NEW MEDIA AND THE COURTS
THE CURRENT STATUS AND
A LOOK AT THE FUTURE

A REPORT OF THE NEW MEDIA COMMITTEE OF THE
CONFERENCE OF COURT PUBLIC INFORMATION OFFICERS

IN PARTNERSHIP WITH THE NATIONAL CENTER FOR STATE COURTS
AND
THE E.W. SCRIPPS SCHOOL OF JOURNALISM AT OHIO UNIVERSITY

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EXECUTIVE SUMMARY

The Conference of Court Public Information Officers report on new media and the courts finds that more than one-third of state court judges and magistrates responding to a survey use social media profile sites like Facebook, while less than 10 percent of courts as institutions use social media for public outreach and communication. After a year of study and online collaboration, the report reveals a judicial branch that clearly recognizes the importance of understanding new media but is proceeding cautiously with concerns about effects on ethics, court proceedings and the ability to support public understanding of the courts.

The report predicts that in the coming years, courts will re-examine state codes of conduct for judges and judicial employees, model jury instructions, rules on cameras in the courtroom and other areas. It makes other predictions and also recommends further research and specific steps for the judicial community to continue to respond productively to new media.

The project was first suggested at the CCPIO 18th Annual Meeting in August 2009 in St. Paul, Minn. A proposal for pursuing the research was approved by the CCPIO board in September. About 120 judges, journalists, public information officers, court managers and academics participated in sharing ideas and information about new media and the courts on the online social media site Ning.com from November 2009 to August 2010. (See Appendix A for a list of members.) A framework for the research was presented and discussed at a workshop in Columbus, Ohio, in February 2010. A series of discussions was held with students and faculty at the E.W. Scripps School of Journalism in spring 2010. The National Center for State Courts (NCSC) assisted in the development and administration of a national survey of judges, magistrates and court administrators conducted in June 2010.

A draft of the final report was presented to the membership of CCPIO at its 19th Annual Meeting in Atlanta, Aug. 9 to 11, 2010. And the final report was released online and to the media Aug. 24, 2010.

Highlights of CCPIO New Media and the Courts: The Current Status and a Look at the Future:

The judicial community is actively exploring new media. The report examines efforts and involvement by the NCSC, Conference of Chief Justices (CCJ), Conference of State Court Administrators (COSCA), National Association for Court Management (NACM), Reynolds Center for Courts and the Media, and other parties.

What is “new media”? The history and meaning of this term is explored, ranging from its use by early media theorists in the 1960s to its present meaning as an umbrella term for the overarching current media landscape. Four constituent segments of the new media environment are defined and discussed: (1) legacy media, (2) traditional public relations/community outreach, (3) digital media/Web 1.0 and (4) social media/Web 2.0. This new media landscape is characterized by:

- Emerging interactive social media technologies that are powerfully multimedia in nature.
• Fundamental and continuing changes in the economics, operation and vitality of the news industry that courts have traditionally relied on to connect with the public.
• Broader cultural changes in how the public receives and processes information and understands the world.

Courts face unique challenges and opportunities. Courts have responded more cautiously to new media because of unique incongruities between the two cultures:

• New media are decentralized and multidirectional, while the courts are institutional and largely unidirectional.
• New media are personal and intimate, while the courts are separate, even cloistered, and, by definition, independent.
• New media are multimedia, incorporating video and still images, audio and text, while the courts are highly textual.

Three areas of study. While new media impact almost every facet of court operations from the delivery of services to balancing privacy and public access in managing court records, the CCPIO report focuses on three areas specifically related to the mandate that courts support public trust and confidence in the judicial system:

1. Effects on court proceedings.
2. Effects on ethics and conduct for judges and court employees.
3. Effects on courts’ ability to promote understanding and public trust and confidence in the judicial branch.

Seven categories of technology. The report identifies seven categories of new media technology that impact the courts, and these technologies are explored in detail:

1. Social media profile sites (e.g., Facebook, MySpace, LinkedIn, Ning). These sites allow users to join, create profiles, share information, and view still and video images with a defined network of “friends.”

2. Microblogging (e.g., Twitter, Tumblr, Plurk). Microblogging is a form of multimedia blogging that allows users to send and follow brief text updates or micromedia, such as photos or audio clips, and publish them on a website for viewing by everyone who visits the website or by a restricted group. Microbloggers can submit messages a variety of ways, including text messaging, instant messaging, e-mail, or digital audio.

3. Smart Phones, Tablets & Notebooks (e.g., iPhone, Droid, Blackberry). This category is defined by those mobile devices that can capture audio, as well as still and video images, and post them directly to the Internet. These devices also enable users to access the Internet, send and receive e-mails and instant messages, and otherwise connect with online networks and communities through broadband or Wi-Fi access.
4. Monitoring and metrics (e.g., Addictomatic, SocialSeek, Social Mention, Google’s Social Search, Quantcast). This category includes the large and increasing body of sites that aggregate information about Internet traffic patterns and what is posted on social media sites. They display analyses of how a particular entity is portrayed or understood by the public.

5. News categorizing, sharing and syndication (e.g., blogs, RSS, Digg, Reddit, del.iciou.us). This is a broad category that includes websites and technology that enable the easy sharing of information, photos and video, and the categorization and ranking of news stories, posts to blogs and other news items.

6. Visual Media Sharing (e.g., YouTube, Vimeo, Flikr). These sites allow users to upload still and video images that are stored in searchable databases and easily shared, and can be e-mailed, posted, or embedded into nearly any website.

7. Wikis. A wiki is a website that allows for the easy creation and editing of multiple interlinked Web pages via a Web browser using a simplified markup language or a WYSIWYG (what-you-see-is-what-you-get) text editor. Among the uses for wikis are the creation of collaborative information resource websites, power community websites and corporate intranets. The most widely recognized and used wiki is the collaborative encyclopedia Wikipedia. Another much lesser known wiki that has impact on the judicial system and is the subject of study in the New Media Project is Judgepedia.

Survey results. An estimated 16,000 individuals in the court community were invited to participate using an online survey tool administered by NCSC between June 16 and 25, 2010. Federal judges were not included in the distribution. About 810 respondents completed the entire survey while another 789 submitted partially completed surveys.

Highlights include:

- About 40 percent of responding judges reported they are on social media profile sites, the majority of these on Facebook. This is almost identical to the percentage of the adult U.S. population using these sites.
- Judges who are appointed and do not stand for re-election were much less likely to be on social media profile sites. About 9 percent from non-elected jurisdictions reported they were on these sites.
- Nearly half of judges (47.8 percent) disagreed or strongly disagreed with the statement “Judges can use social media profile sites, such as Facebook, in their professional lives without compromising professional conduct codes of ethics.”
- Judges appear to be more comfortable with using these sites in their personal lives, with 34.3 percent disagreeing or strongly disagreeing with the statement “Judges can use social media profile sites, such as Facebook, in their personal lives without compromising professional conduct codes of ethics.”
- More than half (56 percent) of judges report routine juror instructions that include some component about new media use during the trial.
• A very small fraction of courts (6.7 percent) currently have social media profile sites like Facebook; 7 percent use microblogging sites like Twitter; and 3.2 percent use visual media sharing sites like YouTube.

• About three-quarters of all respondents agree or are neutral that courts as institutions can maintain a social media profile site, or use microblogging technologies or visual media sharing without compromising ethics.

• However, only about 25 percent of total respondents believe these are necessary tools for public outreach.

• A smaller proportion of judges than might be expected (9.8 percent) reported witnessing jurors using social media profile sites, microblogging sites, or smart phones, tablets or notebooks in the courtroom.

• Almost all (97.6 percent) respondents agree that judges and court employees should be educated about appropriate new media use and practices.

**Future Trends.** The report concludes with predictions about the near future of new media and the courts:

• More courts will develop official presences on Facebook, Twitter, YouTube and other social media sites.

• More judges will be on Facebook, both professionally and personally.

• Courts will continue to become primary content providers and develop multimedia communication capabilities.

• Public information officers and information technology officers will form stronger partnerships and collaborative operations.

**Recommendations.** The report concludes with a set of specific recommendations for future action, including:

• *Continuation of CCPIO New Media Ning site.* More than 120 people participated in the nearly yearlong online conversation about new media at [http://ccpionewmedia.ning.com/](http://ccpionewmedia.ning.com/). The site proved to be an invaluable tool for sharing timely information, news stories, and research concepts and ideas. CCPIO should continue to maintain this site and take steps to encourage even broader participation.

• *National coordination and collaboration among the judicial associations.* New media will continue to evolve rapidly in the coming years, and the courts will benefit from an ongoing, coordinated national response in this area. CCPIO proposes that NCSC, CCJ and COSCA, in partnership with CCPIO, form a standing committee to study and report on new media issues on an ongoing basis. The effort should invite the participation of other partner organizations with designated liaisons to the CCPIO New Media Project, including: NACM, National Association of Women Judges, Court Information Technology Officers Consortium, National Association of State Judicial Educators, and the National Conference of Appellate Court Clerks.

• *Administer the survey as a longitudinal study.* The survey of judges and court administrators was the first of its kind, and it was designed to allow for trend data to be collected and compared over time. CCPIO should plan to administer the survey
annually to measure changes in court use of, experiences with and attitudes toward new media.

- **Develop a survey for the general public.** While we now have a baseline measurement of what courts experience with new media, a valuable comparison would be a look at how some of these same questions are viewed by the general public. CCPIO should work with NCSC to develop and administer a similar survey of the general U.S. population.

- **Develop tools.** To help courts maintain the delicate balance between free speech and open access to courts on one side and fair trial issues on the other, the CCPIO New Media Committee should be established as a standing committee to develop online resources, checklists (see Appendix B), best practices and other tools for courts responding to and managing new media.
INTRODUCTION

This report is the product of a yearlong collaborative national research effort to study new media and the courts. Courts at every level across the United States are working to understand the new media landscape. This new environment is characterized by: (1) emerging interactive social media technologies that are powerfully multimedia in nature and have the potential to alter the delicate balance between open courts and fair trials; (2) fundamental and continuing changes in the economics, operation and vitality of the journalism/media industry that courts have traditionally relied on to connect with the public; (3) broader cultural changes in how the public receives and processes information and understands the world. Taken together, we call this altered and continually changing media landscape “new media.”

First, we examine recent new media developments in the judicial branch, explore the history and use of the term “new media,” and identify the characteristics of the new media in greater detail contrasted with the characteristics and culture of the judicial branch. Next, we detail the process and framework of the CCPIO new media research and take an in-depth look at seven specific categories of technology that are important components of the new media environment. We examine how these categories of technology impact court operations. Then, we present and analyze the findings from the first-ever national opinion survey of judges and court administrators on new media. Finally, we conclude with some predictions for the future and recommendations for further research in this area.

THE COURT COMMUNITY RESPONDS TO NEW MEDIA

Clearly, studying new media in the past several years has become a priority within the judicial system. Leaders and major institutions in the state and federal judicial systems are involved in a wide range of activities and initiatives exploring both the challenges and opportunities the new media landscape has brought to the courts.

In September 2008, the William H. Rehnquist Center on the Constitutional Structures of Government at the University of Arizona James E. Rogers College of Law held a small gathering of judges, journalists and academics for what was probably the first-ever conference dedicated to new media and the courts.

The one-day symposium’s report released later that year explores:

- What effects these changes have had on knowledge and understanding of courts by various segments of the public.
- How members of the traditional press, as well as bloggers, lawyers, professors, judges, and interest groups, use — and misuse — new means of communication to try to educate the public and influence public attitudes about courts.
- How courts have used — and perhaps misused — the new media to distribute information and shape attitudes about them.
- How courts and judges have modified their operations in response to these changes.
- What is in store in the world of courts and communications over the next several years.¹
The report details observations among symposium attendees that news coverage of courts has become less substantive and more sensationalized, that irresponsible blogging about courts has the potential to degrade public perceptions and understanding of the judicial system, that responsible blogging can have the reverse effect, that there are potential pitfalls to judges engaging in social media, and other observations.

On the whole, the dominant theme of the symposium was that the new media environment holds both great positive potential for courts and judges to connect with the public, while posing some obvious possible risks. Both the potential and risks should be systematically considered by judicial leaders.

The nation’s state chief justices and state court administrators are planning a larger forum on new media for 2011. Participants at the July 2010 CCJ/COSCA annual meeting determined that the next annual conference will be dedicated to a thorough examination of new media and the courts.

The federal judiciary has launched its own systematic examination of this topic. The federal courts recently formed an Ad Hoc Subcommittee on New Media under the Judicial Branch Committee of the Judicial Conference of the United States, the policy-making body for the federal courts. The subcommittee will (1) examine current and emerging new media and make recommendations as to how the judicial branch might employ and interact with the new media to enhance external communications; and (2) consider whether information/content on court Internet websites is easily understood to users and is displayed accurately, clearly, consistently and timely.

NACM in 2010 published a complete guide for court managers approaching the new media environment. “Managing the Message: The NACM Media Guide for Today’s Courts” includes articles by leading court managers, public information officers, judges, academics and others in the state court system.

“The term ‘media’ itself is disquieting to many judges and court professionals, and the new media revolution currently occurring in the press only makes its management more onerous,” the guide’s executive summary states, continuing:

The media, however, plays an important role in the justice system. Should judges and court professionals consider the media a nemesis or a resource that can be used to assist the court in delivering its message? If the media is indeed a resource for the courts, what is the best way for judges and court professionals to interact with the media? With the introduction of new forms of media, including social media websites, how does that interaction need to change?

The John S. and James L. Knight Foundation this year awarded $260,000 to “Order in the Court 2.0,” a research project headed by John Davidow, executive editor for new media at WBUR public radio in Boston, for the purpose of exploring new media and the courts in Quincy District Court for one year. CCPIO assisted in the preparation of the grant proposal and will help apply the research in this report to the experiment in Boston.
“To foster greater access to the judicial process, this project will create a laboratory in a Boston courtroom to help establish best practices for digital coverage that can be replicated and adopted throughout the nation,” the grant application says. “While the legislative and executive branches have incorporated new technologies and social media, the courts still operate under the video and audio recording standards established in the 1970s and ‘80s. The courtroom will have a designated area for live blogging via a Wi-Fi network and the ability to live-stream court proceedings to the public. Working in conjunction with the Massachusetts court system, the project will publish the daily docket on the Web and build a knowledge wiki for the public with common legal terms.”

In November 2008, The Reynolds National Center for Courts and the Media held a national conference in Reno, Nev., titled “Technology’s Impact on the Courts & the Media,” bringing together experts from the courts and media professions to explore such topics as how the use of new media will impact the public’s trust in both the courts and media; what the media should know about new challenges and opportunities facing the courts; what the courts should know about new challenges and opportunities facing traditional mainstream journalists; technology’s effect on the courts, media and public; and blogs and online journalism.

The Reynolds Center in 2010 hired veteran journalist and attorney Benjamin Holden as its new executive director, and Holden said the center’s top priority is the study of new media and the courts. Jerry Ceppos, dean of the Reynolds School of Journalism, said in a news release announcing the move: “It seems every week a judge has to decide whether a blogger should get press credentials or whether a mainstream journalist can Twitter (sic) from a courtroom, issues that didn’t even exist five years ago. These issues are perfect for a journalism school that specializes in issues surrounding innovation.”

Even former U.S. Supreme Court Justice Sandra Day O’Connor is spearheading efforts to promote the use of online gaming to teach children civics and address the documented inadequacy of judicial knowledge and understanding among young people today.

The annual meeting of the NCSC board of directors in April 2010 featured a presentation and discussion on new media and the courts, and NCSC’s two eCourts conferences in September and December 2010 are scheduled to feature presentations on the topic.

The 2010 edition of NCSC’s respected annual publication Future Trends in State Courts devotes a section to “Technology Reengineering” with considerable discussion paid to the impact of new media technology on court communication. The 2010 Trends report includes an article on the CCPIO New Media Project, an examination of how court coverage and the journalism industry are changing, and a look at how courts can use social media tools to connect with the public.

For years, Trends has explored the development of the new media environment and its impact on the courts. Several years before the iPhone, Trends predicted in 2003, “The proliferation of new personal technologies will increasingly challenge court policies and procedures that ensure the safety and privacy of court participants and the security of court documents.”
In 2004, Trends included an article titled “Web Logs: Increasing Courts’ Ability to Quickly Communicate with Constituents” detailing early efforts by a handful of pioneering courts to use blogs, efforts the article reported were successful. “Advances in technology enable courts to communicate more easily with the various groups who participate in court business, and the result — more information — increases trust and confidence in the courts,” the author wrote.

**WHAT IS NEW MEDIA?**
So what is this “new media” that has generated so much recent activity in the judicial branch? Let’s look first at the evolution of the term “new media” itself, then discuss its specific characteristics in relation to the judicial branch.

“New media” is a term that has been in existence for more than 45 years. Fundamentally, “new media” refers not to any specific technology or technologies, but to the collective new media landscape of the current Internet-driven age, the specific characteristics of which will be examined below.

Three decades before the Internet became mainstream, Marshall McLuhan surveyed the media landscape in 1964 and wrote: “After three thousand years of explosion by means of fragmentary and mechanical technologies, the Western world is imploding.”

McLuhan was referring to the rapid mass communications developments of the mid-20th century, particularly the telephone, radio, the movie industry, television and the mass pop culture phenomenon that these technologies begat, the previously inconceivable interconnectedness of humanity that he referred to as the “electric age.” He could just as easily have been referring to the current media environment that has been described as a “digital revolution.”

