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Social Media and Court Communication

Alysia Blackham† and George Williams‡

I. Introduction

Courts have traditionally relied on the delivery of judicial decisions as their sole means of direct communication with the general public. Over time this reliance is shifting, including through the willingness of courts to have their proceedings televised. Courts have also sought to have greater influence on how others communicate about and report their decisions, such as by employing public information officers to prepare press releases on court activities and liaise with the media. Most recently, judges and courts have taken their engagement with the public one step further by experimenting with the use of social media.

Social media such as Twitter or Facebook provide a new means by which courts can enhance their openness and accessibility. However, such technologies also come with a fresh set of challenges. In particular, unlike television or media reporting, social media is designed to foster dialogue and ongoing interaction between participants. This needs to be carefully considered, as the use of social media has the potential to affect not only the processes by which courts communicate, but also the nature and substance of court proceedings. While this latter effect could be positive, injudicious use of social media could compromise a court's ability to operate with independence and integrity.

Drawing on a case study of social media use by courts in three common law jurisdictions (the United Kingdom, Australia and the United States of America), this paper considers the extent to which direct communication processes via social media may further the underlying objectives of court communication and enhance the courts' constitutional role. It considers the opportunities and challenges posed by such media for courts, and how the inherent limits and constraints of social media may affect the

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nature of court communication. We assess the extent to which courts should make greater use of social media to enhance their existing communication processes and consider whether additional safeguards should be adopted to ensure the use of social media does not detrimentally impact upon the judicial system.

II. Communication and the Constitutional Role of the Courts

Communication is fundamental for enabling courts to fulfil their constitutional functions in a democratic system. First, as *arbiters of disputes*,[1] courts communicate with individual litigants and their legal representatives through civil and criminal rules of procedure, written opinions and decisions and oral questions during the litigation process.[2] van Hoecke describes these interactions as the 'first "communicative sphere"' of judicial communication.[3] Second, in *applying and making law*,[4] courts communicate with other judicial officers and courts in the same court hierarchy[5] and internationally.[6] Third, as a *safeguard against arbitrary power*,[7] courts communicate with other arms of government[8] to admonish and guide the exercise of legislative and executive power. Finally, in *upholding the rule of law* and *securing individual rights and liberties*,[9] courts communicate with the public to ensure individuals are 'guided by open, general and clear rules'. [10] Open and accountable court processes, secured via effective communication, are therefore fundamental to the rule of law,[11] provide a constraint on

[1] *Labour Relations Board of Saskatchewan v John East Iron Works Ltd* [1949] AC 134, 149.
[2] Jeffrey C Dobbins, 'Judicial Communication, Elections, and the Oregon Supreme Court' (2009) 46 Willamette Law Review 479, 479.
[3] Mark van Hoecke, *Law as Communication* (Hart 2002) 176.
[4] Albert Venn Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959) 60.
[5] van Hoecke (n 5) 176.
[6] Anne-Marie Slaughter, 'A Global Community of Courts' (2003) 44 Harvard International Law Journal 191, 192; see also Anne-Marie Slaughter, 'A Typology of Transjudicial Communication' (1994) 29 University of Richmond Law Review 99.
[7] W Harrison Moore, *The Constitution of the Commonwealth of Australia* (2nd edn, Maxwell 1910) 322.
[8] Lawrence Baum, *Judges and Their Audiences: A Perspective on Judicial Behavior* (Princeton University Press, 2006).
[9] See *Entick v Carrington* (1765) 19 St Tr 1030, 1066 (Lord Camden CJ); *Sommersett's Case* (1772) 20 St Tr 1, 82 (Lord Mansfield).
[10] Paul Craig, 'Formal and Substantive Conceptions of the Rule of Law: An Analytical Framework' [1997] Public Law 467, 469.
[11] *Guardian News and Media Ltd v AB CD* [2014] All ER (D) 88 (Jun), [2].

judicial power,[12] and promote public confidence in the courts[13] and government generally.[14] Court communication can educate the public about court processes and the law,[15] and provide an opportunity for the judicial system to 'prove' its legitimacy to the general public. Effective court communication processes are therefore essential for a democratic system of government.

The nature and function of court communication is likely to be shaped by its audience. While court communication necessarily spans multiple legal and non-legal audiences,[16] some courts (and judges) have traditionally focused on internal legal audiences more than external audiences, and vice versa.[17] Garoupa and Ginsberg argue that a court's audience orientation is shaped by judicial incentives and structures for appointment and promotion: in the UK and Australia, where judges are appointed and have security of tenure, judges and courts have traditionally focused their communications towards internal or legal audiences and building a *collective* public reputation.[18] In contrast, in the US system of judicial elections,[19] judges may seek to build their *individual* public reputation (and electability) instead of, or at the expense of, the judiciary's collective reputation,[20] making court communication more outward-facing. The disparate aims and audience orientation of court communication may also influence the communication processes adopted by courts.

III. Court Communication Processes

[12] Jeremy Bentham, *The Works of Jeremy Bentham, Now First Collected: Under the Superintendence of His Executor, John Bowring* (W Tait 1838) 317.
[13] *South Australia v Totani* (2010) 242 CLR 1, 43 (French CJ); *AF (No3) v SSHD* [2010] 2 AC 269, [63] (Lord Phillips).
[14] John C Bertot, Paul T Jaeger and Justin M Grimes, 'Using ICTs to Create a Culture of Transparency: E-Government and Social Media as Openness and Anti-Corruption Tools for Societies' (2010) 27 Government Information Quarterly 264.
[15] Paul de Jersey, 'Courts and the Media in the Digital Era' in Patrick Keyzer, Jane Johnston and Mark Pearson (eds), *The Courts and the Media: Challenges in the Era of Digital and Social Media* (Halstead Press 2012) 35.
[16] See Nuno Garoupa and Tom Ginsburg, 'Judicial Audiences and Reputation: Perspectives from Comparative Law' (2008) 47 Columbia Journal of Transnational Law 451, 453.
[17] Ibid.
[18] Ibid 453, 461–2.
[19] In the US, 87% of all state court judges face elections, and 39 states elect at least some of their judges: Adam Liptak, 'Rendering Justice, With One Eye on Re-Election' *The New York Times* (New York, 25 May 2008) <http://www.nytimes.com/2008/05/25/us/25exception.html> accessed 21 May 2014.
[20] Garoupa and Ginsburg (n 42) 458.

Despite the constitutional importance and varied purposes, audiences and aims of court communication, courts have traditionally employed few tailored processes to ensure the success of their communications. In resolving disputes, court procedures provide a formalised means of communication between courts and the parties to litigation. These processes are essential for the effective and efficient operation of the legal system and for the resolution of legal disputes. However, they are likely to have limited impact when it comes to communicating with the public at large.[21]

Beyond communication with litigants, courts have traditionally relied on the delivery of judicial decisions as their main means of direct communication with the legal and external world. This limited approach to communication has resulted in *indirect* communication processes coming to the fore, particularly through media reporting and the experiential accounts of litigants. There has traditionally been no expectation that courts will participate in this communicative process beyond the issuing of judgments. Indeed, it has been seen as contrary to the administration of justice and the independence and impartiality of the judiciary for courts and judges to be so involved.[22]

Relying on indirect communication of court decisions has a number of drawbacks. Indirect communication forms 'a haphazard, multistage process which often inadequately informs others in the political system about the decisions of the courts.'[23] The media's traditional monopoly on indirect court information can undermine public confidence in court processes, particularly given the reluctance of courts to respond to media criticism[24] or correct errors. Indeed, serious concerns have been raised about the quality of media reporting of the courts (particularly in the US, but also in Australia):[25] with fewer reporters dedicated to court coverage, fewer court-related stories, and less serious legal coverage in the mainstream press, 'overall trends in the media are

[21] Dobbins (n 4) 479.
[22] Marilyn Warren, 'Open Justice in the Technological Age' (Melbourne, 21 October 2013) <http://www.slv.vic.gov.au/marilyn-warren-open-justice> accessed 22 May 2014.
[23] Bradley C Canon and Charles A Johnson, *Judicial Policies: Implementation and Impact* (2nd edn, CQ Press 1999) 167.
[24] Beverley McLachlin, 'The Relationship between the Courts and the News Media' in Patrick Keyzer, Jane Johnston and Mark Pearson (eds), *The Courts and the Media: Challenges in the Era of Digital and Social Media* (Halstead Press 2012) 28.
[25] Chris Merritt, 'Retired Judge to Blog for Supreme Court' *The Australian* (Sydney, 22 October 2013) <http://www.theaustralian.com.au/business/legal-affairs/retired-judge-to-blog-for-supreme-court/story-e6frg97x-1226744087078> accessed 9 April 2014.

impacting coverage of the courts, resulting in a decline in quantity and quality of court coverage'.[26]

Courts are responding to these concerns about media reporting and other forms of indirect communication. For example, in Australia, all superior courts have appointed public information officers to engage with the media in the hope of producing better and more accurate reporting of their work.[27] Court proceedings in the UK Supreme Court[28] and the High Court of Australia[29] are now also televised. Given such innovations, it is not surprising that courts are also experimenting with the use of social media. They are doing so because social media not only reaches a significant, additional audience, but also because it offers a form of communication that can improve upon the one-way transmission of information provided by television, newspapers and other like technologies.

