The Rt Hon The Lord Reed of Allermuir

President of the Supreme Court of the United Kingdom

Oral Hearings in the United Kingdom Courts: Past, Present and Future[1]

Legal Training and Research Institute of Japan, 29 November 2023

1. Introduction

1.1 At Christmas time in the United Kingdom, many people enjoy Charles Dickens' novella, *A Christmas Carol*, or one of the film, television or theatre adaptations of it. *A Christmas Carol* tells the story of Ebenezer Scrooge, who is visited by three spirits: the Ghost of Christmas Past, the Ghost of Christmas Present, and the Ghost of Christmas Yet to Come. Since I am speaking to you just as we are getting ready for the Christmas season, these three spirits can provide us with a useful lens through which to explore oral hearings in the UK courts, which are the subject of my lecture today.

1.2 Adversarial procedure plays a central role in the UK's common law legal system. The idea is that, by assessing the competing evidence and arguments put forward by each side, the judge or jury is best enabled to decide the dispute before them. In the UK, this is done primarily through oral argument, although the pre-trial process also has an important role to play. My own experience as a judge has taught me that oral argument can be of great value. As I will go on to explain in more detail, in the UK Supreme Court the parties to the appeals file detailed written cases and comprehensive bundles of supporting authorities (ie previous decisions: a crucial source of law in a common law system). But my views do not crystallise until I have heard counsels' submissions at the hearing. Indeed, our legal system is predicated on the understanding that nothing is settled until we have heard the oral argument. As Lord Justice Laws once put it, "that judges

[1] I am indebted to my judicial assistant, Rebecca Fry, for her invaluable assistance in the preparation of this lecture.

… change their minds under the influence of oral argument is not an arcane feature of the system; it is at the centre of it."[2]

1.3 I realise that the courts and legal procedures in Japan are different, but I hope that my thoughts on oral hearings in the UK will be of interest to you. Starting with oral hearings past, I propose to explain how our tradition of adversarial oral hearings has developed over time and embedded itself in the UK's constitutional and legal culture. I will then give an overview of the way oral hearings operate in the UK courts today, and some of their practical and constitutional benefits. The last part of the lecture will outline ongoing reforms to embrace new digital technologies, and consider some of the impacts that artificial intelligence, or "AI", might have on oral hearings in the future.

2. Oral Hearings Past

2.1 The English tradition of oral hearings has a long history. One of the earliest known decision-making bodies was the "moot" or "folk assembly", an open-air meeting of the populace to discuss local affairs under the presidency of an official.[3] These communal assemblies were not, strictly speaking, courts of law, but they were called on to decide a wide range of issues, including property disputes and allegations of wrongs committed by one member of the community against another. If the case turned on disputed facts known only to the parties, the matter would be put to "proof" by oath, meaning that the defendant would swear on the Bible that his case was true. In minor cases, this could be backed up by oaths sworn by the defendant's supporters, or "compurgators", denying the charge made against him.[4] But in more serious cases, or in cases where there were particular concerns about the defendant's reliability, the oath might have to

---

[2] *Sengupta v Holmes* [2002] EWCA Civ 1104, para 38 per Laws LJ.
[3] Sir John Baker, *An Introduction to English Legal History* (5th edn, Oxford University Press 2019), pp. 6-8 and H L Ho, "The Legitimacy of Medieval Proof" (2003) 19 Journal of Law & Religion 259.
[4] Sir John Baker, ibid, p. 7. See also Theodore F T Plucknett, *A Concise History of the Common Law* (5th edn, Little Brown 1956), pp. 115-116.

be backed up by a physical test, known as an "ordeal". Ordeals were administered with the participation of the local priest, and generally involved a trial of fire or water.[5] For example, the person accused might be asked to grasp a piece of hot iron or to plunge his hand into boiling water to retrieve a stone. His hand would then be bound and inspected after a few days. If the burn had not healed, then God was taken to have decided against the defendant. There was, accordingly, no need for a human judge because the matter was deemed to have been resolved by divine authority.

2.2 When the Normans came to England in the 11th century, they brought with them the use of inquests in public administration.[6] That is, the practice of "ascertaining facts by summoning together by public authority … people most likely, as being neighbours, to know and tell the truth, and calling for their answer under oath."[7] This has been described as the parent of the modern jury.[8] The inquest was initially used to uncover information of interest to the Crown. One of the earliest examples was the first comprehensive survey of the country's landholdings,[9] which made it possible for taxes to be raised, and assisted the Crown in administering and ruling the country. But inquests were not initially used to settle disagreements between subjects. Instead, disputes were put to proof by Anglo-Saxon compurgation or ordeal, or by the Norman practice of judicial combat, in which the parties (or their representatives) would engage in a regulated duel, with judgment going to the victorious side.[10] The common belief was that God contributed to the outcome of the duel by fortifying, if necessary, the strength of the innocent party.[11]

[5] Sir John Baker, ibid. See further, Paul R Hyams, "Trial by Ordeal: The Key to Proof in the Early Common Law" (1981) in Morris, Green, Scully and White eds, *On the Laws and Customs of England – Essays in Honor of Samuel E. Thorne* (UNC Press 1981) and Margaret H Kerr, Richard D Forsyth and Michael J Plyley, "Hot Water and Cold Iron: Trial by Ordeal in England" (1992) 22:4 Journal of Interdisciplinary History 573.
[6] As noted by Sir John Baker, note 3 above, p. 79, the inquest had roots in Scandinavia and in the old Carolingian empire.
[7] James B Thayer, "The Older Modes of Trial" (1891) 5:2 Harvard Law Review 45 at 45.
[8] James B Thayer, ibid.
[9] Sir John Baker, note 3 above, p. 80. See also Theodore F T Plucknett, note 4 above, p. 111.
[10] Theodore F T Plucknett, note 4 above, pp. 116-118.
[11] See H L Ho, note 3 above at 261.

