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this observation of *Mustill & Boyd*, (op. cit., at 552):

"Where a party has argued for a finding of fact with which the arbitrator does not agree, the award should state explicitly that the allegation has not been proved. Otherwise there may be a suggestion that the matter has been accidentally overlooked."

My fifth point of difference (like some of its predecessors) is not truly a point of difference, but I hope is a point worth making. It is, however, a point which I make with diffidence since it rests largely on a judgment of my own which may well, for all I know, be disapproved of in appeal. But it has not, so far as I know, been disapproved yet, and accordingly with all appropriate reservations I quote it

"What documents the arbitrators choose to annex for that purpose i.e. of giving reasons under the 1979 Act is, in my judgment, very much a matter for them. It may be useful to annexe contract documents to avoid extensive summary, or it may not. There is certainly, to my knowledge, no authority in favour of annexing telex exchanges relevant to an issue such as repudiation or renunciation and the authority of Thomas Borthwick (Glasgow) Ltd v Faurse Fairclough Limited *[1968] 1 Lloyd's Rep. 16 at p. 23, may be said to be plainly against it.*

That was a special case. But with a reasoned award under the 1979 Act it is, in my judgment, more desirable that arbitrators should summarise the conclusions they drew from primary documents rather than annexing them. If material is annexed it is very hard indeed for the Court to resist the temptation to put its own construction on, and thus make its own evaluation of, such documents. That is not the Court's task. I do not think it arguable that the arbitrator's failure to annexe these telexes, despite the charterers' very explicit request, was misconduct." (*The Appollonius*, supra at 412-413).

That case was not, I should make clear, one in which the correct legal construction of a written document was in issue. In such a case an arbitrator could not give adequate reasons without annexing the document or citing all relevant parts of it. The case concerned the effect of certain telexes which formed part of a course of conduct. I held that the arbitrators, although asked, had not misconducted themselves in not annexing them. I did, however, add (at 416):

"Plainly the arbitrators discounted the telexes as throwing little or no light on the charterers' intentions but it would have been better if they had stated, however briefly, the view they took..."

My sixth and last point is this. An arbitrator is not called upon to make any detailed analysis of the legal principles canvassed before him or to review in any detail the legal authorities cited. It is enough if he briefly summarises the arguments put to him and expresses his legal conclusion in a way that makes it intelligible. I have no doubt that Redfern & Hunter are right when they say (*Law and Practice of International Arbitration*, 1986 at 29.i):

"However, it should perhaps be borne in mind by such tribunals that what the parties want is a reasoned decision, rather than a legal dissertation."

On that practical note I end. I feel sure I have exhausted my audience, if not my subject. And I do not at all costs wish to provoke Lord Hallsham, who has kindly undertaken to chair this meeting, into repeating an observation which he made on the floor of the House of Lords on the 8th of February 1979 (*House of Lords Debates*, col. 867):

"Enough is enough, in my judgment, and Bingham was enough - perhaps too much".

Rothwells – A Hi-Tech Case

The June issue of *Brief*, journal of the Law Society of Western Australia carries an article by Terry McAdam of the Court Services Directorate on the role of technology in the Rothwells trial.

The trial itself was a huge undertaking and it is evident that its duration would have been lengthened had not the court been in favour of a largely paperless trial and taken steps to ensure that appropriate technology was used wherever possible.

As it was, the trial lasted 15 months (with over one month to hear the Crown's closing address alone) and produced 12,424 pages of transcript. Evidence was heard from 174 witnesses and 15,369 documents were tendered as evidence.

An imaging system was used to scan and store the huge amount of documentation required. The courtroom was set up so that all participants had access to monitors in order to view documents, and monitors were provided on the judge's desk, his associate's desk, the Bar table, the dock, the press room, the witness box, and the jury box. Documents were displayed via two distribution zones, one servicing the jury/press and one servicing counsel/judge/witness, as the court decided that it would not be appropriate for the jury/press zone to view certain documents.

The judge's associate had the task of displaying all documents to the court and had access to two monitors, one of which retrieved and displayed imaged material and the other viewed the image presented to the court. It was her responsibility to control the image distribution zones.

The electronic proceedings also allowed for a running transcript service, involving the transmission of the hearing to the transcript contractor's office where it was transcribed and downloaded to the judge's and prosection's laptop computers during lunchbreaks and at the end of each day's sittings. Software also enabled key word searches, notemaking and date searches of the transcript.

At the end of the day, it was felt that the conducting of the Rothwell proceedings in an electronic environment was a succesful exercise with much to be learnt from it.

There were inevitable problems, including the limitations of the technology used and its redundancy. However, it was equally felt that the use of an electronic environment in this way not only overcame many of the time, space and distribution problems attached to presenting evidence in a trial of this nature and magnitude but also had the added benefit maintaining the concentration and interest of the jury by adding variety to the proceedings.