The transformative power of technology

Enhancing open courts?

By Jennifer Farrell

***Jennifer Farrell** is a PhD candidate at Macquarie Law School. Her thesis topic is: The Digital Pathway to Justice: Access or Privacy? She is a member of staff, Federal Court of Australia (2001-2013) Judicial Assistant (2001-2007; 2008-2014) and Deputy District Registrar (2007-2008); member of the Law Society of New South Wales (2002 -2013) and member of the Law Society Technology Committee (2010 -2013).*

The interactive and collaborative tools of Web 2.0 as well as audio-visual technologies in courtrooms have offered unprecedented visibility and transparency and have thereby challenged our understanding of "open courts". Virtual courtrooms and electronic documents have changed the method of access to legal information. Video recordings, online transcripts and instantaneous tweets have made disclosure of trial information a realistic expectation, exposing the practical obscurity of paper records and questioning the necessity for everyone to have the opportunity to be physically present in court.

Introduction– the technological transformation

The development of Web 2.0 applications, social networking and interactive applications has flooded the internet with information challenging the practical obscurity[1] of paper records. Electronic records and electronic filing have changed the method of access to court documents. Virtual courtrooms[2] have the potential to provide "open courts" in a way not previously thought possible. Video recordings, online transcripts, instantaneous tweets and discussions have made disclosure of trial information a realistic expectation.

These technological developments raise questions such as: how open have courts been in the past? How open can courts be in the future? To what extent have the development of interactive applications impacted on the nature of open courts? Are new regulations necessary? In making courts more open will this provide access to justice? Will it be necessary for privacy to be given greater consideration in providing open courts in the digital era?

The use of the new collaborative tools of Web 2.0 has been recognised as offering "an unprecedented opportunity to achieve more open, accountable, responsible and efficient government"[3]. The tools of Web 2.0 have demonstrated considerable advantages including providing tools to find people with appropriate legal knowledge or technical expertise; to filter the avalanche of data available on the internet; and collaborate to empower "people and organisations to transform data by 'mashing it up' and combining it with other data" to make it useful in new ways.[4]

The increased demand and public expectation for improved access and the re-use of public sector information has followed the "growing capacity of networked digital information technologies to process and visualise large amounts of information in a timely, efficient and user driven manner"[5]. In particular, this has been encouraged by the development of Government 2.0 which encompasses the use of tools facilitating collaboration, efficient government and accountability. The improvement in access to public sector information and its use has been acknowledged as "of major importance for all economies"[6]. However, it has been acknowledged that openness applies to a "different extent to different categories of information and content", depending on such issues as: legal requirements, privacy, confidentiality, national security, human rights and freedom of information.[7]

With the application of Web 2.0 tools the means of providing an explanation of the function of courts is available. It is no longer necessary for courts to "acquire their credibility and account to the wider community" through the media.[8] The media is no longer the "filter" for information. Web 2.0 tools have enabled anyone with access to the internet, social media, mobile phones or other mobile devices to report on the work of the

court. The changing role of the media, largely initiated by developments in technology, has highlighted the problem that "it is not the media's role nor necessarily in the media's interest to necessarily provide the type and extent of coverage which the interests of the administration of justice appear to dictate"[9]. The "cult of the amateur" reporter who works without editorial control or professional standards has created a "fifth estate"[10] changing the nature of communication and bringing ubiquitous transparency to online reporting.

Before the use of electronic records and electronic filing paper records such as court applications and judgments were "public" documents, however many were practically obscure. Retrieval of paper documents required attendance at court registries, completion of forms and the payment of fees. These records are "organic" and "exist in time and space differently from electronic records".[11] Over time these paper records accumulated considerable physical space and needed to be archived and relocated. Also as time passed the privacy value of such information could increase so that in reviving it and making it public it would no longer be protected by fading memories. Finding information was often a "treasure hunt around the country to a series of local offices to dig up records".[12]

These paper case files can also be categorised as "offline data", described as very different from electronic files because:

> They gather dust in filing cabinets, often disorganized and disregarded. An obscure bit of information remains apart from the handful of people who might really benefit from knowing it because it would cost too much to search, sort, or reorganize. Offline data, though available in principle, is physically and psychologically heavy, encumbered by brick and mortar logistics, and tucked away in rooms with limited opening hours. Offline data is *inert.* [13]

As the Supreme Court in the *United States Department of Justice v Reporters Committee for Freedom of the Press*[14] noted in 1989:

> There is a vast difference between the public records that might be found after a diligent search of courthouse files, county archives, and local police stations throughout the country and a computerized summary located in a single clearinghouse of information.

