

**CELEBRATING THE PAST, EMBRACING THE
FUTURE: The Eastern Caribbean Supreme Court at
Fifty, 1967-2017**

By Justice Don Mitchell (Ret)

Introduction

In this presentation, I shall take a very personal, indeed, idiosyncratic, look at the history of the legal profession in our jurisdiction of the ECSC, and the challenges facing our twin professions of lawyer and judge. I shall start with an examination of what it once took to become a Caribbean lawyer, and briefly compare the historical process with how it is done now. And then, I shall look at how the technology of the practice of law and of the judicial process has changed in the Organisation of Eastern Caribbean States (OECS) sub-region over the past fifty years.

When I began my professional practice as a young and callow lawyer in Basseterre in September 1971, I did my own typing on a portable Olivetti typewriter. I did a touch-typing course after I graduated from law school, as I knew it would be years before I could afford to pay a proper typist to help me. So, I prepared to do it all myself. Many young lawyers today face the same challenges, but the work environment has completely changed. In my day, the equipment necessary for the practice of law had hardly progressed beyond that of the 18th Century. The only items in my Chambers that **James Boswell** would

not have recognised were my manual typewriter, sheets of carbon paper, and Bic ballpoint pens.

A Legal Education

I was called to the Bar in London in June 1971, as thousands of West Indian Barristers had for 300 years before me. There was, at that time, neither a Cave Hill Campus nor any Sir Hugh Wooding Law School that I could go to. There was no point in my getting a US or a Canadian law degree, as those qualifications were unrecognised, in the sense of allowing me to practise law back home. The only legal education accepted in the islands was a UK one.

If you were a brilliant student you might win a scholarship to Oxford or Cambridge University. Otherwise, you might stay home and do an external degree at London University. Or, if your family could afford it, you could privately attend a UK university, or the Inns of Court School of Law, and be called to the Bar of England and Wales, before you came back to practise law in the OECS. That is what I did, with the help of a scholarship from my father's employer, Tate & Lyle Ltd.

I have often been asked why was a law school called an "Inn of Court"? As with so many things in the law, the name is a matter of history. In the earliest period of English legal education, say from about 1100 to about

1300, the way a young, would-be lawyer got qualified was by following the Judge around while he was doing a Circuit of the towns in the County, and listening and learning as he heard cases and settled disputes. The student would attend court and take notes of the legal issues and the Judge's rulings. During the evenings, the students gathered around the Judge at dinner at the same hotel, or inn, where the Judge was staying. They asked him questions about the disputes he had settled that day, and they took notes. This being an inn, they drank a lot of wine.

How did a lawyer's qualification to practise law come to be known as a "call to the bar"? The Judge would arrive in a town where his Commission from the King authorised him to sit and to do justice. His Commission would be read out aloud by the Town Crier, and petitioners for justice would begin to gather. A corner of the market hall would be cleared of traders, and new straw thrown down on the floor so the Judge would not dirty his shoes. A bench and a table would be set up for him to hear the suits brought by the town's citizens. Early English judges really did sit on a simple bench in a market hall. A plain wooden barrier would be erected across the floor of the hall to keep the pigs and sheep, which typically shared market hall space with their traders, away from the Judge. The litigants who had paid a fee to a

court official to draft their claim or defence would throng around waiting for their case to be called. And, the students would be present ready to take notes. Only the bar kept them from jostling the Judge.

When a case was called, the Judge might ask the litigant or accused person if he had a lawyer. If he indicated he did not, and the Judge thought he needed one, he would look around the hall. If there was no willing advocate available, or the litigant could not afford one, and the Judge saw a student of his who he thought was sufficiently advanced in his studies, and could help the accused, he might call on him to approach the bar, and he would ask him to assist. This process amounted to recognition that the student was now accepted by the Judge as worthy of addressing the Court on a case. The student was then said to have been “called to the Bar”.

