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# ***Trial by Tweet? Findings on Facebook? Social Media Innovation or Degradation? The Future and Challenge of Change for Courts*<sup>1</sup>**

By Dr. Pamela D Schulz and Dr. Andrew J Cannon<sup>2</sup>

## **Abstract:**

The growth and exponential influence of social media challenging modern media outlets and the scope of participants is rivalling that of nation states. In addition the power of this media spectrum is forming another style of Public Square in cyber space and the demise of the spiral of silence. In turn this appears to be democratic input that can affect public policy and perhaps affects court administration and outcomes. This paper argues that while Courts must become more media savvy and modernise their methods of information outputs, it is also incumbent upon them to consider the theoretical impact and practices at work and how to ensure the delivery and dissemination of relevant responsive information and maintain the integrity and independence of Courts and the Judiciary.

## **1. Social Media and a Brave New World**

Social media has been heralded around the world as the new way of sourcing information and communication and this new social world appears in some instances to be the predicator of a different style of democracy conducted by user generated content. The site *Facebook*<sup>i</sup>, which is expected to have 500 million users by the end of 2012, and *Twitter* are larger communities than most nation states. The image hosting site *Flickr* also hosted more than 3 billion images in 2010 and photographs making the world famous libraries and museums pale by comparison. 75% of all internet users used social media in one form or another<sup>ii</sup>. There are more than 1.5 million private blog sites on line. This is a profound change from the western cultural model of the management of power. This article discusses how courts, who are part of that power arrangement, should engage with this new media to ensure that their role as bastions of independent principled appliers of a rule of law is understood and appreciated in the broad community.

Western power arrangements have long been based on the nation state which claims a monopoly of power over people in a defined geographical area.<sup>iii</sup> Discourse in the community has been substantially directed by political, business and media leaders who have interconnected interests. So as to ensure that conflict is resolved peacefully and without threatening the position of authorities, the State intermediates the exercise of its power over citizens through the court system which also ensures that disputes between citizens can be resolved peacefully. In better examples the population exercises a degree of control over the powerful elites by the free election of the political leaders, the media discourse is lively and free ranging and the court system is fully independent of executive government.

There was a time when the work of courts was accepted without substantial criticism and the Attorneys-General of modern democratic states would speak up for and defend the courts. Those times are long past. The power of the nation state is declining as against large corporate interests, court systems are being privatized<sup>iv</sup> and parallel to this ownership of the traditional media has become increasingly concentrated at the same time as its influence is challenged by the fast emerging social media. Discourse around courts has increasingly focused on a 'law and order' rhetoric. Notwithstanding low crime rates and relative safety, politicians and media have manipulated fear of crime to gain public attention and courts have suffered collateral damage and sometimes direct attack in a discourse of disrespect about their work in controversial cases.<sup>v</sup>

To some extent the new media is still just an extension of the media spectrum of old but with a modern twist. That twist is to encourage and enthuse the users to log on and to consume media in its myriad contexts and platforms which are incredibly mobile. These contexts are now being designed to excite, enthuse and to disturb as part of what has been described in Australia as *infotainment*.<sup>vi</sup> This form of *infotainment* is now part of a spectrum that finds itself lodged between the cult of celebrity and the notion of the fear of crime that feeds what some journalists describe as the "hungry beast"<sup>vii</sup>: an ever hungry, and never sated, media that needs to fill a void 24 hours a day 7 days a week. The notion of media agenda setting by opinion editorial pages in large national dailies is diminishing. Well known media blog sites still attempt to keep the community scared or titillated and lead discussions on matters political and social, but increasingly they have lost control over community discourse which freely swirls around social media unconstrained by the control of nation state leaders. The current media climate is different from that of only a decade or more ago. The concept of mass

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<sup>1</sup> Dr. Schulz presented a version of this paper at the International Courts Administration Conference in The Hague, June 2012.

<sup>2</sup> Dr. Pamela Schulz is a part time lecturer in Graduate Studies in the School of Communication and International Studies at the University of South Australia in Adelaide. Dr. Andrew J Cannon is Deputy Chief Magistrate and Senior Mining Warden of South Australia and adjunct Professor at Münster University and Flinders University Law Schools. The authors acknowledge the interest and suggested sites provided for this paper by Markus Zimmer.

media where a passive audience would receive and respond to messages whether from news or from marketers has been overshadowed by the interactive form.