The difficulty of obtaining paper case files was explained by Peter Winn[15] as an important factor in largely insulating "litigants and third parties from the harm that could result from massive or unnecessary exposure, dissemination, or misuse of information provided in connection with a legal proceeding." It also meant that the balance that had been adopted between the providing access to court records and protecting privacy needed to be altered. The private information in electronic case files such as personal identification details and medical records need additional protection.

It was also more difficult in the past to aggregate information. There may have been as much information available as there is today about all aspects of an individual's life[16], however, combining what would otherwise be harmless information has the potential to reveal data that can be analysed and investigated to create a profile.[17]

Technology has made it possible for all online information to be disclosed and permanently available online.

Open Courts – why does it matter?

The principle of open courts has been referred to as a "core principle of the common law"[18], one of the most "pervasive axioms of the administration of common law systems"[19] providing stability and facilitating democracy[20]. It is an important principle that protects those "subject to the authority of the courts", facilitates and is an important ingredient of the rule of law.[21] It is a principle consisting of key features with "multivalent" roles. It provides an educational and supervisory role; enables the public to attend court, requires publication of judgments and access to court documents. However it is a principle that must be "balanced against countervailing interests"[22] such as privacy and security and challenged by developments in technology.

The open court principle has been interpreted as meaning more than "open court-room doors"[23] and access to information. It is not a "legal door stop" or an end in itself rather a "means to an end".[24] The word "open" itself has taken on a certain ambiguity with the development of concepts such as "open government" and "open data". It has been observed that the term "'open government'" is vogue but vague, an agreeable-sounding term with an amorphous meaning. We need better conceptual and linguistic tools, both for keeping governments honest and for exploring the transformative potential of information technologies in civic life".[25]

Justice Gibbs in *McPherson v McPherson*[26] considered that hearings in open courts can be distinguished from the activities of administrative officials, exposing proceedings "to public and professional scrutiny and criticism, without which abuses may flourish undetected". This openness was important because it assisted in maintaining confidence in the integrity and independence of the courts.

According to The Hon Sir Gerard Brennan, AC, KBE, popular respect for the administration of justice is earned by "steady and manifest adherence to the judicial method"[27]. An important element of the judicial method is that "subject to narrow exceptions, every word that is uttered from the opening sentence of a case to the closing words of an appellate judgment be open to scrutiny. Nothing must be hidden".[28]

Lord Denning in 1955 in "The Road to Justice" recognised that over time there have been attempts to "whittle down" the principle of publicity and open justice and referred to the applications made in *Scott v Scott* [1913] AC 417 and *McPherson v McPherson*

where there was an attempt to protect private information in divorce cases.

In a discussion of open justice Lord Shaw in *Scott v Scott* stated that it is "a sound and very sacred part of the constitution of the country and the administration of justice"[29]. This decision was followed in Australia in *Dickason v Dickason*. [30] In *Dickason* an application to hear the matter *in camera* was refused because it was held that the Court had no inherent power to exclude the public unless there was a clear statutory provision to the contrary.[31]

The principle of open justice is a common law principle, according to Lord Neuberger, stretching back into the earliest period of common law.[32] A principle important because of "the role it plays in supporting the rule of law"[33] and guarding against repression[34], however, it is a principle that is not absolute. At common law exceptions to the principle of open justice were recognised in *Scott v Scott* where Viscount Haldine LC at 437 explained that the exceptions are "the outcome of a yet more fundamental principle that the chief object of Courts of justice must be to secure that justice is done". The principle however can only be displaced when it is necessary for justice to be achieved and not out of convenience.