By the 15th Century, there were established in London around the city’s civil courts several Inns of Court, housing students, lawyers and judges. Eventually, they were whittled down to four: Grey’s Inn and Lincoln’s Inn, the Inner Temple and the Middle Temple. And, why would a law school be called a “Temple”? They were so-called since they were established in the properties originally owned by the ancient religious Order of the Knights Templar. After the abolition of the Order in 1312, lawyers came to occupy the Temple buildings. They

formed themselves into two societies, the Inner Temple and Middle Temple, first mentioned by name in a manuscript yearbook of 1388. Their Charter as law colleges was signed by **King James I** in 1608.

As **Anthony Wagner** wrote,¹ the Inns of Court *became in effect the third university of England, to which the nobility and gentry sent their sons to acquire knowledge of the world and of a subject then as useful as any for the management of property and the pursuit of worldly and political ambitions.*

The Inns of Court were thus, though not given a charter as a university, the third oldest law school, after Oxford (1096) and Cambridge (1209). The Inns were organised on the same basis as the colleges at Oxford and Cambridge, offering accommodation to practitioners of the law and their students, and facilities for education and dining. Professional law exams were introduced at the Inns for the first time only in the year 1853.

Up to the time I qualified as a Barrister, you could not be called to the Bar unless you had dined the requisite number of a dozen times at your Inn. Passing your examinations was not sufficient for you to graduate.

¹ https://familysearch.org/wiki/en/Lawyers_in_England_and_Wales

The dinners were compulsory, and were a reminder of the early history of legal education.

In the year 1674, the Leeward Islands Colony consisting of Antigua, St Kitts, Nevis and Montserrat² got its first federal style legislature with a General Assembly made up of two planter and merchant representatives from each of the member islands. It met regularly until 1711. By the time of the General Assembly of the Leeward Islands in 1705, several of the representatives had been called to the Bar in England. They set about establishing a system of law familiar to them for their islands' governance. One of the first Acts they passed was to declare the common law of England part of the law of the Leeward Islands.³ From that time on in our islands, Barristers have always done all the legal work done in England up to the reforms of 1875 by Barristers, Proctors, Attorneys, and Solicitors.⁴ So it was that, when I was called to the Bar in St Kitts in 1971, I was admitted as a 'Barrister and Solicitor of the West Indies Associated

² Anguilla and the Virgin Islands were not represented, being too small to have their own Assemblies.

³ It was initially entitled An Act for Preventing Tedious and Chargeable Law Suits, and for Declaring the Rights of Particular Tenants. In time, as most of its provisions were repealed, leaving only section 2 remaining, it came to be re-named The Common Law (Declaration of Reception) Act. This Act can still be found under that title in any good collection of laws of any of the Leeward Islands.

⁴ A Proctor practised in the Admiralty and Ecclesiastical Courts, an Attorney in the common law courts, and a Solicitor in the Courts of Equity. The Judicature Acts, 1873-1875, of the United Kingdom Parliament, combined all three in the common professional title of Solicitor.

States Supreme Court'. This was the court that was established by the Supreme Court Order of 1967, and which is still our court, though renamed the Eastern Caribbean Supreme Court.

The English came to separate the work of Barristers and Solicitors long after we in the Eastern Caribbean had adopted the common law, and our courts came to recognise English qualifications. As with the United States of America, most of our islands never adopted the system of the two separate legal professions of Barrister and Solicitor.

An OECS law student could until recently, in theory, go to England and study to be a Solicitor rather than a Barrister. However, when I was a law student, a student Solicitor, called an 'Articled Clerk', had to have family and other connections to join a firm of Solicitors in England. Few West Indians had that advantage. Also, a Solicitor's education, including passing the examinations set by the Law Society, lasted for a minimum of five years, compared to the three years typically required to be called to the Bar. Very few Eastern Caribbean lawyers, mainly some from Trinidad and Jamaica, took the longer route of studying to become a Solicitor.

I went from Trinidad to the UK in 1964 to complete my "O-Levels", and to do my "A-Levels", as my High School did not offer A-Levels. Once I got my A-Levels, I

was qualified to apply for admittance to an Inn and to study for the Bar. I joined a Jamaican school friend, who was also planning to study law and come back to the West Indies, in gaining admittance to the Inner Temple in London in the year 1967. I was called to the Bar of England and Wales in 1971.

