The UK Scene for Litigation Support

by Vicky Harris

This report is the result of interviews with several large law firms in the city of London, an accommodating barrister and several transcript firms and providers of litigation support services. Many of the contacts were generated from the Litigation Support Interest Group of the UK Society of Computers and Law which was formed in early 1992 with a view to exchanging and disseminating information about computerised litigation support among the legal profession. The current convenor is Graham Smith of Bird & Bird (Tel 071- 242-6681 and Fax 071-242-3643).

Interestingly a conference entitled 'Litigation Support in Action: Trial Preparation to Presentation' was scheduled to take place on 10 September 1993, the same day as the ALSM conference on the Gold Coast - 'Technology on Trial'.

Law firms

Bird & Bird is a medium sized law firm with approximately 27 partners situated in the heart of Holborn. They are an unusual firm in that technology is driven by two of the partners, one of whom is Graham Smith who has written a short but very informative paper on a lawyer's guide to litigation support. In an article in the UK publication *Computers and Law* March 1992 entitled 'Computerised Discovery in Everyday Litigation' he describes how his firm have taken advantage of systems and software to hand.

He has developed the use of *WordPerfect* to the nth degree. Bird & Bird produce discovery lists by using a flat file database called *Notebook* in *WordPerfect Office* in con-

junction with *WordPerfect* 5.1. Macros have been written in *WordPerfect* to assist lawyers generate the most appropriate discovery number for the list. There are options to insert a particular prefix to the main number.

Woe betide any unsuspecting articled clerk who tries to produce a list by manual dictation. They are quickly brought back into line and told to use the firms litigation support set up. If they do not know how to use it they undergo a refresher training course.

Another partner, Morag Macdonald, extolled the extensive use the firm makes of e-mail facilities with their Brussels office. She utilises the e-mail facility at least five times a day to correspond with Brussels on specialist patent work she undertakes.

Another active firm in the London litigation support group is Denton Hall Burgin & Warren which straddles Chancery Lane at the Fleet Street end. They have large litigation matters which warrant the use of imaging documents. Recently they have used a bureau to microfilm documents in the UK and then image them in the USA. The firm receives a compact disk of imaged documents.

The advantage of being an Australian visitor is that the English think we should be entertained. Despite having worked in London, I was shown the vagaries of the Thames over lunch in the Little Ships Club by their Litigation Support partner, Howard Field. There he confided to me that if anyone could write a program to search imaged documents they would make a fortune.

Food for thought for the programmers out there amongst you.

I was told by Ed Dean, IT manager of McKennas, that the English speaking nations of the world can be characterised as either Americans who throw money at any solution, British who are good thinkers or Australians who seem to have got their act together and actually do things. This was rather a refreshing appraisal of our talents and it seems that many people think Australians are quite advanced in terms of their technological practices in law. However Ed Dean did add that he thought Australians were less commercially minded possibly because they were not so exposed to commercial acumen and competition as that experienced in Europe.

There was some concern about the amount of secrecy which law firms like to shroud themselves with, in regard to their technology. Dr Richard Susskind has established a successful consultancy practice in Masons, which is situated away from the rather tired inns of court in a bijou part of London near the Barbican. He has written a somewhat scathing article in the Financial Review back in October 22 1990 where he asks lawyers to 'unravel the myths of information technology', and condones the sharing of information by relating it to management theory.

He says that management theory has 'two basic strategies for achieving and sustaining competitive advantage : maintaining lower costs over rivals; or differentiating oneself from competitors'. He dismisses the first strategy as not common among law firms and the second can surely suc-

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ceed only if all points are made unambiguously clear to clients and potential clients alike. But how can this happen if lawyers are too secretive?'

He continues that there is a great deal of development involved in the implementation of any system for competitors to work through and suggests secrecy should only apply to applications under development but not working systems.

I whole heartedly agree with this approach. It is the basic tenet of the Association of Litigation Support Managers which has gained national recognition over the past few years. He suggests lawyers are doing the whole profession a disservice by being secretive and that may prejudice competition both domestically and internationally.

Again I quote from his paper:

'The latest research on management and international completion suggests that the most outstanding commercial organisations in the international arena are those which are based in highly competitive markets with demanding customers and for-

midable competitors .....Outstanding firms that use IT heavily, and regard it as central to their success, will surely then be serving their own best interest by urging their competitors to use technology; for IT will strengthen these competitors, reinforce the domestic market and thereby encourage the best firms to flourish internationally.'

It would seem that firms such as Linklaters have not heeded this advice. They have shrouded themselves in a veil of secrecy and rumour has it that they are going to put a NextStep workstation on every fee earners' desk at a cost of goodness knows how many millions.