Restrictions on publication

Conflict between the principle of open justice and the due administration of justice has been recognised where certain forms of publicity could possibly prejudice a fair trial; when it may be difficult for witnesses to testify in open court or people deterred from institution proceedings; or where it is necessary to control public attendance.[35]

Under common law in Australia the principle of open justice can be departed from if it is "really necessary to secure the proper administration of justice"[36]. The common law on "open justice" was discussed in the High Court by French CJ in *Hogan v Hinch*[37]. The rationale of the principle being to subject court proceedings to public and professional scrutiny and maintain public confidence in the courts.[38] However, the application of the principle can be limited where the character of the proceedings and the nature of the function conferred upon the court may dictate this.[39] Examples provided by French CJ were[40]: where the proceeding involved a secret technical process such that the whole matter in dispute would be destroyed by disclosure; injunctive relief against an anticipated breach of confidence; the protection of a witness, such as a blackmailer's victim, where if not protected other complainants may not give evidence; similarly the name of a police informant may require protection; the "exceptional and compelling considerations going to national security"[41]; proceedings relating to wards of the State and mentally ill which were historically exceptions or other proceedings not "in the ordinary course of litigation".

In *Hogan v Australian Crime Commission*[42] French CJ analysed the meaning of "necessary" in s 50(1) of the *Federal Court of Australia Act 1976* (Cth) . His Honour considered that it did not mean "convenient, reasonable or sensible or to serve some notion of public interest"[43] in the context of the statutory provision "necessary in order to prevent prejudice to the administration of justice or the security of the Commonwealth". It was considered by Perram J to be a "strong word" not "concerned with trivialities"[44].

While the provisions in *Access to Justice (Federal Jurisdiction) Amendment Act 2012* (Cth) replaced s 50, substantive changes were not made. The new provisions prescribe what the court must consider and what must be specified in the order. The order must be "necessary to prevent prejudice to the proper administration of justice". The duration of the order must be specified with reference to a fixed period or a specified future event (s 37AJ). The intention was to harmonise the law in relation to non-publication and suppression orders for superior courts in Australia.[45]

Technology providing enhanced openness

The growing relevance of technology to courts and judicial work and its "incontrovertibly central role" according to Karen Eltis, "has thus far evaded scholarly inquiry almost entirely"[46]. She has considered that besides providing increased availability of information, technology has distorted the "judicial process and its outcomes", as well as impacting on the "delicate balance between privacy and the 'open court'"[47]. Some of the problems discussed by Eltis include, "online court records and privacy, *ex parte* electronic communication, an inadvertently e-mailed draft decision, the challenge to judicial independence posed by government-owned and operated court servers"[48] as well and the distortion of the principle of "open courts" by "massive search engines".[49]

Eltis distinguishes "accessibility" in the pre-electronic era to the present where there is "an audience of incalculable numbers with indiscriminate access" allowing access to personal, sensitive information "in an unprecedented fashion".[50] This new accessibility has been shown to lead to distorted profiles particularly through the use of search engines such as Google. The inaccurate and often misleading data can be obtained by aggregation of often unrelated information. The decision of *Helow v Scotland (AG)*[51] was used to illustrate how information discovered by the use of a search engine revealed misleading data. In this case the judge was "googled" and it was discovered that she was a member of the International Association of Jewish Lawyers and Jurists. It was alleged by the appellant, a Palestinian seeking a refugee asylum in the United Kingdom that membership of such an organisation alone demonstrated apparent bias.[52] The case was described as a "warning to judges regarding the ready dissemination of personal and unrelated information over the internet, its availability to litigants, and the potential for resulting frivolous claims or manipulation".[53] It also raised the recurring question of the relevance of personal data about judges. The United Sates Department of Justice[54] has warned of a "web-*industry*" dedicated to collecting information from court records with the object of "intimidation and

retaliation". It has been concluded by David L Snyder[55] that the "remote electronic availability and dissemination of judicial documents may come at a considerable cost" which includes the intimidation of witnesses, retaliation and harassment.