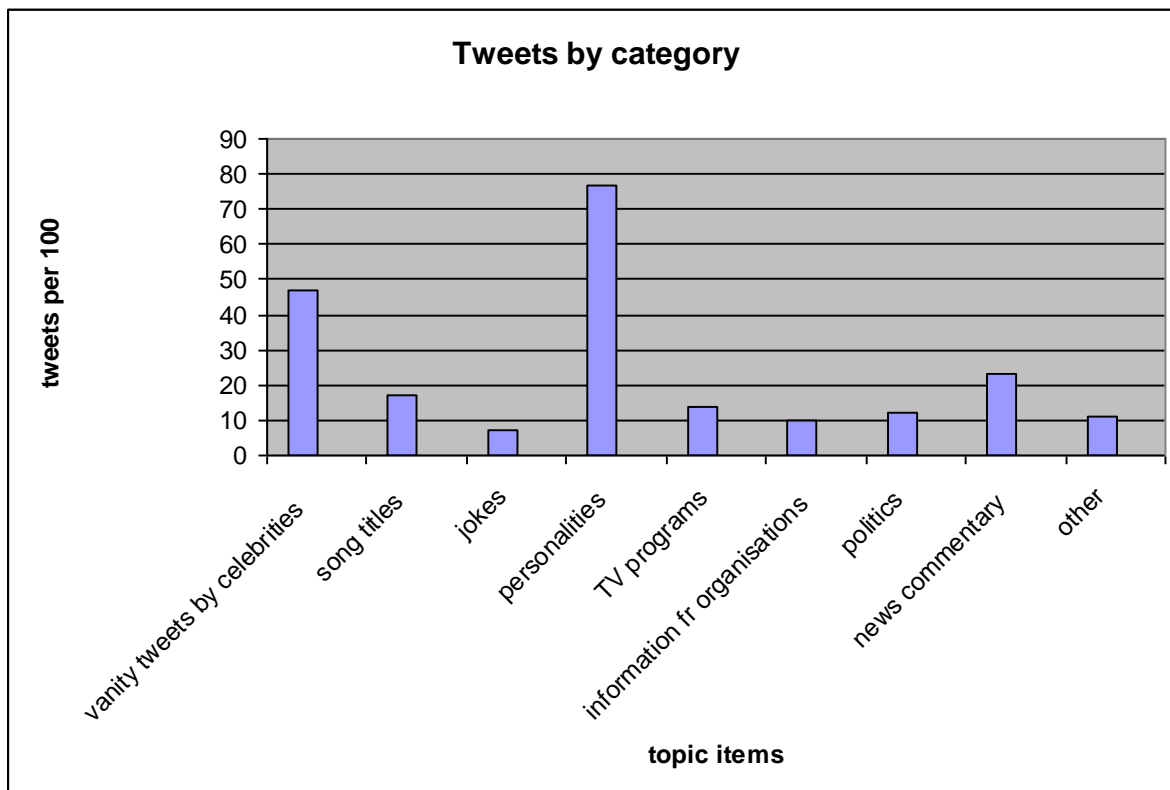
The issue for Courts is now clear. Should they allow themselves to shrivel under the increasingly strident and opportunistic criticism of their work by the declining nation state leaders, or should they consider ways in which this new but powerful method of communication in social media can direct and pull audiences so that they understand and value the courts as a bastion of integrity in a world of celebrity. Can this be a way of showcasing institutions of independent rigor in a world that is often at the mercy of public generated hatreds based on shallow discussion of distorted facts? To answer this question it is necessary to consider the implications of these fast emerging new social media discussions.

## 2. Implications of Social Media

What seems to be at work at present is the beginning of the end of the *spiral of silence*<sup>viii</sup> which at one time kept whole groups of people quiet and afraid to contest or challenge public policies and ideas and who did not speak out as the number of people who did not accept their view appeared to be in the majority. Members of a community do like the opportunity to be heard within what Habermas termed “the Public Sphere” but when that is offered it becomes clear that the more educated and ideologically motivated members of a community are likely to attend physically. The domination by business, political and media elites of traditional media discourse is an example of this phenomenon and often leaves the “silent majority” simmering with voiceless anger. The new *public square* at work in cyberspace gives often anonymous voice to personal points of view.<sup>ix</sup> Social media provides for those less inclined, or less educated and thus less confident to attend in physical spaces, opportunities to express their views within cyberspace. The growth of the *citizen journalist* has also exaggerated this in quick time with more and more blogs becoming the mainstay of the media cycle. People are keen to be seen as being heard in modern deliberative democracies and the voice of the people known within media by the term *vox pop* is truly representative of their points of view. This in turn then suggests that emerging communities of interest are gaining more power and influence via the new *public squares* offered by modern media and social media.<sup>x</sup>

It is interesting to see what they are discussing. Studies of *uses and gratification* theory into how modern users of the myriad choices of media platforms show that the various forms of digital media presently promote points of view of consumerism and consumption rather than being used to empower the users themselves.<sup>xi</sup> A quick snapshot using discourse analysis by the author Schulz especially prepared for this paper of the top trends and topics on twitter in April 2012 gives some insight into the use of this new technology.

## 3. Favored Subjects on Twitter



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The topics most favored were celebrity and personalities while news commentary has climbed into the 20+% mark in addition to discussion of politics and other discussions. Although the chart above is just a snapshot and can change rapidly it gives a useful indication of the nature of this media traffic. This augurs well for news outlets and others who see opportunities to influence and use this to drive people to their on line news sites. Organizations are beginning to use the service to promote information to targeted audiences and this is currently running at around 10% of traffic.