IV. Social Media

Social media refers to the 'set of online tools that are designed for and centered around social interaction',[30] including such platforms as Facebook, Twitter, YouTube and blogs. Social media is one form of 'new media', which broadly encompasses interactive, user-generated, on-demand and creative participatory platforms. Unlike more traditional mediums, such as print journalism, radio and television, social media depends on user-generated content, and allows people to communicate and share content in a social setting. As a result, social media platforms are designed to facilitate dialogue between users, rather than acting merely as a broadcast mechanism. This emphasis on dialogue and interaction is what distinguishes social media from more

[26] Christopher J Davey, 'The Future of Online Legal Journalism: The Courts Speak Only through Their Opinions?' (2012) 8 I/S: A Journal of Law and Policy for the Information Society 575, 575.
[27] Patrick Keyzer, 'Who Should Speak for the Courts and How? The Courts and the Media Today' in Patrick Keyzer, Jane Johnston and Mark Pearson (eds), *The Courts and the Media: Challenges in the Era of Digital and Social Media* (Halstead Press 2012) 6; Jane Johnston, 'Courts' New Visibility' in Patrick Keyzer, Jane Johnston and Mark Pearson (eds), *The Courts and the Media: Challenges in the Era of Digital and Social Media* (Halstead Press 2012) 49; George Williams, 'The High Court and the Media' (1999) 1 UTS Law Review 136.
[28] See http://news.sky.com/info/supreme-court.
[29] See http://www.hcourt.gov.au/cases/recent-av-recordings.
[30] John C Bertot, Paul T Jaeger and Derek Hansen, 'The Impact of Polices on Government Social Media Usage: Issues, Challenges, and Recommendations' (2012) 29 Government Information Quarterly 30, 30.

traditional, static websites that are generally directed towards the passive viewing of content.

Social media may significantly enhance court communication processes. First, it can provide an effective means for the direct delivery of judicial decisions and court information to internal and external audiences. It is currently estimated, for example, that over 50% of the UK population is registered on Facebook or Twitter. As social media continues to grow, and traditional media formats decline,[31] social media can provide court information in a format that many (particularly younger) citizens are likely to access.[32] Indeed, a 2011 survey of young people in Spain found that while only 10.7% of 16 to 17 year old respondents read print media on a daily basis, 75% consumed news via social media.[33] Similar results have been found in the UK: a 2013 YouGov survey found that 29% of 18 to 24 year olds had not read a print newspaper in the last year.[34] Given social media is used by 93% of 16 to 24 year olds and 53% of all adults in the UK,[35] it has significant potential to increase the reach of traditional court communications, and may increase the transparency and accessibility of court processes via communication in a 'direct manner'.[36] Thus, social media's potential for improved access to information offers obvious and straightforward advantages to courts in extending the reach of their communications.

Second, social media can enhance public confidence and understanding of the courts by facilitating individuals' direct engagement with the courts in a non-confrontational setting. While there is recognition of the educative function of websites,[37] social media use can go beyond this, and facilitate two-way, interactive engagement between the courts and the public. Social media can thereby help to reaffirm public confidence in

[31] See, for example, Michael Janda, 'Circulation in the Red as Papers Not Read' *ABC News* (Sydney, 15 February 2013) <http://www.abc.net.au/news/2013-02-15/newspaper-readership-continues-decline/4519326> accessed 27 May 2014.
[32] See further Andreu Casero-Ripollés, 'Beyond Newspapers: News Consumption among Young People in the Digital Era' (2012) 20 Comunicar 151.
[33] Ibid.
[34] YouGov, 'Optimising Media in a Changing World' (2013) 5.
[35] ONS, 'Internet Access - Households and Individuals, 2013' (2013) Statistical Bulletin 4, 7 <http://www.ons.gov.uk/ons/rel/rdit2/internet-access---households-and-individuals/2013/stb-ia-2013.html> accessed 21 May 2014.
[36] Warren, 'Open Justice in the Technological Age' (n 56).
[37] Donald E Shelton and Michael R Arkfeld, 'Communicating with the Public on the Internet' (2000) 39 Judges' Journal 22.

the legal system, including by assisting courts to build more personal relationships with individuals by showing a more 'human' side to the judicial system. Indeed, Bertot, Jaeger, Munson and Glaisyer argue that social media can promote 'democratic participation and engagement' by engaging the public in government processes.[38]

Third, social media can provide courts with a voice and an opportunity to counteract adverse media coverage and media distortions. Social media provides courts with a direct channel of communication to the general public, allowing them to present their own information on issues without filtering. Courts are thus provided with the opportunity to correct inaccurate reporting and publicise information that may not be regarded as 'newsworthy'.[39] Further, social media allows courts to 'cut through the cacophony of comment' that is generated as a growing multitude of people and groups talk about courts and their decisions[40] by providing courts with a singular and authoritative channel of communication to the public.

Fourth, while courts may choose to use social media to enhance existing court communication processes, there is also a need for courts to engage with new media to re-assert their authority and legitimacy in a changing social landscape. Social media is regarded as a 'great equaliser', overcoming entrenched political inequality,[41] business silos and hierarchies[42] and disparities in organisational size.[43] However, while social media may reduce the significance of power disparities, it also challenges traditional social norms and hierarchies. For institutions like courts, that are highly reliant on hierarchical control and social deference, this can prove challenging. Therefore, as Davey notes: 'judges are recognizing that in the new media environment, they will need to play a direct role in explaining judicial processes and informing the public' in a quest

[38] John C Bertot and others, 'Engaging the Public in Open Government: The Policy and Government Application of Social Media Technology for Government Transparency' (2010) 44 IEEE Computer 53.
[39] See further Richard Cornes, 'A Constitutional Disaster in the Making? The Communications Challenge Facing the United Kingdom's Supreme Court' [2013] Public Law 266.
[40] Ibid 283–4.
[41] Michael Xenos, Ariadne Vromen and Brian D Loader, 'The Great Equalizer? Patterns of Social Media Use and Youth Political Engagement in Three Advanced Democracies' (2014) 17 Information, Communication and Society 151.
[42] Anthony Hilton, 'Getting Real on Reputation Protection' *London Evening Standard* (London, 28 January 2014) <http://www.standard.co.uk/business/markets/getting-real-on-reputation-protection-9090727.html?origin=internalSearch> accessed 21 May 2014.
[43] Elisha Hartwig, 'Social as the Great Equalizer' (*Social Media Week*, 22 February 2013) <http://socialmediaweek.org/newyork/2013/02/22/social-as-the-great-equalizer/> accessed 21 May 2014.

to *prove* their legitimacy, which can no be longer assumed.[44] This is also recognised by Martin and Schmidt: 'to maintain the judiciary's position in a changed technological landscape, judges are particularly conscious of the need to reproduce the symbols of their authority in online environments.'[45]

Hence, while social media use is still regarded as optional for courts, social changes may increasingly *demand* court engagement with the new media. As courts' roles and powers expand in the modern regulatory environment, it is essential that they maintain democratic legitimacy and public trust[46] through stronger accountability[47] and, more particularly, openness to public scrutiny via social media. This may also require courts to re-think their traditional reticence to engage in public debate, as noted by Chief Justice Warren of the Victorian Supreme Court:

> With new media, the community has been promised a future of consultation where their concerns are heard and responded to by public figures. The traditional reticence of the judiciary to speak out in the face of criticism may be leading to the increased devaluation of the courts in the mind of the community.[48]

As a result, maintaining judicial legitimacy in a technological age may require a shift in substantive conceptions of the judicial role and its position in society.

