Technology and the Law Subcommittee

Inquiry Into Technology And The Law

Minutes of evidence

Members Present: Mr Victor Perton (Chairman), Ms Monica Gould and Mr Peter Loney.

Staff Present: Mr Douglas Trapnell (Executive Officer), Ms Padma Raman (Research Officer).

Witness: Mr J. Leeuwenburg, Consultant, AIJA Technology for Justice Conference

The CHAIRMAN — Jeff, you have been involved in a technology project for the Australian Institute of Judicial Administration. You have a wide interest in the field and, according to Padma's briefing, you appear to have a significant overview of where the development is going across the country and internationally. Will you give a general introduction on where you believe we are at the moment and where we are going, and then the committee will have some questions for you.

Mr LEEUWENBURG — I come to this area from two perspectives. For the past eight years I have been working as a contractor to the Australian Securities Commission. I also work for a number of other clients, including — for the past six months — the Australian Institute of Judicial Administration.

In my roles at the ASC I have done a considerable amount of work in the litigation support area, which is made up of the underlying computer systems that support the investigation, prosecution and courtroom support of a number of big white-collar cases that have been prominent over the past six to eight years. I have a close specialisation in litigation support. The AIJA hired me about six months ago to help run the Technology for Justice Conference in March. As part of that conference they have sent me around the country on a tour of different court jurisdictions, prosecution authorities, law enforcement agencies and law firms to help develop the program for the conference. It is a selective overview because in that time frame it has not been possible to visit everybody and analyse everything.

When I visited each state I wanted to know what were the shining examples, the desperate needs and the black holes. I did not have time to cover all the states evenly. It was a very uneven tour.

The best fruits of the tour are contained within the program for the conference. I have brought a number of copies for the program brochure for the committee. If you look at the structure of the program you will see that session one is on electronic courts. Benchmarks have been set in the area of electronic courts. Everyone knows what to do because of the benchmarks. General improvement can be made around the edges, but it is a question of how far down the court system you move.

In the Australian context some of the benchmarks were set with the Rothwells and Bond cases in Perth, the Pro Image and Estate Mortgage cases in Melbourne and the royal commission into the NSW police force in Sydney. These are examples of where a lot of investment has been made in the management of very complicated environments. It was worth spending the money, given the scope of the cases involved. In something like the scale of the Pro Image, Rothwells and Bond cases there was an investment of up to $1 million, with approximately $400 000 spent on courtroom kits and hundreds of thousands of dollars on the evidence preparation processes.

Some of the cases involved $60 million, $70 million, $100 million or $1 billion, and the court costs for the community on a given day could be as high as $100 000. The costs for barristers and solicitors, court costs and other costs for all parties meant that if 10 days of the course of a trial could be saved, $1 million could also be saved as well as achieving a good outcome.

As I said, electronic courts are an established area of good benchmarking. The issues at the moment are to make them cheaper and to bring them to lower court levels such as County Court and Magistrates Court hearings and commissions of inquiry.

Most of the people addressing the conference will be talking about the big case benchmarks. There is the US example of courtroom 21 and the Singapore example. People will be discussing three of the biggest cases that have been held in Australia, but the underlying interest in the conference will be in addressing smaller inquiries — even committees such as this — as well as being serviced by transcripts, attached documents, annotations to the transcript, machine-readable transcripts, submissions and things like that. An example of a small case is the Thredbo inquiry where the costs involved are lower than those in other prominent cases. The benchmarks are in place for electronic courts. It is a matter of making it common practice at the lower levels and in a wider variety of situations.

Session two deals with court management, which is also known as case management. In going around the country and looking at case management I found this area not to be well evolved. For this system to be well handled in a big court system high levels of investment are needed. Most of the states have systems that nobody can be proud of. Every state I visited said that it did not regard its case management system as a shining example. If states regard their system as a black hole, they believe significant improvement is required.

To put in a case management system within the context of the state or federal systems the investment level will have to be in the $9 million, $12 million or $13 million range. There are no major working examples that people can draw on. The theoretical pay-off from having all court processes using one system will come through better levels of information, better statistics and better management. Most states are quite a considerable distance away from having a big case management system that they are comfortable with. They do not have the investment and project management expertise required to put some of these things in place.

