of gross waste and delays through inadequate E-mail systems, lack of trained staff, ineffective computer equipment (in one case working only 75% of the time) and the absence of electronic filing and diaries. There was strong criticism of the system of funding through court fees, which lead to the absurd situation that the court of Appeal appeared "loss making" and that small litigants and the lower courts were subsidising the higher courts. But others stressed the problems, even if more funds were available. There was a major problem in a system as complex as the justice system – involving magistrates and higher courts, the police, the probation service, the CPS and prisons – in aligning cultures and ensuring that, not only did they all talk to each other but they did not pursue their own interests by blocking

allocations from which their own organisation did not benefit. A major problem was the widespread acceptance that delay and cost was inevitable; unless new technology was accompanied by a change in this culture, the outcomes would fulfil Dr. Lynch's worst fears.

A speaker suggested that the plethora of different organizations, and the difficulties, to which the present structure of the justice system gave rise, argued for a central Ministry of Justice, with strong co-ordinating powers. But others thought that it would be dangerous to lose the advantages of the present system, where decision-making powers were clearly allocated and accepted. To bring together information from different quarters through IT, while leaving the decision maker free to decide on the basis of the full information would be the desirable course.

Speakers agreed that there was a problem at present with the reluctance of elderly people to accept, or make efforts to understand, IT, but there was discussion about whether this was a temporary problem, which would disappear as younger people more familiar with IT grew up, or whether there would always be new advances in IT which would leave those who had not dealt with it in youth disadvantaged. But the position was not uniform; there was segment of the mature population eager to embrace IT, and with the time to do it. The problem might well be one more of class and education: if so, extensive reliance on IT in the justice system could add to social and economic exclusion. Speakers agreed that the use of IT by professionals to help them make decisions was now generally accepted, but only where it was evident that the eventual decision – be it that of a doctor making a diagnosis or a judge deciding on a sentence – was in the hands of the decision maker. No decision of this nature was without risk of error and people rightly felt that the judgement of risk was more secure if it was being made by an individual, and not by a computer programme. US experience of computer programmes to aid sentencing helped to analyse the risk involved in any decision, but left the final decision on what level of risk to accept in the hands of the judge.

Sir Geoffrey Chipperfield