2.3 This started to change after Henry II passed a series of enactments, or assizes, which made trial by inquest available to the general public in certain property cases. For example, the Assize of Northampton of 1176 established an assize, or court, which was empowered to hear actions to recover lands of which the claimant had allegedly been dispossessed.[12] The assize, at this stage, was a form of jury made up of twelve free men who were summoned to discover and declare the facts in issue in the dispute.[13]

2.4 Juries were not used in criminal trials until around 1220, almost 45 years later. Their introduction was the result of the Church's decision in 1215 to prohibit clerical participation in trial by ordeal, thereby effectively abolishing it.[14] Henry III instructed his justices to find some new means of criminal proof, and within the year they had agreed on jury trial.[15] The jury was made up of twelve independent men drawn from the area where the alleged crime was committed. They were expected to draw on their own knowledge of the matter, as well as on the evidence before the court, to determine the truth of the factual allegations before them.[16] Trial by jury "soon became the norm. It was cheap and effective, and by making ordinary lay people central to the system of justice it was revolutionary."[17]

2.5 The use of juries to decide questions of fact continued to develop over the following centuries so that, over time, it became a "constitutional principle …

[12] Theodore F T Plucknett, note 4 above, p. 111.
[13] Sir John Baker, note 3 above, p. 80.
[14] This decision was taken by the Fourth Lateran Council. See Sir John Baker, ibid, Harry Potter, *Law, Liberty and the Constitution: A Brief History of the Common Law* (Boydell Press 2015), p. 77 and Tom Bingham, *The Rule of Law* (Allen Lane, 2010), p. 15.
[15] EDH III, p. 430f, as cited in Harry Potter, ibid, p. 79.
[16] Sir John Baker, note 3 above, p. 82.
[17] Harry Potter, note 14 above, p. 79. Not all ordinary lay people could sit as jurors. For example, women did not serve on juries until 1920, after the Sex Disqualification (Removal) Act 1919 removed the bar to their participation. Both men and women had to satisfy certain property qualifications until the 1970's, when the Criminal Justice Act 1972 made the electoral register the basis for jury qualification. See further Anne Logan, "'Building a New and Better Order?' Women and Jury Service in England and Wales, c. 1920-70" (2013) 22 Women's History Review 701.

that factual issues should be tried by juries and that judges should not meddle with fact."[18] Indeed, in the United States of America, the right to trial by jury has been enshrined in their Constitution.[19] In England and Wales, trial by jury became the standard procedure in both criminal and civil cases,[20] although its use in civil cases started to decline in the 19th century.[21] Jury-less trials were successfully introduced in the County Courts in 1846, and extended to the Superior Courts less than ten years later.[22] Today, the overwhelming majority of English civil cases are tried by a judge, who is tasked with finding the facts and applying the relevant law on his or her own.[23] But juries made up of twelve members of the public continue to hear criminal cases in the Crown Courts, which is where all but the most minor criminal offences are tried.

2.6 This brings us back to oral argument. In medieval England, only a very small percentage of the population could read or write.[24] Moreover, until the advent of the printing press in the 15th century, books and other written materials were not readily available.[25] There was, accordingly, a strong tradition of "aurality": that is, the act of listening to texts which were read aloud or performed.[26] It is not

---

[18] Sir John Baker, note 3 above, p. 83. See also Sir Patrick Devlin, *Trial by Jury* (Stevens & Sons Ltd 1956), p. 164: "…trial by jury is more than an instrument of justice and more than one wheel of the constitution: it is the lamp that shows that freedom lives."

[19] Article 3(2) of the United States Constitution provides that "[t]he trial of all Crimes, except in Cases of Impeachment, shall be by Jury." The right to trial by jury in criminal cases is re-iterated in the 6th Amendment (1791), while the 7th Amendment (1791) preserves the right to trial by jury in common law civil actions with a value of more than $20.

[20] Note that there was no right to a trial by jury in the courts of equity. For a discussion of the development of the jury in Scotland, see Ian Douglas Willock, *The Origins and Development of the Jury in Scotland* (The Stair Society, 1966).

[21] See Conor Hanly, "The Decline of Civil Jury Trial in Nineteenth-Century England" (2005) 26 Journal of Legal History 253.

[22] As Conor Hanly has explained, "The County Courts Act of 1846 introduced a regularized system of local courts with a jurisdictional limit of £20 in personal and contractual causes, and allowed for optional jury trial in civil actions in those courts. The vast majority of suitors chose bench trial, which had a major bearing on the debate leading up to the enactment of the Common Law Procedure Act 1854. This Act made jury trial options in the superior courts, laying the ground-work for the eventual demise of civil jury trial in England." See Conor Hanly, ibid at 255.

[23] Section 69 of the Senior Courts Act 1981 preserves a qualified right to a civil jury trial in cases of fraud, malicious prosecution or false imprisonment.

[24] In 1475, only 5% of people in the UK aged 15 and older could read and write. See Max Roser and Esteban Ortiz-Ospina, "Literacy" (2016). Published online at OurWorldInData.org: Literacy - Our World in Data

[25] Printing press | Invention, Definition, History, Gutenberg, & Facts | Britannica

[26] Joyce Coleman, "Audience" in Marion Turner (ed), *A Handbook of Middle English Studies* (Wiley 2013), p. 157.

surprising that legal proceedings were conducted in the same way in the medieval courts of law. The defendant would be called to appear at the bar of the court, in person or by an attorney, and the claimant would state his demand or complaint. "The [claimant's] opening pleading was called a 'count', the French word for a tale or story (narration in Latin). Its main object was to amplify the matter outlined in the writ, and to reveal the factual details relied upon as the cause of action."[27] By the middle of the thirteenth century, professional counters (or narratores) had emerged[28] and, from there, a specialist Bar comprised of professional advocates skilled in pleading their client's case at oral hearings began to develop.[29]

3. Oral Hearings Present

3.1 Today, the oral hearing is at the heart of the UK's justice system; it "is important not only in being the final point for the resolution of disputes, but as a means of creating the precedent that is crucial to a common law system."[30] In books and films, the trial is often a moment of high drama, as one party's case collapses unexpectedly and the truth is exposed.[31] In reality, however, much of lawyers' time is spent trying to resolve cases, or at least to narrow the issues, at the pre-trial stage.

3.2 In England and Wales, civil trials are organised in accordance with detailed Civil Procedure Rules, known as the "CPR", which have the overriding objective of enabling the court to deal with cases justly and at proportionate cost.[32] The CPR were introduced in 1999[33] to implement the recommendations made by Lord

---

[27] Sir John Baker, note 3 above, p. 83.
[28] Sir John Baker, ibid. See also Harry Potter, note 14 above, p. 85.
[29] For a more complete history of the development of the legal profession in England and Wales, see J H Baker, "Counsellors and Barristers: An Historical Study" (1969) 27 Cambridge Law Journal 205.
[30] S H Bailey, J P L Ching and N W Taylor, *Smith, Bailey & Gunn on The Modern English Legal System* (5th edn, Sweet & Maxwell 2007), p. 933.
[31] For an excellent list of memorable literary court scenes see: John Mullan's 10 of the best: trials | Books | The Guardian
[32] CPR Rule 1.1, available at: PART 1 - OVERRIDING OBJECTIVE - Civil Procedure Rules (justice.gov.uk)
[33] Civil Procedure Rules 1998 SI 1998/3132.