Commentators on this cacophony of new voices in cyber public squares of *citizen journalism* are identifying different sources of discussion and emerging themes.<sup>xii</sup> The *Panopticon* theory of societal control contends that all major controlling organizations need a *watch tower* approach to viewing and scrutinizing the behavior and reporting on them. This concept was first used by Bentham in his work on prison reform and hospital surveillance techniques. Modern interpretations of this theory is that the mass media until recently has become the watch tower and then instructs a community on how to react by agenda setting.<sup>xiii</sup> In a safer society that has become more risk averse<sup>xiv</sup> *fear discourse* has been used by the mainstream media to attract the attention of a public increasingly distracted by diverse sources of information, with a heavy focus on *discourses of disapproval*, tough on crime political debates and Law and Order as entertainment.<sup>xv</sup> Political commentary has become a game of catch the mouse as politicians are asked to rule in or rule out simplistic options and then if they make a mistake this is the story, not the substance of policy. However mainstream media is suffering diminishing returns as *speed of light* communication<sup>xvi</sup> undermines the importance of the daily newspaper supporting the daily TV news services.

E juries, as the author Schulz calls the new judges of community events, and citizen journalists are now taking on the Panopticon role in greater numbers. This offers opportunity to participate without the problem of face to face debate and allows ideologically based information to be more widely disseminated preventing the Noelle-Neumann *Spiral of Silence* which had in the past kept people away from such topics. It now appears that open slather arrangements of information are expected and often are the predictors of news whether they appear to be true or based on innuendo or rumor. This may lead to major discomfort for celebrities faced with what the author Schulz calls as *trial by tweets* or *blogosphere juries*.

The tweets show the strong *cult of celebrities*, some of whom are purely narcissistic, while others use the attention they have to influence public opinion.<sup>xvii</sup> Groups of people are now in a position to feel the power of having influence on outcomes where in the past this may have been denied to them and they are actively pursuing this choice. For the novice social media can be a minefield of potential error and may lead to mistakes in judgment on both a personal and professional level. This has already been well established with the downfall of some of these celebrities who did not think before adding information to blog sites or web pages or compromising themselves in public and being hurt when their frailties or more are exposed to public gaze.

*Contested space* theories hold that the media as selects and frames what can be seen or should be reported about traditional institutions such as courts.<sup>xviii</sup> The media stand between administrators of the organization and its work and lead the public in their thinking. This has now changed with the growth of the citizen journalist who is now contesting media space with mainstream media. The organizations are at risk of being framed adversely, in an ill-informed discourse of disrespect unless they engage with this new social media.

According to *Technorati Media*, a social media information website, the difference in social media is the notion of users determining and setting the agenda, and that the content reflects that of the main client base. In addition the audience focused interactions means that the outreach is very diverse and encompasses a range of information and ideas that are not typical of one way communication processes that have been so comfortable for marketing and communications specialists in the past. These types of interaction are more in keeping with the two way communication model<sup>xix</sup> which advocates that in order for information to be truly absorbed and understood the organization, in addition to direct one way dissemination of information, should find peripheral routes of persuasion to connect with consumers and responsive two-way routes, to ensure key messages are being received.<sup>xx</sup> This approach encourages would be consumers of a message to inculcate it in as many ways as possible so that it finds the most appropriate connections and is understood and reinforced.

While the above gives a brief explanation of how the new social media is affecting discourse in modern society, courts and their judiciary and administration are mostly holding on to their own *Habitus*<sup>xxi</sup> or cultural tradition that holds courts as separate, independent and above the fray. The question is whether in this new and constantly changing and challenging world of e-communication, they can afford to remain aloof as this will leave them misrepresented, diminished and ultimately irrelevant.

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Now that the privileged few no longer control the discourse in modern democracies there is a view that being heard in modern democracies is vital.<sup>xxii</sup> Although courts will not wish to attend rallies in the modern electronic *public square* should they consider using modern social media to inform and participate with the society of the citizens they serve within the justice system?

#### 4. Social Media Innovation for Modern Instrumentalities

There is now a plethora of government and other government funded organizations that have taken on the challenge of Social Media as a form of strategic communication.<sup>xxiii</sup> Many government websites now have official *Facebook* and *Twitter* accounts but there room to doubt whether they are effectively using the *push and pull* strategy that has been identified as part of effectively using social media. The *push* strategy, which is described widely in marketing and communication literature, is the manner in which points of view are disseminated via various strategic tactics designed to get a point of view into the public domain while a *pull* strategy is designed to draw people and audiences toward an event product or concept. Social media is particularly valuable to encourage would be audiences to log on or respond to some “call to action” which is seen as a key to getting a targeted audience to react to a particular message. Mergel indicates that this networking strategy *via* the use of social media tools is:<sup>xxiv</sup>

‘highly interactive with a lot of back and forward between the agency and its diverse constituencies’. The new media directors usually have a sense of who is following them and who they want to reach. They are using *Facebook*, *Twitter*, etc., very strategically not only to control and direct messages to their audiences, but also to have their ears and eyes on the channels where the actual issues are being discussed that might be of relevance to their agency’s or department’s mission.’