My steering committee has been avoiding addressing the issue of big case management systems head on; instead it has been looking at a number of small

systems, particularly the Compensation Court of New South Wales, because the people who use it are happy with it, it works and it is meeting a lot of its business requirements. The investment level is known, it works and it is being used. It cannot be used for planning a big state system because it has been customised specifically and is linked into its specific requirements.

We touch on the Victorian Children's Court system, which is a prototype. It is based on software from South Australia which is not yet functioning there. That was put forward by the Victorian Department of Justice as an indication of the direction in which it is considering moving. It is not committed to using the South Australian software but it is ready to see whether it can be adapted to Victoria.

There are many underlying anxieties with the case management system and we are addressing these at the conference in a workshop on how to plan and address your anxieties with big systems. It does not appear on the program yet, but we are addressing that by having a panel of people to ask questions and provide answers, which will essentially address the question: how do you plan and project manage an all-of-state court management system? There are no benchmarks in Australia from which to draw on and precious few overseas! They are very hard to come by, even for this conference. I do not believe it is a question of Australia or any particular state being behind, but of there being nothing out there on which to draw. People from the United States and New Zealand will try to address that question. I am able to provide some information about the current state of the political process, but I want to do that off the record.

The CHAIRMAN — We will hear that evidence in camera.

Proceedings in camera follow.

Open hearing resumed.

Mr LONEY — If you were looking into a crystal ball what do you see as being the most likely short, medium and long-term applications of technology in the courtroom and justice systems? What do you think can be done straight away and what is further out?

Mr LEEUWENBURG —Electronic courts benchmark everything. Everyone knows how to do it and it can be done in any courtroom environment at a range of prices relating to the service one wants. There are no mysteries or black boxes and there is an active market. Many people can now do it for you. We have a session on transcripts at the seminar. It is well-known technology, but there are some innovative programs, such as audio-based transcripts, remote transcripts and realtime transcripts, that are benchmarked and capable of being done. There is also a market.

Audio transcripts operate in a different environment. It is possible to use transcripts in areas not typically addressed by transcripts, for example, areas involving Arabic, Chinese or Japanese or other South East Asian scripts. Video conferencing is also a clear example of the advances that are being made. The Victorian Department of Justice's claims to have broken new ground are reasonable and have been endorsed by the other states. The pay-offs are obvious and the market is reasonable . It is not a

strong market but it is a reasonable market. It is a matter of getting on with it and providing the services. It may cost money, but controlling the budget makes it manageable.

The use of Internet and Intranet is suitable for rapid development. The terms cover a multitude of sins, but I have seen a number of computer systems developed outside the legal environment — in a business environment — and even inside the legal environment which suggest that a number of software and telecommunication tools are developing quickly. They can be very powerful. The National Native Title Tribunal system and Dun and Bradstreet are examples of involved, tailored information services.

Internet communication is developing rapidly and clearly in the short, medium and long terms will be an area of significant growth. One of the papers at the conference will be a demonstration of an international application of Intranet. It is a due diligence case, which means the assembly of information pertaining to the sale of a company or a set of companies, or it could be airport or transport sales. Due diligence involves assembling all the relevant documents in the document room and inviting all interested parties to come to that room at a particular time and acquaint themselves with what is going on. The use of Intranet has meant that the due diligence room has become virtual — all the related information has been collated on the Intranet over a period of about three months and is made available to anyone anywhere in the world who can make a contribution. It involves collecting information in 50 different sites on five different continents and making it available to 100 or more purchasing parties around the world. It is not a litigation issue; it is a legal issue that is relevant to a wider area of government than just the justice sector.

Coming back to your question, electronic courts are operating and there are some new things occurring with transcripts. Video conferencing is clearly available and Intranet is an area of explosive growth. It may still cost you money to deliver a good service, but you can reasonably expect some telescope time frames and good competition in the marketplace.

The CHAIRMAN — Have you seen anything in the course of your travels that has made you say, 'Gee whiz'?

Mr LEEUWENBURG — The National Native Title Tribunal and the due diligence Intranet applications. I suppose the video conferencing and electronic courts, including the New South Wales compensation courts, did not make me say, 'Gee whiz', but they certainly worked.

The CHAIRMAN — I guess the other question is whether any new technologies are appearing on the horizon that no-one has thought of using yet. As you say, everything we are talking about is established. But is there anything that will come and surprise us?

