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How Technology Supports Open Justice and Transparency

Abstract: This article by **Paul Magrath**, Head of Product Development and Online Content at ICLR (incorporated Council of Law Reporting), provides a survey of 10 key technological developments that, over time, have contributed towards or affected our understanding of the administration of justice. Developments involving digitisation, the internet, and artificial intelligence (AI) are dealt with in greater depth, with a particular focus on recent AI developments at ICLR.
Keywords: Administration of justice; Open justice; transparency; case law; artificial intelligence

INTRODUCTION

We're all familiar with the idea of open justice. The principle that justice should not only be done, but should be seen to be done. That means that cases should by default be heard in public, before an independent tribunal, and clear and intelligible reasons given for the court's decision. Cases should be listed in advance and the parties identified, as well as the judge(s) and the lawyers involved.

Transparency includes all that, but it also means something more. It means the process should be clear and intelligible. Secrecy does not reside only in holding the hearing behind closed doors. It can exist in the use of obscure language or procedures, or in a failure to share critical information, such as written pleadings or arguments which the court has seen but are not made available to the press or public observers.

Transparency can also include such things as data and statistics, recording the number and type of litigants, how long their cases took to be resolved, how satisfied they were in the outcome, and so forth. Such data, if properly and efficiently collected, can provide material for bulk analysis to identify trends and biases, either in the system or in the work of individuals, such as judges.

Some of this is scary, for those exposed to scrutiny. But the courts exercise draconian powers, affecting the lives and liberties of often involuntary litigants. It is right this branch of the state should be subject to scrutiny. And, of course, there are exceptions: for national security or commercial confidentiality, for children in family breakup, for victims of sexual offences. But these are derogations from the default position of openness, and must be justified in each case.

How does technology help? This article will identify 10 key aspects of technology that, over the centuries, have affected our understanding of the administration of justice.

1. ARCHITECTURE AND DESIGN

Architecture, the physical space in which justice is performed, can contribute a great deal towards our understanding of legal proceedings. From earliest times, hearings have been held in public, sometimes in open spaces, as in Roman or Viking times; more often in closed court rooms with designated areas for particular roles to occupy: the judge up on the bench, the advocates at the bar, arranged in seniority; the jurors in their box; the accused in the dock; reporters in the press bench; and the public in their gallery. The costumes – wigs, gowns, robes – reinforce our awareness of these roles.

But in some courts the physical design of the space can also be a hindrance to understanding. The height and prominence of particular features, such as a secure dock, may obscure the sightlines of observers. And how well can we hear the shy witness in a cavernous old court room? This is true also with live streamed hearings, where the position of the cameras and microphones is critical to the observer's ability to follow the proceedings. In some cases you can barely hear disembodied voices. Better design and technology could solve these problems.

Partly to address such concerns, HM Courts and Tribunals Service has issued a Court and Tribunal Design Guide.[1]

2. WRITING

It may seem odd to think of writing as a key piece of legal technology, given its universal contribution to civilisation. But while an oral tradition may support a shared

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knowledge of social customs, it was writing that enabled the development of a common law, harmonising custom and precedent across the nation. With the common law came the idea of a Court of Record. Law reporting has its origin in the plea rolls which were written up by clerks in Latin and Law French.

Our concept of a 'statute book' is likewise dependent on the notion of a written record of the laws made by the sovereign in parliament. Magna Carta began as a contract but was later enshrined into law as a statute. The practice of inscribing (later printing) new laws onto vellum in the UK only ceased as recently as 2016.

3. PRINTING

The invention of the printing press revolutionised the dissemination of knowledge, in law as much as in religion and philosophy. Law reporting may have begun with the plea rolls but with the advent of printing it was possible to collect the important cases into yearbooks. Early commentary by Bracton and others relied heavily on this material. Law reports by individual barristers and judges were haphazard and intermittent as a record of the development of the law, but printing enabled the collected knowledge of the common law to be much more widely distributed.

Printing also enabled the compiling of legal codes and the wider dissemination of statutes, as well as student textbooks and popular guides to the law. That said, the contribution of written material to public understanding of the law depended on levels of literacy, which substantially improved during and after the industrial revolution.

Even among those who can read, though, there remain many whose understanding is limited, hindering the benefits of transparency. In a drive for greater accessibility, HM Courts and Tribunals Service have recently issued an easy-read guide to the court process: 'Going to court or a tribunal' (Feb 2024).[2]

4. TYPING AND COPYING

Until the late 19th Century all court documents were handwritten, with copyists (such as Nemo in Dickens's *Bleak House*) making the necessary duplicates. The public could access some of these documents, such as writs, wills or grants of probate, by queuing and paying a fee at a dingy little office somewhere in the labyrinth of the Royal Courts of Justice. (This continued until the establishment of digital filing: see below).