The problems were discussed by the United States Supreme Court as early as 1977 in *Whalen v Roe*[56] referred to the risks of "accumulation of vasts amounts of personal information in computerized data banks or other massive government files".[57] Justice Brennan in concurring considered that these computerised data banks accessible electronically "vastly increase[s] the potential for abuse of that information" and suggested that in the future there may need to be a curb on this technology.[58]

Impact on courtroom design

The increased use of innovative technologies in courtrooms, particularly videoconferencing, has had a significant impact on court designs in countries such as the Netherlands and Australia. Videoconferencing technologies have been promoted as a way of reducing costs and improving productivity.

In the Netherlands the videoconferencing courtrooms have been designed to allow connection to studios in prisons. The judge, prosecutor, clerk and members of the public are in the court building and the defendant, sometimes with an interpreter and lawyer, are in the prison studio. They are physically separate but form the same virtual courtroom. Both sites are decorated in "identical style".[59] The question of whether "a design approach could help integrate the kind of videoconferencing technology used in the Netherlands into the UK court system" was examined in a seminar in 2011.[60] The seminar report concluded that a "design thinking" approach should be imbedded in any approach to innovations and should involve all stakeholders.

Professor David Tait[61] found that court buildings have become "part of a dispersed network of justice-related activity and also information centres for court users" due to the trend towards "e-Justice"[62]. He considered that the design principles for contemporary courts involve the promotion of public access and many of the changes in the future, he thought, would be most likely determined by how much of the court business goes online.

Innovative communication

Technological developments, particular the development of Web 2.0 applications have enabled anyone with a mobile phone or computer to report, blog, tweet and comment on news and legal decision. However, this access provided by technology has paradoxically been restricted by the increased provision of electronic material being used in court proceedings. It has raised the question of what access rights people who are not parties to the case being heard have to this material. As Justice Rares of the Federal Court of Australia has noted:

> The more paper or electronic material before the court, the less likely it is that the observer will obtain adequate information as to the judicial process he or she observes, unless that written or electronic material is publicly available.[63]

The fair and accurate reporting of court proceedings was considered by McHugh JA to be essential to ensuring that the public know what is happing in the courts and prevent "rumours, misunderstandings, exaggerations and falsehoods which are so often associated with secret decision making".[64]

Some of the problems relating to increased openness of court processes have been listed in a consideration of public records on the internet in the United States[65]. These include: the possible chilling effect of increased publicity which would discourage participation in public life; the possibility of identity theft using freely available information; the safety risks from violence and stalking when it is easier to locate people; the secondary use of public data, especially following aggregation of information from different and disparate sources; and the permanency of information which can lead to minor crimes in the past preventing future employment in a "dossier society". The solutions presented were: limiting the data posted online; automatic redaction systems; "robust rules of court"; analysing the public policy objectives of online records; restricting access, particularly to sensitive personal information; anonymizing data; regulating private industry to limit background checks and the purchasing of private information; and the implementation of a careful and incremental approach to posting public records online.

Online social media

In the United Kingdom, in the *Giggs* case[66] the use of suppression orders illustrates how Twitter has impacted on open courts, particularly how the anonymisation did not achieve its purpose in the face of a Twitter onslaught. Ryan Giggs, a well-known celebrity football player for Manchester United was granted a super injunction to prevent publication of his identity due to allegations by a reality TV star that he had had an extramarital affair with her. The defendants in the case published an article, "Footie Star's Affair with Big Bro Imogen" on 14 April 2011. Although Mr Giggs was not named his identity soon became well known. A Twitter site was set up on a server outside the UK so subscribers could speculate about celebrities and which ones had obtained privacy orders. Within days the site had 26,000 followers. The *Sunday Herald* published a full front page picture of the footballer with only his eyes obscured to emphasise the futility of the order in preventing the media publishing the information when there was so much information available on the internet. John Hemming MP, on 23 May 2011, named the footballer in the House of Commons debate. The media was not permitted to identify Mr Giggs due to the court order, despite the details being so readily available on the internet. Justice Tugendhat observed in *Giggs (previously known as "CTB") v News Group Newspapers Ltd* [67] that the way the case had been "conducted by the parties had done much to undermine confidence in the administration of justice". By early

2012 many people in England and Wales had heard about the litigation due to the press coverage. In the High Court Mr Giggs finally gave up all claims to anonymity.