Woolf in a comprehensive review of the civil justice system.[34] As I have explained, adversarial procedure is one of our legal system's fundamental features. However, Lord Woolf identified the resulting adversarial legal culture as creating an environment in which "questions of expense, delay, compromise and fairness may have only low priority. The consequence is that expense is often excessive, disproportionate and unpredictable; and delay is frequently unreasonable."[35] As a result, a great deal of emphasis is now placed on encouraging the parties to settle their claim early where possible, and to deal with one another fairly and cooperatively in the period before the trial. Judges have extensive case management powers, which they are expected to use to control the progress of the claim towards trial and to impose sanctions on parties who obstruct that progress.[36]

3.3 A typical claim dealt with by the High Court will take between 12 and 18 months to get to trial from the date of issue of the claim form, although this can vary.[37] The pre-trial timetable is often set at a case management conference,[38] a short hearing which is used by the court to consider how the issues in the dispute can best be focused before the trial and to give appropriate directions. One of the most important steps leading up to the trial is disclosure.[39] At this stage, each

[34] Lord Woolf, *Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales* (1996).
[35] Lord Woolf, *Access to Justice: An Interim Report* (1995), p. 7.
[36] See CPR Rule 1.4, available at PART 1 - OVERRIDING OBJECTIVE - Civil Procedure Rules (justice.gov.uk) and Part 3, available at: PART 3 - THE COURT'S CASE MANAGEMENT POWERS - Civil Procedure Rules (justice.gov.uk)
[37] The most recently published statistics for 2023 indicate that the mean time from the issue of the claim form to the trial was 78.2 weeks. See Civil Justice Statistics Quarterly: April to June 2023, available at: Civil Justice Statistics Quarterly: April to June 2023 - GOV.UK (www.gov.uk). Note that the courts are still catching up after the Covid-19 pandemic. In 2019, the mean time taken for multi/fast track claims to go to trial was 59.1 weeks.
[38] Case management conferences in claims assigned to the multi-track are governed by CPR 29, available at: PART 29 - THE MULTI-TRACK - Civil Procedure Rules (justice.gov.uk). Case management conferences may also be used in intermediate and fast-track claims, which are typically decided in the County Court rather than the High Court.
[39] See CPR Part 31 and Practice Directions 31A and 31B, available at: PART 31 - DISCLOSURE AND INSPECTION OF DOCUMENTS - Civil Procedure Rules (justice.gov.uk), PRACTICE DIRECTION 31A – DISCLOSURE AND INSPECTION - Civil Procedure Rules (justice.gov.uk) and PRACTICE DIRECTION 31B – DISCLOSURE OF ELECTRONIC DOCUMENTS - Civil Procedure Rules (justice.gov.uk). Note that some courts have bespoke disclosure regimes. For example, in the Business and Property Courts, disclosure is governed by Practice Direction 57AD, available at: PRACTICE DIRECTION 57AD – DISCLOSURE IN THE BUSINESS AND PROPERTY COURTS (justice.gov.uk)

party is required to disclose to the others all of the documents (including any emails and other electronic documents) which may be relevant to the issues raised in the claim. These will include the documents the party wishes to rely on, but also those which might undermine its case. The party who has disclosed the documents must then either allow its opponents to view the originals or provide them with copies, unless the disclosed documents can be withheld from inspection, for example, because they are legally privileged.[40] In this way, the parties can gain a good understanding of the evidential strengths and weaknesses of their case well before the trial. In a similar vein, if a party wishes to call on a witness to give oral evidence at trial, then this must also be disclosed in advance via a written witness statement, which must be exchanged with the other parties.[41]

3.4 Before the trial, the claimant's solicitor will prepare an agreed trial bundle, which should generally include, among other things, the claim form, the particulars of claim, the defence and any reply, a case summary or chronology where appropriate, all of the witness statements to be relied on as evidence, and any medical or experts' reports and responses to them.[42] The particulars of claim and the defence must generally each be kept to 25 pages.[43] The parties also provide the court with their skeleton arguments – which should provide a concise summary of the nature of the case and the relevant background facts, the issues to be determined and the party's submissions in relation to each of those issues – and an agreed bundle containing the legal authorities they have cited.[44]

[40] See CPR Rule 31.3, available at: PART 31 - DISCLOSURE AND INSPECTION OF DOCUMENTS - Civil Procedure Rules (justice.gov.uk).

[41] See CPR Part 32 and Practice Direction 32, available at: PART 32 - EVIDENCE - Civil Procedure Rules (justice.gov.uk) and PRACTICE DIRECTION 32 – EVIDENCE - Civil Procedure Rules (justice.gov.uk)

[42] Practice Direction 32, para 27.5.

[43] Practice Direction 16, para 1.3, available at: PRACTICE DIRECTION 16 – STATEMENTS OF CASE - Civil Procedure Rules (justice.gov.uk)

[44] Skeleton arguments and authorities bundles are filed in accordance with the relevant Court Guides. See, for example, paras 9.108 to 9.113 of *The King's Bench Guide 2023*, available at: King's Bench Division Guide - A guide to the working practices of the King's Bench Division within the Royal Courts of Justice - updated May 2023 (judiciary.uk). See also Practice Direction (Citation of Authorities) [2012] 1 WLR 780, available at: Lord Chief Justice Practice direction - citation of authorities 2012 (judiciary.uk).

Skeleton arguments are generally subject to page limits, typically of 20 pages.[45] All of this means that most of the work of distilling the relevant documentation and carrying out legal research should be done by the lawyers acting for the litigants before the trial, not by the judge. The judge's task is then to read through the bundles in order to prepare for the trial.

3.5 It is not, therefore, surprising that successive judges have emphasised the importance of a well-prepared and concise bundle. In most civil cases, there are no strict overall page limits for bundles,[46] but less information is very often better than more. Indeed, submitting a poorly prepared bundle can lead to costs sanctions. For example, in a recent case the judge made a costs award of £20,000 against two barristers for the unreasonable conduct of their solicitor in preparing the trial bundle.[47] Digital technologies have made it increasingly easy to create and copy documents, which gives rise to a risk that judges will be faced with longer and longer bundles.[48] The Supreme Court has consequently urged "those involved in the preparation of … bundles … [to] take full responsibility for keeping their contents within reasonable bounds and [to] exercise restraint."[49]

3.6 Bundles of written material are also filed in appeals. In the Supreme Court, for example, the parties file an agreed Statement of Facts and Issues which should