The system of education at the Inns of Court was a thorough one. It involved attending lectures given by law professors during the day,⁵ and tutorials by practising barristers in the evening, followed by exams at the end of the year. There were among us a few students who spent as little as one year at the Inns of Court School of Law. They had first obtained a university bachelor of laws degree, and were required to do only a shortened, crash course at the School of Law to be qualified to be called to the Bar.

For centuries, only Oxford and Cambridge Universities provided the LLB degree. Everyone in the Eastern Caribbean who wanted to be a Barrister, and was like me not bright enough to win a scholarship, or rich enough to privately attend Oxford or Cambridge University, had to join an Inn and attend the Inns of Court School of Law for a legal education, lasting a minimum of three years, plus eating the requisite number of dinners.

⁵ Lectures were then given in Lincoln's Inn's Old Hall under Hogarth's immense (10 feet by 14 feet) 1748 painting of "Paul before Felix".

With a university degree, you were only required to do the final year at the Inns of Court School of Law, plus eat the requisite number of twelve dinners.

London University was founded in 1836, and is the third oldest university in England.⁶ What was remarkable about this university was that from as early as the year 1858 it allowed students to do the LLB course externally. By the early 20th Century, the first wave of redbrick Universities, such as Liverpool and Birmingham, began to offer law as a degree course. Warwick University and several others were chartered in the late 20th Century, and also offer the LLB degree. Today, there are dozens of institutions offering the LLB degree, and many West Indians have taken up the opportunity to study for the LLB at them.

But, London University was different. From the earliest period, you could stay at home in Grenada or Antigua, and do most of the LLB course by mail, going to the UK only for a few months to sit your final exams. For many West Indians who could not afford to spend years in the UK attending a full-time course of studies, that was a godsend. Clearly it was much more affordable to have to spend only a few months away in London than to have to

⁶ Durham University, which was founded by statute in 1832, also lays claim to be the third oldest university in England, but at first it only admitted students for the Anglican Church ministry:
<http://www.durhamstudent.co.uk/resources/university-history/>

spend the entire three years. It may have taken a little longer that way, maybe four or five years to get the degree, and then another year or so in London to be called to the Bar, but it was affordable. In those early days, once you were called to the English Bar, you were automatically qualified to be called to the Bar anywhere in the Eastern Caribbean.

When you passed your final exams at the Inns of Court School of Law, you obtained what was called the “Degree of the Utter Bar”. In a magnificent ceremony held in the Great Hall of your Inn, after eating good food and drinking much wine, you were presented with your Certificate of Call to the Bar, which signified that you had successfully passed your exams and were now qualified to practise at the Bar of the courts of England and Wales.

The system of Caribbean legal education I have described has all now passed into history. Every OECS law student in England today is required to first obtain an LLB from a university, and then attend the requisite professional training course for one year. Since 2008, the Inns of Court no longer provide a legal education in England.⁷ But, you still have to join an Inn, and only your Inn can call you to the Bar of England and Wales. And, you have to complete 12 of what are now called

⁷ The Inns of Court School of Law is now incorporated in the City Law School where you get your LLB: <https://www.city.ac.uk/law/about>.

'qualifying sessions' in order to be called to the Bar. Qualifying sessions take a number of forms. Yes, they still include attending dinners at your Inn. But you can, alternatively, attend special education days, or attendance at weekends, either at your Inn or at a residential centre, such as Cumberland Lodge, which are convenient methods for out-of-London students.⁸

Since the mid-1970s, the University of the West Indies and the various law schools associated with it now provide a much less expensive and much more relevant legal education for the vast majority of OECS law students. In some of our islands, particularly the British Overseas Territories, a British legal education is not only acceptable, but is for many of us, because of UWI's restricted quota system, the only practical way to become legally qualified. With a British legal qualification, an OECS law student who wishes to practise law at home needs only do a shortened Conversion Course at one of our Law Schools. Additionally, as part of a reciprocal arrangement, certain US and Canadian qualifications are now recognised, and lawyers with those qualifications may be admitted to practise law in the OECS after attending a Conversion Course.

