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## SOCIAL MEDIA – ITS IMPACT AND CHALLENGES ON COURT REPORTERS, JURIES AND WITNESSES

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### **SOCIAL MEDIA AND OUR COURTS**

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Last Tuesday readers of the Herald Sun in Victoria woke up to the headline **(1 slide of Herald Sun)**

#### **Official survey: Judges out of touch on sentencing GUILTY YOUR HONOUR**

The article went on to report:

“Almost two-thirds of Victorians believe judges are out of touch with what ordinary people think.

“A survey by the Sentencing Advisory Council – Victoria’s official independent authority on sentencing – also found that barely half (53.7 per cent) were confident that judges imposed appropriate sentences most of the time”.

As an aside, that it not quite the spin that the SAC media release put on the survey. **(2 slide of SAC)**

Their media release stated:

“The study also suggests that confidence in the courts is improving, with 59 per cent of respondents in this survey saying they were fairly confident or very confident in the courts and the legal system. This compared to a 2003 Australian study in which 70% of respondents reported not very much or no confidence in the courts and legal system”.

Also quoted in the article in the Herald Sun was the Supreme Court of Victoria Chief Justice Marilyn Warren, saying the survey was simplistic, superficial and limited to gauging attitudes, not performances.

Not only was this statement given to the Herald Sun, it was tweeted to the Supreme Court’s followers and repeated in interviews during the day. The Chief Justice has now committed to accelerating the use of social media as a vehicle to communicating the work of the court. She has identified twitter, blogging, updating the website and possibly even Facebook!

The question for our Courts is not “will we allow social media in our courts” but more “how do we respond to its challenges and opportunities?”

The questions include – Where will courts draw the line? If twittering is OK, what about live streaming? What about live blogging?

While it may be manageable in a civil case, what about criminal cases? Are jurors checking out their twitter feed during trials? Does it influence them? What about reporters? What are they doing in court and outside court?

These issues have attracted judicial, and media, attention around the World.

The Lord Chief Justice of **England and Wales** has issued “A consultation on the use of live, text-based forms of communications from Court for the Purposes of Fair and Accurate Reporting. The paper recognises ...”There is immense public interest in the public being able to know the details of what takes place in the courts, subject of course to well established exceptions in the form of statutory reporting restrictions”. It notes the potential for

prejudicial, unfair and inadmissible material to be seen on the internet by jurors. It raises the issue of reporting in a way to protect freedom of speech, the right to a fair trial, and legal reporting which is “**fair accurate and in good faith**”.

The risks identified in the paper include the risks of disruption to proceedings; risks to the fairness of court proceedings; risk of coaching witnesses.

The Supreme Court of the United Kingdom already has a policy which allows the use of text-based communications from court, providing they are silent and do not disrupt proceedings. There are exceptions including reporting restrictions; identification of children and where orders are made.

Consequences of getting it wrong can be very serious, including mistrial. And, of course in the case of twitter, it is instant publication. Plus, who is the media these days? It is not just court reporters. Is it everyone with a blog or twitter account?

In the U.S. they have much more open court reporting, live televising of trials, practically anything goes. It has had its consequences. In 2009, three state courts of appeal threw out criminal convictions as a result of jurors doing their own research over the internet. One model policy says that “In order to provide the public with timely and informative reports of what is transpiring in public courtrooms, the press must be permitted to utilize these devices both inside the courtroom and court house “as long as they do not create adverse effects such as noise or other distraction”

## **WHAT ARE WE DOING IN OUR COURTS**

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**The Supreme Court of Victoria** is the most advanced in the social media space. Believed to be the only court public information officer tweeting in Australia so far.

SCVAnne is who to follow – Anne Stanford who is the Court’s strategic communications adviser. **(3 slide of SCVANNE)**

Anne began tweeting in March this year, and has 130 followers and rising. She tweets sentences, links, speeches and any media releases. She uses it as a signpost. She is followed by community and legal groups, media, and individuals.

She follows newsrooms and court reporters. Like all of us in the communication business, she recognises that twitter is faster at breaking news than radio.

The Supreme Court also posts its judgments and has regular live broadcasts of significant sentences. *(4 slide of Supreme Court home page)*

Most recently, the sentencing of a man convicted of murder after he threw his daughter off the Westgate Bridge was audio streamed and covered live on Melbourne radio. It was compelling listening and gave the public a complete picture of all the elements that went into the sentence. The court website registered **almost 30,000** views that day. (The sentencing page generally only attracts an average 600 views)

This week the Supreme Court went to Horsham to begin a class action resulting from the Black Saturday Bushfires. The opening addresses were live streamed and are up on the website, as will be closing addresses and judgment.