---

[45] See for example para 9.110 of the *King's Bench Guide 2023*, which provides that a skeleton argument should "be as brief as the issues allow and not normally be longer than 20 pages of double-spaced A4 paper".
[46] There are exceptions to this. For example, in proceedings in the Family Court and the Family Division of the High Court, bundles should be limited to 350 pages of text unless the court has specifically directed otherwise. See Practice Direction 27A, para 5.1, available at: PRACTICE DIRECTION 27A – FAMILY PROCEEDINGS: COURT BUNDLES (UNIVERSAL PRACTICE TO BE APPLIED IN THE HIGH COURT AND FAMILY COURT) (justice.gov.uk)
[47] *Bailey v Stonewall and others* ET/2202172/2022 (5 July 2023), in which Employment Judge Goodman made a £20,000 costs award against Garden Court Chambers and two of its KCs, sued as representatives of Garden Court Chambers.
[48] See for example *White Winston Select Asset Funds LLC v Mahon* [2019] EWHC 1381 (Ch), where the High Court was presented with a trial bundle comprising 35 level arch files, including a chronological bundle of more than 8,000 pages. During the trial, the parties made reference to around 200 to 250 pages from the 8,000 in the chronological bundle, and only 200 pages from the other files. Most of the submitted material was therefore unnecessary, and the judge found himself "at a loss to understand the thinking behind" it. He went on to explain that, when preparing the bundles, lawyers should take a "building up from nothing" rather than a "thinning down from everything" approach, thereby ensuring that every document that is selected for inclusion is relevant to the issues before the court and will assist the judge in reaching a decision: para 44, per His Honour Judge Simon Barker QC.
[49] *Poshteh v Royal Borough of Kensington and Chelsea* [2017] UKSC 36, para 47 per Lord Carnwath.

give a neutral summary of the relevant facts and the issues raised in the appeal. They also file an appendix containing the judgments and orders of the courts below, written cases of up to 50 pages, and bundles containing the authorities they rely on.[50] Since the Covid-19 pandemic, all of these papers are filed with the Supreme Court Registry electronically.[51] Electronic filing is currently done via email or an upload to Microsoft SharePoint (a web-based document storage and collaboration platform). However, the Supreme Court is currently developing a new a "Digital Services Portal" which will allow users to file documents digitally, make electronic payments, access details about the status of their cases and track the progress of any applications they have made.[52] A version of this digital filing system is already used in some lower courts.[53]

3.7 But, although the courts generally derive great value from the written materials filed with us, the hearing remains the main event. At first instance, civil trials are generally conducted orally before a single judge.[54] The trial will normally proceed as follows. First, the advocate acting for the claimant will give an opening speech which should outline the case with reference to the evidence to be called. If there are any agreed medical or expert reports, or other documentary evidence, these will normally be put in evidence, unless the judge has indicated in advance that this not necessary. The claimant's advocate will then call each of the claimant's witnesses in turn. The witnesses will be asked to identify themselves and to confirm the accuracy of their written witness statements filed in advance of the trial. Oral questioning by the claimant's advocate is rarely permitted: the written witness statements are generally taken as their evidence in

[50] See The Supreme Court Rules 2009, rules 22 to 24, available at: Microsoft Word - uksi_20091603_en.doc (supremecourt.uk). See also UKSC Practice Directions 5 and 6, available at: Papers for the appeal hearing | Practice direction 5 - The Supreme Court and The appeal hearing | Practice direction 6 - The Supreme Court.
[51] UKSC Practice Direction 14: Filing Documents in the Registry of The Supreme Court by electronic means | Practice direction 14 - The Supreme Court and Practice Note (March 2022): Practice Note March 2022 (supremecourt.uk)
[52] Supreme Court launches the next phase of its ambitious Change Programme - The Supreme Court
[53] The High Court and the Upper Tribunal: HMCTS E-Filing service for citizens and professionals - GOV.UK (www.gov.uk)
[54] As described above, jury trial is still used in limited circumstances.

chief, as it is known.[55] Each witness may be cross-examined by the advocate acting for the other side, who will ask the witness questions in order to test their evidence and expose weaknesses where they exist. The witnesses for the defence are then called and cross-examined in the same way. The judge does not conduct his or her own investigation into the evidence, but may put questions to the advocates and the witnesses during the course of the trial. Finally, first the defendant's advocate and then the claimant's advocate will give a closing speech setting out their submissions about the evidence and the applicable law. The judge can give his or her judgment orally ("ex tempore") at the end of the hearing, but more commonly chooses to reserve judgment and then give it in writing at a later date.

3.8 In the High Court, a trial can last from a day or two to more than a month, depending on the complexity of the case. Appellate hearings are generally shorter because the factual background has been established at trial and the legal issues are more focused. In the Supreme Court, most appeal hearings are listed for one or two days, although longer hearings may be needed in particularly complex cases. Generally speaking, our oral hearings are getting shorter: in the Supreme Court, the average length of oral hearings is now around one and a half days, compared with three to four days in the House of Lords 40 years ago.[56] Counsel are required to make their points within strict time limits, which are agreed in advance. Some other common law countries spend less time on oral hearings. For example, in the United States Supreme Court, each side is generally allowed just half an hour to present their case.[57]

3.9 As I have explained, extensive written materials are filed with the court at the pre-trial stage. Almost all civil cases are now determined by expert judges with

---

[55] CPR Rule 32.5(2): "Where a witness is called to give oral evidence under paragraph (1), his witness statement shall stand as his evidence in chief unless the court orders otherwise." Available at: [PART 32 - EVIDENCE - Civil Procedure Rules (justice.gov.uk)]

[56] Alan Paterson, *Final Judgment: The Last Law Lords and the Supreme Court* (Hart, 2013), p. 39.

[57] Rules of the Supreme Court of the United States, Rule 28(3), available at: [Rule 28. Oral Argument | Supreme Court Rules | US Law | LII / Legal Information Institute (cornell.edu)]

many years of legal experience who will be used to reading and analysing documents, not by juries comprised of lay people. Why, then, do we continue to hold oral hearings? The truth is that, for certain types of application, we no longer do so. For example, applications for permission to appeal to the Supreme Court are now almost always decided on the papers, without an oral hearing. There is no general right to appeal to the Supreme Court. Accordingly, prospective appellants must seek the Court's permission to appeal, which will only be granted in cases which raise an arguable point of law of general public importance.[58] In our predecessor court, the Appellate Committee of the House of Lords, applications for permission to appeal were often considered at oral hearings. However, over time, these hearings were phased out, primarily because of the high levels of time and expense involved.[59] By 2005, more than 98% of applications for permission to appeal were considered on the papers.[60] This practice has been continued in the Supreme Court; the Court retains the power to refer an application for a short oral hearing, but this power is very rarely exercised.[61]

3.10 The position is different for trials, and for substantive appeal hearings, where oral argument, and oral examination of the evidence, are considered to confer significant benefits. One of the most important practical benefits is that oral hearings allow for far greater flexibility and dialogue between the judiciary and counsel than is permitted by written representations. They give the judge the opportunity to test the relevant facts and law and, perhaps most importantly, to develop a clearer understanding of the issues that are the most critical to the parties involved in the case by questioning counsel. Good advocates do not merely repeat the points they have already made in their written cases. They

---

[58] Supreme Court Practice Direction 3.3.3, available at: Applications for permission to appeal | Practice direction 3 - The Supreme Court

[59] Brice Dickson, "The Processing of Appeals in the House of Lords" (2007) 123 Law Quarterly Review 571 at 581.