For McLuhan, the defining characteristic of the electric age and its associated new media was that they resulted in a new world that was at its heart interconnected.

“In the electric age, when our central nervous system is technologically extended to the whole of mankind and to incorporate the whole of mankind in us, we necessarily participate, in depth, in the consequences of our every action.”

McLuhan was one of the first scholars to use the term “new media,” but in doing so he didn’t quite mean what is usually meant today by the term. McLuhan’s “new media” were the successive waves of technological advances in communication (the written word, moveable type, the printing press, the telegraph) that throughout history have broadened the “extensions of man,” the progressive expansion of interconnectedness that he saw as culminating with the modern mass media age.

But, in another sense, McLuhan used “new media” to mean something very similar to what it has come to mean today: the overarching, unpredictable and disruptive cultural effects of any new communications technologies that change the dynamics of human interconnectedness.
“Men of any one particular culture will panic when some familiar pattern or landmark gets smudged or shifted because of the indirect pressure of new media,”\(^{10}\) McLuhan wrote. He continued:

The new media and technologies by which we amplify and extend ourselves constitute huge collective surgery carried out on the social body with complete disregard for antiseptics. If the operations are needed, the inevitability of infecting the whole system during the operation has to be considered. For in operating on society with a new technology, it is not the incised area that is most affected. The area of impact and incision is numb. It is the entire system that is changed.\(^{11}\)

Since McLuhan’s time, the term new media has persisted and has at different times meant different things in various contexts. Or, as it says in the introduction of the *Encyclopedia of New Media*, “What is new media? There is no single answer to be given. Even old media were once new … and new media are constantly changing and evolving.”\(^{12}\)

The “New Media Timeline,” published by PoynterOnline,\(^{13}\) dates back to 1969 and starts with developments such as the founding of CompuServe and the commission of an experimental network of four computers by the U.S. government. (Protocols subsequently developed for the network are widely considered the beginning of the Internet.\(^{14}\)) Beginning in the 1970s and into the 1980s, new media was often used as a business term to describe the emerging, varied cable television industry.\(^{15}\)

In 1984, Ronald Rice defined new media as communication technologies that enable or facilitate user-to-user interactivity and interactivity between users and information.\(^{16}\) This interactivity is a characteristic of most definitions of new media, the idea that individuals can use current information technology to produce and distribute multimedia content online, including video and still images, text and sound.

“New media” is now most widely understood as an umbrella term describing the current state of digital and Internet technology and its collective impact on culture, sometimes also referred to as the digital revolution.

JoAnn Atkin, writing in the *American Journal of Business*, summarized the multitude of definitions as focusing on three characteristics: (1) interactive communication that is digital in format and (3) distribution.\(^{17}\) “This definition … implies that the computer or information technology plays a critical role in both message content/design and dissemination.”\(^{18}\)

This brings us back to Marshall McLuhan. In a forthcoming book titled *Understanding New Media: Extending Marshall McLuhan*, Robert K. Logan, a senior fellow at the Institute of Biocomplexity and Informatics at the University of Calgary, writes:

If McLuhan were around today, I think he would see the impact of new media as an extension of his observations on the impact of the early electronic media. And in fact the effects seem to be even more intense with new media than they were
for electronic mass media. Examples of the intensification of effects with new media include McLuhan's observations that with electronic media:

- Our involvement with each other would increase.
- Social structures and access to information would decentralize.
- “Consumer becomes producer as the public becomes participant role player.”
- The media become extensions of our psyches.
- “The entire business of man becomes learning and knowing.”
- There is a growth of interdisciplinarity.
- Melting of national borders and the rise of a global village.
- Men are suddenly nomadic gatherers of knowledge, nomadic as never before — but also involved in the total social process as never before; since with electricity we extend our central nervous system globally, instantly interrelating every human experience.  

It turns out the challenge of adapting to the new media landscape is actually quite old. In a celebrated book, Swiss scientist Conrad Gessner warns that recent information technology developments cause information overload and, he cautions, is “confusing and harmful” to the mind. He was writing in the 16th century about the advent of the printing press.

In one sense, as long as there have been new communications media there has been a cottage industry built around analyzing its effects on individuals and society. The observations over the centuries have invariably ranged from dystopian to utopian and everywhere in between. Few disagree that in 2010, the media environment is as complicated as it has ever been, and is continuing to transform at an amazing pace.

In his book *The New Media Monopoly*, Ben Bagdikian of the Graduate School of Journalism at the University of California Berkley, notes “the speed with which the digital revolution has penetrated an entire society has been breathtaking.”

Bagdikian writes, “The computer and Internet … have altered the way millions live their daily lives. The new technology has almost miraculous functions that at their best have led to the betterment of numberless aspects of life, like science scholarship and medicine.” While Bagdakian goes on to devote most of his text to a critique of what he sees as the negative economic and social effects of the new media, others have a more positive view.

Media theorist W. Russell Neuman writes, “[T]he ongoing digital revolution in present day media technology represents an important new beginning in public life and is likely to have a rather fundamental influence on how individuals, social groups and societies define themselves, how individuals come to know the world around them, and whether further generations succeed in sustaining an energetic public sphere and open marketplace of ideas.”

But, as reported elsewhere, these rapid transformations in the media landscape have put serious economic and cultural strain on the traditional news media, with newspapers collapsing, newsrooms shrinking, and reporters feeling increasing pressure to adapt. “Plummeting
newspaper circulation, disappearing classified ads, ‘unbundling’ of content – the list of what’s killing journalism is long.” James Fallows wrote in a June 2010 Atlantic Monthly article titled, “How to Save the News.” The traditional media are reacting with a fairly predictable blend of morbid gallows humor and nostalgia.

“Call me a grumpy old codger, but I liked the old way better. For one thing, I used to have at least a rudimentary idea of how a newspaper got produced: On deadline, drunks with cigars wrote stories that were edited by constipated but knowledgeable people, then printed on paper by enormous machines operated by people with stupid hats and dirty faces,” the Washington Post’s Gene Weingarten recently wrote. He dared online editors to insert the term “Lady Gaga” in the headline to aid search engines and confirm his theory that true journalism is dead in the new media age. They titled it: “Gene Weingarten column mentions Lady Gaga.”

“Everything is different today and it’s much more confusing,” Weingarten writes. He goes on to share his view that reader comments on online news stories are like serving steak “with a side of maggots.”

A more academic take on the transformation of the journalism industry can be found in Elliot King’s Free for All: The Internet’s Transformation of Journalism. King writes:

Over time … three great technology platforms for the dissemination of news have emerged. The first to come was printing, which made the mass distribution of news possible. The second was broadcasting, which made news more readily available to large audiences more quickly and in a dramatically different format. The third great platform for the distribution of news is emerging now with the Internet and the different technologies for the production and consumption of information and content that the Internet supports.  

King details how the changes in online news have come at breakneck speed compared to previous developments in print and broadcast technologies:

It took about [200] years for all the technology that allowed for the development of the modern newspaper to emerge. By the early 1900s, however, newspapers began to look very much like they did a hundred years later. For online journalism, the technology continues to develop at an accelerated clip, and there is no evidence to indicate when the rate of development may slow. It is not yet clear which technologies will shape the ultimate contours of online journalism.

So, to conclude, “new media” as a term has been in existence for more than four decades. The challenge of adapting to emerging forms of communication technology has been around as long as there has been such technology. “New media” as most widely used today and as used in this report refers to the complete current media landscape, which is characterized by emerging interactive social media technologies that are powerfully multimedia in nature; fundamental and continuing changes in the economics, operation and vitality of the news industry that courts have traditionally relied on to connect with the public; and broader cultural changes in how the public receives and processes information and understands the world.
NEW MEDIA AND THE COURTS: UNIQUE CHALLENGES AND OPPORTUNITIES

For the purpose of understanding court communications in the new media age, it is useful to break this multifaceted new media landscape into constituent parts:

1. Legacy media.
2. Traditional PR/community outreach.
3. Digital media/Web 1.0.
4. Social media/Web 2.0.

*Legacy media* is a term often used to refer to the traditional news media of the news industry: newspapers, magazines, radio and television. As already noted, the changes brought about by the digital revolution are bringing major changes in the legacy media that are still developing and not fully understood. Ever since the First Amendment established the right of free expression and the Sixth Amendment guaranteed criminal defendants the right to a “speedy and public trial,” judges and journalists each have played unique roles. The courts have a responsibility to be accessible to the news media, to explain the system, and to protect constitutional rights of both litigants and the media. Legacy media hold courts accountable and represent the public interest. As the U.S. Supreme Court said in *Ohio v. Sheppard*, “The press does not simply publish information about trials, but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism.”

Understanding the interdependent relationship between these two unique and independent institutions has always been a challenge, one that has changed over time with the evolution of the technology that drives the media. Each successive breakthrough in media technology brought with it changes in the relationship between the two, from the advent of the penny press in the 19th century to the introduction of cameras in the courtroom. Recent developments in mass media communications have been described as nothing less than a “cultural revolution.” In 2009, 293 newspapers folded, eight magazines with a combined circulation of 1 million closed, more than 1,100 online and print magazines of all sizes closed, the parent companies of 100 TV stations were in Chapter 11, and the radio industry lost 15 to 20 percent of its revenue and 10,000 jobs.

*Traditional public relations/community outreach*. While courts have traditionally relied on journalists to connect with the public, they have not done so exclusively. A 1993 study by NCSC and the American Judicature Society found that the biggest factor contributing to lack of public
trust and confidence was “inadequate general knowledge of the courts.” Beginning with the movement to professionalize the administration of justice in the 1960s, courts for the last 50 years have increasingly made direct community outreach a priority, understanding that it is an effective tool for supporting public trust and confidence in the judicial system by enhancing knowledge among citizens.

A good definition of “community outreach” can be found in the 1999 handbook, “Dialogue: Courts Reaching Out to Their Communities,” released by a California Task Force on Court/Community Outreach: “(1) Courts should open avenues of communication with the public through which the courts truly ‘listen’ [to the concerns and problems of those we serve], and (2) courts should actively engage in public education about the role and operations of the courts.”

Traditional public relations and community outreach programs include mock trials, visitor education centers, touring courts, speakers’ bureaus, juror orientation, print publications and other activities. The new media environment and advancements in digital media do not do away with the need for these traditional programs, but offer new and effective avenues for connecting court community education and outreach programs with the audiences they serve.

**Digital media/Web 1.0.** Driving the first wave of transformation in the media landscape was the rise of the World Wide Web in the 1990s as a mainstream mass communications tool. Like most institutions, courts’ initial use of websites was a largely static, one-way communication that functioned as a more accessible digital version of traditional print publications. Courts posted information to their websites, which was accessed by the various individuals and communities looking for that information. Of course, this practice continues and is now an indispensible, central part of not just courts’ communications programs, but their delivery of basic services to the public.

**Social media/Web 2.0.** The major development in media and communications in the last four years or so was the rise of social media: highly interactive, multimedia websites and programs that allow individuals to form into communities and share information, knowledge and experiences more quickly and effectively than ever before. Facebook, YouTube and Twitter seemed to have come out of nowhere and instantly become commonplace in culture, business and government. The underlying concept for these and all other social media is a redefining of what the World Wide Web is and how it functions. These advances represent a migration from the static, unidirectional, mass communication tools of the 1990s to a concept of the Web as highly interactive, dynamic and community-oriented — a migration from Web 1.0 to Web 2.0.

There are three characteristics of new media that contrast sharply with basic characteristics of the judiciary. These characteristics help to explain why the new media environment presents the judicial system with both challenges and opportunities that are unique to the courts as compared to both the private sector and the other branches of government. They are:

1. New media are decentralized and multidirectional while the courts are institutional and unidirectional.
2. New media are personal and intimate while the courts are separate and, by definition, independent.
3. New media are multimedia, incorporating video and still images, audio and text, while the courts are highly textual.

Decentralized and Multidirectional. One of the defining characteristics of the new media is that they are multidirectional and decentralized. In more theoretical terms, new media are described as the third and most recent of what are essentially only three possible communications media: (i) interpersonal media as “one to one,” (ii) mass media as “one to many” and, finally, (iii) new media or “many to many.” The image of the lone blogger in his pajamas taking on government corruption and institutional injustice has already been romanticized into an archetypal myth. Like all myth, its basis is firmly grounded in reality. Today more people are producing and disseminating media content (still and video images, commentary, news reports, etc.) than at any point in human history.

As early as 1990 this process was under way when Nicholas Negroponte wrote in the seminal work *Being Digital*, “The monolithic empires of mass media are dissolving into an array of cottage industries … Media barons of today will be grasping to hold onto their centralized empires tomorrow … The combined forces of technology and human nature will ultimately take a stronger hand in plurality than any laws Congress can invent.” The result is a culture in which institutions play less of a role in shaping ideas in the public mind, and individuals and small groups can play a much greater role. “Welcome to convergence culture, where old and new media collide, where grassroots and corporate media intersect, where the power of the media producer and the power of the media consumer interact in unpredictable ways.”

Contrast this with the traditional institutional and unidirectional judicial culture and way courts have operated. “The court speaks only through its opinions” is the standard line repeated countless times by public information officers responding to media inquiries about court decisions. Courts by their very nature are unidirectional communicators. The essence of their fundamental mission, resolving disputes, requires that courts very often communicate one way. Courts issue orders, and parties comply. One of the challenges of courts responding to the reality of new media will be resolving this inherent incompatibility between the two cultures.

New media are personal and intimate while the courts are separate and distant. Another inherent characteristic of new media is that they facilitate personal communication and intimacy of communication that previously were possible only through one-on-one channels. To use just one example, anyone who is exposed to Facebook for the first time is struck by the personal, intimate nature of a medium that is also largely open and transparent. You “friend” a casual acquaintance or coworker and instantly you are seeing details of this person’s personal life that you might otherwise not have come into contact with, pictures of the family cat, videos of children’s piano recitals, birthday wishes from Mom and even insights into the person’s religious and political lives. The social media that lie at the heart of the new media revolution are strikingly personal and intimate. Mores and standards about sharing personal information are changing in the broader culture in ways that will not be understood for some time.

This stands in sharp contrast to the way courts communicate. The bar that separates attorneys and judges on one side and the public on the other, the elevated bench, the black robe, the practice of
formal address (‘‘your honor’’) — all of these are practices that have evolved for centuries in the judicial culture and play an important role in symbolizing and reinforcing the independence necessary to achieve impartiality. Judges have always had to work at being a part of their communities in a way that is special and different from any other government officials. Judges must be independent, and maintaining that independence as human beings part of a larger community requires that judges be particularly deliberate and careful in their personal and professional communications. The way the new media culture is redefining cultural expectations and practices regarding personal information-sharing raises unique and interesting questions for courts. There is an incompatibility between the judicial culture and the new media culture.

New media are multimedia, incorporating video and still images, audio and text, while the courts are highly textual. Probably the most basic characteristic of new media is that they are multimedia in nature. More than anything else, the digital revolution allows for the sharing of information and knowledge and the telling of stories through multimedia methods. With more and more of the public consuming more news and information online, the new media environment now includes a substantial proportion of the citizenry that approaches institutions with the strongly held expectation that communication will include video and audio clips, text and still images wound into a matrix of information and knowledge that tells compelling stories.

Courts have, in varying degrees, begun to experiment with multimedia techniques. From video arraignments to televised oral arguments and online instructional videos, courts have found ways to use multiple media platforms effectively. But there is a certain incompatibility here too. The law is an inherently verbal enterprise. It is concerned with precise definition of terms, interpretation of statutory and judicial language, and the precise parsing of speech. The multimedia nature of new media challenges courts to tell their inherently textual stories through multimedia techniques.

THE CCPIO NEW MEDIA PROJECT

Project Outline
To assist courts in meeting these challenges and leveraging the opportunities of the new media landscape, the Conference of Court Public Information Officers embarked in 2009 on this research project to examine new media and analyze their potential effects on the courts and media coverage of courts.

The CCPIO New Media Project has five primary objectives:

1. Clearly define the current technology.
2. Systematically examine the ways courts use the technology.
3. Empirically measure the perceptions of judges and top court administrators toward the technology.
4. Collect and analyze the literature on public perceptions of the judiciary and court public outreach programs.
5. Offer a framework and analysis for judges and court administrators to use for making decisions about the appropriate use of new media.
The project was suggested at the CCPIO Annual Meeting in St. Paul, Minn., in August 2009. A committee was designated that month, and the committee developed a project outline that was approved by the board in September. The latter part of 2009 was devoted to initial research, inviting participation by leaders representing each of the national judicial associations, and the development of an online collaborative tool.

The research was conducted under a framework developed by the committee that includes (1) articulating three broad areas of study for examination of how new media technologies impact the courts and (2) categorizing major new media technologies into seven broad segments based on their functionality and demonstrated effects on courts in the three areas of study.

This framework was developed based on discussion and information sharing from November 2009 to January 2010 on the New Media Project website established as a collaborative online network for the project. As of July 2010, the site included as registered members more than 120 judges, journalists, attorneys, law professors, court administrators, information technology officers and public information officers.

The CCPIO New Media Committee is composed of Christopher Davey, director of public information for the Supreme Court of Ohio (co-chair); Karen Salaz, district administrator for the 19th Judicial District of Colorado (co-chair); Steve Schell, communications coordinator, Administrative Office of the Pennsylvania Courts; and Kathryn Dolan, public information officer, Indiana Supreme Court.