With the advent of typing, carbon copies, and eventually the photostat machine, it was possible to compile court bundles and to file copies of documents for public viewing in a form that was easier to read and easier to duplicate. It was also possible to type up a reserved judgment and to make copies of it for 'handing down' in court and distribution to reporters.

5. WORD PROCESSING

With the advent of office PCs, it was possible to type and edit documents and even to publish them to a remote terminal, as well as storing and retrieving them. Where previously judges had dictated their reserved judgments for an overnight typist, or given them to their clerks to type, now they could work on them using their own PCs. Word processors also facilitated the writing, editing, and even typesetting of law reports (paving the way for digital publication).

Word processing, either on dedicated machines or networked PCs, enabled the composition of entire newspapers, such as *The Independent*, launched in 1986 – for which I then worked as a law reporter for the next 10 years. We filed our copy from a portable word processor over the telephone using a screeching analogue modem. Newspaper law reports were for a long time the best way to get early news of new case law. *The Times* had had law reports from the late 18th Century, but in the 1980s the *Financial Times*, *Independent*, *Guardian* and *Daily Telegraph* all competed. It was, in some ways, the golden age of newspaper legal coverage, with all the papers also employing expert legal correspondents, contributing hugely to public legal education and awareness.

6. THE INTERNET

While reserved judgments could now be created on a word processor, the Internet made it possible not just to hand them out in court, but to publish them online. AustLII (the Australasian Legal Information Institute) was the leading exponent of this, and its founders had a big hand in developing the British and Irish version, BAILII. Founded on the principles of the Free Access to Law Movement (FALM), it was independent of both the government and the judiciary, run as a charity, supported by donations and grants;[3] but BAILII soon acquired official status and was funded by the Ministry of Justice as a public repository of judgments. For about 20 years that worked very well. However, it depended on courts and judges sending their judgments to BAILII on a mainly voluntary basis. Some practice directions required it for certain kinds of judgment, but compliance was patchy and inconsistent.

Digital publication wrought an important change in the way judgments were published. Cases could now be cited by Neutral Citation number, regardless of whether or by whom they might be reported; and people could navigate around them by way of numbered paragraphs rather than page or marginal letter references. The system adopted in common law countries was later adapted to European civil and international courts by way of the (somewhat clunky) European Case Law Identifier (ECLI).

Meanwhile, with The National Archives (TNA) having successfully taken over and updated the Statute Law Database – now www.legislation.gov.uk – the next logical

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step was to ask it to manage the other major source of primary law, namely case law. The result was the Find Case Law database (caselaw.nationalarchives.gov.uk), launched in April 2022, and now the primary distribution point for all judgments of the senior courts and tribunals in England and Wales. Where previously judges sent their judgments to BAILII, now they are required to send them to TNA. Judgments can be delivered remotely by emailing them to the parties and sending a copy to TNA, which then distributes it via feeds to BAILII, ICLR, and all the other publishers and reporters who used to get it direct from the court. But the feed is efficient and we usually get them the same day, often within the hour.

The main difference from BAILII is that TNA permit bulk re-use and bulk data analysis, under licence, which BAILII never did. This has hugely benefited ICLR because we need to ingest all the unreported judgments so they can be searched alongside our full text case reports, and for tools such as Case Genie to work their magic on them.

For public access, however, it has not made that much difference. Many journalists prefer to search on BAILII, which is familiar to them, and it also includes content from other jurisdictions in the British Isles, and elsewhere, notably Scotland, Northern Ireland and the Republic of Ireland. In terms of free public access to legal materials, supporting open justice and transparency, BAILII was and remains the real revolution.

7. LEGAL BLOGGING AND SOCIAL MEDIA

Lawyers themselves are one of the best sources of public legal education. For a long time judges were cautioned about talking to the public extra-curially. A doctrine of tight-lipped aloofness, originating in the 1950s, continued until quite recently. Now it is more common for judges to give speeches and lectures, and to engage with schools and universities. But they are still officially discouraged from talking to the press, and even more so the public via social media.

Lawyers in practice or academe are not so shy, and legal blogging has provided a massive boost to transparency, in the sense of the public understanding of how the law works. Many legal blogs – or 'blawgs' as they insisted on calling themselves – were set up with the specific intention of explaining obscure legal issues to a public readership wanting more than they could get from traditional media coverage. The opportunity to upload relevant documents and images alongside a blog enabled far more complete and immediate coverage than newsprint publications could provide. Readers could engage with the blogger via the comments at the bottom, allowing threads of erudite discussion on specialised topics.

Later, those threads occurred on Twitter (now X), and other social media sites, as the bloggers themselves took to publicising their posts there, and readers continued the discussion in Twitter threads rather than on the blog itself. Obviously, much of the social media activity of the legal community is dedicated more towards self-promotion or what has become known as 'humble-bragging', and some of it to adversarial spats which do nothing to benefit public understanding of the law. The judiciary, meanwhile, are still being urged to avoid identifying themselves, let alone wading in, on what the official guidance rather prissily referred to as 'micro-blogging sites'.