⁸ <https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/current-requirements/bar-professional-training-course/how-to-apply-for-the-bptc/joining-an-inn/>.

The Practice of Law

In the decade of the 1960s, we West Indians were just beginning to emerge from the pre-constitution paradigm of the practice of law. That paradigm rested on the principle that the courts do not have the jurisdiction to question the validity of an Act of Parliament. Only the House of Assembly could amend or set aside a statute. A judge's role was to interpret the statute and apply it. Then, commencing in the year 1961, Jamaica, Trinidad and Barbados adopted independence Constitutions which proclaimed the supremacy of the Constitution. It took the 1970 trade's union case of Collymore v A-G⁹ from Trinidad to establish that parliament's laws are subject to the Constitution of a Commonwealth Caribbean Country, and the role of the Supreme Court is to be the guardian of the Constitution. It took the 1977 gun court case of Hinds v R¹⁰ to finally put to rest any lingering doubts caused by any real or perceived limitations of the Collymore judgment on the question of the supremacy of Commonwealth Caribbean Constitutions.

How far have we moved since those early days! Today, it is routinely and universally accepted that the Supreme Court can amend or set aside a statute, if it finds that the words of the statute are in conflict with a

⁹ Collymore v Attorney-General (1967) 15 WIR 229.

¹⁰ Hinds v The Queen [1977] AC 195.

provisions of the Constitution. Constitutional and administrative law issues now take up large chunks of court time. And, with our societies becoming ever more litigious, our courts are being called on to deal with more complex and difficult issues than our predecessors, engaged as they were in running-down cases and larceny prosecutions, could ever have imagined.

When I began to practise, society was much less litigious than it is today. For most of our citizens the law lay in the background of people's lives and society. Once we paid our debts, stayed out of jail, and kept as far from the law courts as possible, we would be all right. Now, as Canadian Chief Justice **Beverley McLachlin** has put it,¹¹ law permeates every facet of our society. Criminal Codes have amplified the old offences, and created a host of new ones, from drugs trafficking to money laundering. Since the negligence principle was defined in Donoghue v Stevenson,¹² the law of tort has broadened enormously. The law of contract has expanded to impose liability for non-economic, intangible losses. The regulatory state has brought a host of rules, regulations and statutory tribunals into every aspect of economic and social life, all requiring supervision by the courts. Since the 1970s, our

¹¹ Rt Hon Beverley McLachlin, PC, Chief Justice of Canada, *The 21st Century Courts: Old Challenges and New*, the fourteenth AIJA Oration in Judicial Administration, a speech delivered on Friday April 28, 2006, in Sydney, Australia.

¹² Donoghue v Stevenson (1932) AC 562.

courts have been called on to recognise and protect the basic liberties inherent in each individual: freedom of speech; freedom of religion; freedom of movement; and freedom from discrimination, among others. Constitutional and human rights cases now play a larger role in using court time than ever before.

The Courts

The result of this rising tide of litigation is that courts now find themselves more and more involved in issues that touch and shape our responsibilities to each other. More and more, Judges matter; and more and more, as **McLachlin CJ** notes, Judges are scrutinised and criticised. Add to that the technological revolution, and the demographic and social pressures caused by our increasingly mobile and ethnically and religiously diverse populations, and the stresses on our societies that our courts are increasingly being called on to deal with, continue to grow.

If our judiciary is to maintain the respect of our societies, the traditional judicial qualities of impartiality, independence and integrity will need to be maintained and strengthened, and new practices will have to be adopted. The modern West Indian Judge will increasingly be called on to adapt old principles to modern realities.

Judicial impartiality will increasingly be challenged by the modern ethic of corporate market-place efficiency. Judges will be called on to 'practise management reforms'; show 'more effective use of resources'; be 'more responsive to the needs of society'; and, more accountable for their actions. We will be asked about our 'performance results' and be subject to 'program-based budgeting systems', all imposing a greater risk of political direction.