[60] Ibid at 582. In 2005, there were only four oral permission to appeal hearings, representing 1.5% of the applications filed. In more recent years, there have typically been one or none.

[61] Supreme Court Practice Directions 3.3.12 to 3.3.16, available at: Applications for permission to appeal | Practice direction 3 - The Supreme Court

expand on their submissions in order to respond to the points made on behalf of the other parties, and to address the questions raised by the judge. As one of our leading advocates, Lord Pannick KC, has pointed out:

> "The advocate should recognise that questions provide an opportunity to find out and address what interests or concerns the court… If it matters to the judge, then it should matter to the advocate."[62]

3.11 Some of the benefits of oral hearings were explored by the House of Lords in an appeal concerning the extent to which the Parole Board was required to offer a prisoner, who had been recalled to prison after provisional release, an oral hearing before deciding whether or not to recommend his re-release.[63] The Law Lords' speeches make it clear that they considered oral hearings to enhance the quality of decision-making. Lord Bingham, with whose speech the majority of the Committee expressed agreement, said:

> "While an oral hearing is most obviously necessary to achieve a just decision in a case where facts are in issue which may affect the outcome, there are other cases in which an oral hearing may well contribute to achieving a just decision."[64]

He went on to note that "[i]t may often be very difficult to [make] effective representations without knowing the points which are troubling the decision-maker".[65] In a similar vein, Lord Slynn recognised a risk "that if only written representations are looked at a decision may be taken without a full appreciation of what really matters."[66] Lord Hope added that, "[i]f the system is such that oral hearings are hardly ever held, there is a risk that cases will be dealt with instead

[62] Lord David Pannick KC, *Advocacy* (Cambridge University Press, 2023), pp. 31-32.
[63] *R (West) v Parole Board* [2005] UKHL 1.
[64] Ibid, para 31 per Lord Bingham of Cornhill.
[65] Ibid, para 35 per Lord Bingham of Cornhill.
[66] Ibid, para 48 per Lord Slynn of Hadley.

by making assumptions ... Denying the prisoner of the opportunity to put forward his own case may lead to a lack of focus on him as an individual."[67]

3.12 This last point is an important one. In a more recent case, which also concerned the Parole Board,[68] I explained that the purpose of the hearing is not only to increase the chance that the court or other decision-maker will reach the right decision. At least two other values are also engaged. The first concerns procedural fairness.[69] Justice requires a procedure which pays due respect to persons whose rights are significantly affected by the decision of the judge. As I put it in the judgment, "[r]espect entails that such persons ought to be able to participate in the procedure by which the decision is made, provided they have something to say which is relevant to the decision to be taken."[70] In a culture in which oral hearings are an accepted aspect of a fair procedure, they are one way in which the court can show its respect for litigants. They give litigants the chance to present their case to the judge, thereby avoiding "the feelings of resentment that will be aroused if a party to legal proceedings is placed in a position where it is impossible for him to influence the result."[71]

3.13 The second, closely related, value is the rule of law. There is a lot of debate about what compliance with the rule of law entails,[72] but its core includes the requirement that laws are accessible and administered openly and consistently.[73] Oral hearings can help secure these requirements because they are generally held in public. There are some exceptions to this, because the right to see justice done and to understand its workings sometimes has to be balanced against other,

[67] Ibid, para 66 per Lord Hope of Craighead.

[68] *Osborn v The Parole Board* [2013] UKSC 61.

[69] In the UK, procedural fairness is protected both by the common law and by article 6 of the European Convention on Human Rights, as given effect in our domestic law by the Human Rights Act 1998.

[70] *Osborn*, note 68 above, para 68 per Lord Reed.

[71] *Secretary of State for the Home Department v AF* [2009] UKHL 28 at para 63 per Lord Phillips of Worth Matravers.

[72] See Brian Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge University Press, 2004), pp. 3-4 and Tom Bingham, note 14 above, p. 5 and Ch 3.

[73] Lon Fuller, *The Morality of Law* (Yale University Press, 1969), Ch 2 and Tom Bingham, note 14 above, p. 8.

competing interests.[74] But, in most cases, anyone who wants to attend a court hearing can do so, and they may be freely reported on by the press.[75] Indeed, in the Supreme Court and the Court of Appeal, hearings are also live streamed online and made available afterwards on YouTube[76] so that members of the public can watch them at a time that suits them. The Supreme Court also live streams the delivery of judgments, when the Justice who has written the lead judgment gives a short oral explanation of the Court's decision in accessible language. During the last financial year, 470,000 viewers watched our cases and judgments live and on demand, and our footage was regularly used by the media on television and on newspaper websites.[77]

3.14 We hope that these measures promote both accessibility and public understanding of the courts and their work. They also help to guard against abuse, and to protect public confidence in the judicial process. As I explained in an appeal which concerned an anonymity order, "society depends on the courts to act as guardians of the rule of law… [But] [w]ho is to guard the guardians? In a democracy, where the exercise of public authority depends on the consent of the people governed, the answer must lie in the openness of the courts to public scrutiny."[78] This is particularly important in a common law system like ours where judges develop the law through their judgments, in addition to applying and administering it.

4. Oral Hearings Yet to Come

4.1 Unlike the first two ghosts in *A Christmas Carol*, the Ghost of Christmas Yet to Come is a shadowy figure who does not speak, reflecting the mystery and unknowability of the future. But although the future cannot be known, I will do

[74] For example, hearings in the family courts usually take place in private. See further *A v British Broadcasting Corporation* [2014] UKSC 25, paras 27-41 per Lord Reed.
[75] *Khuja v Times Newspapers Limited* [2017] UKSC 49, para 12 per Lord Sumption.
[76] See UKSupremeCourt - YouTube and Court of Appeal - Civil Division - Court 71 - YouTube
[77] The Supreme Court and Judicial Committee of the Privy Council – Annual Report and Accounts 2022–2023
[78] *A v British Broadcasting Corporation*, note 74 above, para 23 per Lord Reed.

my best to paint a picture of how the UK's practice of holding oral hearings might develop in the light of new digital technologies and improvements in AI. As Richard Susskind has put it, even if we cannot predict as-yet un-invented technologies, we can at least try to "anticipate the broad trajectory, if not the specific details, of the world yet to come."[79]

4.2 In fact, the adoption of digital technologies can already be seen in the present. In the Supreme Court, and in many other UK courts, the use of technology increased sharply as a result of the lockdowns during the Covid-19 pandemic.[80] The fact that there was no alternative but to move to using online hearings rather than hearings in person, electronic files rather than paper files, and electronic library resources rather than books, meant that judges and court staff had to learn at once how to use the technology, and overcame any cultural resistance there might otherwise have been to those changes in working methods.