The committee liaisons with designated representatives of six national judicial associations: NCSC, NACM, National Association of Women Judges, Court Information Technology Officers Consortium, National Association of State Judicial Educators, and the National Conference of Appellate Court Clerks.

Many of the ideas in this report were presented, discussed and refined at the 5th Annual Supreme Court of Ohio Judges & Journalists Workshop in Columbus, Feb. 11, 2010.

It is fitting that journalists and judges work together to understand the effects of new media on the judicial branch because the media and the courts have similar — though certainly not identical — interests in supporting an open, accessible and understandable system of justice.

The New Media Project brings together judges, journalists and other interested parties to examine how the latest technological evolutionary changes affect the courts and the centuries-old relationship between the Third Branch and the Fourth Estate.

**Functionality-Based Categorization**

Tom Hodson, a former trial judge and the director of the E.W. Scripps School of Journalism at Ohio University, tells his incoming students the jobs they will seek when they graduate will be with companies that do not yet exist, and they will use technologies in those journalism jobs that have not yet been invented.
The changes currently transforming the media industry are difficult to pin down or predict. Categorizing the diverse and ever-evolving array of sites and functions in the new media environment is challenging. New technologies emerge almost daily, and the basic functions of existing sites expand and transform as sites compete for users and evolve.

For these reasons, the New Media Project is concerned not with specific, proprietary technologies, but instead with categories of technology as defined by their broad functionality. By establishing this functionality-based framework for our research, we avoid (or at least diminish) the problem of evolving technologies, while at the same time identifying a clear scope for the research.

Later, we examine the seven categories of new media technology identified as impacting the judicial system. But first, we look at three areas of study that form the basis of selecting these seven categories of new media technology.

*Three Areas of Impact on the Courts*

There are countless categories of technology that arguably could impact the operation of the courts. For example, voice over Internet protocol (VOIP) could have a fiscal impact on courts by enabling them to meet telephone needs at lower costs than traditional telephone service providers. On the negative side, cyberterrorism and Internet security is another general area of information technology that clearly has potential impact on the judicial system and is worthy of study.

However, the New Media Project limited the scope of its research by first establishing three areas of impact on court operations based on the Trial Court Performance Standards and Measurement System established and implemented by NCSC and the Bureau of Justice Assistance of the U.S. Department of Justice.  

These standards establish five performance categories (with subcategories within each) “to measure the performance of the [n]ation’s general jurisdiction [s]tate trial courts.”

The standards are as follows:

2. Expedition & Timeliness.
3. Equality, Fairness & Integrity.
4. Independence & Accountability.
5. Public Trust & Confidence.

Because CCPIO’s mission is to promote professional training, networking and development opportunities for the men and women in the court system involved in media relations, public outreach and education, the CCPIO New Media Project is focused on studying those new media technologies that impact the fifth performance standard, “Public Trust & Confidence.”

This performance standard has three components:
Standard 5.1 - Requires that the trial court be perceived by the public as accessible.
Standard 5.2 - Requires that the public believe that the trial court conducts its business in a timely, fair and equitable manner, and that its procedures and decisions have integrity.
Standard 5.3 - Requires that the trial court be seen as independent and distinct from other branches of government at the state and local levels, and that the court be seen as accountable for its public resources.

Based on these criteria, then, the committee identified three areas where new media technologies impact courts’ ability to meet the trial court performance standards of supporting public trust and confidence:

1. Effects on court proceedings.
2. Effects on ethics and conduct for judges and court employees.
3. Effects on courts’ ability to promote understanding and public trust and confidence in the judicial branch.

**Effects on Court Proceedings.** From the Scopes “Monkey Trial” to the Lindbergh kidnapping and the O.J. Simpson trial, as the modern media era of the 20th century progressed, each successive generation’s “Trial of the Century” brought renewed vigor to a debate as old as the law: What is the appropriate balance between the two often-competing interests of a fair trial and the public’s right to know? Recent events illustrate that while the debate may be old, advances in information technology make it much more complex. YouTube and portable video devices with upload capability have made the existing rules and processes for restricting cameras in the courtroom instantly anachronistic. Facebook, Twitter and the Web browsing capabilities of countless handheld devices have compromised the security of the jury box.

Here are just a few recent examples of how new media technologies have impacted court proceedings:

- A juror in a child kidnapping and sexual assault case in Lancastershire, England, posted details of the case on her Facebook page indicating that she intended to poll her online friends for advice on how the case should be decided. She was dismissed from the jury.36
- A Maryland appeals court last year threw out the first-degree murder conviction of a 23-year-old man because a juror looked up the definition of the word “lividity” on Wikipedia one night after deliberations.37
- Media representatives have vowed to fight a Florida judge’s order in January that a newspaper reporter and two television reporters stop using electronic devices to cover the trials of three men charged with the 2006 shooting death of a Jacksonville 8-year-old. The judge cited concerns that the jurors would be distracted.

The New Media Project is studying specific categories of technology and their effects on court proceedings. These technologies have demonstrated the potential for adversely impacting the courts’ ability to fulfill Trial Court Performance Standard 5.2, which “requires that the public believe that the trial court conducts its business in a timely, fair and equitable manner, and that
its procedures and decisions have integrity.” In addition, these technologies are being studied with the understanding that they have the potential for positively fulfilling this performance standard and Standard 5.1 “that the trial court be perceived by the public as accessible.”

Effects on ethics and conduct for judges and court employees. In December 2009, the Florida Supreme Court Judicial Ethics Advisory Committee issued an advisory opinion on Florida state court judges using Facebook that received widespread national coverage in the New York Times and other publications. The opinion concluded that judges cannot use social media profile sites like Facebook and MySpace to designate as a “friend” any lawyer who may appear before their courts, and vice versa.

Social media profile sites like Facebook, MySpace, LinkedIn and others, offer the promise for judges, court employees and courts as institutions to network, communicate and collaborate. At the same time, courts will need to find ways to balance these potential benefits against potential risks, including use of public resources, potential negative impact on public perceptions and other issues.

Courts are not alone. Local governments and businesses are increasingly re-examining personnel policies to account for social media. For example, Boulder County, Colo., officials in 2009 passed new policies restricting employee use of online social media profile sites aimed at balancing the potential benefits with risks.

The New Media Project is studying the potential impact of new media on ethics and public perceptions for judges and court personnel because of the potential effects, positive and negative, on supporting public trust and confidence in the judicial system, including effects on Trial Court Performance Standard 5.3, which “requires that the trial court be seen as independent and distinct from other branches of government at the state and local levels, and that the court be seen as accountable for its public resources.”

Promoting understanding, public trust and confidence in the judicial branch. Building on the famous statement on the limits of judicial power from the Federalist Papers, former U.S. Supreme Court Justice Sandra Day O’Connor recently remarked that, lacking the legislative appropriation “power of the purse” and the executive “power of the sword,” the judiciary must rely on the “power of the quill.”

“The Judicial power lies in the force of reason and the willingness of others to listen to those reasons,” she said. This is why the Trial Court Performance Standards require that courts work to promote public trust and confidence in the judicial system and why the New Media Project is studying the effects of new media on courts’ ability to promote understanding and positive perceptions of the judicial branch.

Traditionally, the most important influence on the public’s understanding and opinion of the judicial system has been the news media. Now, this long-standing role of the media is in significant decline, while emerging new media have the potential to have more impact on how the public receives information and understands the world. More and more people get news and information and form opinions based on a wide range of new and emerging Web-based media.
Governments, at all levels, are starting to experiment with many of these technologies in the
hope that their collaborative capabilities can transform the relationships between governmental
entities and their constituents.  

These developments have obvious potential impacts on all three of the Trial Court Performance
Standards related to public trust and confidence, which therefore is the third area of study for the
New Media Project. The project examines how courts can use new media proactively to promote
understanding and positive public perceptions, and also how — independent of courts’ efforts —
the new media environment has the potential to affect public understanding of the judicial
system.

**Seven Categories of Technology**
Based on these three areas of study, there are seven categories of new media technology that are
the focus of the New Media Project research. The categories are not comprehensive, but were
selected because (1) they have already had an impact on courts and/or have a clear potential for
impacting court operations and objectives, either positively or negatively, and (2) the impact of
these categories of technology is in one or more of the three areas of study identified as affecting
courts’ ability to meet the Trial Court Performance Standard of public trust and confidence.

The seven categories of technology are as follows:

1. **Social media profile sites (e.g., Facebook, MySpace, LinkedIn, Ning).** These sites
   allow users to join, create profiles, share information, and view still and video images
   with a defined network of “friends.”

2. **Microblogging (e.g., Twitter, Tumblr, Plurk).** Microblogging is a form of
   multimedia blogging that allows users to send and follow brief text updates or
   micromedia, such as photos or audio clips, and publish them on a website for viewing
   by everyone who visits the website or by a restricted group. Microbloggers can
   submit messages a variety of ways, including text messaging, instant messaging,
   e-mail, or digital audio.

3. **Smart Phones, Tablets & Notebooks (e.g., iPhone, Droid, Blackberry).** This
   category is defined by those mobile devices that can capture audio, as well as still and
   video images, and post them directly to the Internet. These devices also enable users
to access the Internet, send and receive e-mails and instant messages, and otherwise
connect with online networks and communities through broadband or Wi-Fi access.

4. **Monitoring and metrics (e.g., Addictomatic, SocialSeek, Social Mention,
   Google's Social Search, Quantcast).** This category includes the large and increasing
   body of sites that aggregate information about Internet traffic patterns and what is
   posted on social media sites. They display analyses of how a particular entity is
   portrayed or understood by the public.

5. **News categorizing, sharing and syndication (e.g., blogs, RSS, Digg, Reddit,
del.iciou.us).** This is a broad category that includes websites and technology that
enable the easy sharing of information, photos and video, and the categorization and ranking of news stories, posts to blogs and other news items.

6. **Visual Media Sharing (e.g., YouTube, Vimeo, Flikr).** These sites allow users to upload still and video images that are stored in searchable databases and easily shared, and can be e-mailed, posted, or embedded into nearly any website.

7. **Wikis.** A wiki is a website that allows for the easy creation and editing of multiple interlinked Web pages via a Web browser using a simplified markup language or a WYSIWYG (what-you-see-is-what-you-get) text editor. Among the uses for wikis are the creation of collaborative information resource websites, power community websites and corporate intranets. The most widely recognized and used wiki is the collaborative encyclopedia Wikipedia. Another much lesser known wiki that has impact on the judicial system and is the subject of study in the New Media Project is Judgepedia.

The next section examines each of these categories of technology in detail, looking at their effects on court proceedings, effects on ethics and conduct for judges and court employees, and effects on courts’ ability to promote understanding and public trust and confidence in the judicial branch.
SOCIAL MEDIA PROFILE SITES (E.G., FACEBOOK, MYSPACE, LINKEDIN, NING)
These sites allow users to join, create profiles, share information, and view still and video images with a defined network of “friends.”

Social media profile sites create networks of individuals, events, groups and/or organizations with shared relationships, interests or activities. They typically allow subscribers to develop a personal profile to build their social network and join others. Using the sites and related technologies is often referred to as “social networking.”

Many of the sites combine with each other in addition to incorporating other technologies, such as microblogging (e.g., Twitter, Tumblr and Plurk; see below). These sites also are highly integrated with mobile applications, such as smart phones and electronic tablets that can be accessed from nearly anywhere, adding to the popularity.

Popular Service Providers
Social media profile sites have become extremely popular for individuals and organizations. Four of the more popular sites are Facebook, MySpace, LinkedIn and Ning, all of which are free to join.

Facebook, created in early 2004, has become an online conduit for connecting more than 400 million active users. It was predicted to reach 500 million users in July 2010. Subscribers can upload an unlimited number of still and video images, video messages, links, blogs, songs, profiles, notes or events, and can create individual photo albums with up to 200 photos. A subscriber’s “friends” can view his or her Facebook page and leave comments. Privacy settings can be applied to all or parts of a subscriber’s page. Facebook also has options adapted for mobile phones and devices.

MySpace, launched in January 2004, supports nearly 70 million monthly active subscribers to post personal profiles, still or video images, messages, games and music, and has mobile device capabilities.

LinkedIn, launched in May 2003, links more than 60 million professionals, about half of whom are outside the United States. The site networks executives, experts and professionals to develop business opportunities, collaborate on projects and share job opportunities. Subscribers post a personal profile that includes expertise and accomplishments. LinkedIn has a premium business membership available for a fee that provides additional tools.
Ning, founded in 2004, is a software platform with more than 2 million “networks” and more than 43 million registered members. Network creators can choose from 50 designs to develop their network, define profiles for project members, opt for a private or public network, serve as moderator, define network search attributes, have member activity posted in real-time, embed RSS feeds to provide ongoing updates, load still and video images, facilitate a real-time chat and blog forums, and organize events. Premium services are available for fees. According to LeeAnn Prescott, the former research director at Hitwise, there is a second tier of providers, such as Tagged, Hi5, MyYearbook and Bebo, that garners 3 to 6 million unique users per month. There also are specialty social media profile sites, such as BlackPlanet.com, that cater to certain specific audiences. With 16 million members, BlackPlanet.com claims to be the largest online black community.

Court Challenges
Beginning in 2009, New York, South Carolina, Florida and Kentucky issued ethics advisory opinions that set guidelines for how judges should use Facebook and other social networking sites. All but Florida’s opinion determined that judges are permitted to use all aspects of these sites with discretion, placing some limitations on how the judges should conduct themselves online. The Florida opinion is stricter. All opinions follow the general rule that the same limitations judges must observe in their offline interactions also apply online.

All of the opinions reference, in one way or another, at least one of the following rules about judges’ behavior: (1) Judges must act at all times in a manner that upholds the integrity and impartiality of the judiciary; (2) Judges must not convey or give others a reason to convey the impression that they are in a special relationship with an attorney or employee who may appear before the judge in court; and (3) it is neither wise nor possible for a judge to remain isolated from his or her community. These rules are discussed separately.

Recent Statistics
The growth of these sites has been phenomenal and explosive. In February 2010, Facebook announced it had 400 million users. Just five months later, it claimed 500 million. Trailing only Google, Facebook now is second in visitors, having eclipsed Yahoo in January 2010, according to compete.com. Facebook also claims 260 billion page views per month, 6 million page views a minute and 37.4 trillion page views per year. The numbers are staggering.

According to the 2010 Social Networking Report published on smrb.com, 66 percent of online Americans use social networking sites, compared to 20 percent in 2007 – a 46 percent growth in three years. The same report says that 90 percent of 18 to 34 year olds who are online visit a social networking site daily. Some 41 percent of “online adults age 50 and older” go to sites like Facebook and MySpace daily.

To further the point, the Pew Internet and American Life Project issued a recent report, finding that 40 percent of adult Americans have profiles on an online social media network. At one time, MySpace was the most popular site among adults. While this has since changed with the explosion of Facebook, MySpace is still a force in the social media world.

LinkedIn also is a factor. It claims 70 million members in 200 countries and maintains that a new member joins every second.

Ning, too, is growing. Its blog claims, more than 850,000 social networks growing at the rate of more than 3,000 each day (February 2009) and about 100,000 in January 2009 alone.
within the context of each state’s opinion.

It is clear that the general consensus in these opinions is that a judge’s use of social networking sites should not be restricted, but that a judge should be aware that his or her behavior is closely scrutinized by the public and should act accordingly.

All of the opinions, with the exception of South Carolina’s, reference the public nature of online interactions, and consider conversations or posted material on social networking sites to be more public than similar in-person actions. Florida’s and Kentucky’s opinions also address the concept of an online language (i.e., a “friend” on Facebook often carries a different meaning from a “friend” in the traditional sense).

New York Judicial Ethics Committee (Opinion 08-176, January 2009). The New York Judicial Ethics Committee released in January 2009 its opinion on the propriety of judges’ use of social networking sites. The opinion is in response to a judge’s inquiry about using a business-related social networking site. The committee concluded\(^5\) that there is nothing inherently inappropriate in the judges’ use of social networking sites as long as the judges do not violate the Rules Governing Judicial Conduct (the “rules”).\(^6\)

The opinion generally advised that since it is appropriate for judges to socialize in person, there is nothing “per se” unethical about socializing by means of technology, such as phone and Internet.\(^7\) However, a judge using a social media profile site still must abide by the rules in the same manner as if the communication were in person. The rules state that a judge must “…avoid impropriety and the appearance of impropriety in all of [his or her] activities” and “…shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”\(^8\)

In essence, the New York opinion found that the question is not whether a judge should use social media, but how he or she uses it. A judge should recognize that his or her actions on a social media profile site are public and should post accordingly.

The opinion found that a judge should also be aware that making public online connections with attorneys or others who appear in his or her court creates an appearance of a special relationship with that party in which the attorney has influence over the judge. In some cases, this may be equivalent to adding an attorney’s phone number to an address book or speaking to him or her in public. However, a judge’s “friend” on Facebook often has more access to the judge’s other “friends” than to a private address book, and can assume a closer relationship between judge and attorney, even if one does not exist. Therefore, in making these connections, the judge should consider whether the connection conveys a “close social relationship” that requires disclosure and/or recusal.\(^9\)

The committee also noted that the rules prohibit judges from giving legal advice or discussing cases in face-to-face meetings, and so decided that judges should not do so online either.