Lord Neuberger discussed super-injunctions and proceedings which have been closed for reasons of national security. These were considered to be developments which have questioned the boundaries of open justice which should only "yield" when "strictly necessary to secure the achievement of the proper administration of justice".[68]

Lord Neuberger considered that in principle tweeting would be "an excellent way to inform and engage interested member of the public, as well as the legal profession" and an activity that should be accepted unless it interfered with the hearing.[69] The Lord Chief Justice of England and Wales, Lord Judge, on 14 December 2011[70] issued a guidance on live text-based communications from court and stated:

> A fundamental aspect of the proper administration of justice is open justice. Fair, accurate and, where possible, immediate reporting of court proceedings forms part of that principle.

While the judge retains full discretion to prohibit live, text based communications the overriding responsibility considered was to ensure that there was not "any improper interference" with court proceedings. Under the guidelines, representatives of the media or a legal commentator is able to use text-based devices for communication from court. This includes using mobile email, social media, including Twitter, and internet enabled laptops in open court. Prohibition on the taking of photographs and use of sound recording equipment without leave remains. However, a member of the public must make an application, either formally or informally to use live text-based communications during court proceedings.

By August 2012, the Senior Presiding Judge for England and Wales and Senior President of Tribunals issued guidance for all court and tribunal judicial office holders on blogging, including microblogging such as Twitter. Judges are advised not to identify themselves as members of the judiciary, "avoid expressing opinions which, were it to become known that they hold judicial office, could damage public confidence in the own impartiality or in the judiciary in general".

Justice Cowdroy in the Federal Court of Australia in 2010 permitted tweeting to be used for reporting in *Roadshow Films Pty Ltd v iiNet Limited (No 3)* [201] FCA 24. By 2013 the Chief Justice of South Australia proposed to make it possible for lawyers and the media to tweet and blog from the Supreme Court, reporting directly on criminal verdicts and important civil cases. A fifteen minute time delay was to be applied. Judges were to retain their discretion to stop live broadcasting in the interests of justice.[71] The Chief Justice of Victoria, the Hon Marilyn Warren AC, in the Redmond Barry Lecture (October 2013) considered that the development of "new media" has changed the traditional methods of providing open justice for the public. Her Honour has supported the use of Twitter and Facebook to improve direct community engagement and preserve open justice.

The High Court of Australia has made public audio-visual recordings of its hearings available from 1 October 2013 to improve public access to its hearings. The recordings will be available a few business days after the hearings to ensure there is time for vetting of materials for information that may be the subject of publication constraints. The recordings will not include applications for Special Leave but otherwise will cover all Full Court hearings in Canberra.[72]

Developing technologies have been increasingly used in Australian courts to improve communication with the parties, lawyers and the public and provide more openness to court proceedings. This has developed together with regulations which attempt to balance openness and the proper administration of justice.

The Future

In the pre-digital era when courts operated in "practical obscurity" the right to open courts was a fundamental principle, although it was never absolute. Recent technological developments, particularly interactive applications, online social media and the use of virtual courts have dramatically changed this, challenging how open courts should be and to what extent privacy and open courts can co-exist.

---

[1] The term, "practical obscurity" refers to the "inaccessibility of individual pieces of information or documents created, filed and stored using traditional paper methods relative to the accessibility of information contained in or documents referred to in a computerized compilation" and has precluded meaningful open court records and proceedings being realised. Discussion paper prepared on behalf of the Judges Technology Advisory Committee on "Open Courts, Electronic Access to Court Records, and Privacy." May 2003. It was a term used by the U.S. Supreme Court in *U.S. Dept. Of justice v Reporters Committee* 489 U.S. 749 (1989) in relation to the privacy interest in rap sheets held by government agencies, despite much of the information being a matter of public record. It concerns information that would have been forgotten except for the computer aggregation.