4.3 The Supreme Court is continuing to build on its use of digital technologies. As I have explained, we are currently undertaking a programme to digitise our processes for filing and case management, so as to integrate our existing cloud-based system for the filing, storage, organisation and sharing of documents, including appeal bundles and draft judgments, with a customer relationship management system which will contain all information about appeals and communications with court users in the same system. This will make it easier to store and find information, avoid duplication, and reduce the likelihood of human error.

4.4 Online hearings remain available in appeals from the jurisdictions outside the UK which use the Judicial Committee of the Privy Council (the permanent

[79] Richard Susskind, *Online Courts and the Future of Justice* (Oxford University Press, 2019), p. 13.
[80] For an overview, see Lord Hodge, "Covid, continuity and change: the courts' response to the pandemic", British Irish Commercial Bar Association Annual Law Forum, 5 November 2020, available at: BICBA Annual Law Forum lecture 11.20.pdf (supremecourt.uk)

judges of which are the Justices of the Supreme Court).[81] We are also considering a proposal to make the most important case papers available through our website, so that they can be viewed alongside the livestream of the hearing. Journalists and members of the public do not currently have automatic access to the written submissions, precedents and other papers filed with the Court.[82] This can make it more difficult for them to follow and understand the proceedings, so we have trialled putting the key case papers online in a small number of cases.[83] The technology is already available, but careful handling is required to ensure compliance with data protection and confidentiality requirements. We are working through these issues to determine whether case papers can be made available to the public on a more regular basis in the future.

4.5 The lower courts and tribunals in England and Wales have also undergone an extensive digital transformation in the past few years.[84] The programme aims to "modernise courts and tribunals by digitising paper-based services and centralising administration processes, [to] improve efficiency and access to justice while reducing operating costs."[85] The reforms to date include a pilot online process for resolving small money claims,[86] as well as new digital systems for issuing probate applications, divorce applications, and certain civil damages claims, among others. A new Online Procedure Rules Committee, which includes a technological expert, was launched in June 2023 to oversee the

---

[81] For further information about the Judicial Committee of the Privy Council, see Role of the JCPC - Judicial Committee of the Privy Council (JCPC)

[82] As set out in Supreme Court Rule 39(3), all documents held by the Court may be inspected by the press or members of the public on application to the Registrar. The Registrar may refuse an application for reasons of commercial confidentiality, national security or in the public interest. Under the Supreme Court Fees Order 2009, an application to inspect documents under Rule 39 carries a fee of £350. There is a further fee for the provision of additional hard copy documents.

[83] *R (Miller) v The Prime Minister* [2019] UKSC 41 and *Chandler v The State No 2 (Trinidad and Tobago*) [2022] UKPC 19. See R (on the application of Miller) (Appellant) v The Prime Minister (Respondent) - The Supreme Court and Chandler (Appellant) v The State (Respondent) No 2 (Trinidad and Tobago) - Judicial Committee of the Privy Council (jcpc.uk)

[84] The HMCTS Reform Programme - GOV.UK (www.gov.uk)

[85] House of Commons, Committee of Public Accounts, "Progress on the courts and tribunals reform programme" HC 1002 (30 June 2023), p. 3, available at: Progress on the courts and tribunals reform programme (parliament.uk)

[86] Make a court claim for money: Make a claim - GOV.UK (www.gov.uk)

development of rules for online proceedings generally, thereby ensuring appropriate consistency across the Civil, Family and Tribunals jurisdictions.[87]

4.6 The online civil money claims service was one of the first digital court services to be piloted. It is designed to make it quicker and easier for litigants to resolve relatively low value claims of up to £25,000 (or £10,000 if the parties are not legally represented),[88] in response to a finding in 2016 that there was a "lack of adequate access to justice for ordinary individuals and small businesses".[89] More than 445,000 claims have been issued using the online service since its introduction in March 2018.[90] The service encourages the settlement of defended claims by automatically referring the parties to its associated free online mediation service, unless they make an active choice to opt out.[91] Over 48% of the 7,105 mediation appointments made in 2023 have resulted in claims being settled, thereby reducing the need for court hearings. The online service also seeks to free up judicial time by enabling legal advisers to make case management directions in defended claims with a value of up to £1,000.[92] As a result, claims have been progressed more quickly than they were in the past.[93]

4.7 The incorporation of AI is likely to be the next major development. The new digital court systems I have described use what have been called "architectural" forms of AI:[94] in other words, rule-based systems, or algorithms, which can be programmed to undertake tasks using "decision tree" type software and flow

---

[87] Created pursuant to the Judicial Review and Courts Act 2022, sections 22-24. See further: New Online Procedure Rule Committee launched - GOV.UK (www.gov.uk)

[88] CPR Practice Direction 51R, para 2.1(6), available at: PRACTICE DIRECTION 51R – ONLINE CIVIL MONEY CLAIMS PILOT (justice.gov.uk)

[89] Briggs LJ, *Civil Courts Structure Review: Final Report* (July 2016), para 12.4, available at: civil-courts-structure-review-final-report-jul-16-final-1.pdf (judiciary.uk)

[90] Fact sheet: Online Civil Money Claims - GOV.UK (www.gov.uk)

[91] CPR Practice Direction 51R, section 6.

[92] CPR Practice Direction 51R, section 20.

[93] See note 89 above. The Fact Sheet reports at para 3 that, as at 17 October 2023, "it takes 44 weeks from receipt to first hearing compared to 53 weeks in the non-digital journey, and settlement agreements being reached in 24 calendar days from issue on average."

[94] Richard Susskind, note 79 above, p. 264. Some commentators do not characterise this kind of algorithmic analysis as AI. See for example, Lord Sales, "Algorithms, Artificial Intelligence and the Law" (2020) 25 Judicial Review 46 at 47.

charts. The answer to each question prompts another, leading to an ultimate conclusion. Lawyers and judges already have some experience of this kind of AI, which has for many years been incorporated into legal research platforms, such as Westlaw and LexisNexis. Other potential uses have been tried in other legal systems, for example in the US as a guide to the risk of reoffending and thus as an aid to sentencing judges.