It also urges judges to, at the very least, “…employ an appropriate level of prudence, discretion and decorum in how they make use of this technology…” by using the above situations as
examples, not strict rules. The committee also notes that social media are rapidly evolving, and judges should stay aware of new developments and use discretion in their actions.

South Carolina Advisory Committee on Standards of Judicial Conduct (Opinion 17-2009, October 2009). The South Carolina Advisory Committee on Standards of Judicial Conduct released an opinion in October 2009 about the judicial use of Facebook. This opinion is a response to an inquiry from a magistrate judge about his use of Facebook and his “friendship” on social networking sites with law enforcement officers and employees of the judge’s office. The committee concluded that a judge may be a member of Facebook and may be friends with law enforcement officers and employees as long as the judge does not discuss anything related to his or her position as a judge.

The opinion stated “…A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (see Canon 2 (A), Rule 501, SCACR).” The committee also noted Canon 4, which states that a judge’s complete separation from extra-judicial activities is impossible and unwise and a judge should not become isolated from the community in which he or she lives. Further, a judge’s use of Facebook allows community members to better understand and communicate with the judge. Thus, a judge may be a member of social networking sites such as Facebook.

Florida Supreme Court Judicial Ethics Advisory Committee (Opinion 2009-20, November 2009). The Florida Supreme Court’s Judicial Ethics Advisory Committee released an opinion in November 2009 that reached four conclusions about judicial use of social networking sites:

1. A judge may post comments and other material on his or her page or profile as long as the publication of the material does not violate the Code of Judicial Conduct (1).
2. A judge may not add lawyers or other social networking users who may appear before the judge as “friends” and may not permit said persons to add the judge as a “friend.”
3. A committee that is conducting an election campaign on behalf of the judge’s candidacy may post material on the committee’s page if the publication of said material does not violate the Code of Judicial Conduct (the “code”).
4. A committee that is conducting an election campaign on behalf of the judge’s candidacy may establish a profile that has an option for users, including lawyers or others who may appear before the judge, to list themselves as “fans” or supporters of the judge’s candidacy, as long as the judge does not control who is permitted to become a fan.

The first and third conclusions relate to the method of publication, not the content of the published material. The code addresses only the substance of communication, not the method. Thus, the method of publishing material cannot violate the code and is not addressed in this opinion.

The second conclusion falls under Canon 2B of the code, which generally states that a judge shall not convey the impression that the judge’s social networking “friends” are in a special position that threatens the integrity of the judiciary. On Facebook, for example, a judge can create his or her personal page and can accept or reject users who request to be his “friend.” The
judge’s “friends” may then access an entire list of the judge’s other “friends.” These three criteria must be present on a social networking site for it to fall under Canon 2B, according to the Florida Opinion.

According to the code, a judge must always expect to be the subject of constant public scrutiny, and must accept that there are restrictions on his or her actions that members of the general public might not share. Thus, a judge shall conduct all of his extra-judicial activities so that they do not (1) give the public a reason to doubt the judge’s ability to act impartially; (2) appear to be coercive; or (3) interfere with the proper performance of judicial duties (for more limitations, see Canon 5A of the code).66 The code also clarifies the “special relationship” rule between judges and lawyers and states that the key distinction is between intent and perception. As long as others perceive the lawyer to be in a position of influence over the judge, identification online or otherwise is not permitted.

The committee’s minority opinion was that the listing of “friends” on the judge’s page does not reasonably assume a special relationship between the two parties. Social networking sites are so popular and prevalent that the term “friend” takes on a different meaning online. Thus, the minority agree that conclusion two does not violate Canon 2B.

With regard to conclusion four, the opinion states that a judge may have “fans” on Facebook because becoming a “fan” is a unilateral procedure. A judge may not accept or reject those who become a “fan,” so none can reasonably perceive a special relationship between the judge and a “friend.” Thus, this practice does not violate Canon 2B.

*Ethics Committee of the Kentucky Judiciary (Opinion JE-119, January 2010).* The Ethics Committee of the Kentucky Judiciary released an opinion in 2010 about the propriety of an inquiring judge being a member of Facebook and being “friends” with people who may appear before him or her in court. The committee concluded that both of these activities are permitted.67

Canon 2D of the Code of Judicial Conduct (the “code”) states that “a judge [must] avoid impropriety and the appearance of [it] in all of the judge’s activities” and shall not “…convey or permit others to convey the impression that [anyone] is in a special position to influence the judge.”68

The code also states that none of the judge’s extra-judicial activities should interfere with the proper performance of judicial duties. The code expands on this by stating that complete separation of a judge from extra-judicial activities is unwise and impossible, especially because judges in Kentucky must remain involved in their communities in order to campaign for re-election on a consistent basis.69

The committee also decided that simply listing other people as “friends” on social networking sites does not reasonably convey a special relationship between judge and “friend.” Not every relationship the judge has with another constitutes recusal from a case [for more information on recusal, see Canon 3E(1)].70 Furthermore, the designation of a “friend” on Facebook does not, alone, indicate the extent of the relationship. Terms like “friend,” “fan” and “follower” are not defined online in the same way as offline.
Again, social networking sites are often more public than in-person conversations, and judges should use discretion. Judges’ use will often be more restricted than the use of the general public, so judges should join social networking sites knowingly and willingly.

According to Canon 2A, judges should always act in a way that upholds the public’s confidence in the integrity of the judicial system; this confidence can be lost in several ways. The offline rules about discussing cases, pending or impending decisions remain the same in online situations.

This opinion does not prohibit judges from most social networking use, but instead strongly urges judges to be “…extremely cautious that such participation does not otherwise result in violations of the Code of Judicial Conduct.”

It also is important to note that all of these opinions are advisory, not binding under the law. These four states have set the stage for exploration into social networking ethics, and thus far, judges do not face many restrictions. Each opinion differs slightly, but it is clear in each that judges are to use discretion and caution in every action they take online, and that they should be aware of the consequences of reckless behavior on social networking sites. Each committee also urged judges to consult the committees with further inquiries regarding the matter. Due to the rapid pace of online evolution, no opinion can reasonably act as an exhaustive examination of possibilities a judge may encounter on social networking sites.

The Florida Judicial Ethics Advisory Committee opined that judges cannot add lawyers who appear before them as “friends” on a social networking site or allow such lawyers to add the judges as friends; the minority opinion held that the designation of “friend” on a social networking site does not convey the impression that a person is in a position to influence the judge in violation of Florida judicial canons. The South Carolina Advisory Committee on Standards of Judicial Conduct concluded in a similar inquiry that judges can be members of Facebook and “friend” law enforcement officers and employees of the magistrate with certain restrictions. The mixed messages and challenges social media are generating in the courts must be addressed. In approaching solutions, education and thoughtful analysis will be critical.

**Effects on Court Proceedings**

The temptation social media profile sites present for jurors in particular is an especially troubling dilemma for courts. No matter how clear the admonition, the lure seems to linger. Potential witness, victim and juror intimidation over these sites keeps judges vigilant. The third prong to the discussion involves judges’ personal and professional use of social media profile sites. Because judicial canons, most of which were written prior to the social media revolution, remain unclear, judges are left to define their own boundaries on participation.
A sampling of news stories and comments posted on social media profile sites illustrate how they are used to get a sense of how the public sees and interacts with the courts:

- Acting Supreme Court Justice Margaret L. Clancy, in New York, concluded in People v. Rios that a juror’s request to one of the witnesses to be her “friend” on Facebook after a day of deliberation in the case was “unquestionably a serious breach of her obligations as a juror and a clear violation of the court’s instructions.” The judge rejected a claim that the action tainted the case; a conviction was overturned on other grounds.  
- In Sacramento, Calif., a defendant’s girlfriend attempted to tamper with a juror on MySpace by pleading with her to acquit her boyfriend who was later convicted of felony domestic violence against the mother of his child. The juror was excused from the case.  
- In Lorain, Ohio, the clerk of the municipal court posts the court’s approximately 2,000 outstanding warrants on the clerk’s office Facebook page.  
- Congresswoman Tammy Baldwin (D-Wis.) used Facebook to comment on the U.S. Supreme Court’s Jan. 21, 2010, ruling on campaign reform.

**Effects on Ethics and Conduct for Judges and Court Employees**

When judges and court employees engage in professional or personal participation on social media profile sites there is an inherent risk of directly or inadvertently making comments that can be viewed (real or perceived) as improper when measured in regard to the high standards imposed by codes of conduct for both groups.

On the flip side, sites such as Ning can provide a powerful project platform for judges and court employees. The network creator can set permissions that allow only “invited guests” to participate, keeping the project completely confidential within that defined group. Participant groups can include individuals from both inside and outside the judicial community. With budgets strained and everyone trying to do more with less, this tool enables the efficient completion of projects by members who are miles apart.

**Effects on Courts’ Ability to Promote Understanding and Public Trust & Confidence in the Judicial Branch**

Organizations are successfully experimenting with social media profile tools. With properly tagged Web content, an organization can expand its visibility significantly. The ability to post multimedia on an external server also is attractive. Those considering becoming involved in social media opportunities are encouraged to review the considerations noted in *Effects on Courts’ Ability to Promote Understanding and Public Trust and Confidence in the Judicial Branch* of the microblogging technology review section of this report.

Judges and court employees must proceed with caution. Human resources departments, court administrators, judicial officers and employees need to take an in-depth look at the potential liabilities and ramifications. There are legal ramifications and constitutional freedom of speech considerations that need an open-forum discussion.
Summary
Social media pose an interesting dilemma. On the one hand, social media offer great potential for courts and judges to connect with the community. On the other hand, there are the ethical, practical and technical issues detailed elsewhere in this report. The primary consideration is to ensure use of the media is managed properly. Proactive discussions will prepare courts and judges to use the technology to the greatest benefit possible.

Court-Related Social Media Profile Site Samples

http://www.facebook.com/

http://www.linkedin.com/home?trk=hb_home

http://ccpionewmedia.ning.com/
Microblogging (e.g., Twitter, Tumblr, Plurk)

Microblogging is a form of multimedia blogging that allows users to send and follow brief text updates or micromedia, such as photos or audio clips, and publish them on a website for viewing by everyone who visits the website or by a restricted group. Microbloggers can submit messages a variety of ways, including text messaging, instant messaging, e-mail, or digital audio.

The term “blog” originally evolved from the terminology “Web-log.” This in turn evolved into “microblog,” meaning a “blog snippet” that is most often limited to 140 characters, the length of text messages supported by cell phones.

Typically, anyone who wants to create a microblog, “follow” microblogs posted by others or post a comment on another’s microblog must create an account with a service provider, such as Twitter, Tumblr or Plurk. Although, depending on the service or individual privacy settings, the main page listing posts for a microblog can be available to non-members. These services generally are linked through cell phones, instant messaging, e-mail accounts and the Web. Comments are aggregated, forming an instantaneous, ongoing thread, or conversation, in reverse chronological order, with the most recent appearing at the top.

Tag posts are a resource microblogging supports, allowing the author of a post to designate keywords, thus making comments searchable. When combined with aggregator tools (discussed later in this report), users can monitor multiple services and network sites in a single location, like their cell phone or computer.

Popular Service Providers

There are limitations to microblogging. Twitter, launched in 2006, for example, allows users to generate messages or “tweets,” up to 140 characters in length, including all punctuation and spaces. Twitter is a free, recipient-driven information network, meaning the user determines the types of messages he or she receives and who has access.

Tumblr, a free platform launched in 2007, enables text, still and video images, quotes, links and audios to be loaded primarily from a browser, phone, desktop or e-mail. The average user creates 14 original posts per month and reblogs three times. Half of those posts are photos. The rest are split between text, links, quotes, music and video images.

Launched in 2008, Plurk is a newcomer to the industry. It is a free microblog and social networking service allowing users to post 140-character links or short messages known as “plurks.” Updates, generated through instant messaging or text messaging, appear on users’ home pages in chronological order.

Uniformly, there is little or no oversight to ensure accuracy. Further, information sources can be vague or nonexistent, and credible sources and information may be blended with inaccurate information that can live into perpetuity, thus taking on a life of its own. There also are problems with virus generation and transfer through the array of microblogging services that must be considered when a computer is connected to critical court networks.
**Effects on Court Proceedings**

Headlines from across the nation reflect the difficulties microblogging attorneys, jurors, journalists and judges have created for courts. When abused or improperly managed, the technology has the potential to taint witnesses, disseminate inappropriate or potentially threatening photos, produce appellate issues, or provide an inappropriate communication thread for jurors, parties and observers.

A sampling of news accounts illustrates recent situations:

- Responding to a judge’s order imposing restrictions on the release of information, the attorney for the Fort Hood, Texas, shooting suspect launched a blog.\(^8^2\)
- In February 2009, a juror in Fayetteville, Ark., posted a tweet saying, “I just gave away TWELVE MILLION DOLLARS of somebody else’s money,” after he and fellow jurors awarded a $12.6 million verdict to a company that claimed it was duped into an investment scheme.\(^8^3\) Attorneys for the losing party attempted unsuccessfully to get the verdict reversed, and the episode received national media attention, generating a national discussion in the judicial community about the obvious potential pitfalls of jurors tweeting.
- In January 2010, the U.S. Judicial Conference distributed suggested jury instructions regarding juror use of electronic communication technologies to all the federal district judges. The suggested admonishment reads, “You may not communicate with anyone about the case on your cell phone, through e-mail, Blackberry, iPhone, text messaging, or on Twitter, through any blog or website, through any internet chat room, or by way of any other social networking websites, including Facebook, My Space, LinkedIn, and YouTube."\(^8^4\)
- An attorney in the “Bonusgate” trial in Harrisburg, Pa., argued that reporting via Twitter could jeopardize his client’s right to a fair trial and asked the judge to prohibit all in-court observers from publishing any dispatches.

**Recent Statistics**

An October 2009 Pew Research Center study estimated that nearly 20 percent of Internet users use Twitter or a like service to share updates or to read updates about others. This was an 8 percent leap in a six-month period.

Pew also found three groups were primarily responsible for the growth: (1) social network website users; (2) mobile device Internet users; and (3) Internet users under the age of 44. The median age of a Twitter user is 31. The full report is available here and here.

A more recent claim from Computer World in January 2010 says Twitter has 75 million users, but is showing a slowing growth rate of users. Twitter released its own figures claiming 5,000 tweets a day in 2007, but that number exploded to 300,000 in 2009 and to a whopping 2.5 million in 2010.

Twitter claims that over the past year, tweets grew 1,400 percent to 35 million per day. Mid-way through 2010, Twitter estimates 50 million tweets per day, or 600 per second, are made.

Certain segments of the population are flocking to Twitter. For example, Business Insider in May 2010 said African-Americans, approximately 12 percent of the population, comprise 25 percent of Twitter users.

According to Tumblr founder David Karp, as reported on techcrunch.com, “Tumblr is currently seeing 2 million Tumblr bloggers publish about 40 million new posts per month. About 10,000 new people sign up for Tumblr every day on average, and the retention rate is very high: close to 85 [percent] remains active after registering for the microblogging service…”

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on any social networking systems. He argued that real-time flow of information could taint testimony from witnesses yet to take the stand.\textsuperscript{85}

- A North Carolina judge was reprimanded for “friending” a lawyer in a pending child custody and support case, posting and reading messages about the litigation, and accessing the website of the opposing party.\textsuperscript{86} Judge B. Carlton Terry Jr. and lawyer Charles Shieck both posted messages about the child custody and support case heard last September, the Lexington \textit{Dispatch} reported. Terry also accessed the website of the opposing litigant and cited a poem she had posted there, according to the April 1 public reprimand by the North Carolina Judicial Standards Commission.

- Recently, George Freeman, a lawyer for The New York Times Co., said in an interview to the Pittsburgh \textit{Tribune-Review}, “Frankly, I think the court system doesn’t know how to handle the burgeoning amount of tweeting and Googling (by jurors) that is going on inside their buildings.”\textsuperscript{87} Twitter, one of the widely used Internet-based microblogging technologies, reports that in 2010 it is projected to have just over 18 million users.\textsuperscript{88} Microblogging is not a phenomenon that will soon disappear, nor is it technology the courts can ignore.

A critical cultural challenge microblogging technology poses in the court community is its evolution from being viewed as a potential threat to being supported as a valuable communication tool. A second prerequisite cultural shift will require judges be educated and armed with tools to manage the technology in and around their courtrooms. If properly handled, it has the potential to significantly strengthen public trust and confidence in the nation’s judicial system. A third prerequisite will be for court technology divisions to investigate the potential exposure to viruses the use of microblogging may have on critical records and case management networks.

\textbf{Effects on Ethics and Conduct for Judges and Court Employees}
When judges and court employees engage in professional or personal microblogging there is an inherent risk of directly or inadvertently making comments that can be viewed as improper when held to the high standards imposed by codes of conduct for both groups.

Judges’ codes of judicial conduct\textsuperscript{89} characteristically contain language applicable to a judge’s decision to engage in microblogging. Judges are required to uphold the integrity and independence of the judiciary, avoid impropriety and the appearance of impropriety in all activities, perform the duties of the office impartially and diligently, conduct extra-judicial activities minimizing the risk of conflict with judicial obligations.