Mr LEEUWENBURG —If you asked me the question three years ago I would have said that the Internet will expand, and I would not have known the nature of the Intranet. I suppose what would really surprise me would be communications providers actually putting in an information superhighway, because the cost of

telecommunications has remained virtually unchanged over 10 years, despite all the promises to the contrary. It could be that something like mobile telecommunications with mobile phones and The Iridium satellites may change how services are provided in remote and isolated localities and mobile localities. I would expect that would happen, although most people are not looking for it just yet. That would be one new technology that would not necessarily have much of an impact in a place like Victoria, which is relatively small — —

The CHAIRMAN — I know, I made a speech in Walwa; it works in Walwa.

Mr LEEUWENBURG — At the AIJA Asia–Pacific conference held late last year the Sri Lankan Chief Justice said the use of typewriters in court was being contemplated, but that they would be a risk because of the problem that there was no guarantee of uninterrupted power supplies to any of the courts in Sri Lanka. At that point a number of echoes came from members of the Australian judiciary, such as, 'I do inquiries in Tennant Creek' — or the Kimberleys, or wherever it might be — 'What services can be provided and at what kind of price?'. At that point they were told, 'You could use a laptop and a mobile or a satellite phone'. Then the Chief Justice of the Solomon Islands said that the last time he was given a laptop the diskettes grew a fungus and rotted within three weeks, so if you were to use that system in the Solomons you would have to have an airconditioned office thrown in with it. I would say that the availability of global mobile satellite phone services would have an effect within country Australia which most people do not yet anticipate.

Another thing that is close to here and now is that courts are progressing and wanting to relate better to their user communities. For example, the Residential Tenancies Tribunal in Victoria will service estate agents; the Magistrates Court already has a certain level of on-line filings from solicitors; and the Compensation court in New South Wales is beginning to put court listings on the Internet. That is the first harbinger of spring, as it were. I think from court listings it will go to things like e-mail communications between sheriffs and potential jurors. The base of technology in the community will move down through the legal or accounting professions to the point where more and more you will expect that people at home, just as they have a telephone, could well also have e-mail. A number of processes that currently take place by mail and by telephone will move into either the e-mail or the automatic telephone environment. But I do not see them as surprises.

One of the earlier commissioners of the ASC said that a nice surprise for him would be the design of a scanner head which could be put into a shredder. You would announce in advance that you would swoop at 6 o'clock, and at 5 o'clock they would pick up all the documents, scan them for you and pick out the key ones.

Mr TRAPNELL — It would have to be before the teeth.

Miss GOULD — Absolutely.

Mr LEEUWENBURG — I think the most important thing for my conference to address is the large scale versus the customised. I think the jury is still out on — well it need not be out —the different situations where some require a $10 million or

$15 million investment, while others can get by with $50 000, $100 000 or $200 000 to get a really cute solution for a defined problem.

A lot of the litigation support work I have done, like the work I did with Rothwells, Bond or Pro Image, has been for defined projects with defined times. The instruction has been, 'Do the best you can by 1 April, because that is when we go to court and it has to survive until the case is over' — which can be anywhere from 1 to 10 years. But the system has a use-by date stamped on it. If you have a use-by date and a defined job it is relatively easy to get quite high value for money. But the big systems always blow out: they always cost more and take longer than you thought, and they do not always work. I suppose there is a lesson of some kind in there.

The CHAIRMAN — What do you know about Pathfinder?

Mr LEEUWENBURG — I have only had a number of short briefings about Pathfinder. I talked about shining examples and desperate needs. People at the Department of Justice said, 'We should know about Pathfinder, but it will not work by 25 March' and they did not particularly want to discuss it because they had talked about it in public before. No-one has asked me to review Pathfinder and its current state of health, but I just note that it will not be there on 25 March. If we can go in camera again I will tell you an anecdote.

Proceedings in camera follow.

Open hearing resumed.

The CHAIRMAN —This is now an open hearing.

Mr LEEUWENBURG — I have worked on projects where people get things done and the frameworks have to be cut specifically to the projects. The West Australian example is quite easy because they say, 'Look at jury management; take Fred, send him on a Lotus course, lock him in a room and see what he does'. I have sympathy for that, but I also have sympathy for the problems of the big systems.

The CHAIRMAN — Do you want to go on to transcripts, or have we touched on that?