Social media tools are not used merely for publishing purposes but it needs care to ensure they do not become a time sink of the already overworked IT staff, but rather as a strategic information sharing and knowledge creation tool involving social media champions from different content areas. However, the social media phenomenon that is sweeping the world has its limitations and must be seen in the context of the whole current media spectrum and not as an entirely different entity.

This now sets the tone for how Courts should view and use this emerging and powerful new communication tool.

It can be vital for courts to publicize decisions and modern media can certainly be effective for that. For example a court in Malaysia ordered an apology by tweet as reported on several blog sites (June 2<sup>nd</sup> 2011) in a defamation case. This in turn attracted substantial media interest.<sup>xxv</sup> The push factor in putting out significant and important messages is a useful way in getting in touch with targeted users especially on *Twitter* where the concise use of 140 characters is the method of choice to present information quickly and efficiently. The problem for courts is that complex and difficult legal arguments, decisions and outcomes including sentences or significant decisions cannot be captured in a tweet. Some news organizations have pushed for tweeting to be allowed in court (*Herald Sun Melbourne Boston Globe*, etc.)<sup>xxvi</sup> and some news organizations around the world have “guest tweeters” chatting to an online and ever growing interactive audience. Although such reports may seem banal, they do engage an ever widening audience in the work of courts. Once engaged it is possible to then pull them to other court media sites that discuss issues more comprehensively. It is doubtful that the courts could afford specialist tweeters to distil such issues for speed of light transmission but they may be able to permit accredited media to do so and review their tweets to ensure the dialogue does not damage usual rules of propriety.

The Courts in England and Wales have issued a standard protocol in which tweeting, emailing and texting of messages from hand held unobtrusive devices is now permitted from courts under the direction of the judge<sup>xxvii</sup> and this is being mirrored in other parts of the world such as the USA and Australia (see Ramasatry 2010) . Already however, the concept of mistrial and wrongful information looms large. At the time of finishing this article in September 2012 there has been the suspected rape and murder of a journalist in Australia. The publicity given to this by the media during the search for the offender engaged social media in a major way. When a *Facebook* page was established to assist in the search for her it attracted 120,000 likes, some of which assisted police in their investigation. When her body was discovered and an accused charged, 30,000 people took to the streets of Melbourne to express sympathy. Meanwhile details of earlier sentencing remarks about the offender with clear potential to prejudice his ultimate jury trial have been posted on *Facebook* leading the police to express concern about “a trial by social media” and how it might prejudice the trial. *Facebook* initially refused to take down the offending page.<sup>xxviii</sup> This is a good example of how traditional media can push a story but then it gains its own life on social media, with consequences that may affect the ability of the court system to deliver, in its terms, a fair trial. This problem may be less profound in civil code inquisitorial systems, because the fact finders are used to being well informed about the background of the accused but it challenges the common law jury trial method, where lawyers routinely keep information such as the offenders prior convictions from juries, on the basis that the prejudice outweighs any probative indication that the offender committed this new offence. The ability to censor this

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information does not extend to the internet so that the new social media paradigm may make the exclusion of this information from the jury unworkable in notorious cases.

Again in Australia government and court orders for nurses to desist from strike action were challenged on *Facebook* and this generated such high levels of public support for the nurses as to challenge the credibility of the court orders. This clearly shows how the lack of control of information output and discourse can lead to mistrust and organizational or reputation problems as the government, and the court, struggled against the onslaught of public support for nursing staff.<sup>xxix</sup>

Of course courts are increasingly using new media as a communication tool. Some courts tweet to connect with a target group of users who need information such as plaintiffs, defendants, legal counsel, or even jury members to report for duty. The Family Court of Australia has recently established a twitter feed<sup>xxx</sup> and in the United States a court has ordered a virtual visitation to children by *Skype* for those parents who cannot afford to travel.<sup>xxxi</sup> The *Courts Service* Ireland web site in six languages provides good information about the work of the courts and up to date judgments on line, and an interesting on line small claims system. The United States Courts, in addition to comprehensive information about the work of the US Federal Court, has a regular news services and email alerts for important news items.<sup>xxxii</sup> In addition there have been examples presented from the USA as indicated by Norman Meyer in his summing up as Chair of the Panel at the recent international IACA Conference in The Hague. He pointed out that several courts around the world had taken the initiative to proceed with innovative ways in connectivity for community. These included a range of activities such as:<sup>xxxiii</sup>

- Information sharing about cases due to be before the courts
- Community outreach
- Publishing information with media jurors and staff
- HR Recruitment of staff
- Internal Communication

In Australia most courts have media officers to ensure an easy and accurate passing of case information to the mainstream media and maintain comprehensive websites.<sup>xxxiv</sup> Despite this, in South Australia and elsewhere, the author Schulz has amply demonstrated that this accurate information has not deterred the mainstream media, encouraged by politicians bolstering their profile with 'law and order' scare campaigns, from running a *discourse of disrespect* about the courts.<sup>xxxv</sup> Left without correction it is clear that this will feed into the discussions in the social media community leaving courts denigrated and undermined.