Seventeen years ago, in the first Special Sitting of the Court of Appeal to receive an address by a Chief Justice marking the opening of the new law year,¹³ **Sir Dennis Byron** introduced us to his judicial reform programme. This included,

- the start of the backlog reduction exercise;¹⁴
- the publishing of the court's website;
- the shortly to be introduced new Civil Procedure Rules;
- the introduction of case management, whereby the progress of cases would be transformed from lawyer-driven to a court-driven process.

¹³ The Rt Hon Sir Dennis Byron: *An Address to Mark the Opening of the Law Year, 2000/2001*; delivered simultaneously in the courthouses of all the OECS countries by video link on Monday 18th September, 2000, from Castries, St Lucia.

¹⁴ Many of our courts had hundreds of cases, some as many as fifteen years old, stuck in the system, and the programme was designed to remove these cases by either trial or striking off before the planned new Civil Procedure Rules were brought into effect.

- Prominent in this address was the news that the court had hired its first 'Information Technology Manager'.

In his address two years later,¹⁵ **Sir Dennis** described the beginning of the main features of our present-day court system. These included,

- the wiring of our courthouses, some dating back to the 18th Century, to facilitate the use of computers by the court and lawyers;
- the air-conditioning and general modernising of our courtrooms;
- the introduction of a new selection process for the appointment of our Judges by the Judicial and Legal Services Commission based on principles of transparency, competition and merit;
- CPR 2000 had come into effect, replacing the old Rules of the Supreme Court;
- the backlog reduction programme had disposed of a vast number of ancient cases, and the backlog was considerably reduced;
- the case management software package, JEMS, had been introduced into the ECSC headquarters and was being deployed throughout all the courts of the region;

¹⁵ The Rt Hon Sir Dennis Byron: *An Address to Mark the Opening of the New Law Year 2002/2003*, delivered by video link on 16 September 2002 from Charlestown, Nevis.

- court managed mediation was about to be introduced in the courts of the region to assist in the disposal of cases which were suitable for this process;
- audio recording had been introduced in St Lucia and Dominica and was due to be introduced in all the islands, as Computer Aided Transcription Reporters from around the region began to be trained at the College in Tortola;
- the programme to regionalise the magistracy had begun;
- formal legal aid programmes were being promoted in all the islands;
- the Judicial Education Institute housed at the ECSC headquarters in St Lucia had become increasingly visible and productive through a number of programmes held in the previous law year. There had for the first time been workshops for Judges, Magistrates and Registrars on such varied matters as money laundering; telecommunications law; sentencing; orientation for new Judges, masters and magistrates; and
- training of mediators throughout the region was in progress.

Since then, further improvements and innovations have been introduced by subsequent Chief Justices. These include,

- An enormous growth in personnel. While the ECSC headquarters in the year 2000 employed a total of 6 professional staff, being 4 Court of Appeal Judges, a Chief Registrar and a Librarian, assisted by 7 support staff, now there are 26 professional staff. There are now 6, instead of 4, Court of Appeal Judges, and 20, instead of 2, professionals. One third of the professionals at headquarters are lawyers, including 5 Judicial Research Assistants. The number of support staff has grown from 7 to 19;
- A professional statistician now collects and publishes statistics on the work of all the courts of the sub-region;
- All courts were supplied with computers, scanners, printers and ancillary equipment, including the appropriate software to enable office automation facilities and tools for the most modern techniques in case management;
- Every Judge and Registrar was supplied with a laptop computer with the capacity for linkage to the court office network;
- The increased administrative capacity has enabled headquarters to provide technical assistance to all

court offices throughout the sub-region. The growth in human and technical resources over the past eighteen years has necessarily impacted the budget, which tripled in size from EC\$5 to over \$18 million;

- The research capabilities of Judges and Registrars were strengthened through the use of QUICKLAW and LEXIS-NEXIS;
- The court website began to publish all judgments given by our courts, newsletters, and other information on the court system, in a cost-efficient manner and free to users;
- Practice Directions, copies of which are available on the court website, began to be published, playing a vital role in clarifying various rules and enhancing the more accurate use of procedure;
- It became standard procedure for court lists to be automatically generated by JEMS and circulated to all lawyers by email;
- Court filings by email, pursuant to the two relevant Practice Directions, has now started;
- New Probate Rules have been drafted and circulated to the Bar Associations for comments, which when published will harmonize the procedure across the jurisdiction;