Mr LEEUWENBURG — If anyone has any questions about transcripts, I can go further into that. At the session I will address transcripts for judges and for transcript providers. The main thing that is happening is the migration in — I think the operator's job is secure — what is done with the transcript once it has been received. There will be less and less paper and more and more indexing. There will be more and more realtime transcript, depending on the environment. In the big and complex cases realtime transcripts certainly have a very big role to play.

There are emerging technologies, but nothing will catch anybody by surprise at the conference. The key report at the conference will be in session four, the *Report on the Electronic Appeals Project* prepared for the Council of Chief Justices of Australia and New Zealand and the Queensland Law Foundation. We have allowed lots of time for that. A person at a very high level will introduce it and lots of people are keen to

present it. It will attempt to introduce top-down standards and certain kinds of submissions into courts. Because the states do their own thing and the commonwealth does its own thing the standards are not always quite the same, and the conference was funded partly to improve the level of standardisation. This project is saying, 'If you want to lodge an appeal in the High Court your court book must conform to these standards', which means that everyone else down the food chain will have to work to those same standards. It is 'gee whiz' in that at the end of the day it may lead to a higher level of standards; it is not 'gee whiz' in terms of intrinsically what is in there.

The CHAIRMAN — I just thought it was a more complicated word document, really.

Mr LEEUWENBURG — What, the electronic —

The CHAIRMAN — Yes.

Mr LEEUWENBURG — Have you looked at it?

The CHAIRMAN — Other than that it sets some standards, I do not understand why it is so hard.

Mr LEEUWENBURG — It is only there to set standards. Judges have helped to draft it.

The CHAIRMAN — And consultants have made money from it.

Mr LEEUWENBURG — And consultants have made money from it. But I am not sure that consultants make money by making things harder. I suppose they do. If the market wants hard things, it hires consultants to make things hard.

Something which does not appear on the program but which has been added to the program web site is that there will be two presenters from the Australian Federal Police and the New Zealand police force. They were very hard to find. They were thought to be relevant to the whole structure of the conference.

I come back to the purpose of the conference, which is to find as many standards as possible across the different jurisdictions. The steering committee reluctantly realised that you cannot stop a conference being a show-and-tell event. With whatever you try to do and whatever you try to organise — ping! — people pop up and say, 'I want to show this', or, 'I want to tell you about that'. Another part of the agenda was to try to bring the whole chain, from police through to prison — from the time you are logged in the motor car for speeding to the time you are let out of gaol for refusing to pay your fines — if not into a single computer system into a series of computer systems that could communicate with each other. Finding the law firms was all right, finding the courts was easy, finding the judges was easy, and finding the prosecuting authorities was quite easy, but getting the police also to say, 'We are part of the system', was quite a bit harder. Two police presenters will be there.

I will move on. I have touched on video conferencing. Although at the conference we will not address video conferencing, a 'gee whiz' wave of desktop video conferencing

will emerge with improving e-mail and voicemail. The use of video mail is becoming common practice in big law firms. It is already common practice with ministerial briefings, although that is not desktop video. If we meet again four years from now and look back we will see that a lot more desktop videoing has appeared. I advise technically-minded people to pay a lot of attention to that session because he did the brain work behind the Estate Mortgage court presentation system. I am not sure where this man's brain is moving next, but you should keep track of where he is going. I do not know whether you have come across him?

The CHAIRMAN — He is a contemporary of mine. He is obviously flying now. I do not think his heart was in being a barrister.

Mr LEEUWENBURG — His heart is in what he is doing at present. He is doing it very well. Estate Mortgage was a stunning benchmark by international standards. Big monitors have been used before and the use of Realtime transcripts has been done, but he did it very well. The thing he excelled with was allowing a solicitor to sit at his or her desk in London or Sydney and watch the transcript on the monitor. It was the closest step to a virtual court I have seen. If he is about to make a leap in a new direction it would be worth knowing about.

The CHAIRMAN — Can you suggest a big law firm with a system in place that we should see?

Mr LEEUWENBURG — I have seen the international discovery system at Clayton Utz. I suggest Mallesons Stephen Jaques, which I have not seen. I would go to Clayton Utz and ask Phil Farrelly to give me a look around.

The CHAIRMAN — Philip Argy is actually the technology partner at Mallesons, but he would not be driving their system, would he?