Judicial employee codes of conduct\textsuperscript{90} routinely contain language requiring behavior that promotes public confidence in the integrity and impartiality of the judicial system. Employees are expected to conduct themselves in a manner creating confidence in the judicial system as fair and impartial, adhere to high standards of conduct, including personal integrity and professional responsibility, and avoid not only impropriety, but the appearance of impropriety.
Effects on Courts’ Ability to Promote Understanding and Public Trust & Confidence in the Judicial Branch
Microblogging’s impact on the courts must be analyzed from two distinctly different, opposing perspectives. The technology has the potential to allow courts to expand access to previously untapped audiences, instantaneously disseminate information, control the content and context of messages to clearly communicate with the public, and reach traditional audiences who are moving away from traditional news delivery services like newspapers, television and radio. When microblogging is integrated with more traditional outreach platforms used by courts, such as press releases, news conferences, websites, personal interaction and educational resources, it has the potential to significantly strengthen communication.

The appealing ease of use, affordability and broad spectrum of service providers creates both opportunity and inherent risks for the judiciary that cannot be ignored. The very attributes making the technology attractive for courts as a communication tool present the potential for misuse in courtrooms across the nation that will be examined herein. If managed professionally, however, microblogging holds the potential to raise public trust and confidence significantly through accessibility, transparency, immediacy, integrity and accountability.

Proper planning, management, and oversight provide opportunities for courts and judges alike to foster public trust and confidence through the use of microblogging technologies. The benefits have been outlined previously.

News articles and literature indicate the trend already is beginning to shift, as judges take a hard look at weighing the benefits and risks inherent to allowing microblogging from their courtrooms. On one end of the spectrum are judges who consider courtroom tweeting the equivalent to broadcasting. Conversely, other judges are opening their courtrooms to bloggers and microbloggers for myriad reasons.

Court communication plans that include microblogging technology must be carefully developed, taking a close look at how it will be managed. The following questions should be considered:

- What do you want to achieve using microblogging?
- What situations are available to achieve these goals?
- Who will have the ability or authority to post information?
- Are there criteria in place as to what topics can be discussed?
- Is there a forbidden topic list?
- How will inappropriate comments be handled?
- What will be the procedure in the event a threatening remark is posted?
- What safeguards are in place to ensure nothing is posted that jeopardizes a case or trial?
- Will members of the public be required to register prior to posting comments?
- Who will have the authority to make postings private or public?
- What is your archive policy?
- Will judges and court employees be allowed to post personal comments?
- What types of posts will be allowed (e.g., text comments, still and video images)?
• Does your service provider offer the opportunity to conduct private members-only discussions, collaborative projects, or safely transmit sensitive materials?
• Is your information technology division involved in making critical infrastructure decisions?
• Does the technology have the potential to interfere with or increase the vulnerability of critical computer systems, such as case management, accounting?

Summary
Microblogging in some form or adaptation will become a component of the court culture whether it be sooner or later. The primary consideration is ensuring it is managed properly. Proactive discussions will prepare courts and judges to use the technology to the greatest benefit possible.

Court-Related Microblogging Examples

2/7/2010: Jury Duty
I’m sitting in the Jury Assembly room of the Peoria Courthouse with about 40 people. We’ve all been sitting here staring at each other for 30 minutes now. The questionare (sic) we had to fill out leads me to believe that this is a DUI case. My specialty. This area of “downtown” Peoria is pretty nice. New buildings, neat landscaping, etc. And they are letting me snag Wi-Fi. Well, at least for the time being. ;)

http://twitter.com/hawaiicourts

PhilaCourts: All courts within the District will be OPEN Monday, February 8, 2010. All Jurors must report for Jury Duty.
The DC Courts will open @ 10am tomorrow. Petit jurors should report then. Normal operations from 10 am on about 1 hour ago from txt

http://twitter.com/njcourts

www.tumblr.com
SMART PHONES, TABLETS & NOTEBOOKS
(E.G., iPHONE, DROID, BLACKBERRY)
This category is defined by those mobile devices that can capture audio, as well as still and video images, and post them directly to the Internet. These devices also enable users to access the Internet, send and receive e-mails and instant messages, and otherwise connect with online networks and communities through broadband or Wi-Fi access.

Popular Devices
The term “smart phone” refers to a family of mobile phone devices, such as the iPhone, Droid, and Blackberry. They contain any combination of personal computer-like operating systems and functionalities including phone, e-mail, Internet access with Web browsers, Wi-Fi and/or mobile network connectivity, built-in keyboard, still image and/or video/audio camera, maps, calendars, to-do lists, multimedia-enabled capabilities, portable media player, text messaging, games, stock reports, weather updates, calculator, face-to-face chat and compass. Their popularity increases as these mobile devices add increasingly powerful processors, memory capabilities, user-friendly screens and keyboards, and open operating systems. They also are increasingly affordable.

Tablets and notebooks are two types of portable computer devices. The tablet generally has a touchscreen, limited operating system and a pen-enabled stylus. Notebook personal computers (PCs) are slightly larger containing more functional operating systems, but again are equipped with a stylus. Most have an integrated flip-up display monitor, keyboard, microphone port, headphone port, speakers and rechargeable battery. The primary difference between a tablet PC and a notebook is that the latter has a touchpad or tracking ball rather than a stylus.

Court Challenges
In February 2010, Cuyahoga County (Ohio) Common Pleas Judge Nancy Russo declared a mistrial after jurors noticed two individuals with cell phones in the back of the courtroom videotaping the jury and prosecutors. The judge cited the individuals for intimidating and frightening the jurors, sentencing one

Recent Statistics
According to Gartner, Inc., a research and advisory company, mobile phone sales increased 17 percent in the first quarter of 2010 over first-quarter 2009, but smart phone sales increased 48.7 percent over the same period. Mobileroar.com reports that, in 2009, 14 percent of mobile phone users owned smart phones, but that number is expected to rise to 29 percent by 2012.

Mobile devices also are breeding grounds for social media use. Simply put, social media are mobile. In February 2010, Ruder Fin reported on Read Write Web, “More people are using the mobile web to socialize (91 percent) compared to the 79 percent of desktop users who do the same. It appears that the mobile phone is actually a better platform for social networking than the PC.”

Andrew Lipsman, senior director of marketing communications for comScore, Inc., released a startling report in March 2010. He said, “The study found that 30.8 percent of smartphone users accessed social networking sites via their mobile browser in January 2010, up 8.3 points from 22.5 percent one year ago. Access to Facebook via mobile browser grew 112 percent in the past year, while Twitter experienced a 347-percent jump.”

This translates to Facebook having 25.1 million mobile users in January 2010, while Twitter attracted 4.7 million mobile users.

Growth also is notable in tablet sales overtaking notebooks. Tablet sales are expected to out-strip notebook sales by 2012. It also is estimated that desktop computers will be outsold by tablets by 2015. As these figures demonstrate, we are becoming a society of “mobile media” that can easily invade our courthouses.
to 60 days and the second to 30 days in jail.\textsuperscript{97}

That same month, Colorado District Court Judge Christina Habas barred a citizen journalist from her courtroom for ignoring her highly publicized order banning all electronic communication devices in or near the courtroom. Sheriff’s deputies cited the citizen journalist for using his iPhone in the courtroom during the trial of a gang leader accused of killing Denver Bronco player Darrant Williams.\textsuperscript{98}

Smart phones, tablets and notebooks present a fundamental challenge to the court community. Courts have long held that in order to be understood, they must, by nature, be transparent and open to the citizens they serve. As technology advances and becomes deeply embedded in the culture of our society, this discussion now moves into uncharted territory as courts struggle to balance defendants’ rights and transparency.

Highly portable devices, such as cell phones, smart phones, tablets and notebooks, provide attorneys, parties, members of the public, jurors and members of the media important tools for interacting with the courts. They allow those waiting for a case to be called to court to conduct business as they wait. Information that previously was unavailable because someone left it “back in the office” can be accessed in the courtroom and displayed on screen. Electronic calendars are readily available. As courts move toward paper-on-demand, portable devices become a necessity. Jurors can use their devices while waiting to be called to courtrooms and during breaks, thus relieving some of the inconvenience of serving. Members of the media can update editors and producers from the courtroom. They also can write articles as events unfold, often reporting in the form of blogs and microblogs.

Counterbalancing these benefits are courtroom management issues the courts must recognize and control. Are there administrative orders in place prohibiting these devices in the courtroom? If so, it is probably time for the bench to have a discussion to gauge the climate and examine actual practices from division to division. What, if any, legal ramifications are there to allowing these devices in the courtroom? Do they differ depending on the case type? Has there been a recent discussion with judges regarding transparency issues in the court? What benefits and dangers can be identified in allowing these devices in courtrooms? If dangers are identified, how can they be mitigated? Have there been bench-bar discussions on this issue?

The issues raised for cell phone, camera phones, smart phones, tablets and notebooks go hand-in-hand with those related to microblogging from the courtroom. The attributes making microblogging attractive for the courts as a communication tool present the potential for misuse or abuse in courtrooms. If managed properly, however, both hold the potential of significantly raising public trust and confidence through accessibility, transparency, immediacy, integrity and accountability.

\textit{Effects on Court Proceedings}

When abused or improperly managed, this technology has the potential to facilitate tainting witnesses, disseminating inappropriate or potentially threatening photos, producing appellate issues, or providing an inappropriate communication thread for jurors, parties and observers.
For a productive discussion, the following topics should be addressed:

- Will the issue be addressed by the state Supreme Court or the administrative office of the courts, or will it be a local decision?
- Will discretion be given to individual judges?
- Will cell phones, smart phones, tablets and notebooks be banned from the courthouse?
- Do new court rules need to be developed?
- Do specific jury instructions and admonitions need to be implemented?
- Does language for decorum orders need to be developed?
- What signage needs to be developed and posted?
- What will be the ramification of ignoring the issue?
- Has a policy been clearly communicated to all court personnel and courthouse security?
- Have court personnel and courthouse security been instructed on how to handle the situation should it arise?

**Effects on Ethics and Conduct for Judges and Court Employees**

The intersection of judges and court employees concerning ethical issues related to smart phones, tablets and notebooks appears to be primarily based on whether their use is strictly limited during business hours. Many courts have adopted policies similar to those in the private sector prohibiting employees from having devices turned on during regular business hours.

**Summary**

As smart phones, tablets and notebooks become more common, the proactive management of their interaction and integration with the courts is a discussion that should be held sooner than later. Ignoring technology and the challenges it poses is a disservice. Short of an all-out ban of electronic devices in the courtroom, facing the issues is the best management approach.

As courts progress toward paper-on-demand, the necessity for such devices in the courtroom will become more apparent. Proactive discussion will prepare courts and judges to use the technology to the greatest benefit possible.

**Smart Phones, Notebook and Tablet Samples**

![Smart Phones, Notebook and Tablet Samples](http://www.apple.com/iphone/iphone-3gs/)
MONITORING AND METRICS (e.g., ADDICTOMATIC, SOCIAL SEEK, SOCIAL MENTION, GOOGLE'S SOCIAL SEARCH, QUANTCAST)
This category includes the large and increasing body of sites that aggregate information about Internet traffic patterns and what is posted on social media sites. They display analyses of how a particular entity is portrayed or understood by the public.

As the Internet continues to explode in sheer volume, diversity and mass, manual monitoring and tracking is impossible. Automated Internet aggregation technologies regularly scan thousands of websites, mining for information to be delivered in subscriber-customized packages. An aggregator can check for new content at user-determined intervals and retrieve updates, eliminating the need for manual monitoring. The information and data are mined from sites ranging from unfiltered controversial opinion-based sites to sites with verified statistical data reports. Aggregators take no legal responsibility for information collected.

When using an aggregation service, subscribers determine what information they want “pulled” from sources they identify. In this way, aggregators differ from tools like e-mail alerts that are often used by courts. Specifically, rather than subscribers having information “pushed” to them unsolicited, information is “pulled” for them from sources they identify. The “pull,” as opposed to the “push,” functionality also allows recipients to unsubscribe easily from a feed or location. Aggregation services generally allow subscribers to create their own unique dashboard, single-screen browser display or desktop application that organizes and displays the desired incoming information and data.

Aggregation features are frequently built into website portals, Web browsers, and e-mail programs. Once a user is subscribed to a source, such as an RSS feed, tag (a keyword or phrase that allows the subscriber to search, sort, filter and categorize incoming information), news reader, search aggregator or other source, the aggregator automatically scans for new content and displays it on the subscriber’s personal display.

Popular Service Providers
Addictomatic creates a custom page on any topic, enabling users to create personal Web searches for news, blog posts, and still and video images. The service allows each user to collect results on a personally tailored dashboard and bookmark the page for future reference. The dashboard also can be modified to accommodate the user’s changing preferences.

SocialSeek focuses on news and hot topics, performing searches on press, tweets, blogs, events, and still and video images on any topic. The application creates charts, topical comparisons and allows users to export the results and charts. Social Mention is a social media search-and-analysis platform that aggregates user-generated content into a single stream of information. It can track and measure any topic in the social media websphere, including Twitter, Facebook, FriendFeed, YouTube, Digg and Google.
Google Social Search is a service designed to help users find relevant, publicly accessible content from within a social circle or set of online friends and contacts. All displayed content is publicly available online through various search engines. Types of information available comes from websites, blogs, public profiles and other content linked from sources, such as the user’s friends’ Google profiles, Web content, tweets and reviews.

Quantcast measures and organizes digital media traffic information. The user controls what information is publicly available. Quantcast scans U.S. Internet users, providing detailed audience profiles for the advertising marketplace to learn more about what consumers do online. The service allows users to evaluate customer profiles against the entire U.S. Internet population.

Addictomatic, SocialSeek, Social Mention, Google Social Search and Quantcast are all free services.

**Effects on Court Proceedings**

“There are rules of court, rules of procedure and rules of evidence that need to be followed,” Texas District Judge Craig Smith said, referencing independent research by jurors as particularly troubling, stressing, “No case should ever be tried by secret evidence … Secret evidence would be information presented and not subject to cross examination or context.”

To date, the literature available to the New Media Project research did not specifically point to monitoring and metrics as a tool used by courts, judges or jurors impacting court proceedings. The potential or subliminal impact is, however, real if ignored. With an aggregator installed on a personal digital assistant (PDA), a juror easily can research any person or aspect of a trial within minutes in any location.

On the court administration and public information side of court operations, monitoring and metrics have a significant potential for identifying target audiences to promote the courts and provide educational resources, proactively monitor and respond to inaccuracies throughout the Web and foster public trust and confidence. Court public information officers use these tools to monitor media reports, allowing them to respond quickly to inaccuracies and produce public information campaigns to educate the public proactively.

**Recent Statistics**

The higher the traffic on the Web and the more chatter there is on social media, the more important it is for monitoring services to provide accurate use data to both information providers and news makers. Addictomatic now has 12,500 page views a day. While in competition with numerous other tracking services, it is ranked by many observers as the top monitoring service and the easiest to use.

Other services, like Topsy, which searches daily conversations about topics, are helpful when giving feedback. SocialSeek and Social Mention also track the “hotness” of topics or issues and continue to grow in use.

Allyson Kapin, founding partner of Rad Campaign, an online communications firm, ranked in June 2010 the “Top Five Tools for Listening on the Social Web,” on frogloop.com. She recommended groups or individuals select at least two “listening” sites and visit them at least three times per week for a month. After four to six weeks, Kapin suggests, the group or individual should select new sites to visit, providing the broadest spectrum of information.
Effects on Ethics and Conduct for Judges and Court Employees

Potentially, the most obvious effect monitoring and metrics tools have on ethical considerations for judges, court administrators and court employees is their ability to “dig” out information or comments that may be inappropriate for public display. Both judges and court employees are held to a high standard by their respective codes of conduct.

Effects on Courts’ Ability to Promote Understanding and Public Trust & Confidence in the Judicial Branch

Monitoring and metrics online tools automate information and data extraction, collection and integration. As a tool for the judiciary, these services enable courts to track issues, address inaccuracies, and gauge public trust and confidence. Judges, on the other hand, are tasked with ensuring jurors do not exploit the convenience of having a myriad of case-related, non-admissible information at their fingertips.

Public information officers have used monitoring technology successfully to track issues and cases, address inaccuracies, proactively respond to issues before they become insurmountable, promote public education in areas where misinformation or lack of information prevails, and gauge public trust and confidence since the technology’s inception.

Summary

For a public information office, law enforcement officials or court administrators, having a monitoring tool readily available can help detect potential safety and security issues. For judges, the ease and convenience a monitoring tool offers jurors trying to conduct investigations can be devastating to a case. The potential asset, as well as liability, aggregators present is illustrated in the example below, a search of a high-profile case that worked its way through the 19th Judicial District, State of Colorado, in the courtroom of District Court Judge Marcelo Kopcow.
Court-Related Monitoring and Metrics Examples
NEWS CATEGORIZING, SHARING AND SYNDICATION
(e.g., BLOGS, RSS, DIGG, REDDIT, DEL.ICIOU.US)
This is a broad category that includes websites and technology that enable the easy sharing of information, photos and video, and the categorization and ranking of news stories, posts to blogs and other news items.

A blog, or “Web log,” is a Web dialogue or commentary typically containing text, images, videos, Web links, and/or graphics displayed in reverse chronological order. Blogs are generally classified as personal, topical, organizational or media (including vlogs — composed of videos, linklogs — composed of links, tumblelogs — containing shorter posts and mixed media), and by device type, such as moblog (blogs created for a mobile phone or PDA). A blog can be either a one-way or multi-party thread of commentary. With blog search engines, such as Bloglines, BlogScope and Technorati users can perform global searches across the different proprietary service providers.