While courts may need to use social media to secure democratic and social legitimacy, social media can also undermine courts' authority. Courts need to operate with a degree of detachment.[49] Engaging with the public through social media may reduce this, thereby undermining the integrity of the courts. Further, engagement with social media may expose courts to criticism or jeopardise the due administration of justice. Mediums

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[44] Davey (n 64) 593.
[45] Paul Martin and Patrick Schmidt, 'The New Public Face of Courts: State Judicial Systems and the Internet as Political Resource' (2003) 24 Justice System Journal 118, 118.
[46] Kees Van Kersbergen and Frans Van Waarden, '"Governance" as a Bridge between Disciplines: Cross-Disciplinary Inspiration Regarding Shifts in Governance and Problems of Governability, Accountability and Legitimacy' (2004) 43 European Journal of Political Research 143, 153, 158.
[47] Giandomenico Majone, 'The Regulatory State and Its Legitimacy Problems' (1999) 22 West European Politics 1.
[48] Warren, 'Open Justice in the Technological Age' (n 56).
[49] de Jersey (n 40) 35.

such as Twitter allow impulsive comments to be instantaneously visible globally. There is a risk that court officers will make a comment that is liable to be criticised or release information prematurely into the public sphere. While this risk can be managed through staff training and supervision, social media poses new challenges and risks for courts, as well as opportunities.[50] With this in mind, we turn now to consider how courts are using social media as a tool to enhance their communication, and what consequences are arising as a result.

V. National Case Studies of Social Media Use

To examine the use of social media by courts, we conducted an empirical survey between April and May 2014 of courts' presence on social media platforms. The survey was conducted across the UK, Australia and the US, and canvassed Twitter, Facebook, YouTube and blogs. We also examined the jurisdictions' attitudes to social media use, as expressed for example in codes of conduct.

A. UK

UK courts are embracing social media tentatively. As noted in Table 1 below, most UK courts have only an indirect presence on social media. Rather than individual courts appearing on social media platforms, UK courts have consolidated their presence via the UK Judicial Office[51] and the Judicial Office for Scotland.[52] Indeed, of all UK courts, only the Supreme Court has its own presence on social media. Further, almost all engagement is occurring with Twitter: there is no presence apparent on Facebook or via blogs, and only the Supreme Court appears on YouTube.

Court	Twitter	Facebook	YouTube	Blogs

[50] See further Alysia Blackham and George Williams, 'Australian Courts and Social Media' (2013) 38 Alternative Law Journal 170.
[51] The Judicial Office supports the UK judiciary in its operations. Its staff includes professional trainers, legal advisers, HR and communication experts, policy makers and administrators: see https://www.judiciary.gov.uk/about-the-judiciary/training-support/jo-index/.
[52] The Judicial Office for Scotland is part of the Scottish Court Service, tasked with supporting the Lord President in his role as head of the Scottish judiciary. The Office incorporates the Lord President's Private Office, Judicial Communications, the staff of the Judicial Institute and a section dealing with Strategy and Governance: see http://www.scotland-judiciary.org.uk/23/0/Judicial-Office-for-Scotland.

Supreme Court	@UKSupremeCourt		/UKSupremeCourt	
Judicial Office	@JudiciaryUK			
Judicial Office for Scotland	@JudgesScotland			

Table 1: Social media use by UK courts

A consolidated approach to social media, like that being employed in the UK, is an effective risk management tool. It limits individual courts' exposure to the risks of social media, and means only a few individuals need to be trained in the use of the technology. This offers an efficient and straightforward means of transmitting information. However, it also limits the potential for any two-way dialogue between courts and the public. Using social media only for information transmission purposes promotes a very limited form of 'transparency', and fails to engage with the full potential of the platforms. This might in some cases heighten public skepticism of the courts.

This conservative approach is evident in how the UK Supreme Court is using Twitter. Its account is mostly used to tweet information about court judgments and, on occasion, court news. The account is also used occasionally to tweet about the activities of members of the Supreme Court, as shown in Figure 1 below. However, there is no evidence that the Court is using Twitter to engage with other users.

Figure 1: UK Supreme Court tweet, 20 March 2014

This is consistent with how the Supreme Court describes its own engagement with social media. In its *2012-13 Annual Report*, the Court wrote:

> The Court's official Twitter profile continues to receive positive feedback, providing legal professionals, students and others with real-time alerts on

> judgments and other Court news. We also use the profile to handle queries about the Court's operations and to engage with educational groups. The profile had 37,000 followers as at 31 March 2013 (five times the number who had subscribed a year ago).[53]

While the Court views its account as a limited form of two-way exchange, there is no evidence of the Court's profile being used to field queries or engage with other users, other than through information transmission.[54]

The fact that the Supreme Court is the only UK court engaging with social media on its own behalf may reflect the Court's relative youth and desire for institutional authority: the Court replaced the Appellate Committee of the House of Lords as the highest court in the UK in October 2009. The creation of an institutionally independent Supreme Court in the UK has raised fresh questions of judicial legitimacy, particularly in the face of the judicialisation of politics.[55] The Supreme Court is, therefore, 'a new institution staking out its position within the constitutional firmament.'[56] Perhaps as a result, the UK Supreme Court has worked actively to build its public profile.[57] The Supreme Court's (limited) engagement with social media may form one aspect of the Court's legitimacy building activity.

The Supreme Court's engagement with social media may also be seen in a different light. The Court's Strategic Objectives state:

> The UKSC will maintain and increase confidence in the administration of justice throughout the United Kingdom. It will promote transparency in, accessibility to and knowledge of the ways in which justice should be rightly administered.[58]

[53] UK Supreme Court, 'The Supreme Court Annual Report and Accounts 2012–2013' (2013) HC3 41.
[54] That said, the Court may be using the direct message function of Twitter, which is out of public view.
[55] See Lorne Neudorf, 'The Supreme Court and the New Judicial Independence' (2012) 1 Cambridge Journal of International and Comparative Law 25.
[56] Cornes (n 78) 268.
[57] Joshua Rozenberg, 'The Media and the UK Supreme Court' (2012) 1 Cambridge Journal of International and Comparative Law 44; see also Cornes (n 78).
[58] UK Supreme Court (n 92) 9.

Further, the Court's values include:

> *Clarity and Openness*: We will undertake our work without prejudice in an open and transparent manner. …
> *Accessibility*: … We will positively promote awareness and understanding of the Supreme Court and interest in the history of the building and the works of art.[59]

The Court also operates (with the Judicial Committee of the Privy Council) a dedicated press office 'to help communicate our work to a wide range of audiences'.[60] The Supreme Court's use of social media reflects a commitment to accessible court processes, recognition of the importance of social media as a communication tool, and sufficient staffing and resources to facilitate its use. It is unlikely many other courts have similar resources and opportunities to consider and engage with social media in this way. That said, even with all of these advantages, the Supreme Court is still using social media overwhelmingly as an information transmission mechanism.

The UK's concern with the risks of social media is perhaps related to issues that have arisen in the past with court officers' social media use. In 2009, a UK magistrate resigned after it was discovered he was tweeting about cases while in court.[61] Some of the material that was tweeted was arguably prejudicial to an ongoing case. While designed to limit the courts' exposure to the risks of social media, the UK's approach may miss the benefits of social media as a communication tool.

The UK judiciary's conservative approach to social media is reflected in the introduction of a comparatively strict guide to judicial conduct. According to the *Guide to Judicial Conduct 2013*, judges should exercise their freedom to comment in the media with 'the greatest circumspection'.[62] While social media use is 'a matter of personal choice', the guide notes that the Judicial Technology Committee has issued

[59] Ibid 10.
[60] Ibid 40.
[61] Richard Ashmore, 'Magistrate Quits after Posting Updates about Ongoing Cases on Twitter "While in Court"' *The Daily Mail* (London, 26 April 2009) <http://www.dailymail.co.uk/news/article-1173575/Magistrate-quits-posting-updates-ongoing-cases-Twitter-court.html#ixzz2RUNP7KOG> accessed 27 May 2014.
[62] Judiciary of England and Wales, 'Guide to Judicial Conduct 2013' (2013) 21.

guidance to judges regarding security issues associated with social media. Further, while blogging is 'not prohibited', bloggers must not identify themselves as members of the judiciary and should be 'acutely aware of the need to conduct themselves, both in and out of court, in such a way as to maintain public confidence in the impartiality of the judiciary'.[63] To secure this, judicial bloggers must:

> avoid expressing opinions which, were it to become known that they hold judicial office, could damage public confidence in their own impartiality or in the judiciary in general. This guidance also applies to blogs which purport to be anonymous. Failure to adhere to the guidance could ultimately result in disciplinary action.[64]

Commentators have criticised this as being a gag on judicial communication via social media, and as being decidedly unhelpful for assisting judges to use social media effectively.[65] It appears that the guidance has constrained judges' use of social media. Judge Grumpy, a 'fictional Crown Court Judge near you', was one of the few UK 'judges' tweeting regularly about court and the judicial process (@CrownCourtJudge). While the tweets appear firmly tongue-in-cheek, they are not always conducive to public confidence in the judicial process (whether 'fictional' or not). For example, on 26 November 2012, Judge Grumpy tweeted: 'Monday and I am very grumpy. Beware all who appear in front of me this week'. The tweets stopped abruptly on 11 March 2013, perhaps due to the introduction of the guidance. While the guidance may have had positive benefits in this particular case, freezing all judicial communication via social media is not a desirable outcome.