[2] Frederic I Lederer, 'The Road to the Virtual Courtroom? A Consideration of Today's - - and Tomorrow's – High Technology Courtrooms' (1999) *South Carolina Law* Review 799, 836: " … a true virtual courtroom is not a physical location; rather we consider it the interchange of high-quality audio, video, text, and graphical information among trial participants without concern for the physical location of those participants, except for jurisdictional requirements."

[3] Nicholas Gruen, Chair Government 2.0 Taskforce, 'Engage: Getting on With Government 2.0.' in Brian Fitzgerald (ed) *Access to Public Sector Information: Law, Technology & Policy* (Vol 2) (Sydney University Press, 2010) 615.

[4] Ibid 616.

[5] Brian Fitzgerald, "Access To And Re-Use of Public Sector Information' in Brian Fitzgerald (ed) *Access to Public Sector Information: Law, Technology & Policy* (Vol 1) (Sydney University Press, 2010) 1.

[6] Graham Vickery, 'Forward' in Brian Fitzgerald (ed) *Access to Public Sector Information: Law, Technology & Policy* (Vol 1) (Sydney University Press, 2010) vii.

[7] Gruen, above n 3, 615.

[8] Roderick Campbell, 'Access to the Courts and Its Implications' (1999) 1 UTS L Rev 127, 131.

[9] Daniel Stephniak, *Audio-Visual Coverage of Courts* (2008) Cambridge University Press, UK Cambridge, 415.

[10] Greg Jericho, *The Rise of the Fifth Estate – Social Media and Blogging in Australia"* (Scribe Publications, 2012).

[11] Peter A Winn, 'Online Court Records: Balancing Judicial Accountability and Privacy in an Age of Electronic Information" (2004) 79 *Washington Law Review* 307, 316.

[12] Daniel J Solove, 'Access and Aggregation: Public Records, Privacy and the Constitution' (2002) 86 *Minnesota Law Review* 1137

[13] Harlan Yu and David G Robinson, 'The New Ambiguity of "Open Government"' (2012) 59 *University of California Law A Review. Disc.* 178.

[14] 489 U.S. 749 (1989) at 764.

[15] Winn, above n 11, 307.

[16] Solove, n 12, where public records refers to records such as births, deaths, marriages, divorces, professional licenses, voting information, worker's compensation, personnel files, immigration, ,bankruptcy, residence, family life, political activity, health and medical records.

[17] Solove, above n 12.

[18] Emma Cunliffe, 'Open Justice: Concepts and Judicial Approaches' (2012) 40 *Federal Law Review* 388.

[19] James Spigelman, former Chief Justice of New South Wales, "Seen to be Done: The Principle of Open Justice", Keynote Address to the 31st Australian Legal Convention, Canberra, 9 October 1999, 3.

[20] David M Paciocco, 'When Open Courts Meet Closed Government' (2005) 29 *Supreme Court Law Review* 385, 391.

[21] Cunliffe, above n 18, 385.

[22] Cunliffe, above n 18, 388-389.

[23] David M Paciocco, 'When Open Courts Meet Closed Government' (2005) 29 *Supreme Court Law Review* 385, 389.

[24] Ibid.

[25] Harlan Yu, and David G Robinson, above n 13, 205.

[26] [1936] AC 177.

[27] Sir Gerard Brennan, 'Why be a Judge?" (1996) 14 *Australian Bar Review* 89,90.

[28] Ibid 91.

[29] [1913] AC 417, 473.

[30] (1913) 17 CLR 50.

[31] Ibid 51.

[32] Lord Neuberger of Abbotsbury, 'Open justice unbound?' (2011) 10 *The Judicial Review* 260.

[33] Ibid.

[34] Above n 32, 275.

[35] Garth Nettheim, 'Open Justice Versus Justice' (1983

[36] *John Fairfax & Sons Pty Ltd v Police Tribunal of New South Wales* (1986) 5 NSWLR 465.