RSS, or really simple syndication, is composed of standardized Web-feed formats used to upload or publish news headlines, audio and video clips, and blog posts that include text and embedded data, such as publishing dates and source information. Subscribers receive updates aggregated onto their computer or mobile device from Web sources unique to each user’s set preferences. Because they have an integrated standardized file format, XML, RSS feeds can be accessed with RSS reader or aggregator software that is initiated when the subscriber accesses the appropriate RSS icon. RSS readers regularly scan the user-identified subscribed feeds for updates, providing the results of the search on the user’s desktop or mobile device.

Popular Service Providers
Digg is a free social news Web service designed to help subscribers discover and share information from the Internet. To participate, registered subscribers identify a link, log into Digg, categorize the link, such as “news story,” add a headline and description and then “submit” the story. Visitors to Digg then vote stories up or down, thus “digging” or “burying” the submission on the site. “Dugg” stories appear on the front page.

Reddit is a free Web-based service that allows subscribers (who provide all the content) to “vote” on Internet content that is new and popular. Links that receive a high approval rating “bubble up” toward the No. 1 slot on the front page of Reddit.

del.iciou.us is a free Web-based social “bookmarking” service used for searching, discovering, organizing, storing, managing and sharing Web “bookmarks.” “Bookmarks” and “tags” are searchable keywords. del.iciou.us displays its “fresh bookmarks” and “hot list” on its home page. Bookmarks are publicly accessible by default; however, users can manually mark specific bookmarks as private.
**Effects on Court Proceedings**
News categorizing, sharing and syndication tools in many ways present challenges and benefits for the judiciary similar to those presented by wikis (Wikipedia, Judgepedia, etc.). The amount of information readily amassed through these tools can create havoc for judges with inquisitive jurors. For judiciaries facilitating transparency, they become an efficient and effective tool to identify and reach larger, more diverse audiences.

To date, the literature available to the New Media Project research did not point specifically to news categorizing, sharing and syndication as a tool used by courts, judges or jurors impacting court proceedings.

**Effects on Ethics and Conduct for Judges and Court Employees**
News categorizing, sharing and syndication technologies have the potential to launch significant court news or even an indiscretion by a judge or court employee into cyberspace, quickly elevating it to a worldwide forum. If perceived as egregious enough to draw significant attention and “bookmarked” or “tagged” for optimal exposure, the technologies have the potential to quickly rise to the top of services, such as Digg, Reddit and del.iciou.us, bringing even more attention to the issue.

**Effects on Courts’ Ability to Promote Understanding and Public Trust & Confidence in the Judicial Branch**
In the fiscal climate many courts currently find themselves, news categorizing, sharing and syndication technologies provide a work-smart tool. Tracking and monitoring the general climate through a broad range of Internet discussions and news sources, which once consumed many hours of research, now is accessed nearly instantaneously. Not only is it faster, the results also represent much broader sources of information, ranging from world news services to personal tweets or blogs.

In addressing the courts as a news generator, these Internet technologies allow courts to widely distribute

**Recent Statistics**
There were 234 million websites on the Internet in December 2009, according to Netcraft, and 1.73 billion Internet users in September 2009, according to royal.pingdom.com. As the Internet becomes a staple of everyday communication, blogs flourish.

In July 2010, there were nearly 144 million blogs on the Internet, including everything from institutional to personal blogs, according to blogpulse. During one 24-hour period in July 2010, blogpulse logged the creation of 45,000 new blogs. People do not just spend a few seconds on blogs. According to Technorati’s State of the Blogosphere, 15 percent of bloggers log more than 10 hours per week blogging and updating blogs.

Technorati’s snapshot showed the following profile of a blogger in 2009:
- 48 percent are in the United States.
- Two-thirds are male.
- 60 percent are ages 18 to 44.
- 75 percent have college degrees.
- 40 percent have graduate degrees.
- More than half are married.
- More than half have children.
- 25 percent have a family household income of more than $100,000.

Certainly, these newly released statistics should disabuse anyone of the stereotypical notion that bloggers are “35-year-old losers living at home and blogging out of their parents’ basements.”

Digg, created in 2004 by Kevin Rose, also is flourishing. Recent data released by crunchbase placed Digg, with 27.1 million users, among the top 100 Internet sites. Reddit is owned by Conde Nast. Similarly, it had almost 1.75 million unique visitors in June 2010 – an increase of about 450,000 unique users over the same month in 2009.
information at essentially no cost. This is a quantum leap from the days when press releases were copied, folded, stuffed in envelopes and mailed at ever-escalating postage rates.

Summary
News categorizing, sharing and syndication technologies have the potential to become increasingly useful to courts as court personnel become skilled in using these tools and tagging techniques. They are effective and efficient ways to monitor news coverage, gauge the climate surrounding courts and distribute materials to foster transparency.

Court-Related News Categorizing, Sharing and Syndication Samples

http://digg.com/search/page3?s=Alabama+court

http://www.reddit.com/search?q=Florida+court
VISUAL MEDIA SHARING (E.G., YOUTUBE, VIMEO, FLIKR)

These sites allow users to upload still and video images that are stored in searchable databases and easily shared, and can be e-mailed, posted, or embedded into nearly any website.

Internet media sharing hosting services allow individuals to effortlessly upload photos, video clips and sound recordings, for personal or mass distribution, onto the Internet at little or no cost.

Consequently, camera phones and the array of digital recording equipment now available captivate a powerful network of amateur and professional photographers and videographers seeking a platform to share their still images and video recordings.

Visual media sharing hosts store the images and recordings on their servers. Subscribers can select different types of code to allow the world or specific individuals to view their work. The services also provide tagging tools, which embed key words or terms into the postings that are picked up by search engines, such as Yahoo and Google.

Popular Service Providers

YouTube, now a subsidiary of Google Inc., was created in early 2005 to provide subscribers with a platform to upload content, tag files to enable search ability and share low- or standard-definition videos worldwide. The site is ranked fourth in the United States in terms of traffic generated on the Internet. YouTube facilitates viewing a wide variety of formats of subscribers’ movie and television clips, music videos and short original videos. Clips created and uploaded by individuals are available alongside those created by international media corporations.

While only registered subscribers can upload videos, unregistered users can view all unrestricted content. Limited to 10 minutes in length and file sizes of no more than 2 GB, the number of videos a standard subscriber can upload is unlimited. In March 2010, YouTube announced it was introducing automatic captioning for videos, in order to make the site more accessible for the deaf and hearing-impaired.

Vimeo launched in 2004, was created by filmmakers and video creators. It allows non-commercial registered users to upload higher-resolution and high-definition videos, and create profiles to comment on the videos. In March 2010, the subscription service reported more than 3.2 million members. With a free basic account, subscribers are limited to 500 MB per week. With the Vimeo Plus upgrade, subscribers can upload 5 gigs (1 GB per file) per week for an annual nominal fee.

Flickr is a hosting service on which subscribers can edit, organize items into sets or collections, add text and geographic maps, embed tags or tag clouds (tags of multiple key words), and upload still and video images. Subscribers also control privacy and access. Viewers can add notes or comments. “Guest passes” allow subscribers to share “private” images and videos on a controlled basis with nonsubscribers. There are two subscription levels: free, which allows two videos and 100 MB of photos (per-item size restrictions apply) per month; and pro, which is available for a nominal annual fee, allowing unlimited photo and video uploads (per-
video size restrictions apply) with HD capability and unlimited bandwidth and storage. Pro subscribers can monitor their account statistics, including the number of hits to their sites.

**Effects on Court Proceedings**

“I’ve always thought if the public could see how the judicial process works, they would take a somewhat different view of it,” said Chief U.S. District Judge Vaughn Walker, of the 9th Circuit Federal Court, Northern District of California, in approving posting the Proposition 8 debate on homosexual marriages on YouTube. “I think it’s worth trying in this case,” he said. Walker was speaking of the Jan. 11, 2010, trial scheduled to be filmed by court personnel and then posted on YouTube. The controversy over control of federal civil court proceedings’ televised broadcasts, however, escalated to the U.S. Supreme Court. The idea of showing the proceedings on YouTube was abandoned, but the examination of the issues appears to be far from over.

The potential ramifications of visual media sharing for the courts, judges, media, court technology divisions and the public must be methodically examined as it relates to the judiciary. The ease of use, affordability, accessibility and flexibility makes the technology attractive to courts as an educational tool. Those same attributes create a new dimension that requires diligence in identifying how to effectively address and properly manage this new platform of communication.

Examples of how visual media sharing intersects with the courts are emerging from many directions. As an educational tool, YouTube was the platform for insightful videos that sprang to life when Sonia Sotomayor’s name surfaced for U.S. Supreme Court justice. Cases emerging on the legal ramifications of the rapidly evolving visual media sharing technology have found their way into courtrooms. In Houston, a judge was threatened on this online platform.

A sampling of news accounts illustrates recent situations:

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**Recent Statistics**

The Pew Research Center studied the use of visual media sharing sites over the past two years. An April 2009 survey reported that the number of adults watching online videos doubled since 2006. Almost two-thirds (62 percent) of adult Internet users have watched video from the various sites and nearly 20 percent of all Internet users watch online video on any given day. The Pew research is available [here](#) and [here](#).

A new Pew study from June 2010 said 52 percent of all Americans have watched or downloaded a video online:

- 50 percent of adult Internet users watch comedy or humorous videos online.
- 38 percent of adult Internet users watch educational videos online.
- 30 percent of adult Internet users watch political videos online.
- 1 out of seven adult Internet users have uploaded a video to the Internet.

YouTube serves approximately 1 billion videos per day according to the latest reports and its use has skyrocketed. Almost 2.5 million YouTube videos were attached to blogs in the second half of 2009, reported readwriteweb in an article written by Frederic Lardinois. The data also said that 20 to 35 year olds embed the most videos, at 57 percent.

The study also revealed that YouTube has become a forum for discussing politics and governmental issues. “Videos about news and politics get the highest average number of comments (561)...” Lardinois said.

In March 2010, Vimeo launched an Advanced Statistics feature. According to videomaker.com, this new service shows the health of that company and provides subscribers with “detailed information on the playback of their videos.” Plus, members now can see video analytics broken down by date range, geography and embed location. This tool is critical to chart breadth of coverage by a video.
When U.S. Supreme Court Justice Sonia Sotomayor was nominated, video clips emerged on YouTube showing her in various speaking venues, as did clips of various news reports and analyses, followed by her swearing in. The clips added a new dimension and insight to the selection process.

In the Southern District of New York, in U.S. District Judge Louis Stanton’s court, a three-year battle continues with Viacom arguing with Google and YouTube for allowing subscribers to upload and play Viacom’s copyrighted material. Google and YouTube assert they are protected under the Digital Millennium Copyright Act of 1998.

In Houston, a disgruntled party posted a video on YouTube cursing federal Judge David Hittner. The litigant, after posting his feelings, caught the attention of the U.S. Marshals Service.

**Effects on Ethics and Conduct for Judges and Court Employees**

Visual media sharing and microblogging pose similar considerations in regard to judges and court employees. In both professional and personal use, there is an inherent risk of making comments, either directly or inadvertently, that are preserved into perpetuity and also may be viewed as improper when held to the high standards imposed by codes of conduct for both groups.

Judges’ codes of judicial conduct emphasize responsibility as they characteristically admonish judges to avoid impropriety and the appearance of impropriety in all activities. Further, activities on and off the bench should minimize the risk of conflict with judicial obligations.

Judicial employee codes of conduct routinely contain language to avoid any appearance of impropriety that might diminish the integrity and dignity of the court.

**Effects on Courts’ Ability to Promote Understanding and Public Trust & Confidence in the Judicial Branch**

Video vignettes have the ability to capture the attention of a new audience whether they are from courtroom proceedings or generated separately by judicial employees. Juror orientation videos have long been posted on judicial websites, so the basic philosophy is not entirely new.

The sky is the limit in exploring additional opportunities for the use of Web-based tools, such as instructions for pro se parties and attorneys, educational segments and media notifications. One of the significant benefits is that the images are stored on an external server, thus freeing valuable space on judicial servers.

**Summary**

Visual media sharing has captured the interest and intrigue of creators and audiences. As the courts seek transparency to promote understanding, investigating these technologies will out of necessity become a part of the court culture.
Visual Media Sharing Samples

http://www.youtube.com/watch?v=OfC99LrrM2Q

http://vimeo.com/6613324
A wiki is a website that allows for the easy creation and editing of multiple interlinked Web pages via a Web browser using a simplified markup language or a WYSIWYG (what-you-see-is-what-you-get) text editor. Among the uses for wikis are the creation of collaborative information resource websites, power community websites and corporate intranets.

The general premise of a wiki is collaboration. The concept, although innovative, is clearly vulnerable to abuse. Wikis are generally protected against liability stemming from false or inappropriate contributor postings by Section 230 of the 1996 Communications Decency Act, which states, “No provider or user of an interactive computer service shall be treated as the publisher or speaker.”

Distinguishing providers from other entities, like media outlets, subjects media outlets to a much higher standard. Wikis generally outline guidelines stating that information should be void of bias and the focus should be on facts, not opinions or assertions. Sites have disclaimers warning that none of the information available is necessarily reviewed by anyone with the expertise required to ensure accuracy.

Enforcement is challenging, at best, given the volume of contributors and postings.

**Popular Service Providers**

The most widely recognized and used wiki is Wikipedia, an online collaborative encyclopedia created by individual and group contributors. Its structure allows anyone with an Internet connection to alter its content. Wikipedia’s disclaimer states, “Wikipedia cannot guarantee the validity of the information found here (emphasis added).”

Another much lesser-known wiki that has impact on the judicial system is Judgepedia. Judgepedia is a collaborative wiki focusing on courts and judges that allows any registered user to edit the content.

Judgepedia’s home page notes, “By helping to edit, add information, and fix any mistakes you see, the quality and depth of the information steadily improves and grows over time.”

The project, originally sponsored by the Sam Adams Alliance in 2007, reported on its home page in March 2009, “Judgepedia has 76,687 pages and 516 registered users. We’ve had over 5 million page views and twice that many ideas.”

The Lucy Burns Institute took over sponsorship of Judgepedia in July 2009. The Judgepedia disclaimer now reads, “Judgepedia makes no warranty as to the validity of content found on Judgepedia.” In June 2008 Judgepedia changed its configuration to require editors to register by establishing a user account.
**Effects on Court Proceedings**

By and large, it generally can be said that the quality/reliability quotient for information available on the Internet is at least, in part, based upon the source of the information. As users thread their way through the maze of information available, they become more educated, savvy and critical.

As such, wikis present an interesting opportunity and challenge to the judiciary in ensuring accurate information is provided in an ongoing, ever-evolving platform. For judges standing for retention election, ensuring accurate information is void of bias and inappropriate interpretations is very difficult as wikis grow in popularity and depth. The challenge is further compounded by the fact that wikis are a readily available product of open contributions that are at best loosely monitored for accuracy and appropriateness.

To date, the literature available to the New Media Project research did not specifically point to wikis as tools used by courts, judges or jurors as impacting court proceedings. Wikis are available through many PDAs jurors bring into courtrooms daily. Below are two examples of how inaccuracies surfaced.

If someone accuses you on Wikipedia of being responsible for killing a person, do not expect much relief from the courts. That is the lesson emerging from former journalist John Seigenthaler’s run-in with an article in the online, anyone-can-contribute encyclopedia, which for four months carried an article falsely linking him to the assassinations of Robert and John F. Kennedy. But as angry as Seigenthaler was, and as untrue as the article was, it is unlikely he has a good court case against Wikipedia, according to legal experts interviewed by CNET News.com. Seigenthaler himself acknowledged as much in a *USA Today* op-ed piece.\(^{132}\)

Ron Livingston of “Office Space” is suing Wikipedia for liable, invasion of privacy and for using his name and likeness without his permission.\(^{133}\)

**Effects on Ethics and Conduct for Judges and Court Employees**

The existence of open-forum websites promoting themselves as credible information sources provides a broad public platform for anyone who is disgruntled with a specific judge or court employee. Finding and correcting this type of information is akin to finding a needle in a haystack, given the amount of information posted. Conversely, because of the volume, it likely would take a specifically targeted search to access it.
Effects on Courts’ Ability to Promote Understanding and Public Trust & Confidence in the Judicial Branch

Providing accurate information and diligently monitoring court-related postings on wikis can potentially have a significant impact on the quality of information available to the public who use this non-traditional platform.

Summary
The quality and value of wikis will continue to be monitored and argued as long as they exist given the lack of contributor control and oversight available.
Wiki Examples
OPINION SURVEY RESULTS

INTRODUCTION
As new media and the courts has become more of an issue of study and discussion in the judicial branch, a great wealth of anecdotal information has emerged. Nearly every judge or court administrator has stories about a judge on Facebook, a juror tweeting, or a local court launching a successful blog.

What’s been missing has been empirical data about what courts are encountering in the new media environment, how courts and judges are responding, and where they are headed in the future. Following are the results of the first-ever national survey on new media and the courts.

METHODOLOGY
The electronic-only survey tool was distributed on the NCSC e-mail distribution system to an estimated 16,000 individuals primarily within the court community on June 16, 2010. Federal judges were not included in the distribution. The survey remained open until June 25, 2010. Eight hundred and ten participants completed the entire survey while another 789 submitted partially completed surveys. The results of the completed surveys are discussed in this report.