B. Australia

Australian courts have not been early adopters of social media. However, there has been significant discussion around these issues, including at conferences and seminars of the

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[63] Ibid 37.
[64] Ibid 26–7.
[65] Lucy Reed, 'Judiciary Silenced out of Court' *The Guardian* (London, 14 August 2012) <http://www.theguardian.com/law/2012/aug/14/judiciary-banned-blogging-tweeting> accessed 24 February 2014.

Australasian Institute of Judicial Administration.[66] Further, Australian courts are increasingly focusing on how they engage with the public. For example, all superior courts have appointed public information officers.[67] That said, with the notable exception of those in Victoria, it appears that most court information officers are not engaging with social media. While courts are becoming more proactive in their public communications, this does not yet in general extend to engaging with social media. This may in part be a result of courts lacking the staffing levels to manage the use of social media effectively.[68]

Table 2 depicts the use of social media across Australian Federal, State and Territory courts.[69] Only courts with a presence on social media are included.

Court	Twitter	Facebook	YouTube	Blogs
Federal Courts				
Family Court of Australia	@FamilyCourtAU		/familycourtAU	
Federal Circuit Court of Australia	@CircuitCourtAU[70]		/federalcircuitcourt	
State and Territory Courts				
Victorian Supreme Court	@SCVSupremeCourt	/SupremeCourtVic	/SupremeCourtVictoria	
Victorian County Court	@CCVMedia		/VicCourtsTribunalsTV	
Victorian Magistrates' Court	@MagCourtVic			
Courts Administration Authority			Courts Administration Authority	

[66] See, for example, AIJA Public Information Officers' Conference, 'Courts Interacting with the Public' (30 March 2012, Brisbane); AIJA Public Information Officers' Conference, 'Courts Interacting with the Public' (30 April 2010, Melbourne).
[67] Keyzer (n 66) 6; Johnston (n 66) 49; Williams (n 66).
[68] Johnston (n 66) 50–4.
[69] This study replicates one conducted in April 2013: see Blackham and Williams (n 89). The only differences in the results between the two studies were that, by 2014, the Federal Court of Australia had closed its inactive Twitter handle, and the Supreme Court of Victoria had joined Facebook.
[70] While the Federal Circuit Court has created a Twitter account, it has not been used, with no tweets recorded as at 9 April 2014. According to the Federal Circuit Court, it opened a Twitter account to ensure the Court has its preferred Twitter name (or 'handle') if it later decides to start tweeting: email from Denise Healy to Alysia Blackham, 2 May 2013.

in South Australia				
NSW Supreme Court	@NSWSupCt		The Judicial Commission of NSW	
Queensland Courts	@QldCourts[71]			

Table 2: Social media use by courts in Australia

Of the (roughly) 19 courts in Australia,[72] six now have an individual social media presence, and two states are represented by a collective presence. Our survey demonstrates that Australian courts are increasingly appearing on Twitter, and some courts and government judicial departments now have a presence on YouTube. However, the use of social media varies dramatically across the jurisdictions, ranging from no engagement (Western Australia, the Northern Territory, the Australian Capital Territory, Tasmania) to engagement by a central body (South Australia, Queensland), to limited engagement by individual courts (New South Wales, federal courts), to extensive involvement by individual courts (Victoria). Notably, in contrast to the UK Supreme Court, Australia's High Court has no presence whatsoever on social media.

Most courts appearing in Table 2 use Twitter and YouTube as a means of publishing court news (e.g. articles featuring judges) and judgments, administrative matters (e.g. registry opening hours, changes to fees and court disruptions), broader news (e.g. reports by the Attorney General and talks at conferences) and educational items (e.g. informing people of the ability to file court documents online). This shows that engagement with social media tends to be for one-way information transmission only.

Of the Australian courts, the Victorian Supreme Court is engaging with Twitter and other social media tools in the most active way. According to O'Shea, the Court is using social media as more than just a means of information transmission: Twitter has been used in the past to respond to criticism of the Court and publicly present the Court's perspective,[73] and to answer questions from the public (see Figure 2). It has also been used to source public opinion on the courts' operations (see Figure 3). However, it

[71] No tweets as at 9 April 2014.
[72] See http://www.lawfoundation.net.au/courtlists.
[73] Kerry O'Shea, 'Social Media – Its Impact and Challenges on Court Reporters, Juries and Witnesses' (2011) 2.

appears that social media is relatively ineffective at engaging with the public – for example, no replies were received to the Supreme Court's question posed in the tweet. Further, there is limited evidence of the Court using social media as more than a one-way transmission tool. That said, the Court also web-streams criminal sentencing in some cases, and links to the streams via Twitter.[74]

Figure 2: Victorian Supreme Court tweet, 31 July 2013

Figure 3: Victorian Supreme Court tweet, 3 July 2012

[74] Note that the Supreme Court of Western Australia has also attempted to introduce web streaming of court cases, but has been prevented from doing so by the WA Attorney-General and budgetary considerations: 'Top Judge and Attorney-General in War Over "Court TV"' *PerthNow* (Perth, 9 May 2013) <http://www.perthnow.com.au/news/western-australia/wa-attorney-general-blocks-court-tv/story-fnhocxo3-1226638437606?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+PerthnowTopStories+%28PerthNow+|+Top+Stories%29> accessed 27 May 2014.

Recognising the potential of social media to improve the accessibility of the Court and the transparency of its processes, Chief Justice Warren has committed to 'accelerating the use of social media' for 'communicating the work of the court' via Twitter, blogging, the Court's website and Facebook.[75] The Court also plans to recruit a retired judge to blog on the Court's behalf, 'to create greater community understanding around controversial issues'.[76]

However, the Court's adoption of social media has not been without challenge. Occasional legal and technical problems have temporarily constrained the Court's use of social media, including by preventing the uploading of certain judgments due to court orders. Further, using social media merely as a form of information transmission (rather than two-way engagement) may undermine the Court's push to be seen as more accessible and accountable.

While some Australian courts are now engaging with social media, there is limited evidence of Australian judges using social media while acknowledging their professional role. Indeed, only one Australian judge, Lex Lasry, a member of the Victorian Supreme Court, appears to be using Twitter openly in his individual official capacity.[77] Chief Justice Warren also blogs occasionally in an individual professional capacity for the *Herald Sun* newspaper, addressing topics such as the power of sport to prevent anti-social behaviour[78] and reform to criminal trials.[79] These blogs are acknowledged and promoted by the Supreme Court via its Twitter account:

[75] Merritt (n 63).
[76] Ibid.
[77] @Lasry08.
[78] Marilyn Warren, 'Sports a Power for Good' <http://blogs.news.com.au/heraldsun/law/index.php/heraldsun/comments/sports_a_power_for_good/> accessed 27 May 2014.
[79] Marilyn Warren, 'Chief Justice Backs Trials Revamp' <http://blogs.news.com.au/heraldsun/law/index.php/heraldsun/comments/chief_justice_backs_trials_revamp/> accessed 27 May 2014.

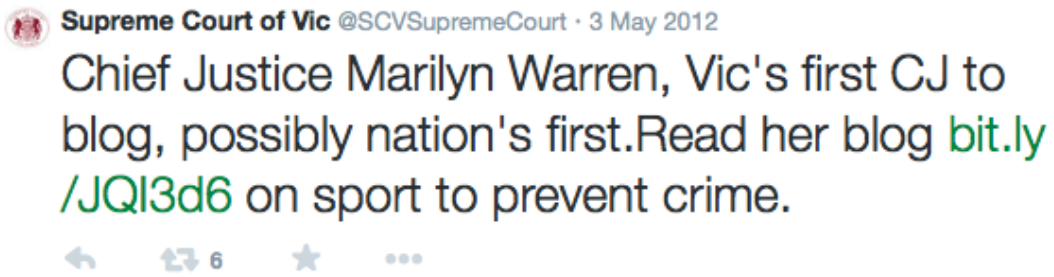

Figure 4: Victorian Supreme Court tweet, 3 May 2012

Ian Gray, the Chief Magistrate of the Magistrates' Court of Victoria, has also blogged on the power of social media.[80] Judges occasionally appear on other people's blogs, including by giving interviews.[81] Given the nature of judicial role and the challenges experienced in other jurisdictions, it is understandable that Australian judges have only limited engagement with social media in their official role. However, this does not preclude the possibility that judges are using social media as private individuals.[82] For example, Judge Judith Gibson of the NSW District Court has previously been an active user of Twitter. While her profile did not mention that she was a judge, there was formerly a link to her account from an external professional profile.[83] If this personal social media use impacted on a judge's professional responsibilities, this could be a cause for concern, as is reflected in the UK guidelines. At the same time, according to Judge Gibson: 'You can't have judges being like vestal virgins in an ivory tower ... because an essential part of being a judge is the reflection of community values.'[84] Given this, it is unrealistic to expect that judges will not engage with such a pervasive technology as social media in some capacity.