Mr LEEUWENBURG — No.

The CHAIRMAN — We must find out who is running Mallesons' system and have a look.

Mr LEEUWENBURG — They have a new IT director, Martin Telfer, who will actually be giving the paper rather than Philip. Philip is doing desktop video and internal communications, but I do not know enough about the underlying architecture. I come back to the example of the Compensation Court time and again because it is using sound architecture. It is using Sun, Oracle and Power Builder. They have chosen modern tools. If people use modern tools it is worth watching what they do, but if they say they are using a mainframe and the OST system my heart wilts. Six months ago if somebody said they were using Lotus Notes I would have been concerned. Western Australia has managed to make Lotus Notes into something reasonably attractive, but I still tense up when people say they are using the Lotus Notes system. It seems to be quite complicated.

The CHAIRMAN — The Victorian Parliament is going on to Lotus Notes — in our offices, on our PCs.

Mr LEEUWENBURG — The native title tribunal uses it as well.. If you have good developers it may not be a bad decision. Power Builder is a good decision, but it requires customising. I do not know whether you want to get into the package level, but it does underlie my feelings about some of these things. Obviously you have looked at the High Court's systems.

I shall move on the trade presentations and whether I expect there will be any surprises there. The US company, JALAN, is sticking its toe into the Australian market for the first time. I do not expect any surprises, but it appears to be offering lots of shrink-wrapped, simple, off-the-shelf packages that a small Magistrates Court or small inquiry may buy and install so that a day later they would have a working system that may never be engineered for anything else but would address the job in hand. It has been my impression that the court and legal environment in Australia has been very badly served by the IT community during the past 20 years. It must have been considered as not having the money to make it worth concentrating on so that the level of services being offered in the area is primitive. I come from a library background. If I were running a library conference of a similar kind I would expect to have three to four times the number of interested trade parties from big and small systems.

Another area is the diversification of services and supplies to the courts and the legal systems, which have to grow. It may have been insignificant three or four years ago but certainly it is not an significant market now. I have no idea how you can foster that. I have found that there are few people I can talk to about this being a primitive and undeveloped market. The computer companies that I do talk to, of the IBM scale, say this area is prepared to spend only $10 million on a case management system every five years and it takes them three years to plan the process, so it is barely worth addressing it. At the mid range there is a market because there is a lot of expenditure in the $50 000 to $200 000 range. A lot of money goes into the transcript industry and I notice that some of the providers are now extending the technical services they offer beyond transcript services to electronic court services. Of course, I have kept my eye on the Melbourne County Court privatisation program and the potential this might have for further privatising of IT services.

The legal information side of things, such as the provision of laws, statutes, judgments, unreported judgments and so forth, have exploded on the Internet during the past two or three years and I expect that will continue.

The CHAIRMAN — We have met or seen everyone listed in that session.

Mr LEEUWENBURG — However, the person presenting that paper could not get the air fare or accommodation cost and so it has been withdrawn. Another paper has been added from the New South Wales judicial commission, which has a judgements database as well. I have talked about Dun and Bradstreet and the National Native Title Tribunal system. Themis and the Law Society of New South Wales are both highly relevant and worth looking at. I have seen Themis, but not the Law Society. Themis is providing a variety of messages services and secure Internet, legal information services and the beginnings of one-line filings through one interface. They look pretty gung-ho about it!

In session 10 the subject Bordertown and the Globalisation of Justice is a feminist magistrate's perspective on what she has gained and what she has not gained in the technology revolution. The Australian Law Reform Commission has 5 minutes in which to say that it has just written a paper and you can buy copies of it.
Tony Sutherland is the brain behind a lot of the Western Australian module-level work with Lotus Notes. I expect a very professional paper. We may have somebody from Microsoft talking about Microsoft and the law. The relationship of court administrators to judges is one area of continuing fascination. The court administrators design things and the capacity of the judges to veto things is immense. It is a whole new dimension to planning information technology.

The CHAIRMAN — What is the paper on the Digital World and its Impact on the Legal World?