Survey respondents represent a wide variety of individuals primarily involved in the courts. Of the 810 respondents discussed here, 254, or 31.4 percent, are considered judicial officers. They are those respondents who identified their job title as judge, administrative judge or magistrate.

Three individuals classified themselves as journalists, 14 as licensed attorneys, and 21 as a variety of other professionals. All others were judicial system employees.

A majority of the respondents, 58.5 percent, work at the trial court level. Municipal courts were represented with 10.1 percent of the responses and appellate courts with 6.4 percent. The “other” category included 25 percent representing a wide variety of specialty courts, 21 federal court respondents and 43 individuals from state and federal administrative offices. Of the respondents, 41.7 percent were attorneys.

The highest percentage of respondents was in mixed jurisdictions, while 29.3 percent were urban, 14 percent rural and 10.5 percent suburban. The highest percentage of participants were from California with 8.7 percent; Arizona with 7 percent; Colorado with 6.9 percent; Ohio with 6.3 percent; and Florida, Michigan and Washington each within the 4-to-5 percent range. All other states ranged from 0.1 to 4 percent.

The largest age group reporting was 46 to 65 years old, representing 72.4 percent of the respondents. Those under age 45 accounted for 23.1 percent, and 66 or older came in at 4.4 percent.

More than half of the respondents, 52.9 percent, work in jurisdictions where judicial officers must stand for competitive elections, 24.5 percent stand for retention election, 14.2 never stand for election, and 8.4 are designated “other.”
GENERAL CONCLUSIONS
Detailed data and charts are shared below. Some of the more interesting conclusions from the survey show:

- About 40 percent of judges reported that they use social media profile sites, with a majority of these on Facebook. This almost mirrors the percentage of the general adult population that reports using social media profile sites, according to the Pew Internet & American Life Project. It is important to keep in mind that this figure may not be 100 percent representative. On one hand, judges represent a social demographic group that tends to have higher Internet use and presumably would have higher social media use (educated, higher income, middle-aged adults). In addition, those electing to take this survey and answering this particular question would presumably be individuals with a more active interest in the topic of new media and thus be more likely users of social media.

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<tr>
<th>USE OF SOCIAL MEDIA PROFILE SITES BY JUDICIAL OFFICERS</th>
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<tbody>
<tr>
<td>Never</td>
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<tr>
<td>Less than once per month to hourly or more</td>
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<tr>
<td>Facebook</td>
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<td>MySpace</td>
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<td>Ning</td>
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<td>Other</td>
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- Judges who are appointed and do not stand for re-election were much less likely to be on social media profile sites. About 9 percent from non-elected jurisdictions reported they are on these sites.

<table>
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<th>JUDICIAL SELECTION METHOD &amp; SOCIAL MEDIA PROFILE SITE USE</th>
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<tr>
<td>Selection method</td>
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<tr>
<td>Stand for competitive election</td>
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<tr>
<td>Must stand for retention election</td>
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<tr>
<td>Never stand for election</td>
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<td>Other</td>
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- More than half (56 percent) of judges report routine juror instructions that include some component about new media use during trial.
- A very small fraction of courts (6.7 percent) currently have social media profile sites such as Facebook.
• An equally small fraction of courts (7 percent) currently use microblogging sites such as Twitter.
• An even smaller number of courts (3.2 percent) use visual media sharing sites like YouTube.
• About three-quarters of all respondents agree or are neutral that courts as institutions can maintain a social media profile site, or use microblogging technologies or visual media sharing without compromising ethics.
• Only about 25 percent of total respondents believe these are necessary tools for public outreach.
• Most courts do not appear to have imminent plans for moving into these technologies (3.2 percent report plans for using social media profile sites; 1.6 percent report plans to start microblogging; and 2.8 percent report plans to use visual media sharing sites).
• A smaller proportion of judges than might be expected (9.8 percent) reported witnessing jurors using social media profile sites, microblogging sites or smart phones and tablets in the courtroom.
• More than one-fourth of judges and general respondents reported witnessing members of the media using these technologies in the courtroom.
• Attorneys by far were the most reported by respondents as using these technologies in the courtroom, with 54.3 percent of judges and almost 40 percent of general respondents reporting they have observed attorneys using the technology in the courtroom.
• Almost all (97.6 percent) respondents agree that judges and court employees should be educated about appropriate new media use and practices.
• Nearly half of judges (47.8 percent) disagreed or strongly disagreed with the statement “Judges can use social media profile sites, such as Facebook, in their professional lives without compromising professional conduct codes of ethics.”
• Judges appear to be more comfortable with using these sites in their personal lives, with 34.3 percent disagreeing or strongly disagreeing with the statement “Judges can use social media profile sites, such as Facebook, in their personal lives without compromising professional conduct codes of ethics.”

USE OF NEW MEDIA TECHNOLOGIES
The survey queried respondents about the use of social media profiles sites, microblogging technologies and visual media sharing websites — looking for specifics on the actual and planned institutional uses by the courts they work for — as well as on the frequency and nature of the respondents’ own use of these three new media technology categories.

Actual Use by Courts as Institutions
While more than a third of respondents agree that courts as institutions can (1) maintain a social media profile site, or use (2) a microblogging technology or (3) visual media sharing websites without compromising ethics, just 7 percent or fewer work for a court that actually engages in such an activity.
Social media profile sites. Only 6.7 percent of respondents indicated they work at courts that, as institutions, maintain a social media profile site. Reported uses for the sites were:

- For public education – 87.0 percent.
- To promote events – 61.1 percent.
- To release decisions – 48.1 percent.
- For explaining court processes and procedures – 40.7 percent.
- To highlight the activities of individual judges – 20.4 percent.
- Other – 16.7 percent.

Respondents identified Facebook as the social media profile site most often used by their court (87 percent), followed by MySpace (3.7 percent), with 37 percent categorizing the site used by their court as “other.”

Microblogging technology. With 7 percent of respondents indicating they work at a court that uses a microblogging technology, this technology is the most heavily used by courts of the three examined in this portion of the survey. Reported uses for the sites are as follows:

- For public education – 70.2 percent.
- To promote events – 63.2 percent.
- To release decisions – 56.1 percent.
- For explaining court processes and procedures – 33.3 percent.
- Other – 31.6 percent.
- To highlight the activities of individual judges – 24.6 percent.

Twitter, at 98.2 percent, was the only microblogging technology identified, with 1.8 percent indicating the use of “other” technology.

Visual media sharing websites. Visual media sharing website use represents the smallest reported use in this portion of the survey, with just 3.2 percent of survey takers indicating they work at a court that, as an institution, uses a visual media sharing website:

- For public education – 69.2 percent.
- For explaining court processes and procedures – 38.5 percent.
- To promote events – 34.6 percent.
- To highlight the activities of individual judges – 11.5 percent.
- Other – 11.5 percent.
- To release decisions – 7.7 percent.

The website respondents reported their courts using most was YouTube (90.5 percent), followed by Flikr (20.4 percent), and Vimeo (13.2 percent). Another 9.3 percent reported the use of an “other” site.
Planned Use by Courts as Institutions
Just slightly more than 3 percent of respondents reported working in courts where plans are in place to engage one of the three technology categories examined in this portion of the survey. The survey did not ask respondents to name the specific technologies their courts plan to engage.

**Social media profile sites.** 3.2 percent of respondents indicate they work at a court that, as an institution, plans to use a social media profile site:

- For public education – 84.6 percent.
- To promote events – 61.5 percent.
- For explaining court processes and procedures – 61.5 percent.
- To release decisions – 30.8 percent.
- To highlight the activities of individual judges – 19.2 percent.
- Other – 19.2 percent.

**Microblogging technology.** Just 1.6 percent of survey takers report working at courts with plans to use a microblogging technology. Planned uses include:

- For public education – 61.5 percent.
- To promote events – 46.2 percent.
- To release decisions – 46.2 percent.
- For explaining court processes and procedures – 46.2 percent.
- Other – 30.8 percent.
- To highlight the activities of individual judges – 15.4 percent.

**Visual media sharing websites.** Only 2.8 percent of respondents indicate they work at courts that, as institutions, have plans for using a visual media sharing website. Intended uses include:

- For public education – 91.3 percent.
- For explaining court processes and procedures – 69.6 percent.
- To promote events – 47.8 percent.
- To release decisions – 30.4 percent.
- To highlight the activities of individual judges – 17.4 percent.
- Other – 13.0 percent.

Use by Respondents
The survey looked at the use of six categories of new media technology by the respondents, both in general and as judicial officers:

- Social media profile sites.
- Microblogging technology.
- Smart phones, tablets & notebooks.
- Monitoring & metrics.
- News categorizing, sharing and syndication technologies.
- Visual media sharing websites.
Smart phones, tablets and notebooks get the most use among the general population of respondents and judicial officers alike, with 60 percent of the respondents indicating they use the technology category and 57.5 percent of the judicial officers participating in the survey indicating they do. Monitoring and metrics technologies are the least used among both groups. No category is used by a higher percentage of judges than by the population of respondents in general.

**USE OF NEW MEDIA TECHNOLOGIES**

<table>
<thead>
<tr>
<th>Technology</th>
<th>Users (general)</th>
<th>Percent of general</th>
<th>Users (judicial)</th>
<th>Percent of general</th>
<th>Percent of judicial</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social media profile sites</td>
<td>464</td>
<td>57.4</td>
<td>102</td>
<td>12.6</td>
<td>40.2</td>
</tr>
<tr>
<td>Microblogging</td>
<td>120</td>
<td>14.8</td>
<td>35</td>
<td>4.3</td>
<td>13.8</td>
</tr>
<tr>
<td>Smart phones, tablets &amp; notebooks</td>
<td>485</td>
<td>60.0</td>
<td>146</td>
<td>18.0</td>
<td>57.5</td>
</tr>
<tr>
<td>Monitoring &amp; metrics</td>
<td>70</td>
<td>8.7</td>
<td>8</td>
<td>1.0</td>
<td>3.5</td>
</tr>
<tr>
<td>News categorizing, sharing &amp; syndication</td>
<td>189</td>
<td>23.4</td>
<td>40</td>
<td>4.9</td>
<td>15.7</td>
</tr>
<tr>
<td>Visual media sharing</td>
<td>432</td>
<td>53.4</td>
<td>130</td>
<td>16.1</td>
<td>51.2</td>
</tr>
</tbody>
</table>

In general, “limited usefulness” was the reason respondents cited most often for not using a technology. “Ethical concerns” was the least cited.

Of the respondents who do not use social media profile sites, 75.1 percent cited privacy and 47.5 cited ethics as concerns. For those not using microblogging, privacy (48.9 percent) was the primary reason. Limited usefulness was the primary reason for those eschewing smart phones, tablets and notebooks; monitoring and metrics; news categorizing, sharing and syndication; and visual media sharing websites.

Additional results for the six categories of new media are illustrated on the following pages.
### SOCIAL MEDIA PROFILE SITES
464 users, 102 of whom are judicial officers

#### I use social media profile sites:

<table>
<thead>
<tr>
<th>Frequency</th>
<th>General response (percent of 464)</th>
<th>Judicial officer response (percent of 102)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Once per month or less</td>
<td>23.5</td>
<td>30.4</td>
</tr>
<tr>
<td>Twice per month to once per week</td>
<td>24.4</td>
<td>25.5</td>
</tr>
<tr>
<td>Twice per week to daily</td>
<td>35.3</td>
<td>30.4</td>
</tr>
<tr>
<td>Twice per day to hourly</td>
<td>14.9</td>
<td>12.7</td>
</tr>
<tr>
<td>Hourly or more</td>
<td>1.9</td>
<td>1.3</td>
</tr>
</tbody>
</table>

#### The purpose of my social media profile site use is best described as:

<table>
<thead>
<tr>
<th>Purpose</th>
<th>General response (percent of 464)</th>
<th>Judicial officer response (percent of 102)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Only personal</td>
<td>56.9</td>
<td>74.5</td>
</tr>
<tr>
<td>Mostly personal but some professional</td>
<td>25.9</td>
<td>18.6</td>
</tr>
<tr>
<td>Equally personal and professional</td>
<td>6.3</td>
<td>2.0</td>
</tr>
<tr>
<td>Mostly professional but some personal</td>
<td>6.5</td>
<td>3.9</td>
</tr>
<tr>
<td>Only professional</td>
<td>4.5</td>
<td>1.0</td>
</tr>
</tbody>
</table>

#### I use the following social media profile sites:

<table>
<thead>
<tr>
<th>Platform</th>
<th>General response (percent of 464)</th>
<th>Judicial officer response (percent of 102)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facebook</td>
<td>89.0</td>
<td>89.2</td>
</tr>
<tr>
<td>MySpace</td>
<td>7.5</td>
<td>4.9</td>
</tr>
<tr>
<td>LinkedIn</td>
<td>30.8</td>
<td>20.6</td>
</tr>
<tr>
<td>Ning</td>
<td>3.2</td>
<td>1.0</td>
</tr>
<tr>
<td>Other</td>
<td>10.8</td>
<td>2.0</td>
</tr>
</tbody>
</table>
# MICROBLOGGING TECHNOLOGY

120 users, 35 of whom are judicial officers

I use microblogging technology:

<table>
<thead>
<tr>
<th>Frequency</th>
<th>General response (percent of 120)</th>
<th>Judicial officer response (percent of 35)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Once per month or less</td>
<td>38.3</td>
<td>47.6</td>
</tr>
<tr>
<td>Twice per month to once per week</td>
<td>21.7</td>
<td>14.3</td>
</tr>
<tr>
<td>Twice per week to daily</td>
<td>17.5</td>
<td>19.0</td>
</tr>
<tr>
<td>Twice per day to hourly</td>
<td>14.2</td>
<td>14.3</td>
</tr>
<tr>
<td>Hourly or more</td>
<td>8.3</td>
<td>4.8</td>
</tr>
</tbody>
</table>

The purpose of my microblogging technology use is best described as:

<table>
<thead>
<tr>
<th>Purpose</th>
<th>General response (percent of 120)</th>
<th>Judicial officer response (percent of 35)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Only personal</td>
<td>31.7</td>
<td>42.9</td>
</tr>
<tr>
<td>Mostly personal but some professional</td>
<td>27.5</td>
<td>38.0</td>
</tr>
<tr>
<td>Equally personal and professional</td>
<td>7.5</td>
<td>4.8</td>
</tr>
<tr>
<td>Mostly professional but some personal</td>
<td>11.7</td>
<td>14.3</td>
</tr>
<tr>
<td>Only professional</td>
<td>21.7</td>
<td>0.0</td>
</tr>
</tbody>
</table>

I use the following microblogging technologies:

<table>
<thead>
<tr>
<th>Platform</th>
<th>General response (percent of 120)</th>
<th>Judicial officer response (percent of 35)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Twitter</td>
<td>75.0</td>
<td>52.4</td>
</tr>
<tr>
<td>Tumblr</td>
<td>2.5</td>
<td>0.0</td>
</tr>
<tr>
<td>Plurk</td>
<td>0.8</td>
<td>4.8</td>
</tr>
<tr>
<td>Other</td>
<td>22.5</td>
<td>42.9</td>
</tr>
</tbody>
</table>
### SMART PHONES, TABLETS & NOTEBOOKS

485 users, 146 of whom are judicial officers

I use smart phones, tablets or notebooks:

<table>
<thead>
<tr>
<th>Frequency</th>
<th>General response (percent of 485)</th>
<th>Judicial officer response (percent of 146)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Once per month or less</td>
<td>3.7</td>
<td>5.5</td>
</tr>
<tr>
<td>Twice per month to once per week</td>
<td>3.9</td>
<td>3.4</td>
</tr>
<tr>
<td>Twice per week to daily</td>
<td>14.8</td>
<td>17.1</td>
</tr>
<tr>
<td>Twice per day to hourly</td>
<td>32.0</td>
<td>43.2</td>
</tr>
<tr>
<td>Hourly or more</td>
<td>45.6</td>
<td>30.8</td>
</tr>
</tbody>
</table>

The purpose of my smart phone, tablet or notebook use is best described as:

<table>
<thead>
<tr>
<th>Purpose</th>
<th>General response (percent of 485)</th>
<th>Judicial officer response (percent of 146)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Only personal</td>
<td>12.2</td>
<td>15.8</td>
</tr>
<tr>
<td>Mostly personal but some professional</td>
<td>25.2</td>
<td>34.9</td>
</tr>
<tr>
<td>Equally personal and professional</td>
<td>23.5</td>
<td>26.7</td>
</tr>
<tr>
<td>Mostly professional but some personal</td>
<td>29.5</td>
<td>16.4</td>
</tr>
<tr>
<td>Only professional</td>
<td>9.7</td>
<td>6.2</td>
</tr>
</tbody>
</table>

I use the following smart phones, tablets or notebooks:

<table>
<thead>
<tr>
<th>Device</th>
<th>General response (percent of 485)</th>
<th>Judicial officer response (percent of 146)</th>
</tr>
</thead>
<tbody>
<tr>
<td>iPhone</td>
<td>26.6</td>
<td>37.7</td>
</tr>
<tr>
<td>iPad</td>
<td>7.2</td>
<td>11.6</td>
</tr>
<tr>
<td>Droid</td>
<td>8.5</td>
<td>6.8</td>
</tr>
<tr>
<td>Blackberry</td>
<td>54.4</td>
<td>47.2</td>
</tr>
<tr>
<td>Other</td>
<td>17.9</td>
<td>15.8</td>
</tr>
</tbody>
</table>
### MONITORING & METRICS