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[80] See Ian Gray, 'Courts Are Embracing Tweets' <http://blogs.news.com.au/heraldsun/law/index.php/heraldsun/comments/courts_are_embracing_tweets/#.UDLR68Q2r3k.twitter> accessed 22 May 2014.

[81] Clancy Tucker, '29 March 2013 – The Honourable Justice Shane Marshall – Guest Judge' <http://clancytucker.blogspot.co.uk/2013/03/29-march-2013-honourable-justice-shane.html> accessed 27 May 2014.

[82] For further discussion of issues related to judges' personal use of social media, see Marilyn Krawitz, 'Can Australian Judges Keep Their "friends" Close and Their Ethical Obligations Closer? An Analysis of the Issues Regarding Australian Judges' Use of Social Media' (2013) 23 Journal of Judicial Administration 14.

[83] See LexisNexis, 'Judge Judith Gibson' (*LexisNexis Author Profiles*) <http://lexisnexis.com.au/author-profiles/authors.aspx?id=5>.

[84] quoted in Graham Maher and Sarah McCarthy, 'Social Media Friends without Privileges' *The Australian* (Sydney, 27 September 2013) <http://www.theaustralian.com.au/business/legal-affairs/social-media-friends-without-privileges/story-e6frg97x-1226727843287> accessed 4 June 2014.

Reflecting the growing importance of social media for the Australian judiciary, a number of federal courts, including the Family Court of Australia and the Federal Court,[85] have revised or adopted social media policies in accordance with the Australian Public Service Commission's (APSC) guidance on the use of social media.[86] While the courts' social media policies are not publically available, the APSC's guidance provides some indication of what the policies might entail. Under the APSC guidance, when making a comment in an unofficial capacity, APS employees are required to:

- notify their manager of any comment to be made in an 'expert' capacity that might reasonably reflect on their APS employment;
- make it clear that they are not representing their agency or government;
- not compromise their capacity to fulfil their duties in an unbiased manner or compromise public confidence in their agency or the APS, including through harsh or extreme criticism of the government, its policies, their agency's administration or stakeholders; and
- not disclose certain information without authority and follow agency policies relating to clearance of material for public release.

This guidance is arguably more accommodating of social media use than that in the UK, as it allows court employees to engage with social media where it will not impact upon their professional role. At the same time, the notice provisions allow courts to proactively manage any risks that may arise.[87]

C. United States

[85] Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Response to Attorney-General's Department Portfolio Question No 141*. See also Family Court of Australia, 'Official Use of Twitter by the Family Court' <http://www.familycourt.gov.au/wps/wcm/connect/FCOA/home/about/Social_media/> accessed 15 June 2014.

[86] Australian Public Service Commission, *Revisions to the Commission's Guidance on Making Public Comment and Participating Online* (Circular 2012/1, 2012).

[87] There is a noticeable absence of social media guidance and policies amongst state and territory courts. While the Victorian Supreme Court has published guidance on *Media Policies and Practices* (February 2014), this makes no reference to judges engaging with social media. Similarly, the Judicial Commission of NSW Code of Conduct makes no mention of social media.

US courts are generally seen as more outward looking than those in the UK or Australia, a position encouraged by the public election of judicial officers.[88] As a result, it would be expected that US courts would engage more strongly with social media.

Previous studies of US courts have found a small but significant proportion using social media, with a particular focus on Twitter. A 2013 compilation of US courts using social media found 25 administrative offices of courts or high courts using at least one social media platform: 23 were on Twitter, nine on Facebook, 10 on YouTube, and three on Flickr.[89] In 2012, a survey of US federal courts found that, of the 135 responding courts, only 21 (15.6%) used social media, but 17 (12.6%) intended to use social media in the future. Twitter was the most common social media platform, followed by Facebook, YouTube, and LinkedIn.[90] Further, a 2013 survey of US courts (mostly at the state level) found that 6.6% used YouTube, 11.3% used Facebook and 14.3% used Twitter.[91] However, 48.1% did not use social media.[92]

Corroborating these studies, our empirical survey found 83 courts in US states and territories engaging with social media. Of these, 24 appeared on Facebook, 62 on Twitter, and 25 on YouTube. The Federal judiciary also had a strong presence on social media, with 13 courts having some presence across the platforms. On the other hand, social media use has not reached the US Supreme Court. It retains 'the luxury of appearing publicly oblivious to the swirl of social media', and has no official presence on new media platforms.[93]

Of the US states, California and Florida were most visible on social media, with eight courts each on social media platforms. Sixteen US states had no courts with a presence on social media. The distribution of courts on social media across the US states is depicted in Figures 4 to 6 below for Facebook, Twitter and YouTube respectively. The

[88] See Garoupa and Ginsburg (n 42) 453.
[89] Christopher J Davey and Carol Taylor, '2013 CCPIO New Media Survey: A Report of the Conference of Court Public Information Officers' (2013) 5.
[90] Ibid.
[91] Ibid 9.
[92] Ibid.
[93] Michael D Shear, 'As Social Media Swirl Around It, Supreme Court Sticks to Its Analog Ways' *The New York Times* (New York, 23 June 2013) <http://www.nytimes.com/2013/06/24/us/high-court-sticks-to-its-ways-oblivious-to-social-media.html> accessed 11 May 2014.

height of the bar on each state indicates the number of courts engaging with the social media platform. Federal courts are excluded.