Mr LEEUWENBURG — That will be given by Tony Sutherland, who is the brain behind what happened in Western Australian IT. I do not know what he is going to say, but it will be well worth listening to. It is will be a kind of strategic paper touching on gee-whiz things such as if a court depends on its evidence being in documents and the commercial world has moved to electronic documents and electronic transactions how that can be managed as evidence. Even in the most electronic of cases there must still be a core of paper documents used in the process. That is the end of the presentation. There will be a slight rejigging of the program, but it is probably not relevant at this point.

In relation to your brief, it will probably become obvious when you attend some of the sessions at the conference — we could make time for you to meet such people as Professor Fred Lederer away from the conference because he will be in Melbourne for a couple of days —that Australia is not a long way behind. There are pockets of extremely good examples. Your communication points would be the National Centre for State Courts in the US, which plays a clearing-house role, and the annual court technology conferences, which play a communication role. You should keep half an eye on Singapore and New Zealand. Singapore is a very different environment. There are very high levels of investment, but the whole city is within microwave distance of the rest of the city. Its solutions may not be transportable.

Mr TRAPNELL — What is the situation in New Zealand?

Mr LEEUWENBURG — Being a small country it sometimes tackles projects from the bottom up rather than the top down. I have done a number of projects in New Zealand and either they have a major failure or they come through with something that is quite streamlined because they have fewer tiers of bureaucracy in their decision-making processes. At the moment they seem to be putting a lot of thought into the area as well.

The CHAIRMAN — One of the things we are all becoming increasingly interested in the quick court system and intelligent advice systems. There is nothing in the program about this? What have you seen that you think is interesting? The idea with the quick court system is that a citizen with a fencing dispute can go into a kiosk and feed information into a computer which can make a judgment.

Mr LEEUWENBURG — Singapore has a kiosk system for traffic fines. You can plead guilty and pop in your credit card and it will print out an indemnity. We keep saying that they should not bring it to Melbourne but they might bring it anyway. I am not sure they will find uses for the kiosk system beyond traffic offences.

The CHAIRMAN — A fellow who gave a presentation at an Australian legal conference said they had developed a family law system that basically asked the client 100 questions from who changed the nappies more often, who earned the money and what legacies were brought in. Basically they fed in 2000 court decisions and settlement results so that the citizen could be advised that if he or she were between 30 per cent and 40 per cent and the property were worth $50 000 there would be no point in engaging lawyers because they would take the difference between the two possible outcomes, but that if the property were worth $500 000 that would be another matter.

Mr LEEUWENBURG — One of the things that came up in working on the review was that court backlogs preoccupied a lot of people in their planning. The Singapore solution is to run the court system longer, which does not get a wonderful response in Australia, but it is a valid response. Singapore courts start at 8 a.m. and finish at 10 p.m.. The Singapore authorities will be presenting a paper on virtual courts, which is taking the Estate Mortgage system and their kiosk system to a point where the courtroom itself may not even exist. The role of virtual courts and changing court hours are two important themes.

Most people I spoke to said there may be better ways of coping with the backlog of cases rather than with technology. They could address the backlog in different ways, especially in civil areas. Most civil cases involve some kind of resolution and that process could be more actively pushed as against the alternative dispute mechanism. Alternative dispute mechanisms should be more accessible in different court environments as an organisational way of clearing the backlog rather than using technology. There is some scepticism that technology alone will clear the backlog.

Most of the discussion about technology helping in this way was not lying around the offices when I was walking around. A number of the more speculative submissions , mostly from academia, were not included in the sessions. When the steering committee was sorting out the submissions it viewed about eight papers, including one on artificial legal intelligence, in which the presenter wanted two and a half hours to present his paper. As the sessions were based on 15-minute submissions the steering committee decided not to include them. The target was meant to involve practical working systems that could be adapted rather than speculative projects.

The closest we got was with judgments and assembling information kits at the point where the judge wants information on the defendant and the accused and precedents in the area. The ability of judges and magistrates to make better judgments was an issue that came up. The strongest response was through access to peers and use of the Internet to access the special legal database. Magistrates are often very isolated because they have huge case loads and regard themselves as being at the coalface. They have to make a lot of decisions, whereas many judges do not make decisions. Magistrates often make decisions based on inadequate levels of support. In the magistrate environment people said to me that the Internet was fantastic — it was a

great release because while they were in court they could access the views of other magistrates and ask them about problems they confronted. But these matters are becoming global. A speaker from the National Centre for State Courts talks about globalisation of legal communication, which is an important growth area.

Committee adjourned.