But blogging has continued to flourish. A number of leading PLE (Public Legal Education) blogs are still in operation a decade or more later, and have built up substantial databases of accessible content. The Transparency Project, of which I am a trustee, promotes open justice (as its name implies) with a particular slant towards family law. Nearly Legal covers housing law. Free Movement covers immigration. Inforrm's blog covers media law. The UK Human Rights Blog covers a wider range of case law than its name suggests. Some blogs deal with particular courts, such as the UK Supreme Court Blog or the Open Justice Court of Protection Project. Individual commentators, such as Joshua Rozenberg KC (hon) and David Allen Green, have accumulated tens of thousands of followers with their coverage of legal affairs and policy.

8. SOUND AND VISION

Every newspaper reader is familiar with the sketchy pastel portraits of litigants and lawyers which court artists are compelled to draw from memory, periodically rushing out of court to scribble as rapidly as they can. They are still bound by a century-old statute prohibiting photography in court. Section 41 of the Criminal Justice Act 1925 also prohibits drawing. But the ban on photography has been selectively lifted for a number of specific purposes, such as video links, remote hearings, and live streaming.

Reformers have long argued for cameras in court, to facilitate more accurate reporting and better public scrutiny. And change has come, albeit with paralysing caution. Video link technology has often struggled to match the needs of justice, let alone transparency.

But the UK Supreme Court, opened in 2009, has been a beacon of transparency. It now live streams all its hearings, posts judgments online, and delivers its decisions in the form of a press summary by one of its judges speaking to camera. The Civil Division of the Court of Appeal began live streaming soon after, and there is an impressive collection of catchup videos on its dedicated YouTube channel. Filming of criminal appeals has been slower to develop, and it was only recently that sentencing remarks from the Crown Court have been broadcast, and only in selected high-profile cases.

However, the Covid lockdowns provided a huge boost to remote video hearings and the need to provide public access to meet the requirements of open justice

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has forced the courts to develop facilities to provide it. Now it is common for a case of any level of public interest in the High Court to have a link provided for remote access, as well as a video link to an overflow room, so the press and public can watch. A similar live-streamed openness has been achieved in recent public inquiries such as the Post Office Horizon IT, Infected Blood, and UK Covid-19 inquiries.

But video hasn't yet killed the radio star, and what used to be called spoken word broadcasting continues in the form of podcasts. As with blogging, this is cheap and immediate, requiring little technical knowledge to set up, and yet offers the public access to a wide range of interviews and discussions with lawyers, as well as commentary from expert perspectives. Even radio programmes are now available on catchup, via the same apps as all the podcasts. (How sad, though, to record the decision by the BBC to discontinue its long-running Radio 4 series Law in Action, one of the few on which serving judges were ever permitted to speak.)

9. ONLINE DISPUTE RESOLUTION

For a long time, the only part of the litigation process that used digital technology was the publication of judgments. Claim forms, pleadings, and witness statements might be drafted on a computer, but they were still filed with the court in hard copy, as were bundles of photocopied authorities in bulging lever-arch files.

That began to change in some parts of the jurisdiction. In 2015 the Digital Case System (DCS) was launched in the Crown Court. Shortly afterwards the MOJ announced HMCTS Reform, a major programme of digitisation under which all filing of documents and case management would be done online, via portals and systems to be built in a cluster of parallel projects over a four-year period. Those four years have morphed into eight and it still isn't complete. Probate applications can be filed online, but they still take months to process; divorce can be applied for online, but if you accidentally enter the wrong case name, as one hapless solicitor did recently,[4] a couple can find themselves irrevocably divorced without the court having any jurisdiction to set it aside. Civil and tribunal pleadings and documents are filed online using CE-file. Criminal filing was eventually supposed to transition to the end-to-end Common Platform but that has not worked reliably so we are still using DCS.

The Reform programme has undoubtedly boosted access to justice, a notable example being the Online Civil Money Claims project, which has issued more than 472,000 claims from unrepresented claimants since its introduction in March 2018, and achieved a user satisfaction rating of 95% for claimants (and 66% for defendants) using the service. There are plans to expand the range of claims and remedies available, and there is now an Online Procedure Rule Committee, whose task will be to frame and update rules specifically designed for online dispute resolution.

There are aspects of the digitisation programme that have also boosted open justice and transparency. The online filing of civil case documents provides reporters and court observers with a conveniently searchable database, for example. But the fees payable to download even a single document from CE-file means the benefit is largely confined to well funded media operations or law tech developers, and puts any kind of large scale analysis beyond the range of legal bloggers or academic researchers.