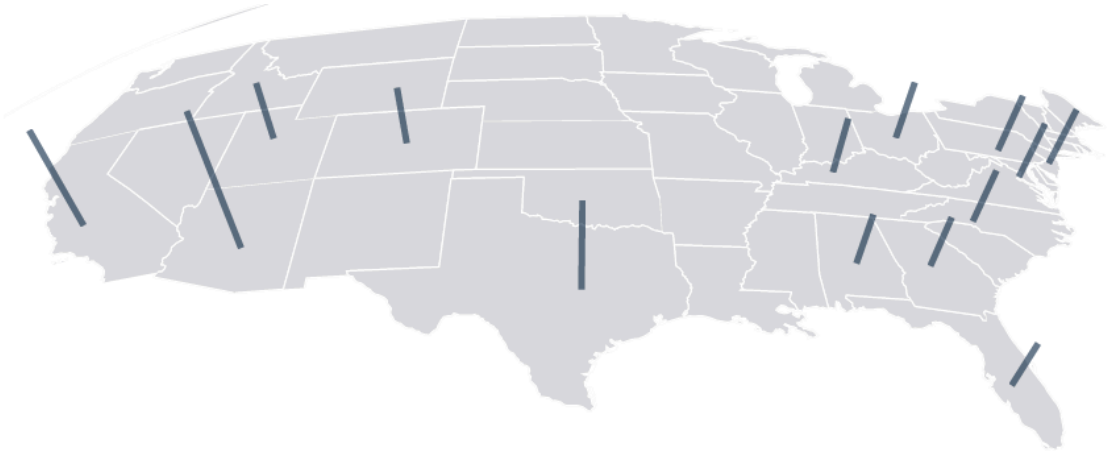

Figure 5: Facebook use by US state courts

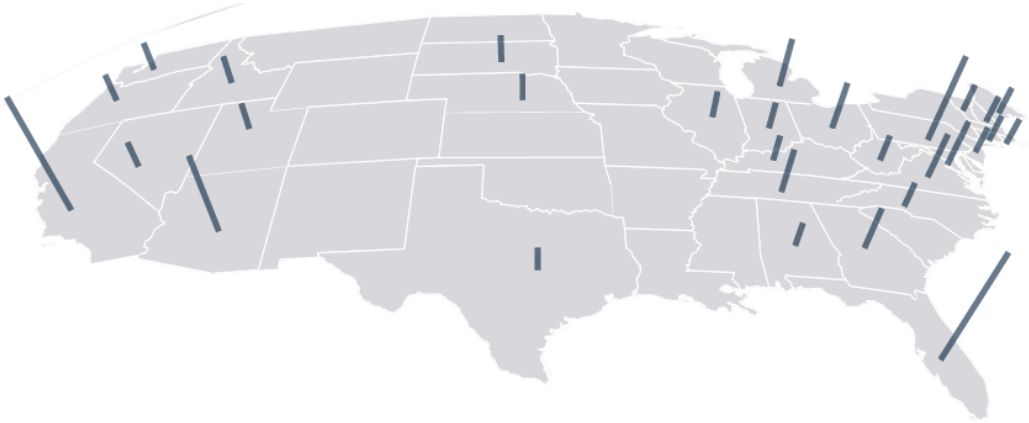

Figure 6: Twitter use by US state courts

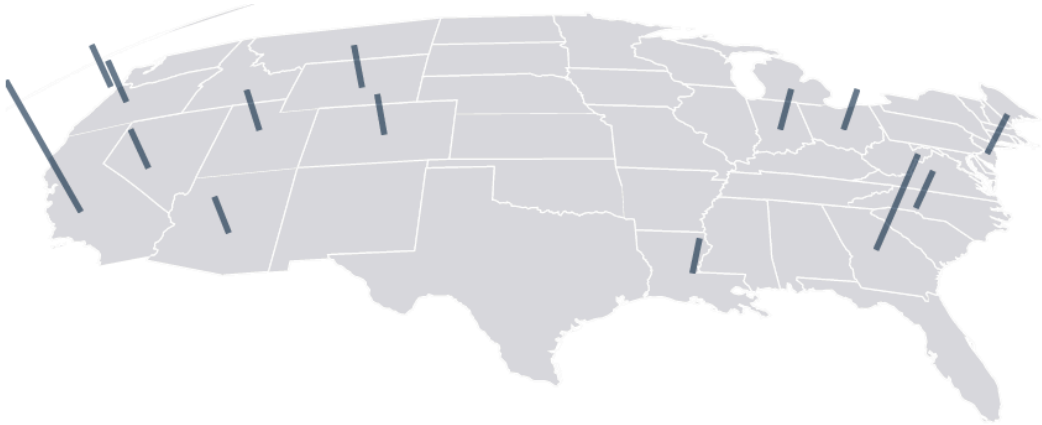

Figure 7: YouTube use by US state courts

Courts' engagement with social media in the US varies significantly across jurisdictions. Further, there is less presence on social media than would be predicted, particularly given the traditionally 'outward facing' orientation of US courts. That said, there is substantial evidence in the US of *individual judges* appearing on social media platforms and openly acknowledging their institutional ties. In our survey, we found 81 US judges who openly acknowledged their judicial affiliation on their social media accounts. Of these, 52 appeared on Twitter and 31 on Facebook (and two appeared on both). Many used their judicial title in their social media user name or Twitter handle (e.g. /JudgeToddRoss and @JudgeDillard). While some US judges have protected Twitter accounts (where their tweets are not publically visible),[94] most publish personal information publically on social media under their judicial profile. As compared to the UK and Australia, it is evident that it is far more common for individuals to engage with social media *as part of their judicial role* in the US.

The apparent acceptance of judges using social media in a personal and professional capacity is consistent with the findings of the *2013 CCPIO New Media Survey*, which asked judges in all 50 US states questions about their experiences and perceptions of new media (including social media), and how it was affecting the administration of justice. In the survey, 5.33% of respondents posted or shared content on Facebook in a professional capacity (compared with 23.1% in a personal capacity). Similarly, 3.1%

[94] For example, Todd Markle, Fulton County Superior Court Judge, @JudgeMarkle; Lee Coffee, Criminal Court Judge, Shelby County Tennessee, @JudgeCoffee; Pennie Thrower, NC District Court Judge, @pthrowe.

used Twitter professionally to post or share content, compared with 5% in a personal capacity. At the same time, few US judges blog, with the notable exceptions being Richard Kopf, a US District Judge; James Kimbler, a Judge of the Medina County Common Pleas Court; and Judith Ann Lanzinger, an Ohio Supreme Court Justice.[95]

Social media appears to be an effective medium for 'humanising' judicial officers in the US, and for increasing the transparency of the judicial function. Figure 7 below shows tweets by Stephen Dillard, a Judge of the Court of Appeals of Georgia, appearing on his social media profile. By openly linking his personal and professional lives via social media, Judge Dillard is arguably increasing the accessibility of the courts, and presenting a more 'human' face for the judiciary.

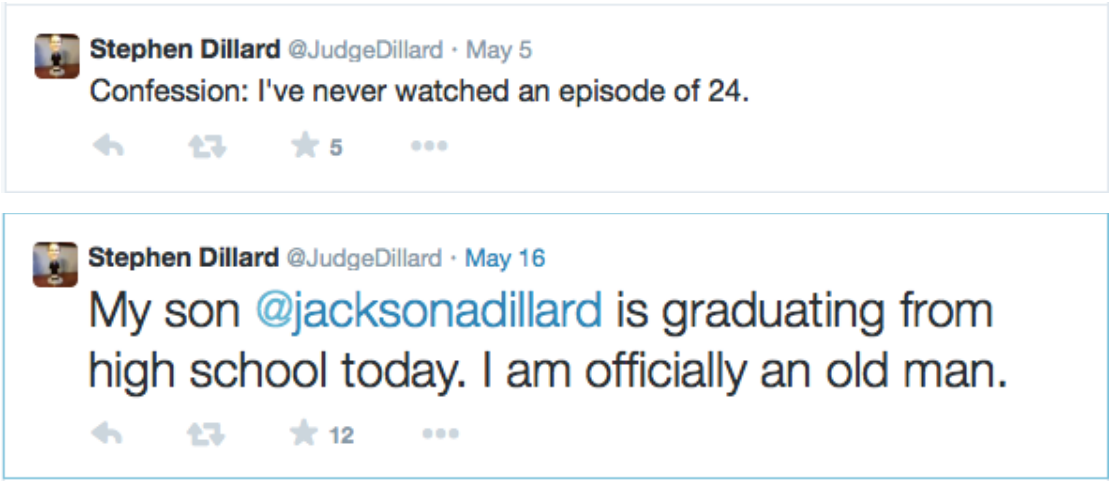

Figure 8: Tweets by @JudgeDillard

However, it is questionable whether this form of 'openness' is desirable, particularly in the more internal-facing court systems in the UK and Australia. Indeed, 'humanising' judicial officers may undermine their appearance of independence and impartiality. Personal 'openness' can have significant reputational repercussions on social media. For example, when Judge Christopher McFadden of the Court of Appeals of Georgia ordered a new trial for an alleged rape on the grounds that the alleged victim (who had Downs syndrome) had not acted 'like a rape victim', critical tweets were linked with the Judge's Twitter account. While the Judge was unable to comment on or defend his

[95] Davey and Taylor (n 130) 5.

decision, this did not limit the level of public comment, with some even promoting a petition to have him removed from office. This is depicted in Figure 8 below.