Modern Communication Theory contends that social media cannot be ignored but must be considered as part of the broader media landscape. The opening point of this article resounds in this discussion. The new *Facebook* networks are a community that rivals the nation state and importantly are beyond the control of the nation state. The internet has escaped the monopoly of the control over force that the nation state paradigm of power has successfully exercised for several centuries. Whether they are tweeting, blogging or emailing the outcome is the same...the public are now in charge of how and when and what information is being passed on from consumer to consumer. This is very different from hotel or café gossip in a closed community. Here the comments, ill-informed or not, can reach an audience of tens of thousands, and remain on the net to later misinform, even though they may be later discredited.

All this article seeks to do is to identify the implications of the new media and to suggest some practical policies to respond to them. A fuller development of policy prescriptions will no doubt follow from experience in this fast developing field and may be the subject of a later article.

## 5. Practical Policies

The new media offers many practical opportunities for court communication with staff and users, challenges and opportunities in presentation of evidence and in making outcomes and reasons available to the broader public. When controversies erupt around a court decision it offers opportunities to engage in, or inform that discussion. Some comments follow about each of these.

### *Communication to staff and users*

No doubt most courts already use email to for internal communication and diary management. New media offers opportunities to improve and broaden electronic communication with staff and users. Staff forums and blogs can be combined with new approaches to education through audio and video recorded information packets to better manage information dissemination to staff and to make it more interesting and interactive. The same techniques can be used with jurors. Similar techniques can be used to inform unrepresented court users and to brief lawyers on important policy

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initiatives. Electronic access to court diaries, court files and court databases offers great advantages in providing necessary information in a timely way without using court resources that would otherwise be required to make it available by physical means. Parties and lawyers can be reminded of court dates by SMS, twitter or informing their Facebook page.

Most notions of service of documents are firmly rooted in notions of village or suburban life where a person lives at a stable address, as demonstrated by the fact that one's address is commonly used as an identifier. It is doubtful how valid this is to highly mobile people who are likely to change employment and locations during the time whilst they engage with a court, and even less so with itinerant "couch surfers" who may successfully live for years without a permanent address. Concepts of valid service by notice on a Facebook page, or to a twitter account, or "whatever" (which is to say in modern parlance the next emerging communication fashion).

There are dangers in any changed method. Before a party or lawyer is permitted access to a court data base the information must be layered so that the privacy concerns of the particular jurisdiction are addressed. The author Cannon has published articles suggesting policies to manage this, from an Australian perspective, but the principle he suggests of designating data to separate levels and providing access to particular levels according to the needs and trustworthiness of the person can be adapted to any jurisdiction.<sup>xxxvi</sup> Problems of 'virtual service' are manifest in the uncertainty that one is dealing with the actual person and not a false identity or "atavar" of someone else. For now the remedy for this would seem to be that first communication should be by conventional physical means, with a clear stable identifier in addition to name, such as a date of birth (or perhaps in the near future some biometric identifier), and then to obtain consent from the person to use an identified electronic means for future communication.

#### *Presentation and recording of evidence*

The technology advances behind new media has made high quality video recording readily available. Most jurisdictions value oral evidence. Many then do not receive it until long after the events being described, by which time the memory has faded, and been changed by intervening events and new information about the original incident and other issues. In common law jurisdictions we permit lawyers who are partisan for one side to obtain statements from witnesses with the clear potential to introduce distortions and errors into later recollection. New technologies offer good opportunities to improve the integrity of orality by video recording a person's recollection at the first opportunity. In criminal cases, if police are trained to ask open questions, they could be empowered to take evidence, the witness warned about the duty to tell the truth, and record all witness statements at the scene or when they first locate the witness and store the data file in a secure way to prevent editing or alteration. This video recording would be the disclosure to the defendants of the evidence against them and could be used as the start of the evidence of the witness if s/he is called at trial. This would save substantial police resources typing up statements and improve the integrity of the oral evidence. Likewise in civil cases the first interview by a lawyer of a witness would be more reliable if it was video recorded, rather than being interpreted into an affidavit form.