What then are law firms using in London? Masons are certainly a Microsoft shop and have a well documented case study to prove it. Not many firms are interested in DOS products according to a leading software retailer. The main litigation support software packages listed are a mixture of American relational databases and full text packages including *Discovery ZX*, *Zyindex*, BRS and *Paradox*. Other products described in transcript firm's literature as major litigation support packages are *Personal Librarian*, *Archive* and *Status*.

Some Australian products have infiltrated the legal market such as ISYS but the influence of American products is fairly strong with consultancy firms such as Quorum Litigation setting up an office in the Strand.

The Bar

James Behrens is the official Bar representative of the Society of Computers and Law. He takes on a fair spread of commercial work and is well versed in the use of computers. Interestingly all the bar tend to use

IBM compatible machines unlike the state of Victoria which has a high number of Macintosh users.

He was interested to learn about the method by which transcript could be indexed and automatic witness and exhibit lists produced through a fairly recent upgrade to an old favourite of the bar and bench in the Victorian Supreme court called Retrieve.

Real curiosity was aroused in discovering how transcript was notated in order to provide a link into the program which was written to produce the lists. The idea of asking the transcript firms to mark up the transcript in the manner to which we have become accustomed in Victoria was new to him. He was also interested in the standards which had been suggested for the formatting of transcript so that they run under different programs.

An interesting protocol which was given to me by Richard Susskind was one developed by the Official Referees Solicitors Association called appropriately the ORSA Protocol. This is used to facilitate and encourage the exchange of information amongst users of the Official Referees' Courts through the use of information technology.

It suggests a questionnaire should be completed by all the parties to act as a framework around which an agreement may be reached on appropriate standards for the interchange of information. The potential areas outlined include:

- Pleadings
- Scott Schedules (summaries of matters in dispute in construction actions)
- Lists of Documents
- Transcripts
- Litigation Support

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- Other items such as witness statements and expert reports

The questionnaire includes information about the IT contact in the firm and the type of word processing and database formats used. Also media formats including size of disk and operating system are indicated.

I found it interesting to note that litigation support is placed as a separate item and the focus is on the document management systems used. They take the form of structured databases, full text retrieval systems and imaging systems. Also the protocol suggests an outline structure for the manipulation of data by defining the type of name label and character size of the field. The recommended format for imaging is TIFF, Tagged Image Format Files.

The question of recovering costs of IT used in litigation is one which has not been clarified under Taxation. However the main benefit of exchanging data electronically is to avoid the cost of duplicating manual entry into another system.

The use of such protocols, whilst needing some refinement, would seem to me to be an excellent starting point in attempting to exchange documents electronically and reaching agreement between the parties prior to the start of exchange of documents in any litigation. This idea is worthy of further attention and one the judiciary may like to examine.

Transcript firms

There has been a fair upheaval amongst some of the transcript firms with a rude awakening to the free market system. Work that had been guaranteed from certain courts to certain transcript firms suddenly was opened to market forces, with the lowest bidder most often the winner.

Some firms are still recovering from the shock whilst others such as Smith Bernal appear to have taken advantage of the situation to market their services and develop appropriate technology to attract lawyers. Their product called *LiveNote* is described as the computerised alternative to note-taking. It includes such features as scrolling, marking, annotating, noting, issue coding, reporting searching and transfer of notes to an edited version of the transcript. Effectively it allows the lawyer to make notes and annotations in court and use them in the edited version of the CAT at the end of the day. This is particularly productive and could save lawyers hours of work in the evening issue coding and noting the day's proceedings. It operates in a Windows environment which allows the use of a mouse to point and click.

A similar product *LexTerm* has been developed by Chris Priestley in the Macintosh environment. He is currently writing a Windows version. The UK lawyers find it very productive and some of the judges are very supportive of it as well. However the story of one High Court Judge sweeping the bench of all microphones because he refused to use this newfangled technology shows the level of resistance amongst some of the judiciary.

Outsourcing

A lot of the larger firms saw that in-house litigation support departments were expensive to run and the space occupied was not always productively used. In speaking with a consultant who was undertaking outsourcing work in the USA and had worked in the UK for over five years he told me he felt there was a move towards the outsourcing of litigation support work from a cost efficiency point of view.

Conclusion

It is difficult to say whether the UK is ahead of Australia in terms of litigation support usage and it would be unfair to make a sweeping statement based on my short visit. However it struck me that there are a great many parties, in London chipping away at the old block. However there is little evidence of any creative UK products, apart from *LiveNote*, to meet specific litigation support needs.

Many people I spoke to saw law firms with strong IT as being able to move ahead into new areas which were opening up in Europe. Indeed firms such as Masons have a specific division of lawyers who specialise in consultancy work. Their investment in IT has two aims: to develop Masons' profile as a major adviser on the law relating to IT and to use IT to increase productivity and enhance the efficiency of the firm as a whole.

As Richard Susskind says 'There is a move from the specific to the generic paradigm which will be the new wave to hit IT in law firms.' ✍

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