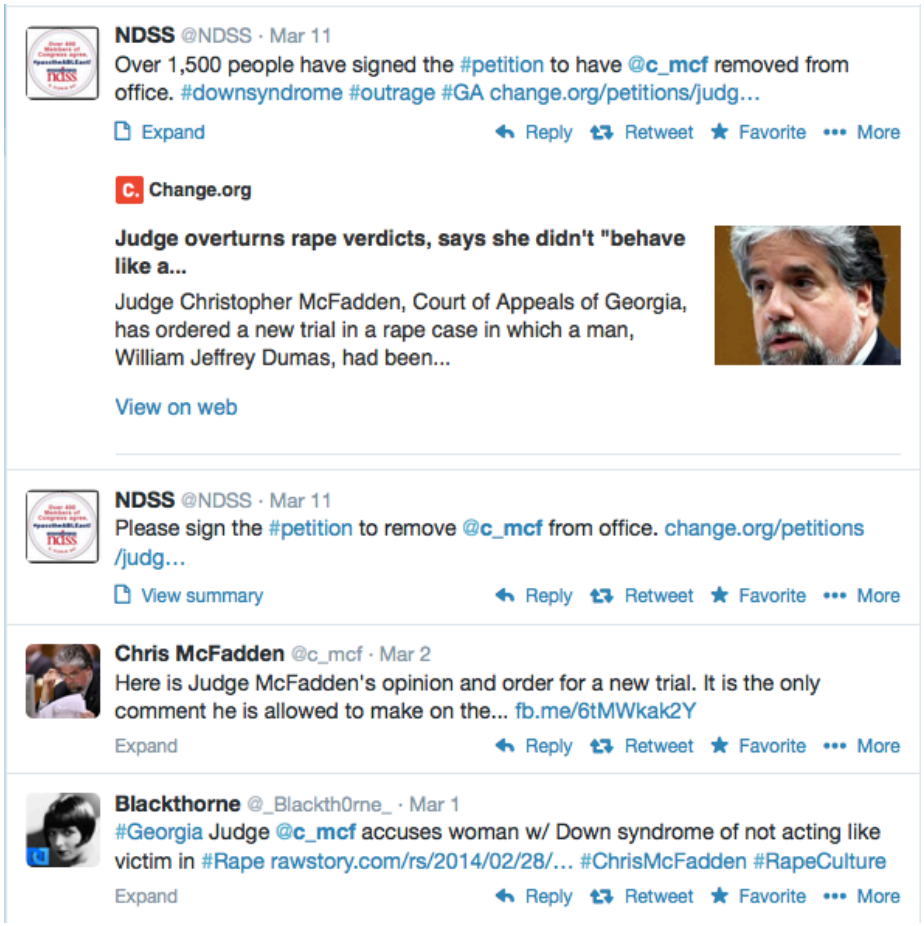

Figure 9: Twitter search results for @c_mcf at 18 May 2014

Events such as this clearly have the potential to compromise the administration of justice and judicial integrity. While social media can be used to criticise judicial decisions even when judges do not have a personal account, a judge's personal Twitter account gives additional visibility and an online focus to critical material. In these circumstances, effective risk management (including via staff training in the use of social media and supervision of the information and comments posted on such platforms) becomes important for maintaining the judicial function.

At the same time, risk management is far more complicated in a system where judges are concerned with their public profile and electability. Our survey demonstrates that elected judicial positions have a strong correlation with judges' engagement with social media. Most of the US judges appearing on Twitter occupy elected judicial posts and,

at the time of study, many were openly campaigning for votes and/or election to a different position (see, for example, Figure 10).

Figure 10: Snapshot of Judge Todd Ross's Facebook profile, 4 June 2014

In our survey, seven of the judges included something related to voting in their user names (e.g. /votejudgeola and @ReElectJudgeR) and another 12 were actively using their Facebook profile to campaign for election. Facebook is also often used to support judicial election campaigns separately from judges' personal profiles.[96]

This is consistent with the *2013 CCPIO New Media Survey* of state courts: 51.9% of respondents said that judges in their jurisdiction stood for competitive elections and 30.5% for retention elections. Only 9.2% of respondents were in a jurisdiction where judges did not stand for election.[97] This implies that most judges (and, from our survey, the majority using social media) will be standing for election at some stage. However, social media is not yet ubiquitous in election campaigns: the same 2013 survey found that 60.3% of respondents' campaigns did not use social media.[98] This context suggests

[96] See, for example: /Magallanes-for-357th-District-Court-Judge/165527570294479; /falloneforjustice; /David-Ellis-for-Appellate-Court/523383911044875; /callowayforjudge; /Judge-Luis-Manuel-Singleterry-for-92nd-District-Court/538594406210025; /Marla-Cuellar-for-County-Court-8-Judge/712360638780075; /JeffOglesbeeForJudge; /reyortizforjudge92nddistrictcourt
[97] Davey and Taylor (n 130) 9.
[98] Davey and Taylor (n 130) 10.

that it will be difficult to regulate judges' use of social media when it forms a core means of promoting individuals' public profiles, and when there is widespread acceptance that social media can be used as a campaigning tool.

While social media use is widely accepted amongst the US judiciary, concerns are still evident. In the 2013 survey, only 49.6% of respondents agreed that judges could maintain personal Facebook profiles without compromising ethics, while 53% agreed with regard to the use of other social networking sites.[99] Further, the adoption of social media by US courts has not been without incident. In 2010, Cuyahoga County Common Pleas Judge Shirley Strickland Saffold was removed from hearing a case after she was accused of posting comments about the case on the Internet. While the judge denied posting the comments, and there was no evidence to suggest she had posted them, the Acting Ohio Chief Justice found the comments had 'created a situation that "poses an impediment to the judge's ability to resolve any remaining legal and factual issues in a way that will appear to the parties and the public to be objective and fair"'.[100] That same year, a Georgia judge resigned after it was revealed he had 'friended' a defendant appearing before him and discussed her defence strategy with her on Facebook.[101] In another case, a Florida circuit court judge was removed from hearing a divorce case after sending a Facebook 'friend' request to one of the parties appearing before him. The appellate court concluded that the party had a 'well-founded fear of not receiving a fair and impartial trial' upon not accepting the friend request.[102] In addition, in our survey, one judge had tweeted that his account had been hacked (@JudgeRozier), jeopardising his personal and professional reputation.

[99] Ibid 18–19.
[100] Karen Farkas, 'Judge Shirley Strickland Saffold Is Removed from the Anthony Sowell Murder Trial' <http://blog.cleveland.com/metro/2010/04/judge_shirley_strickland_saffo_2.html> accessed 27 May 2014.
[101] Debra Cassens Weiss, 'Ga. Judge Resigns After Questions Raised About Facebook Contacts' (*ABA Journal*, 7 January 2010) <http://www.abajournal.com/news/article/ga._judge_resigns_after_questions_raised_about_facebook_contacts/> accessed 21 July 2014.
[102] Jacob Gershman, 'Judge Disqualified over Facebook "Friend" Request' <http://blogs.wsj.com/law/2014/01/27/judge-disqualified-over-facebook-friend-request/?mod=WSJBlog&utm_source=twitter.com&utm_medium=social&utm_campaign=buffer&utm_content=buffer1e54d> accessed 4 June 2014.

It is unsurprising, then, that there are increasing attempts in the US to regulate judges' online behaviour. On 21 February 2013, the American Bar Association released an ethics opinion regarding judges' use of social media. It states:

> A judge may participate in electronic social networking, but as with all social relationships and contacts, a judge must comply with relevant provisions of the Code of Judicial Conduct and avoid any conduct that would undermine the judge's independence, integrity, or impartiality, or create an appearance of impropriety.[103]

There are also a number of state judicial ethics advisory opinions on the topic. The opinions have generally held that judges may join and participate in social networking sites. However, the opinions are divided on whether judges may include lawyers who might appear before them in proceedings as members of their online community (e.g. as 'friends' or 'followers'). Judicial codes of conduct will generally also apply to online behaviour.[104] These advisory opinions and ethical incidents illustrate the very real risk social media may pose to judges' actual and perceived independence and impartiality.

VI. Lessons and Observations

This discussion and analysis reveals four key lessons. First, at a procedural level, social media offers courts a new means of engaging with a wide audience and for increasing the reach of traditional forms of communication (such as the publication of judgments). With the decline of some forms of media, and concerns over the quality of court reporting, social media provides an inexpensive and direct route for court communication to the general public and to court users.

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[103] This opinion is non-binding, and is based on the ABA's Model Code of Judicial Conduct. The opinion explicitly states that the 'laws, court rules, regulations, rules of professional and judicial conduct, and opinions promulgated in individual jurisdictions are controlling.'

[104] For a summary of these opinions, see National Centre for State Courts, 'Judicial Ethics Advisory Opinions on Social Media' (*NCSC*, 25 August 2011) <http://www.ncsc.org/Topics/Media/Social-Media-and-the-Courts/State-Links.aspx?cat=Judicial%20Ethics%20Advisory%20Opinions%20on%20Social%20Media> accessed 5 May 2014.

Second, while the procedural benefits of social media are straightforward, new media may also have more subtle substantive repercussions for courts. The very existence of social media may come to re-define the notion of 'open justice' and require courts to engage more directly with the public. According to the Chief Justice Warren:

> With the rise of new media technologies the traditional methods of guaranteeing open justice for the community are rapidly changing. Open justice now increasingly means the ability of the community to access information about the courts through the internet and social media. … What constitutes open justice is now moving away from the ability of a citizen to sit in a court or read a newspaper or view the television news. … There is now an expectation that open justice involves the judiciary adopting new media technologies and engaging in a direct dialogue with the community.[105]

Therefore, as well as providing a new process by which courts can achieve openness, social media may be changing the very idea of what such openness entails. In particular, the idea of open courts may come to include not only an ability to view the work of the court, but an expectation that courts will engage in some limited form of direct communication with court users and the public 'in a direct dialogue'. Established forms of court communication are unlikely to facilitate dialogue in this way, being geared towards the transmission of information. In this space, social media offers a significant means of promoting and cultivating direct dialogue, if courts choose to use it in that manner (and not just as a one-way form of transmission).