4.8 The strengths of this type of programme are the strengths of computer technology in general: efficiency and consistency. These are important objectives of any legal system, but they are not the only ones. Even at this relatively basic level, the use of a computer programme raises some important questions. One is whether we can understand the algorithm and detect any possible biases built into it or into the data processed by it. However, secrecy is a component of the development of most AI programmes. This is arguably for good reasons of commercial confidentiality, but it has the consequence that, for judicial users, for the parties and for the general public, the manner in which any algorithm arrives at its results is opaque. That may not matter when using a legal research tool, but it does when predicting recidivism in order to sentence offenders.[95]

4.9 In addition to the possibility of bias, computer-generated decisions are not guaranteed to be free from error, although they may be less prone to error than human beings. If it is not possible to understand how an algorithm arrives at its results, then it may not be possible to demonstrate whether its results in any given case are right or wrong, unless we retain the capacity to test the outcomes. To take the example of a programme which recommends sentences in criminal

---

[95] For similar reasons, the House of Lords Justice and Home Affairs Committee has recommended: "There should be a requirement upon producers of technological products to embed explainability within the tools themselves. The interface of tools should be designed to facilitate the experience of users: equipping them with the necessary information to interpret outputs, and an indication of the level of surety its outputs provide. The specifics of what should be explained will vary depending upon the context. The tool should reflect that variation, and encourage users to consider and challenge results." See para 155 of the House of Lords Justice and Home Affairs Committee, "Technology rules? The advent of new technologies in the justice system" 30 March 2022, available at: Technology Rules? The advent of new technologies in the justice system (parliament.uk)

cases, once it is used regularly, there may cease to be any parallel system of sentencing by human judges with which it can be compared. We might then risk finding ourselves in a similar situation to children whose reliance on calculators has left them unable to recognise when they have made an input error which produces a result which is wrong, or like drivers whose reliance on satnav has left them unaccustomed to using a map.

4.10 Our court systems do not yet make use of more advanced forms of AI capable of performing "machine learning". Machine learning involves the use of systems which can "learn" from patterns in large bodies of data, using algorithms which operate automatically with limited or no human intervention. This kind of AI is consequently able to make choices via an evaluative process, to "predict" outcomes, and, in some cases, to generate new content, such as text, in response to prompts from users.[96]

4.11 The legal profession in the UK is already making use of more advanced forms of AI. For example, predictive coding software is being used to review documents and identify the most relevant for the purposes of disclosure.[97] AI is also being used to assist in drafting and reviewing contracts.[98] The judiciary is also taking an active interest in how AI might be used to increase efficiency and improve access to justice in the courts. As the Council of Europe's Committee on Artificial Intelligence has recognised, "artificial intelligence systems may be designed, developed and used to offer unprecedented opportunities to protect and promote human rights and fundamental freedoms, democracy and the rule of law".[99] But AI also presents risks and challenges, which must be carefully managed in order for its benefits to be fully realised.

---

[96] See Adrian Zuckerman, "Artificial Intelligence – Implications for the Legal Profession, Adversarial Process and Rule of Law (2020) 136 LQR 427 at 430-431 and Richard Susskind, note 79 above, pp. 265-266.

[97] See, for example Thomson Reuters Document Intelligence: Get answers in minutes | Legal Solutions UK | Thomson Reuters

[98] See, for example Robin AI - We Make Contracts Simple & Fast With AI

[99] Council of Europe, Committee on Artificial Intelligence, "Consolidated Working Draft of the Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law", 7 July 2023, available at: 1680abde66 (coe.int)

4.12 Perhaps most fundamentally, the question arises whether the process of human decision-making is of value in and of itself, even with the possibility of human error and inconsistency. In other words, in judicial decision-making, is it only the result which matters, or is the process by which that result is reached in itself of importance? I think there is little doubt that society attaches significant value to the process of human decision-making by courts, in terms for example of transparency, accountability, and legitimacy. Judges, at least in a precedent-based system such as the common law, will also be aware of the importance of creativity in the development of the law, and of the flexibility and discretion which can prevent or mitigate cases in which the application of a general rule would cause injustice. The question may be in what circumstances efficiency, consistency, and perhaps economy, may outweigh those factors.

4.13 So, what might this mean for oral hearings? It would be possible to write a PhD thesis in response to this question, but there are four points that I would particularly like to focus on here.

4.14 First, AI has the potential to revolutionise legal advice. AI tools are increasingly able to predict the outcome of cases in advance. For example, the judicial decisions of the European Court of Human Rights have been predicted to 79% accuracy using an AI method developed by researchers in the UK and the USA.[100] Lex Machina – which was developed by computer scientists at Stanford University and has since been acquired by LexisNexis[101] – has been said to "predict the probability of success in patent litigation in the US more accurately than human patent lawyers."[102] As the access to and reliability of these AI models increases, parties will be equipped with data-driven analytics on the likely outcome of their claims, which should ideally complement, rather than replace,

[100] Nikolaos Aletras, Dimitrios Tsarapatsanis, Daniel Preoţiuc-Pietro, Vasileios Lampos "Predicting judicial decisions of the European Court of Human Rights: a Natural Language Processing perspective" (2016) PeerJ Computer Science 2:e93, available at: [Predicting judicial decisions of the European Court of Human Rights: a Natural Language Processing perspective [PeerJ]]

[101] [Legal Analytics by Lex Machina]

[102] Richard Susskind, note 79 above, p. 282.

human legal advice. It is possible that greater access to legal analytics could cause more claims to settle before they come to court, thereby reducing the need for hearings, since the parties will know (or think they know) the outcomes in advance. There are both opportunities and threats for justice within this. On the one hand, it is beneficial if claims can be settled before time and money is expended on a trial. But on the other, there is a risk that some parties could be discouraged, by algorithms which predict probabilities on the basis of existing case law, from pursuing legal claims which have real merit, or which raise a point of law on which there is conflicting authority and a consequent need for guidance from the appellate courts.

4.15 Secondly, AI has already been used to assist with the preparation of cases and submissions, with mixed results. Earlier this year, for example, a litigant in person presented submissions based on answers provided by ChatGPT in a civil claim heard in England.[103] The litigant relied on four cases, but on closer inspection it became clear that one case name had been completely fabricated. The other three cases were real, but the paragraphs cited had been made up, although, at first glance, they appeared genuine. This kind of "hallucination" is a known risk of generative AI. It occurs because bots like ChatGPT work by predicting the next word in a sentence through analysis of large patterns of data, rather than by engaging in legal reasoning: they are essentially a more powerful version of the function on a mobile phone which suggests the next word in an email or SMS. In Canada, two courts have responded by issuing practice directions which requires those who have made use of AI in their submissions to inform the court and indicate how AI was used.[104] But, to my mind, the better approach is to emphasise, as the Bar Standards Board has done, that "AI, while

[103] LiP presents false citations to court after asking ChatGPT | News | Law Gazette

[104] Court of King's Bench of Manitoba, "Practice Direction: Use of Artificial Intelligence in Court Submissions" issued on 23 June 2023, available at: practice_direction_-_use_of_artificial_intelligence_in_court_submissions.pdf (manitobacourts.mb.ca); Practice Direction General - 29 and Supreme Court of Yukon, "Practice Direction 29: Use of Artificial Intelligence Tools", issued on 26 June 2023, available at yukoncourts.ca/sites/default/files/2023-06/GENERAL-29 Use of AI.pdf

a promising tool, is not a replacement for human responsibility and oversight."[105] In the United States of America, the Chief Executive of a company called DoNotPay has offered to pay $1 million to any human lawyer who agrees to repeat submissions formulated by DoNotPay's AI "lawyer" verbatim in an appeal before the US Supreme Court.[106] I am not surprised that he is still waiting for a volunteer. Whatever the quality of the AI they use, lawyers remain responsible for their research, arguments, and representations under their core duties to the Court and to their client.