- These events are being tweeted by court reporters, whether the Courts are aware of it or not.
- Anne believes that generally there is no difference between the hourly radio reporting being filed from outside court and the live tweets that reporters also now are expected to produce. *(5 slide of Kate Osborn)*

Our **County Court** does not currently post its judgments on its website nor does it allow the use of mobile phones in court. The County Court has several issues to contend with – it is the court where the majority of sex offence cases are heard, and they have approximately 10,000 judgments a year. But Chief Judge Michael Rozenes has told the Herald Sun that his Court is aiming to have judgments posted by the end of this financial year.

The **Federal Court** hears approximately 2000 cases a year and generally does not have to worry about influencing juries – though it does have the potential for juries in cartel cases. Most of its cases are civil and the court's Director Public Information Bruce Phillips reports that the court is examining at increasing its social media presence, including twitter.

The Federal Court made news in 2009 when reporters covering a landmark copyright hearing started reporting during the hearing, live via twitter.

All court information officers I spoke to said it was difficult to know whether court reporters were tweeting from court, as they rarely seek advance permission. The Herald Sun did seek, and was granted, permission to tweet the results of a prominent rape case with a footballer defendant, but all suspect the practice is more widespread.

The **Family Court** does not tweet, but it does publish all its judgments. Judgments for the past month are on its website and all are anonymised by using pseudonyms for party names.

And as far as the legal profession goes, we at the LIV are into social media in a big way.

We introduced a President's blog and twitter in February this year, after taking a year to develop and implement our social media strategy. We have now branched out into LinkedIn, and this month we launched our Young Lawyers Facebook page. We have a full time social media co-ordinator and I oversee social media as part of my role.

We believe that social media is an important tool for two way communication with our members.

I think the Courts would also benefit from more widespread use of social media platforms.

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I don't think we will see Judges blogs any time soon, nor funny court videos on Facebook.

But direct and transparent communication **MUST** be a way of improving understanding and confidence of the community in the work of the courts.

## **RISKS**

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- **Reporters** – can get it wrong. Risk of contempt of court, mistrials. But that risk is the same for all other forms of reporting, and has not been an issue in trials to date as far as I am aware.
- **Witnesses** - coaching or briefing of witnesses. Witnesses could use social media to find out what has been said in court before they have given evidence themselves. Same risk for traditional media.
- **Juries** - juries must decide on the basis of evidence presented to them. What if they use the internet?

Two recent cases:

Woman in the UK who was accused of contacting a defendant via Facebook in a trial that subsequently collapsed. The contact led to the jury being discharged. The woman was jailed for 8 months in a British legal first (ie rare).

In Victoria, a juror was fined \$1200 for doing independent research.

It is an offence under the Juries Act to do your own research during a trial, with a penalty of 120 penalty units. The matter went to the Magistrates Court and defence counsel submitted that the juror thought that the judge's directions on the subject were limited to inquiries about factual matters, such as locations and events, rather than legal inquiries. The juror pleaded guilty and was fined \$1200.

Jurors currently in Victoria are presented with all sorts of information about their role and responsibilities, and in addition their phones are confiscated during hearings and returned during breaks.

## **CONCLUSIONS:**

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- Social media is here to stay.
- Judges have the final say in how their courts are run.
- But they cannot always control what is being done outside the courtroom.
- We have a 24 hour news cycle. Court reporters no longer file one story for the next day's paper – they blog, they tweet, they do live updates from the steps of the court.
- Social media, as one of my colleagues has described it, is just *regular media on speed*.
- Its use and potential misuse is not just a risk for court reporters – anyone with a smart phone or Ipad can blog or tweet.
- You won't necessarily know who is using social media in your courts – the days of "press benches" are largely over

- All courts will have to consider how they can work with social media to ensure a fair trial and accurate communication of their work.

I am grateful to Anne Stanford from the Supreme Court of Victoria; Bruce Phillips from the Federal Court of Australia; Anna Bolger from the County Court of Victoria; the Victorian Juries Commissioner; Denise Healy from the Family Court of Australia for their assistance in this presentation. Any errors are my own.