Such a change could have significant implications for the courts, and how the community views them. Social media can level the landscape of public communication, allowing individuals to influence, engage with and contribute to public issues, irrespective of traditional hierarchical and social boundaries. In this way, social media can equalise (by removing traditional boundaries) and decentralise (by allowing individuals to contribute to) public communication. While this may extend, expand and democratise public communication, it also poses challenges to institutions that have traditionally occupied a superior position in the realm of public communication. If

[105] Warren, 'Open Justice in the Technological Age' (n 56).

everyone can contribute to public dialogue, the role, authority and legitimacy of central institutions (like courts) may come under challenge.

If courts are to avoid relinquishing their democratic legitimacy and social authority, it becomes increasingly important for them to engage appropriately with social media. Courts can no longer remain separate and immune from the swirl of social media: they will be drawn-in to social media platforms whether or not they choose to engage with them. Rather than allowing individuals to determine how courts are depicted on online platforms, there is a strong case for courts managing their own presence and profile on social media. Indeed, interactive and continuous engagement with the public via social media may become central to upholding courts' democratic legitimacy and social authority. Conversely, a failure by courts to engage with social media may mean that they are not taking the necessary steps to build their legitimacy and status in the eyes of the social media 'generation'.

Third, despite the procedural and substantive case for courts engaging with new media, it appears that courts across all three jurisdictions are engaging with social media in an ad hoc fashion. Those that engage strongly with social media (such as the UK Supreme Court and the Victorian Supreme Court) pride themselves in their trail-blazing technological usage. However, they are generally supported by a well-resourced press and information office, and see social media use as a strategic priority and means for advancing openness and transparency. Other courts may face internal barriers that limit their ability to utilise social media effectively, such as limited time and resources to constantly update and monitor social media sites, or a lack of skills and understanding to make best use of social media.[106]

That said, even 'trail-blazing' courts are using social media primarily as a one-way form of information transmission, rather than to facilitate a two-way dialogue. While this may reflect the limitations of social media for encouraging a dialogue about judicial

[106] Anne E Howard, 'Connecting with Communities: How Local Government Is Using Social Media to Engage with Citizens' (2012) 38–40; Marilyn Krawitz, 'Summoned by Social Media: Why Australian Courts Should Have Social Media Accounts' (2014) 23 Journal of Judicial Administration 182, 191–4.

work,[107] it also reflects broader limitations in courts' social media use. Instead, courts should be prepared to experiment further with social media as a forum for direct dialogue with the public. This may encompass answering questions from the public and potential litigants, contributing to public discussion of issues that touch upon judicial work, and inviting feedback and comment on judicial processes and activities. These activities are depicted in Figure 11, which shows the range of options for court engagement with social media, ranging from one-way transmissions to two-way dialogue.

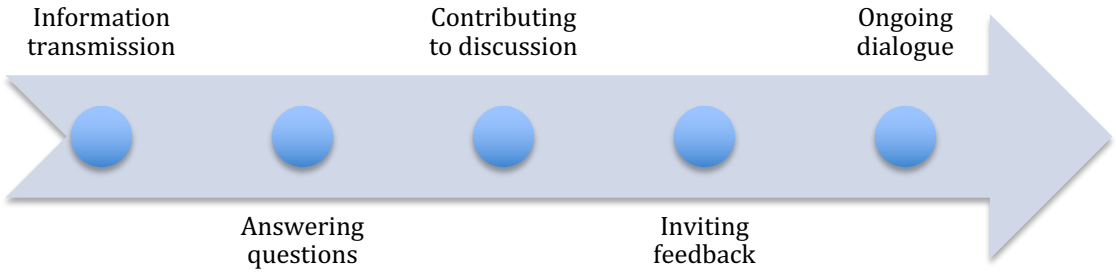

Figure 11: Forms of engagement with social media

While there are obviously a range of ways for using and engaging with social media, relying on social media as merely a new process to extend the reach of traditional court communications (the one-way, information transmission approach) ignores new media's potential as a collaborative and participatory medium.[108] Further, it fails to engage with the *substantive* implications of social media for court legitimacy and open justice (discussed above). As a result, this minimalistic approach to social media may do more harm than good for courts' legitimacy, as individuals may feel ignored and

[107] Indeed, a 2011 survey of social media users found that only 7% of respondents used social media to engage with government representatives or departments: Sensis, 'The Social Media Report: What Australian People and Business Are Doing with Social Media' (2011) 29.
[108] Bertot, Jaeger and Grimes (n 24) 266.

sidelined by court operations in what is seen by them as a democratic medium premised upon two-way engagement.

Therefore, fourth, this analysis demonstrates that courts could do far more to engage effectively with social media. However, this does not mean throwing caution to the wind: unthinking judicial engagement with social media could seriously undermine the administration of justice and the integrity of the courts. Further, it may jeopardise the appearance (and reality) of judicial independence and impartiality. For inward-facing jurisdictions like the UK and Australia, there is a need for cautious and principled engagement with social media by courts as *institutions*, rather than by judges as individuals. This reflects the importance of courts using social media in a way that is consistent with their judicial role and the national constitutional framework. While social media demands renewed attention on external audiences, this does not mean we should automatically adopt an outward-facing judicial orientation. An approach that suits the US and its judicial elections is unlikely to be appropriate elsewhere.

At the same time, a more dialogue-focused approach to social media may significantly enhance courts' democratic legitimacy and social authority. Courts will need to consider carefully how social media can be integrated and accommodated in established communication strategies. More particularly, courts should consider how social media could be used strategically to promote open justice, judicial transparency, public education and the legitimacy of the courts. As part of this, it is essential that courts consider developing appropriate codes of practice to support and establish clear parameters regarding how social media can and should be used. While these codes should reflect and recognise differing conceptions of the judicial role across jurisdictions, they should also seek to facilitate and encourage social media engagement where it is consistent with that role. Established codes of practice are either silent on social media use or significantly constrain its adoption. If courts are to adapt to the new media landscape, it is essential that effective frameworks be put in place to guide and support courts' engagement with social media.

Similarly, appropriate processes should be put in place to educate judicial officers and staff about how social media should be used. Effective risk management becomes fundamental for courts using social media. That said, it is counter-productive to

effectively prohibit the use of social media (as has arguably occurred in the UK). Courts need to strike a careful balance between promoting the use of social media and minimising the risks to courts, judges and the judicial system more broadly. In striking this balance, courts should be mindful of the difficulties in using social media to convey complex information, particularly where messages are limited in length (for example, Twitter messages are limited to 140 characters).[109] Further, a renewed focus on external audiences may require courts to adjust their style of communication and existing judicial communication strategies. Increased engagement with social media will pose numerous practical challenges for judicial officers. However, investing in this is both necessary and worthwhile.

VII. Conclusion

As social media continues to expand in influence and pervasiveness, courts are increasingly recognising the potential of the technology as a communicative device. While social media offers immediate procedural benefits to increase the reach of court communication, it also has the potential to affect the substantive nature of the judicial function. Indeed, this paper has demonstrated social media's potential to change the very notion of judicial openness, and to challenge the traditional isolation and non-engagement of courts with public criticism. Social media offers new challenges as well as opportunities for courts to demonstrate transparency, accountability and to build legitimacy.

At the same time, our empirical survey of courts on social media in the UK, Australia and US demonstrates that this field is dominated by ad-hoc engagement. While the Victorian Supreme Court and UK Supreme Court have a substantial presence on social media, most courts are not visible on any platform. Indeed, the High Court of Australia and US Supreme Court have no social media presence. There is no clear trend in court engagement with social media: rather, leadership by individual judges, the presence of a court communications office and/or a strategic focus on openness and transparency is likely to drive courts to engage with social media. As a result, many courts are failing

[109] Jacqui Ewart, 'Terrorism, the Media and Twitter' in Patrick Keyzer, Jane Johnston and Mark Pearson (eds), *The Courts and the Media: Challenges in the Era of Digital and Social Media* (Halstead Press 2012) 64.

to reap the benefits of new media, while some others are exposing themselves to significant dangers.

For those courts that have a presence on social media, our survey has illustrated the practical challenges facing their staff and judicial officers. While social media may significantly enhance court communication, maintaining judicial and institutional integrity should remain a fundamental concern for all courts. It is essential that courts do not lose sight of their constitutional role, and that any engagement with social media is deployed to enhance that role, rather than to undermine it.