10. ARTIFICIAL INTELLIGENCE

In a lecture given at The Law Society in 2016, Lord Justice Fulford, welcoming the development of the Online Court, referred jokingly to 'cyber judges', assuring us all that they were a figment of science fiction. Eight years later, after ChatGPT passed the US Bar exam,[5] that possibility seems rather less far-fetched.

In the meantime, artificial intelligence has given us numerous other legal tools – for contract drafting, e-discovery, and various kinds of transactional work. More recently it has been harnessed to legal research, with tools such as CaseText's Cara (now part of Westlaw's CoCounsel feature), vLex's Vincent AI, and ICLR's Case Genie, which permit what's called 'brief analysis' – the uploading of a text or document for analysis and comparison, using natural language processing, with existing corpus of primary legal sources, such as case law, to dig out relevant items. (For more about the mechanics of this, see my earlier article, 'The Genie and the Lamp: How Can Artificial Intelligence Help Us Find New Case Law?'[6]).

Case Genie uses AI to recommend up to 50 cases dealing with subject matter similar or relevant to that of uploaded text. But it's a black box system: it can't explain *why* it has recommended those cases. If the cases have been reported, the list of results will include subject matter catchwords. But if unreported, the best we could show, by way of an indication of subject matter, was to extract the first 100 words of the judgment. Sometimes that provides a helpful indication, enabling the user to decide whether to read the whole case. But sometimes the judge will go off at a tangent, or begin with a literary quotation or wry observation which, amusing as it may be, doesn't necessarily indicate what the case is about.

It occurred to us that if the AI in Case Genie could not explain why it had recommended certain cases, out of the hundreds of thousands in the system, then we could at least get another AI to summarise the unreported ones in a form that could be displayed in the search results. Having tried various prototypes, we eventually settled on a system developed by the Canadian law tech developer Jurisage.

These summaries do use generative AI, via GPT-4, but they are not a substitute for a headnote. They offer a

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100-word outline of the case and a list of up to three key issues determined. It's short enough not to suffer from any of the well-publicised risks of hallucination, yet provides enough information to help you decide whether to explore that case a bit further. In short, it's yet another bit of technology that makes the information clearer and more accessible. And it isn't confined to searches using Case Genie: the results of a conventional case search on ICLR.4 will also benefit from these AI summaries.

While tools such as these are primarily aimed at professional and academic users, and may require a subscription, there is plenty of scope for the development of AI tools that can enhance open justice and transparency. For example, there is now software that can provide a transcript of an oral hearing for a fraction of the time and cost of a human stenographer. There are already calls for such technology to be used to provide litigants in person in courts and tribunals with a written record of their hearing, where currently the cost of human transcription services remains prohibitive.

There are risks, too. Chat-GPT can explain the law to a lay person in language they can understand, but in a number of well documented cases, it has also cited non-existent legal sources and case law. A lay person may not have the resources to check the accuracy of the citations, or even the advice. So we need to proceed with caution. And we need to be transparent about the use of AI itself.

CONCLUSION

AI has been hailed as a technological revolution comparable in significance to the invention of printing. Perhaps the same was said of personal computers, or the internet, or even wireless telegraphy in its day. One should be wary of over-hyping it. It is both the Next Big Thing, with tremendous potential, and also just the latest in a long series of technological developments that, over time, have helped to enhance public access to, and understanding of, the justice system.

Endnotes

[1] Court and Tribunal Design Guide (v 3) (April 2023) <https://assets.publishing.service.gov.uk/media/6629612b0ace32985a7e7be/Court_and_Tribunal_Design_Guide_v3.pdf>

[2] Available at <https://assets.publishing.service.gov.uk/media/666866f26c5954022e760d8e/Easy_Read_Attending_hearings_Final_high_res.pdf>

[3] See Magrath, Judgments as Public Information, Legal Information Management 15 (2015) pp 189–195; and Winterton, BAILII: Judgment Day and Beyond, Legal Information Management 22 (2022), pp 73–80.

[4] See Williams v Williams [2024] EWHC 733 (Fam) (Sir Andrew McFarlane P).

[5] ABA Journal, 'Latest version of ChatGPT aces bar exam with score nearing 90th percentile', <www.abajournal.com/web/article/latest-version-of-chatgpt-aces-the-bar-exam-with-score-in-90th-percentile>

[6] Legal Information Management 22 (2022) pp 114–118.

Biography

Paul Magrath is Head of Product Development and Online Content at ICLR. He is also a founding trustee of the Transparency Project (https://transparencyproject.org.uk/) and a member of the Courts and Tribunals Observers' Network (https://courtobservers.org/). He is a co-author, with Lucy Reed KC and Dr Julie Doughty, of *Transparency in the Family Courts: Publicity and Privacy in Practice* (2nd ed., Bloomsbury Professional, 2023).

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