Yellow Jersey: Leading the Electronic Race in Court

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Picture Jersey. What do you see?

If, like me, you're a child of the 80s, schooled as much in TV Land as in the classroom, you might imagine an aerial shot of the island, lush green fields, classic cars and the face of John Nettles, all of it soaked in the funky twangs of an electric guitar, backed up by the Gallic riffs of a jaunty accordion.

If you took your education a little more seriously – or the BBC's *Bergerac* wasn't exported to Australia – your view might extend to brown dairy cows, low taxes, street names in French and contented residents living a bucolic existence of agriculture, tourism and offshore banking.

Neither scene I paint presents a complete picture of Jersey. For the small crown dependency is far more than a rosy stereotype; its politics, economy and social structure aren't a million miles from those in the UK, Ireland, Australia and other common law nations; and its legal system, dealing as it does with a mix of civil and criminal financial cases, smuggling, tort and all manner of other civil and criminal cases, can be studied as a convenient microcosm of these larger countries, from which its lawyers very often seek precedents.

I first published this article on the island's technically savvy courts in a British journal last year. But it's relevant elsewhere. So, having undertaken some additional research, I've edited it for an Australian audience, culminating in the views of Justice Margaret Beazley AO of the New South Wales Court of Appeal.

So how do Jersey's courts work and can we extrapolate for the good? One case from which we could all learn a thing or two – operationally at least – involves squabbling factions of the Alhamrani family. Left a fortune by their father, an enormously wealthy Saudi sheikh, two groups of his children have been arguing for several years with a third and final group of their siblings over the handling of their Jersey-based trust fund.

Not only has the case been incredibly complex and involved, it's been fraught with obfuscation, prevarication, no-shows and all manner of delays. Little wonder, then, that its judges are happy to do all they can to speed up proceedings by embracing time-saving technologies.

With reams of precedent-setting past case reports presented by counsel at the latest hearing in the island's Court of Appeal, all three presiding judges used nothing but laptops to find, cross-reference and read this material – and their use of them hasn't been confined to Jersey.

But before we investigate the logistics and implications of this, and how it came about, we should obtain a bit of background into Jersey's legal system.

James McNeill QC is an Advocate from Edinburgh in Scotland, where he continues his day-to-day practice. But since 2005 he has also acted as a judge for Jersey's Court of Appeal, where he sits at least five times a year. Appointing silks from the UK to the bench here is a standard arrangement both for Jersey and for neighbouring Guernsey, which jurisdictionally speaking includes the other Channel Islands. Some Queen's Counsels see it as a quick stepping stone to a judicial position back home; others are happy to spend longer serving in these courts.

McNeill, who seems content to judge in Jersey for the time being, explains that, like England

and Wales, the island's law mixes precedent and legislation, with an added twist of influence from Normandy and Napoleonic times.

Precedent-setting cases are reported on the free-to-access Jersey law website, he tells me. Since 1980, they've taken the same format as English, Scottish and Australian case reports, and like them, they show which cases – many from abroad – were cited at each trial

Though independent of the UK, unresolved cases from the higher courts in Jersey can ultimately be sent to the Privy Council. Furthermore, though technically only 'persuasive', certain foreign cases are treated very favourably as precedent in Jersey's courts, so access to them is essential. But to an extent it depends on the type of trial and the level of the court; lower courts, it should be said, are less influenced by British and other laws.

As one of the three judges in the latest hearing of the Alhamrani case, McNeill wrote the judgment, which cited a lot of British law (and a dash of Sharia). I have a copy of it. Complicated isn't the word.

An interested layman but a layman nonetheless, it's not immediately clear to me exactly what was at stake. Suffice to say, it's more than one issue. To touch on some of those issues, I bring in the presiding judge, Michael Jones QC, another Scottish silk, whose primary role is as senior partner at Simpson & Marwick solicitors in Edinburgh.

Elements of the Alhamrani dispute have been rumbling along for years. As soon as one bit seems to be resolved, a new bit arises. This instalment, which was resolved in November but which could yet go to appeal, centred in part on the participation of one of the parties. In an earlier hearing, one of the Alhamrani brothers was effectively struck out for failing to comply with a direction of the court. But, says Jones, "there were reasons for his not complying with court orders in the past;" and in the subsequent hearing counsel could demonstrate his willingness to comply. "To strike him out would have been too harsh a sanction."

Among the myriad supporting precedents submitted, defending counsel cited an important English case from the Court of Appeal: *Woodhouse v Consignia* ([2002] 1 WLR 2558), which brings us to the electronic component of the story.

A free sample of the Woodhouse case can be seen at www.justis.com/wcsample. On the Justis full-text electronic legal library, which Jones, McNeill, the Jersey courts and numerous customers in Australia have access to, this case – available in printable PDFs that replicate the original pagination – is part of the ICLR's Weekly Law Reports series, one of many primary and specialist series available on the intuitively searchable Justis database; while the numerous cases it cites, the cases that cite it and how they were treated can be seen for free on the sample record from Justis's sister service, JustCite, at www.justcite.com/wcsample.

A versatile and provider-neutral citator of cases, legislation and articles from the UK, Ireland, Europe and common law jurisdictions such as Australia, Canada and Singapore, JustCite cross-references cases against each other and provides dropdown menus of hyperlinks into the material of free and subscription-based full-text providers such as Justis, BAILII, Westlaw and LexisNexis.

The spirit of JustCite and Justis ties in with developments in Jersey

Caroline Coleman has lived on the island since she was six. In her previous role as a Jersey law firm librarian, she introduced electronic resources to her company; now the clerk – or greffier – of the Court of Appeal, she's continuing that drive and is one of the people behind the initiative to take it to a new level: electronic access *in* court.