4.16 The third point concerns case management. A senior English judge, Sir Geoffrey Vos, has set out his expectation that AI should, in due course, be used to take "very minor decisions",[107] such as the decision to extend time limits by a few days. He has also proposed that integrated mediation processes – such as the process embedded in the online civil money claims service – "can and should be driven by AI, so that the parties are faced with regular logical proposals for the resolution of their dispute."[108] This may help increasing numbers of litigants to resolve claims themselves, without the need for any kind of oral hearing.

4.17 A version of this type of AI-based case management is already used in the private sector by companies such as eBay, Amazon, AirbnB and Uber, which use digital private dispute resolution mechanisms to resolve disputes between the buyers and sellers who use their sites. Since most transactions on these platforms involve relatively small sums of money, it is rarely cost effective for disputes arising from them to be resolved in the courts. At the same time, "a reliable system of dispute resolution [is] vital if buyers and sellers [are] to trust the

---

[105] Bar Standards Board, "ChatGPT in the Courts: Safely and Effectively Navigating AI in Legal Practice", October 2023, available at: [ChatGPT in the Courts: Safely and Effectively Navigating AI in Legal Practice (barstandardsboard.org.uk)]

[106] [Joshua Browder on X: "DoNotPay will pay any lawyer or person $1,000,000 with an upcoming case in front of the United States Supreme Court to wear AirPods and let our robot lawyer argue the case by repeating exactly what it says. (1/2)" / X (twitter.com)]

[107] Sir Geoffrey Vos MR, para 42, available at: [The Future for Dispute Resolution: Horizon Scanning (judiciary.uk)]

[108] Ibid.

platform."[109] For eBay, the result has been a two-stage process. The disputing parties are guided through a series of online forms, which in the majority of cases results in a settlement. However, in the 10% or so of cases where the parties fail to reach an agreement, they can appeal to a human mediator. The eBay system currently resolves more than 60 million disputes a year, which is much more than the civil courts could currently handle. Over 90% are dealt with by a form of AI, without any human intervention.[110]

4.18 I am not suggesting that the civil courts should be replaced with eBay-style dispute resolution. But at the same time, the courts can feel out of reach for too many people, and we need to do more to improve their accessibility.[111] Digital forms of case management, complemented by AI, may be one part of the answer. The challenge is to design the services in a way which is user-friendly, and which facilitates the participation needed to ensure that litigants feel that their complaints have been heard, and that they have been shown respect.[112] For this reason, the Supreme Court's new digital services have been developed in close collaboration with court users and stakeholders, and we have taken their feedback on board. Users are currently engaged in testing the new systems, so that we can be confident that they work efficiently and effectively before they are introduced.

4.19 AI is currently being trialled by my court to produce transcripts of oral hearings, which will be of assistance to the judges, and also to lawyers, the media and members of the public.[113] Other European courts are using AI to link legal citations in documents to legal databases,[114] to anonymise judgments,[115] to direct

[109] Frederick Wilmot-Smith, "Justice eBay Style", London Review of Books, Vol 41 No 18, 26 September 2019, available at: Frederick Wilmot-Smith · Justice eBay Style (lrb.co.uk)
[110] Ibid.
[111] See Richard Susskind, note 79 above, Ch 2.
[112] For a discussion of some of the problems arising when user needs are not met, see Law Society, "Online court services: Delivering a more efficient digital justice system", October 2023, available at: Online court services: delivering a more efficient digital justice system | The Law Society
[113] This is also being done in Spain. The transcripts currently contain too many errors to be publishable, but they should improve over time.
[114] Austria.
[115] Austria, France, Hungary, and Slovenia.

appeals towards appropriate chambers,[116] to detect thematically connected cases, and to prepare summaries of judgments and press releases.[117]

4.20 The last thing I want to talk about concerns the possibility of AI judges. There is much debate as to whether AI will ever be capable of the complex factual and legal evaluation conducted, for example, by a High Court judge. But technology is improving all the time. So, I think the more interesting question is: as a matter of principle, should AI be permitted to decide our cases and, if so, which ones?[118] I have suggested that there is a value in the process of human decision-making, in the context of the courts, which is separate from the decision itself. At the same time, decision-making by AI may enhance other values such as efficiency and consistency. So AI is likely to offer both opportunities and threats. The question may be whether we can exploit the opportunities, and minimise the threats.

4.21 At the moment, there are concerns about bias, about transparency, and about the social, ethical and human rights implications of using "robot judges". Lawyers, judges, academics and policy-makers should be engaging seriously with these concerns, to ensure that AI is used to enhance our justice system, not to replace it. We need to bear in mind that the pace of development is extremely fast. There is a risk that future developments may occur at a pace which exceeds our ability to adapt.

5. Conclusion

5.1 After his visits from the Ghosts of Christmas Past, Christmas Present, and Christmas Yet to Come, Scrooge is a reformed character who embraces Christmas and declares, "I will live in the Past, the Present, and the Future. The Spirits of all Three shall strive within me. I will not shut out the lessons that they

[116] France.
[117] The Court of Justice of the EU.
[118] See Richard Susskind, note 79 above, pp. 290-292.

teach!". The lesson that has struck me as I have surveyed the past, present and future of oral hearings is the continuing role they have played in upholding the rule of law in our jurisdiction under very different social conditions, reflecting a degree of continuity in our fundamental values. As the theorist Lon Fuller has pointed out, the rule of law "involves of necessity a commitment to the view that man is, or can become, a responsible agent, capable of understanding and following rules, and answerable for his defaults."[119] Oral hearings can help to ensure that this commitment is understood and felt by citizens, who have the opportunity to present their case before a judge who will listen to what they have to say.

5.2 You will rightly form your own views on how far the features of the oral hearings I have described can, or should, be transplanted to the Japanese courts, which operate within a different constitutional and legal culture. But as our jurisdictions begin to realise the efficiencies and opportunities presented by digitisation and AI, I am grateful that we can share ideas and learn from each other as we work to increase access to justice and safeguard the rule of law for the future.

[119] Lon Fuller, note 73 above, p 162.