Another aspect of evidence is obtaining information from the internet. When discussing an outdoor scene of a crime or a motor vehicle accident should we allow a Google Maps satellite and street view to be used, with appropriate opportunity to clarify changes that may have occurred between the occasion under scrutiny and the time when Google took their image? To be realistic, if we do not, then jurors and other fact finders might look anyway on their Android or iPhones. In Australia a juror has been punished for independently finding information on the internet.<sup>xxxvii</sup> It may be cheaper and safer to use appropriate internet information as a formal part of evidence than unrealistic prohibitions leading participants to do it surreptitiously. In jury systems the issue of juries informing themselves from the internet ("the Googling Juror" who "saw it on Wikipedia") and even finding out about the defendant's prior history from earlier media reports, or social media or even court websites is a constant challenge to the ability of courts to filter the information that juries are permitted to use to establish guilt. Clear rules to manage these challenges need to be developed. It may be necessary to permit more of this information to be made available to juries and trust them to diminish the weight they place on it, rather than pretending they can be quarantined from access to it.

Modern media has much to offer to better explain complicated scenarios, spatial relationships and to make technical evidence more accessible. Once courts permit its use the issue of who pays the cost arises. It is a risk for courts to invest heavily in technology which may not be used and will soon be out of date. Relying of parties to supply technology may unfairly advantage a well-resourced technologically literate party over an unsophisticated poor party. This suggests that courts need to make small investments in mobile technology, and renting technology as required, rather than attempting to equip multiple court rooms with standing equipment. They do need to invest in training so that when technology is used, it works.

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Courts should also record and keep the record of all public proceedings because modern media puts discreet recording cheaply into the hands of all members of the public and modern software permits easy editing of the recording. Short of confiscating all phones and electronic devices at the door, which would be a demanding and alienating process, it is not possible to prevent private recording of public court proceedings. Having a complete court recording of the process will be essential to discourage and disprove any misrepresentation of what happened in court.

#### *Communicating outcomes and reasons to the general public*

The work of courts is crucially important to mediate power in evolving society arrangements so that the rule of law is maintained, but experience in the State of South Australia, where the authors live, demonstrates that the traditional media and the political establishment cannot be trusted to fairly inform discussion about the work of courts.<sup>xxxviii</sup> It follows that courts should ensure that the community is accurately informed about their work. Modern media offers multiple opportunities to do this, and courts around the world already use some or all of these methods:

- Courts should maintain a well formatted webpage that is accessible to all current media to provide good background user information and current materials on judgments and rulings of public interest.
- Judgments in matters of public interest can be streamed by a live feed to the internet and by traditional video media at the same time as they are distributed in written format. These judgments can be recorded and placed on the court website as podcasts, video feeds to stream and download and in written format to read and download. This requires judges to give thought to their audience which will be much larger than the lawyers appearing before them and the appeal court in the future. Reasons need to have readily accessible summaries which read well, with necessary long technical analysis of facts and law separated for the more determined viewer or reader to access as they wish.
- The court webpage should include good *push* strategies, such as in the US Federal courts and the Australian Family Court to send out email and news alerts. *Push* information should be provided in multiple formats. By engaging in social media the courts will present a modern face to world and their work will be seem more relevant to the younger generations.
- Courts should have an adequately resourced communications specialist (not necessarily a journalist) to advise on the development and maintenance of a whole of community communications strategy. This will include educational materials for the public and instructional materials for court users. The court communications specialist will need skills of analysis of social and mainstream media trends of comment as well as a sound understanding of mainstream journalism. The discipline of discourse analysis as well as journalism is desirable.
- The communications specialist will need to maintain good relations with mainstream media to ensure that reporting of decisions is accurately presented and well informed as well as the knowledge to monitor social media discourse.
- Courts should consider tweeting and other social media live reports on high profile cases by approved users. The communications specialist should review their tweets to ensure that they are appropriate and do not offend sub judice rules or prejudice fair trial.
- Because tweets cannot possibly convey the nuances of legal complexity part of the *push* strategy will be to insist that approved tweeters attach links to court information sites for more extensive information. This should achieve a *pull effect* to bring the social media community to court web site information.

#### *Correcting errors and engaging in controversies*

This article argues that courts can no longer trust existing leaders or elites to respect or properly represent them. Once they maintain their own communications strategy the question quickly arises how they should manage misreporting of their work by politicians and the media and ill-informed discussions in the social media. Judges who decide individual cases have always kept clear of engaging in the controversy that may attend their decisions. This is desirable to retain their detachment and to be answerable to the appeal court under reasoned careful analysis, not swirling populist discourse. In traditional media the communications specialist can go a long way to achieving fair reporting by direct contact with journalists and their subeditors who may have skewed the meaning of an original fair article. However, sometimes media discussion is damaging the institution of the court, and it should consider ways to respond to these broader issues. One method is to have a respected retired media judge who can be a go to person to comment in traditional media and should have access to skills in social media to engage in key internet discussion groups.

It is essential that courts expect and encourage community interest. Courts do not need to be liked but they do need to be relevant and respected. They can expect media derision and disapproval of direct engagement with communities and social media suggested in this article as it challenges their hegemony over the selection and mediation of the information that is given to the community.