- Additional specialist divisions of the court, with their own Rules and Practice Directions, have been created, that is, a Criminal Division, a Commercial Division, and soon to be a Family Division, each with power to manage cases and with a view to more efficiently handling the increasing volume of work;
- All-year criminal sittings, running in tandem with the civil sittings, have been introduced in all but the smaller States and Territories of the OECS, resulting in a reduction of the backlog in criminal cases which had plagued our criminal justice system for decades;
- Court-administered mediation on a voluntary basis in civil disputes was now widespread throughout the sub-region; and, we are now considering making mediation mandatory in all civil cases, and introducing mediation in relation to less serious criminal cases;
- Video Link facilities were installed at the High Courts and the ECSC Headquarters during 2010-2011; the facility has been in operation and facilitates case management, Chamber Hearings, and several Court of Appeal sittings between headquarters and the member States since then, with considerable savings in the expense of

travelling, and a speeding up of hearings which can now be disposed of outside of regularly scheduled sittings;

- With the enormous increase of litigation over the past 50 years, the demand for appellate services has increased to the extent that the Court of Appeal now routinely holds two separate sittings simultaneously;
- A list of trained and court-approved transcriptionists in most jurisdictions has been circulated to lawyers for their use; and transcripts of the day's evidence are now prepared in as little as 24 hours.
- The hearing of evidence by video-link in criminal cases in St Lucia and St Vincent is now governed by a Practice Direction;
- Last year, 2016, saw Antigua and Barbuda use the Evidence (Special Provisions) Act 2009. For the first time a live video feed from a witness outside the State was used in a criminal trial in the High Court. As the use of this technology spreads, all of our member States and Territories will in due course adopt this procedure so as to enjoy this improved level of efficiency and cost saving. The advantages to our people are that,
 - There will be a tremendous saving in costs, and a more expeditious resolution of matters in court;

- Non-essential witnesses, such as experts and others who are not resident in the State, will not be required to spend time and money travelling to and from court;
- Police officers will be freed up for front-line duties;
- The number of adjournments will be reduced, enabling the swifter disposal of cases;
- Evidence can be taken from children and vulnerable witnesses in a manner that is safe and non-threatening; and
- Witnesses in correctional facilities will no longer be required to be transported to the court at great cost and increased security risk.

The Role of Information Technology

The Caribbean Court of Justice (CCJ) will increasingly in the coming years become our final court, so it is worth looking at some of their I.T. that will soon affect us. At the ECSC Court of Appeal and the CCJ, Judges and lawyers now routinely work on their laptop or iPad in court. Notes are made and cases referred to are accessed online in real-time, while the court is listening to evidence or addresses. At the end of the day, certainly at the CCJ, lawyers and Judges on their way out of court are presented with a printed transcript of the day's proceedings.

The CCJ is presently implementing a bespoke electronic court management software suit called *Curia*. *Curia* has three modules called *Folio*, *Attaché*, and *Sightlines*. *Folio* is the name for their electronic filing platform. *Attaché* is their case management system. And, *Sightlines* is their performance management toolkit for Judges and administrators, providing access to data and reports. In the ECSC, we have our own version of these three software packages in the form of our JEMS.

Earlier this year, **Sir Dennis** established the *Curia Register Project* which is working on getting every Judge, Registrar, Magistrate, Barrister, Solicitor, and Attorney-at-Law in the West Indies, from Bermuda and Belize in the North to Suriname and Guyana in the South to become registered participants in the CCJ database. This database is not intended to replace similar OECS efforts, but may well help: to reduce the burden on Secretaries of our Bar Associations trying to keep track of membership; Registrars attempting to police the Legal Profession Acts; and litigants searching for the right lawyer to represent them.