[37] *Hogan v Hinch* [2011] HCA 4; (2011) 243 CLR 506.

[38] Ibid [20].

[39] Ibid [21].

[40] Ibid.

[41] Ibid.

[42] (2010) 240 CLR 651.

[43] *Hogan v Australian Crime Commission*(2010) 240 CLR 651, 664.

[44] *ACCC v Air New Zealand Limited (No 4)* [2012] FCA 1439, [4].

[45] This is referring to the High Court of Australia, the Federal Court of Australia, the Family Court of Australia and the Federal Circuit Court of Australia.

[46] Karen Eltis, 'The Judicial System in the Digital Age: Revisiting the Relationship Between Privacy and Accessibility in the Cyber Context' (2011) 56:2 *McGill Law Journal* 289.

[47] Ibid 291.

[48] Above n 46, 289.

[49] Above n 46, 295.

[50] Above n 46, 289.

[51] [2007] CSIH 5 at [16]; [2008] UKHL 62 2 All ER 1031.

[52] [2007] CSIH 5 at [16]; [2008] UKHL 62 2 All ER 1031 – it was held that a fair-minded and informed observer, having considered the relevant facts, would not conclude that there was a real possibility that the judge had been biased by reason of her membership of the association.

[53] Above 46, 299.

[54] Letter from Michael A Battle, Director, Executive Office for U.S. Attorneys, U.S. Department of Justice to James C Duff, Secretary, Judicial Conference of the U.S. (6 December 2006). http://www.floridasupremecourt.org/pub_info/summaries/briefs/06/06-2136/Filed_01_31_2007_ProsecutorsSupplementalCommentsAppendix.pdf

[55] David L Snyder, 'Nonparty Remote Electronic Access to Plea Agreements in the Second Circuit' (2009) 35 *Fordham Urb. Law Journal* 1263, 1265.

[56] (1977) 429 U.S. 749, 589.

[57](1977) 429 U.S. 749, 605.

[58] Ibid.

[59] Jamie Young, 'A Virtual Day in Court – Design Thinking & Virtual Courts' <http://www.thersa.org>

[60] Ibid – the RSA (Royal Society for the encouragement of Arts, Manufacture and Commerce) and Cisco Systems held a seminar *A Virtual Day in Court* in July 2011.

[61] David Tait, Chapter 4 'Court Environments as Legal Forums, Workplaces and symbols of Justice' in *Australian Courts: Serving Democracy and its Publics* (The Australasian Institute of Judicial Administration Incorporated, 2013).

[62] This is a reference to the increase in online legal work, efiling of documents, appearance of vulnerable witnesses by video link; on-site computer access to litigants and the use of cloud technology.

[63] Steven Rares, 'How the implied Constitutional Freedom of Communication on Government and Political Matter may require the Development of the Development of the Principles of Open Justice', Judicial Conference of Australia Colloquium 2007, Sydney, [76].

[64] *John Fairfax & Sons Ltd v Police Tribunal of New South Wales* (1986) 5 NSWLR 465, 481.

[65] 'Public Records on the Internet: The Privacy Dilemma' (2002 posted; revised 2006) <https://www.privacyrights.org> Computers, Freedom and Privacy 2002 Conference: Plenary Session #9 'How Public is too Public? Public Records and Personal Privacy', San Francisco, CA.

[66] *CTB v News Group Newspapers Ltd* [2011] EWCH 1232 (QB) – 16 May 2011; *Giggs (previously known as "CTB") v News Group Newspapers Ltd* [2012] EWHC 431 (QB).

[67] Above n 66 *Giggs* [91]-[111].

[68] Above n 32, 275.

[69] Above n 32, 269.

[70] 'Practice Guidance: The use of live text-based forms of communication (including *Twitter*) from Court for the purposes of fair and accurate reporting.' (14 December 2011) <http://www.judiciary.gov.uk>

[71] Loukas Founten and Candice Marcus, 'Tweeting to be allowed from South Australian courtrooms' (9 September 2013) <http://www.abc.net.au>

[72] <http://www.hcourt.gov.au> media release.