This is described by the author Schulz as the *Discourses of Disapproval and Disrespect*<sup>xxxix</sup>.

Courts have a core role to play as institutions that test claims and find factual reality and then apply established principles to them in a rigorous way. In an increasingly connected world, where gossip and sometimes ranting of ill-informed opinion is now widely available on line, this role of factual certainty and intellectual integrity must be even more important than it was when most public discourse was mediated through traditional media dominated by those in positions of influence. Courts and lawyers were part of those dominant groups. Now that oligopoly over community discourse is breaking down, if courts remain aloof from the social media fray, they risk being diminished by opportunistic mainstream media and political attacks which are amplified in the social media pack. The challenge is to use and build on communication techniques discussed in this brief analysis to ensure courts are heard and valued in a way that does not compromise their primary devotion to a properly applied rule of law.

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<sup>i</sup> For example Kaplan AM and Haenlein M (2010) 'Users of the World Unite: The Challenges and Opportunities of Social Media' in *Business Horizons* Vol 53 pp 59-68 report that in 2009 the online social networking application Facebook had more than 175 million registered users.

<sup>ii</sup> Ibid. citing Forrester Research.

<sup>iii</sup> Max Weber, *Politik als Beruf* a lecture at Munich University January 1918, published in *Gesammelte Politische Schriften* (Muenchen, 1921) pp 396-450.

<sup>iv</sup> Cannon, "A Pluralism of Private Courts", (October 2004) 23 *Civil Justice Quarterly* 309-23; Cannon, *Lessons from the Australian Constitution: An introduction to the Australian legal system*, Lit Verlag, Münster and Berlin (2008), 1-184. For an example of a private internet court see: [www.legalfaceoff.com](http://www.legalfaceoff.com) (accessed 5 October 2012). These are also available for download at <http://ssrn.com/author=1772513>.

<sup>v</sup> Schulz Pamela D (2010) *Courts and Judges on Trial: Analysing and Managing the Discourses of Disapproval* Berlin London New York Lit Verlag.

<sup>vi</sup> Kirby The Hon Justice Michael AC CMG (2001) 'The Judiciary in Federation Centenary Year : good news, bad news, no news' 11<sup>th</sup> AIJA Oration in judicial administration 22 June Banco Court Supreme Court of New South Wales Australia AIJA Publications Melbourne, p.5.

<sup>vii</sup> An information news program on the ABC in Australia was named *Hungry Beast*. For more information see: <http://www.abc.net.au/tv/hungrybeast/well-here-we-are-then/index.html>

<sup>viii</sup> Noelle- Neumann E (1974) 'The Spiral of Silence: A Theory of Public Opinion in Journal of Communication Vol 24 Issue 2 pp 43-51.

<sup>ix</sup> Goidel Freeman Procopio and Zewe (2008). Goidel R Freeman C Procopio S Zewe C (2008) Who participates in the Public Square and does it matter? In *Public Opinion Quarterly* Vol 72 No 4 Winter pp792-803

<sup>x</sup> Bennett J Hall K and Holmes P (2008) *Media Studies AS: A Study Guide* Pearson Education Harlow and Edinburgh

<sup>xi</sup> Samuel-Azran T and Caspi D (2008) 'New Media and innovative technologies' Israel Beersheba Ben-Gurion University Press.

<sup>xii</sup> The Medill School of Journalism suggests this is one of the hottest buzz words in academia in media studies today... for example see Source Watch as a site promoting this form of citizen generated media [http://www.sourcewatch.org/index.php?title=List\\_of\\_citizen\\_journalism\\_websites](http://www.sourcewatch.org/index.php?title=List_of_citizen_journalism_websites) (accessed 4April 2012).

<sup>xiii</sup> Mc Combs M (2004) *Setting the Agenda: the mass media and public opinion* Polity Cambridge.

<sup>xiv</sup> Beck U (2005) *Risk Society: Towards a new modernity* London Sage Publications.

<sup>xv</sup> Lyons W and Scheingold S (2000) 'The politics of crime and punishment' in *Criminal Justice* Vol 1 no 1 pp 103-148 and Schulz 2010, op cit.

<sup>xvi</sup> Virilio Paul & Degener M (2005) *Desert Screen: War at the Speed of Light* London UK Continuum Publishing Company.

<sup>xvii</sup> Bennett *et al* (2009), op cit.

<sup>xviii</sup> Eldridge J (2000) 'News Truth and Power' a Glasgow Journalism School on line publication and available at <http://www.glasgowmediagroup.org/images/stories/BookChapters/GetMessage/ntp.pdf> viewed April 23<sup>d</sup> 2012.