I am convinced of the benefits of the *Curia* system, and have agreed to be named as the chair of the committee working on the project, as a result of which you are all likely to be pestered by me in the coming months to participate by submitting your personal and

professional data to enter into the *Curia* database. The benefits are many.

- Once an attorney is registered, she will no longer have to input personal and professional information when making an e-filing;
- It will automate the provision of personal and professional information on lawyers, judges and case management officers;
- It will monitor things like continuing legal education, and even matters for the welfare of lawyers;
- It will improve the system of requiring lawyers to be of good standing and pay their annual dues;
- It will automate the issuing of practice certificates, and provide a transparent manner for the public to check on practitioners;
- It will assist our Registrars, who have to calculate the number of years standing for each lawyer to be able to fix the scale of fee payable annually; and
- It will automatically show which lawyers have professional indemnity insurance, something that litigants are clamouring for.

The Future

As I consider the changes that have taken place in the practice of law in the OECS in the past 50 years, that we could, at the start of the period, never have imagined were possible, I realise that any attempt to forecast what the practice of law will be like after another 50 years lies in the realm of science fiction. But, some things seem obvious to me now.

In just a few years' time, no lawyer will employ a messenger to attend at the courthouse to file a paper claim or defence; this will all be done automatically by accessing the Registry online. The court Registry will be replaced by the cloud.

Already, most modern West Indian lawyers' offices do not house a single textbook, unless it is for decorating the walls in the conference room. In the modern law firm, all legal research is now done online.

There are things that lawyers have traditionally done that can be automated today. Artificial or Augmented Intelligence (A.I.) is coming to the practice of law and the determination of disputes. There is no sense fighting it.¹⁶ IBM's *Watson* is considered by many to be the most significant technology to come to law. According to a May 2016 release, *ROSS*, 'the world's first artificially

¹⁶ Susan Beck, 'Technology Shapes the Future of the Law' in The American Lawyer, August 4, 2014.

intelligent attorney' powered by *Watson*, recently landed a position at New York law firm **Baker & Hostetler** handling the firm's bankruptcy practice.¹⁷ Lawyers ask ROSS research questions in natural language, just like they were talking to a colleague, and the A.I. 'reads' through the law, gathers evidence, draws inferences, and returns with a 'highly relevant', evidence-based answer. The program gets smarter and continues to improve the more it is used. It also keeps track of developments in the legal system, especially if anything pertains to a lawyer's specific case.

As A.I. becomes more efficient and pervasive, most lawyer's routine legal work, such as writing opinions and lawyers' letters, and drafting contracts and wills, will be handled by software. Today in London and New York, if you feel you have been wrongfully issued with a parking ticket, you can fill out a questionnaire and hire the free on-line robot lawyer *DoNotPay*. It fires off a letter contesting the citation. Has your flight from Miami to Paris been delayed, and you want some compensation? *DoNotPay* will draft the letter for you.¹⁸ The 20-year old Stanford University student who developed the application claims a

¹⁷ <http://www.dailymail.co.uk/sciencetech/article-3589795/Your-AI-lawyer-IBM-s-ROSS-world-s-artificially-intelligent-attorney.html>

¹⁸ <http://www.donotpay.co.uk/signup.php>

success rate of 60% in the 200,000 cases *DoNotPay* has handled in the last two years.¹⁹

While systems like *ROSS* and *DoNotPay* are unlikely to displace the reasoning processes of lawyers, there are very few legal tasks that require a lawyer to apply ‘bespoke’ reasoning. More commonly, lawyers apply ‘proven’ approaches in slightly different contexts. This is where bot-lawyers like *ROSS* and *DoNotPay* will play an increasingly important role. It may take a little longer for A.I. to invade the judicial realm, but that will become commonplace. There are many rulings the judge is called upon to make that are routine, and for which the necessary algorithms will soon be written. A ‘bot judge’ will then be able to deliver an automated and instantaneous ruling. The result is that law will become more accessible and transparent, as it should be.²⁰

In time, there will be no requirement for witnesses to go through the process of attending a trial in person. After all, we no longer accept trial by battle as the only way to arrive at the truth.²¹ Nor do we any longer accept

¹⁹ <http://www.npr.org/2017/01/16/510096767/robot-lawyer-makes-the-case-against-parking-tickets>

²⁰ Paul Lippe and Daniel Martin Katz, ‘10 predictions about how IBM’s *Watson* will impact the legal profession’ in *The New Normal*, posted October 2, 2014.