"I like JustCite a lot," she says "It's very easy to use" But it doesn't stop here. Coleman makes use of a service called CaseMap to put together electronic bundles on disk for her judges.

A database application from a company called CaseSoft, CaseMap allows judges' (and counsels') laptops to be teed up with court proceedings, case citations that have been submitted, searchable PDFs and the like. Justis and JustCite – and links from them – can easily be accessed on CaseMap, Coleman tells me.

"Well, this is the initiative we've taken here," says Coleman. She has eight particular enthusiasts among her 12 judges, Jones and McNeill being the staunchest members But she has no doubt that new members will expect to have electronic bundles

As an Advocate, Jones "effectively pioneered the use of electronic presentation in Scotland in some big cases a few years ago." His defence of Transco against charges of corporate manslaughter was one; another, *McTear v Imperial Tobacco* ([2005] 2 SC 1 – see the case report for free at www.justis.com/misample), referenced 85,000 documents. Of his use in that trial of CaseMap and an electronic transcription application – LiveNote – Jones says that "the judge said we saved a substantial amount of court time." Similar applications were also used in the recent inquest hearing in London into the deaths of Diana, Princess of Wales and Dodi Al Fayed, Jones tells me.

"There will be an official rollout of electronic bundles [in Jersey] in the first sitting this year [2009]," he says. "When I first joined the Court of Appeal three or four years ago, I'd be sent files in bankers' boxes in advance of each hearing," he adds. He wonders, ironically, whether the courier actually employed people to disrupt the contents of those boxes as they often arrived damaged But with so many papers to sift through before the trial, it's hardly surprising that problems arose, not to mention the inconvenience of being without those papers for the time it took to courier them back to the court, and not to mention the wastage of paper.

Convenience, it seems, is key. And on this, McNeill points out the basic yet irrefutable arithmetic argument "In an appeal court with three judges, asking them all to turn to page whatever of whichever file, however many times during the sitting, will take time; with laptops, you can retrieve cases within milliseconds." And, of course, one can cross-link between them.

"If we looked at a one-day case, I'm sure we'd take a third less time than we would if we'd used lever-arch files," McNeill says confidently

And yet he does accept some of the arguments against.

Reading long tracts of text on a computer screen isn't everyone's cup of tea. "Even people in their 20s can pick up things more readily on a [printed] page," he says.

This, I feel, is an obstacle that will be overcome by most if the trend continues in the direction it seems to be taking.

Certainly the signs are good that technology is taking hold in the courts of the British Isles.

At a modest level, printable PDFs in court (rather than photocopies) have become "100% admissible," according to Coleman, "unlike five, six or seven years ago. Usage changed things."

Could this indicate more fundamental changes and fully electronic courts? "As more lawyers and firms use [these technologies], so industry will have to follow suit," she says; while Jones points to the fondness for these technologies among Scottish judges: "I'd say most of the Outer House (Court of Session first instance) judges in Scotland are pretty technologically advanced."

It's even spread to the Privy Council – "already an electronic court," according to Coleman

Six or seven months after the original version of this article was published, I carried out a straw poll of some of my Australian court librarian contacts to see whether they recognized this as a trend in their work.

The consensus seemed to be that it was a case of 'when' not 'if', although some initiatives are already underway.

Frieda Evans of the Northern Territory Courts Library mentioned several magistrates' use of laptops in Alice Springs and Darwin, and all Northern Territory judges' general access to an array of electronic products. Perhaps most interestingly, she said: "There is a courtroom in the Darwin Supreme Court that is set up for electronic trials and it has been used for this from time to time, depending on the needs of the trial."

And, rather late in the day, I managed to track down Justice Margaret Beazley AO of the New South Wales Court of Appeal.

Over in London to address the Anglo-Australasian Lawyers' Society, Justice Beazley met me to discuss the issues in this article which, unconventionally, I presented to her beforehand to digest at length.

Commenting on the Alhamrani-related issue of estates and trusts, Justice Beazley explained that in similar Australian cases it's now commonplace to include DNA testing for paternity. With estimates that around one in five children are brought up in homes in which the father figure is unknowingly not the child's biological father and with such big money at stake, this shouldn't be a surprise, and serves to underline the significance of this area of law

An interesting trusts case at which Justice Beazley herself presided at state court of appeal-level involved an Eastern Orthodox community's dispute with a Macedonian archbishop's handling of assets worth A$5 million. For this case, there was plenty of Australian precedent to cite but Justice Beazley acknowledges the use of English precedent for persuasive use in many other circumstances.

On the matter of tracking down supporting cases, despite being at the young end of the judicial spectrum, Justice Beazley admits that much of her own use of electronic databases is done with

the help of a research assistant intermediary, who often plugs in the keywords, party names and judges that she remembers from past hearings. This works a treat and she tells me that the new wave of practitioners – and therefore eventually judges – are relying more and more on electronic resources both in preparation for court and actually in court. "The day will certainly come – I don't know when or how far into the future – when that will be the way we all research the law," she adds.

Anecdotally, Justice Beazley draws my attention to a judge in nearby Guam whose work necessitates much island-hopping. Back in the day, she says, he would travel around with "four or five suitcases full of paper – court files and the like". But some years ago his "court went electronic," so his suitcases – or rather suitcase – now contain just clothes and electronic equipment

Back home, the New South Wales courts, she tells me, use a system called "Justice Link", which caters for various electronic aspects of the judicial process, some of them outside the scope of this article

Currently, it seems that much of what *can* be done electronically is only *actually* done electronically if specified and paid for by the parties in a case.

So will courts move towards using computers in court to draw up cases? "Yes," says Justice Beazley. "It's undoubtedly the way it's going to go Once the funding is in place, it'll happen quickly," both at state- and national-level in Australia.