<sup>xix</sup> Grunig J (2001) 'Two Way Symmetrical Public Relations past present and future' in Heath R (Ed) *Handbook of Public Relations* Thousand Oaks CA Sage publications pp 11-30 who uses the exemplar of the *Elaborated Likelihood Model* (Petty and Cacioppo cited in De Pelsmacker P Geuens M and Van Den Burgh (2010) 4<sup>th</sup> Edition 'Marketing Communications: A European Perspective' London Harlow New York Pearson Publications).

<sup>xx</sup> Grunig 2001, op cit; Kitchen P & De Pelsmacker P (2004) 'Integrated Marketing and Communications: A Primer' London and New York Routledge; Keller K (2008) 'Strategic Brand Management: Building, Measuring and Managing Brand Equity' Upper Saddle River New Jersey Prentice Hall Pearson Education International.

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- <sup>xxi</sup> Bourdieu P (1989; 2003 last edition) 'Distinction- a social critique of the judgment of taste' Trans R Nice New York Routledge.
- <sup>xxii</sup> Mitchelstein E (2011) 'Catharsis and Community: Divergent Motivations for Audience Participation in Online Newspapers and Blogs' in *International Journal of Communication* No 5 pp 2014-2034.
- <sup>xxiii</sup> *Society for Public Administration publication Gov 2.0- insert* < <http://www.aspanet.org/public/> > viewed April 2012.
- <sup>xxiv</sup> Mergel I (2010) *Gov 2.0 Revisited: Social Media Strategies in the Public Sector* an online paper published by the American Society for Public Administration on line at [http://patimes.eznuz.com/article/Commentary/Special\\_Section/Gov\\_20\\_Revisited\\_Social\\_Media\\_Strategies\\_in\\_the\\_Public\\_Sector/22647](http://patimes.eznuz.com/article/Commentary/Special_Section/Gov_20_Revisited_Social_Media_Strategies_in_the_Public_Sector/22647) (accessed 15 April 2012).
- <sup>xxv</sup> For an article about this case see <http://www.guardian.co.uk/world/2011/jun/02/malaysian-tweet-apology-defamation> (accessed 23<sup>d</sup> April 2012).
- <sup>xxvi</sup> See for example <http://www.flmb.uscourts.gov/twitter/> twitter feed from Florida Courts other examples are available via the Justice Support Group on Linkedor via US Courts news to provide information as a push strategy at <http://news.uscourts.gov/revised-jury-instructions-hope-deter-juror-use-social-media-during-trial> viewed April 2012.
- <sup>xxvii</sup> <http://writ.news.findlaw.com/ramasastry> (accessed 23 April 2012).
- <sup>xxviii</sup> <http://www.abc.net.au/news/2012-10-01/facebook-refuses-to-remove-meagher-page/4289262> viewed October 2012.
- <sup>xxix</sup> Gettler L (2012) 'Tweets of Destruction' on *Technology Spectator* Report <http://technologyspectator.com.au/emerging-tech/social-media/tweets-destruction> (accessed 23<sup>d</sup> April 2012).
- <sup>xxx</sup> [twitter.com/FamilyCourtAU/status/257602638319849472](https://twitter.com/FamilyCourtAU/status/257602638319849472) (accessed 15 November 2012).
- <sup>xxxi</sup> Ramasastry A (2010) 'Parenting in Cyberspace' on the *FindLaw* website at <http://writ.news.findlaw.com/ramasastry> viewed 23 April 2012.
- <sup>xxxii</sup> <http://www.courts.ie/>, <http://www.uscourts.gov/Home.aspx> (both accessed 1 October 2012)
- <sup>xxxiii</sup> Meyer N 'Innovative Uses of Courts Systems of Social Media' Power Point Presentation The Hague Netherlands June 2012 .
- <sup>xxxiv</sup> See for example [www.courts.sa.gov.au](http://www.courts.sa.gov.au) and the Federal Court of Australia E Court site on [http://www.fedcourt.gov.au/ecourt/ecourt\\_slide.html](http://www.fedcourt.gov.au/ecourt/ecourt_slide.html) ( both accessed 4 October 2012).
- <sup>xxxv</sup> Schulz (2010) op cit.
- <sup>xxxvi</sup> Cannon, "A Suggested Policy to Control Electronic Access to Court Databases" (May 2002) 11(4) *JJA* 176-179, Cannon, "Policies to Control Electronic Access to Court Databases" (November 2001) 11(2) *JJA* 100-106. These are also available for download at <http://ssrn.com/author=1772513> .
- <sup>xxxvii</sup> Jon Kaila, 'Juror in Hot Water for Online Search', *Herald Sun* (online), 19 June 2011 <http://www.heraldsun.com.au/news/victoria/juror-in-hot-water-for-online-search/story-fn7x8me2-1226077656291> (accessed 4 November 2012).
- <sup>xxxviii</sup> Schulz (2010), op. cit. footnote 5.
- <sup>xxxix</sup> Schulz Pamela D (2008) "Rougher than usual media treatment: A Discourse analysis of media reporting and justice on trial" April (4) *Journal of Judicial Administration* 223-236.