²¹ Trial by battle was not officially abolished by Parliament until the year 1819. The year before, a litigant threw down a gauntlet in anger in front of the judges of the King’s Bench, and demanded his right. The Lord Chief Justice, Lord Ellenborough, decided this method of trial was still a permissible option

that torture is the natural way to obtain true evidence, at least most of us don't.

In the years to come, the court will observe a hologram, a three-dimensional representation of the witness sitting in the witness box, broadcast electronically from the place where the witness is located, and observe and listen to his or her hologram speaking, to determine what the truth is. Sensors will inform the Judge and lawyers immediately a witness is not being truthful. A transcript will be created in real-time, and the whole process will be recorded for future use, e.g., on an appeal.

Advocacy will become entirely electronic. Oral arguments are already becoming a thing of the past. Legal practitioners will have to rely on their filed submissions. At the conclusion of the trial, the Judge will no longer sit in person and read the judgment aloud. Instead, the Judge will deliver the judgment by posting it onto the court's website, and move on to the next case before the parties have even had the time to read it.

Today, I can sit in my office at home in Anguilla, and access a streaming video of the English Supreme Court sitting in real-time and hear and observe the argument in every appeal that the court is dealing with, and the final

under law; but the other party refused to go through with the procedure, and the case was dismissed: https://en.wikipedia.org/wiki/Ashford_v_Thornton

judgment when it is given. The day will come when we will be able to do the same thing for any trial in any court in the OECS.

Jury trials will become obsolete in criminal cases as they have in civil ones. Lay persons will sit with the Judge to assist in monitoring the sensors that help separate truth from falsehood, while the Judge refers to the appropriate device that informs him or her which rules are applicable.

In time, the courthouse itself will become a thing of the past. When the judge will no longer be required to sit in the same building as the lawyers, the parties, or the witnesses, there will be no purpose served by having a dedicated structure for the resolution of disputes.

As we develop a strong and robust e-system for our judicial process, we will need to be sure we have secure firewalls and real-time backup. There is no point having the most up-to-date electronic justice system that a 20-year old student can hack into, (and change all the amounts of damages awarded, while tinkering with the lengths of prison sentences imposed). I.T. technicians already need to constantly improve their skills or they risk becoming obsolete five years after they graduate.²²

²² <http://readwrite.com/2013/05/06/how-to-thrive-in-the-tech-industry-for-decades/>

There is an argument that ‘the cloud’ will soon render the I.T. department itself obsolete.²³

We will need to make sure the key consumers: judges, lawyers and litigants, are confident in buying into the coming electronic justice system. If this is successfully managed, the likelihood is that in the years to come an entire court case will be completed without any of the judge, lawyers, parties, or witnesses ever having visited a courtroom, and without leaving any physical paper trail.²⁴ The technology exists today. The courthouses where we now work will be converted to museums of law, where ancient artefacts such as books and pens, and videos of the eminent lawyers of the past, eloquently holding forth, making submissions in oral support of their client’s case, will be exhibited only to excite the curiosity of schoolchildren.

A presentation to mark the 50th Anniversary of the establishment of the Eastern Caribbean Supreme Court, made at the Sandals Grande Hotel, Antigua, on Monday 27 February 2017.

²³ <http://www.techrepublic.com/blog/the-enterprise-cloud/cloud-computing-and-it-obsolence-reinventing-the-role-of-it/>

²⁴ Justice Ming W Chin, ‘*The Court of the Future: Use of Court Technology in the Next Generation*’ cited in ‘*Embracing the Courts of the Future: Final Report of the Next Generation Courts Commission*’, a partnership of the Supreme Court of Georgia and the State Bar of Georgia.