70 users, 8 of whom are judicial officers

I use monitoring and metrics:

<table>
<thead>
<tr>
<th>Frequency</th>
<th>General response (percent of 70)</th>
<th>Judicial officer response (percent of 8)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Once per month or less</td>
<td>50.0</td>
<td>37.5</td>
</tr>
<tr>
<td>Twice per month to once per week</td>
<td>24.3</td>
<td>50.0</td>
</tr>
<tr>
<td>Twice per week to daily</td>
<td>14.3</td>
<td>12.5</td>
</tr>
<tr>
<td>Twice per day to hourly</td>
<td>7.1</td>
<td>0.0</td>
</tr>
<tr>
<td>Hourly or more</td>
<td>4.3</td>
<td>0.0</td>
</tr>
</tbody>
</table>

The purpose of my monitoring and metrics use is best described as:

<table>
<thead>
<tr>
<th>Type</th>
<th>General response (percent of 70)</th>
<th>Judicial officer response (percent of 8)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Only personal</td>
<td>14.3</td>
<td>12.5</td>
</tr>
<tr>
<td>Mostly personal but some professional</td>
<td>21.4</td>
<td>37.5</td>
</tr>
<tr>
<td>Equally personal and professional</td>
<td>15.7</td>
<td>25.0</td>
</tr>
<tr>
<td>Mostly professional but some personal</td>
<td>18.6</td>
<td>25.0</td>
</tr>
<tr>
<td>Only professional</td>
<td>30.0</td>
<td>0.0</td>
</tr>
</tbody>
</table>

I use the following monitoring and metrics websites:

<table>
<thead>
<tr>
<th>Website</th>
<th>General response (percent of 70)</th>
<th>Judicial officer response (percent of 8)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Addictomatic</td>
<td>2.9</td>
<td>12.5</td>
</tr>
<tr>
<td>SocialSeek</td>
<td>1.4</td>
<td>0.0</td>
</tr>
<tr>
<td>Social Mention</td>
<td>4.3</td>
<td>12.5</td>
</tr>
<tr>
<td>Google Social Search</td>
<td>68.6</td>
<td>75.0</td>
</tr>
<tr>
<td>Bing</td>
<td>41.4</td>
<td>25.0</td>
</tr>
<tr>
<td>Quantcast</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Other</td>
<td>15.7</td>
<td>12.5</td>
</tr>
</tbody>
</table>
# News Categorizing, Sharing & Syndication

189 users, 40 of whom are judicial officers

I use news categorizing, sharing and syndication technologies:

<table>
<thead>
<tr>
<th>Frequency</th>
<th>General response (percent of 189)</th>
<th>Judicial officer response (percent of 40)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Once per month or less</td>
<td>30.2</td>
<td>37.5</td>
</tr>
<tr>
<td>Twice per month to once per week</td>
<td>20.6</td>
<td>15.0</td>
</tr>
<tr>
<td>Twice per week to daily</td>
<td>30.2</td>
<td>25.0</td>
</tr>
<tr>
<td>Twice per day to hourly</td>
<td>14.3</td>
<td>17.5</td>
</tr>
<tr>
<td>Hourly or more</td>
<td>4.7</td>
<td>5.0</td>
</tr>
</tbody>
</table>

The purpose of my news categorizing, sharing and syndication technology use is best described as:

<table>
<thead>
<tr>
<th>Type</th>
<th>General response (percent of 189)</th>
<th>Judicial officer response (percent of 40)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Only personal</td>
<td>17.5</td>
<td>25.0</td>
</tr>
<tr>
<td>Mostly personal but some professional</td>
<td>22.8</td>
<td>25.0</td>
</tr>
<tr>
<td>Equally personal and professional</td>
<td>15.3</td>
<td>17.5</td>
</tr>
<tr>
<td>Mostly professional but some personal</td>
<td>20.6</td>
<td>15.0</td>
</tr>
<tr>
<td>Only professional</td>
<td>23.8</td>
<td>17.5</td>
</tr>
</tbody>
</table>

I use the following news categorizing, sharing and syndication technologies:

<table>
<thead>
<tr>
<th>Technology</th>
<th>General response (percent of 189)</th>
<th>Judicial officer response (percent of 40)</th>
</tr>
</thead>
<tbody>
<tr>
<td>blogs</td>
<td>50.8</td>
<td>55.0</td>
</tr>
<tr>
<td>RSS</td>
<td>68.8</td>
<td>45.0</td>
</tr>
<tr>
<td>Digg</td>
<td>9.5</td>
<td>7.5</td>
</tr>
<tr>
<td>Reddit</td>
<td>1.1</td>
<td>0.0</td>
</tr>
<tr>
<td>Del.icio.us</td>
<td>3.7</td>
<td>2.5</td>
</tr>
<tr>
<td>Other</td>
<td>13.8</td>
<td>17.5</td>
</tr>
</tbody>
</table>
**VISUAL MEDIA SHARING**
432 users, 130 of whom are judicial officers

I use visual media sharing websites:

<table>
<thead>
<tr>
<th></th>
<th>General response (percent of 432)</th>
<th>Judicial officer response (percent of 130)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Once per month or less</td>
<td>49.5</td>
<td>51.5</td>
</tr>
<tr>
<td>Twice per month to once per week</td>
<td>34.5</td>
<td>30.8</td>
</tr>
<tr>
<td>Twice per week to daily</td>
<td>15.3</td>
<td>16.9</td>
</tr>
<tr>
<td>Twice per day to hourly</td>
<td>0.7</td>
<td>0.8</td>
</tr>
<tr>
<td>Hourly or more</td>
<td>0.0</td>
<td>0.0</td>
</tr>
</tbody>
</table>

The purpose of my visual media sharing website use is best described as:

<table>
<thead>
<tr>
<th></th>
<th>General response (percent of 432)</th>
<th>Judicial officer response (percent of 130)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Only personal</td>
<td>61.6</td>
<td>67.7</td>
</tr>
<tr>
<td>Mostly personal but some professional</td>
<td>24.5</td>
<td>24.6</td>
</tr>
<tr>
<td>Equally personal and professional</td>
<td>6.7</td>
<td>4.6</td>
</tr>
<tr>
<td>Mostly professional but some personal</td>
<td>4.4</td>
<td>2.3</td>
</tr>
<tr>
<td>Only professional</td>
<td>2.8</td>
<td>0.8</td>
</tr>
</tbody>
</table>

I use the following visual media sharing websites:

<table>
<thead>
<tr>
<th></th>
<th>General response (percent of 432)</th>
<th>Judicial officer response (percent of 130)</th>
</tr>
</thead>
<tbody>
<tr>
<td>YouTube</td>
<td>90.5</td>
<td>91.5</td>
</tr>
<tr>
<td>Vimeo</td>
<td>3.2</td>
<td>2.3</td>
</tr>
<tr>
<td>Flikr</td>
<td>20.4</td>
<td>12.3</td>
</tr>
<tr>
<td>Other</td>
<td>9.3</td>
<td>8.5</td>
</tr>
</tbody>
</table>
EXPERIENCE WITH NEW MEDIA TECHNOLOGY IN THE COURTROOM
General respondents (4.7 percent) and judicial officers (8.3 percent) report they have observed witnesses using social media profile sites, microblogging, or smart phones, tablets or notebooks in the courtroom. (See results for Question 4.)

4
In my professional life, I have personally observed a witness use a social media profile site, microblogging, or a smart phone, tablet or notebook in the courtroom, or participated in a trial during which a witness used a social media profile site, microblogging, or a smart phone, tablet or notebook in the courtroom.

<table>
<thead>
<tr>
<th></th>
<th>General response</th>
<th>Judicial officer response</th>
</tr>
</thead>
<tbody>
<tr>
<td>NO</td>
<td>95.3</td>
<td>91.7</td>
</tr>
<tr>
<td>YES</td>
<td>4.7</td>
<td>8.3</td>
</tr>
</tbody>
</table>

Social media | 18.4 | 0.2 |
Microblogging | 7.9 | 0.1 |
Smart technology | 71.1 | 6.7 |
Don’t know | 18.4 | 0.1 |

General respondents (7.2 percent) and judicial officers (9.8 percent) report they have observed jurors using these same technologies. (See results for Question 1.)

1
In my professional life, I have personally observed a juror use a social media profile site, microblogging, or a smart phone, tablet or notebook in the courtroom, or participated in a trial during which a juror used a social media profile site, microblogging, or a smart phone, tablet or notebook in the courtroom.

<table>
<thead>
<tr>
<th></th>
<th>General response</th>
<th>Judicial officer response</th>
</tr>
</thead>
<tbody>
<tr>
<td>NO</td>
<td>92.8</td>
<td>90.2</td>
</tr>
<tr>
<td>YES</td>
<td>7.2</td>
<td>9.8</td>
</tr>
</tbody>
</table>

Social media | 20.7 | 0.2 |
Microblogging | 12.1 | 0.1 |
Smart technology | 82.8 | 7.1 |
Don’t know | 8.6 | 0.1 |
General respondents (25.2 percent) and judicial officers (28.7 percent) have viewed members of
the media using these technologies. (See results for Question 3.)

<table>
<thead>
<tr>
<th>NO</th>
<th>General response</th>
<th>Judicial officer response</th>
</tr>
</thead>
<tbody>
<tr>
<td>YES</td>
<td>25.2</td>
<td>28.7</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Social media</th>
<th>General response</th>
<th>Judicial officer response</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>12.7</td>
<td>0.4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Microblogging</th>
<th>General response</th>
<th>Judicial officer response</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>28.9</td>
<td>8.3</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Smart technology</th>
<th>General response</th>
<th>Judicial officer response</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>75.0</td>
<td>20.9</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Don’t know</th>
<th>General response</th>
<th>Judicial officer response</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>16.7</td>
<td>0.6</td>
</tr>
</tbody>
</table>

A slightly larger group, 34.1 percent of general respondents and 39.8 percent of judicial officers,
has observed members of the public who are not a party to the case using these technologies in
the courtroom. (See results for Question 2.)

<table>
<thead>
<tr>
<th>NO</th>
<th>General response</th>
<th>Judicial officer response</th>
</tr>
</thead>
<tbody>
<tr>
<td>YES</td>
<td>34.1</td>
<td>39.8</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Social media</th>
<th>General response</th>
<th>Judicial officer response</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>14.9</td>
<td>7.5</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Microblogging</th>
<th>General response</th>
<th>Judicial officer response</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>14.5</td>
<td>3.9</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Smart technology</th>
<th>General response</th>
<th>Judicial officer response</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>78.3</td>
<td>29.1</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Don’t know</th>
<th>General response</th>
<th>Judicial officer response</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>17.0</td>
<td>11.0</td>
</tr>
</tbody>
</table>
Topping the used-in-the-courtroom list is counsel. General respondents reported 39.4 percent and judicial officers reported 54.3 percent use by this category. (See results for Question 5.)

<table>
<thead>
<tr>
<th></th>
<th>General response</th>
<th>Judicial officer response</th>
</tr>
</thead>
<tbody>
<tr>
<td>NO</td>
<td>60.6</td>
<td>45.7</td>
</tr>
<tr>
<td>YES</td>
<td>39.4</td>
<td>54.3</td>
</tr>
<tr>
<td>Social media</td>
<td>8.2</td>
<td>4.7</td>
</tr>
<tr>
<td>Microblogging</td>
<td>3.4</td>
<td>2.8</td>
</tr>
<tr>
<td>Smart technology</td>
<td>88.1</td>
<td>48.9</td>
</tr>
<tr>
<td>Don’t know</td>
<td>11.6</td>
<td>5.5</td>
</tr>
</tbody>
</table>

Judges are beginning to acknowledge and manage social media technologies proactively in the courtroom. Judicial officers report 32.7 percent have observed admonishments for improper use of new media technologies in the courtroom and 24.4 percent of the general respondents have witnessed the same. (See results for Question 6.)

<table>
<thead>
<tr>
<th></th>
<th>General response</th>
<th>Judicial officer response</th>
</tr>
</thead>
<tbody>
<tr>
<td>NO</td>
<td>75.6</td>
<td>67.3</td>
</tr>
<tr>
<td>YES</td>
<td>24.4</td>
<td>32.7</td>
</tr>
<tr>
<td>Social media</td>
<td>12.2</td>
<td>3.9</td>
</tr>
<tr>
<td>Microblogging</td>
<td>8.1</td>
<td>3.9</td>
</tr>
<tr>
<td>Smart technology</td>
<td>77.7</td>
<td>23.6</td>
</tr>
<tr>
<td>Don’t know</td>
<td>16.2</td>
<td>7.1</td>
</tr>
</tbody>
</table>
Fifty-six percent of the judicial officers have observed judges, as a matter of routine, include jury instructions admonishing jurors to avoid what is deemed the “improper use” of these technologies. Forty-one percent of the general respondents have observed juror admonishments. (See results for Question 7.)

<table>
<thead>
<tr>
<th></th>
<th>General response</th>
<th>Judicial officer response</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>Social media</td>
<td>29.3</td>
<td>16.1</td>
</tr>
<tr>
<td>Microblogging</td>
<td>23.6</td>
<td>14.6</td>
</tr>
<tr>
<td>Smart technology</td>
<td>44.5</td>
<td>28.7</td>
</tr>
<tr>
<td>Don’t know</td>
<td>35.2</td>
<td>18.5</td>
</tr>
</tbody>
</table>
**How is the Use of New Media Viewed by Respondents?**

An overwhelming majority (97.6 percent) of survey respondents agree “it is essential that judges and court employees are educated about new media technologies to ensure the technologies do not inappropriately impact a court proceeding.” (See results for Question 2.) A similarly high number of respondents (84.9 percent) agree “it is essential judges and court employees are educated about new media technologies so they can make the most use of the technologies as tools to serve the courts.” (See results for Question 1.)

<table>
<thead>
<tr>
<th>Question</th>
<th>Description</th>
<th>General response</th>
<th>Judicial officer response</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>It is essential judges and court employees are educated about new media technologies to ensure the technologies do not inappropriately impact a court proceeding.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>strongly agree</td>
<td>69.0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>agree</td>
<td>28.6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>neutral</td>
<td>1.9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>disagree</td>
<td>0.2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>strongly disagree</td>
<td>0.4</td>
</tr>
<tr>
<td>1</td>
<td>It is essential judges and court employees are educated about new media technologies so they can make the most use of the technologies as tools to serve the courts.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>strongly agree</td>
<td>48.3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>agree</td>
<td>36.6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>neutral</td>
<td>11.5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>disagree</td>
<td>3.1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>strongly disagree</td>
<td>0.5</td>
</tr>
</tbody>
</table>
Use of New Media by Judicial Officers

Nearly half of the respondents, both in general and judicial officers specifically, felt judicial officers using social media in their professional lives could compromise the judges’ professional code of ethics. (See results for Question 4.) Conversely, 21.7 percent of the general respondents and 24.0 percent of the judicial officers felt it would not compromise ethics. Nearly one-third of both groups were neutral on the issue.

<table>
<thead>
<tr>
<th>Question</th>
<th>Judges can use social media profile sites, such as Facebook, in their professional lives without compromising professional conduct codes of ethics.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>General response</td>
</tr>
<tr>
<td></td>
<td>Judicial officer response</td>
</tr>
<tr>
<td>strongly agree</td>
<td>4.8</td>
</tr>
<tr>
<td>agree</td>
<td>16.9</td>
</tr>
<tr>
<td>neutral</td>
<td>30.4</td>
</tr>
<tr>
<td>disagree</td>
<td>31.0</td>
</tr>
<tr>
<td>strongly disagree</td>
<td>16.8</td>
</tr>
</tbody>
</table>

Mirror results were reflected for judges’ use of microblogging technologies in their professional lives. (See results for Question 6.)

<table>
<thead>
<tr>
<th>Question</th>
<th>Judges can use microblogging websites, such as Twitter, in their professional lives without compromising professional conduct codes of ethics.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>General response</td>
</tr>
<tr>
<td></td>
<td>Judicial officer response</td>
</tr>
<tr>
<td>strongly agree</td>
<td>4.3</td>
</tr>
<tr>
<td>agree</td>
<td>15.1</td>
</tr>
<tr>
<td>neutral</td>
<td>33.6</td>
</tr>
<tr>
<td>disagree</td>
<td>31.0</td>
</tr>
<tr>
<td>strongly disagree</td>
<td>15.9</td>
</tr>
</tbody>
</table>

There was generally more support by all respondents for judges’ ability to use new media technology in their personal lives without compromising professional codes of conduct. Concern for code compromises fell more than 10 percent among both groups considering judges’ use of social media profile sites in their personal lives (Question 3).

<table>
<thead>
<tr>
<th>Question</th>
<th>Judges can use social media profile sites, such as Facebook, in their personal lives without compromising professional conduct codes of ethics.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>General response</td>
</tr>
<tr>
<td></td>
<td>Judicial officer response</td>
</tr>
<tr>
<td>strongly agree</td>
<td>8.8</td>
</tr>
<tr>
<td>agree</td>
<td>29.4</td>
</tr>
<tr>
<td>neutral</td>
<td>27.6</td>
</tr>
<tr>
<td>disagree</td>
<td>24.0</td>
</tr>
<tr>
<td>strongly disagree</td>
<td>10.3</td>
</tr>
</tbody>
</table>
Support for personal microblogging (Question 5) rose to about one-third for all respondents, with one-third being neutral and one-third disagreeing it is possible.

<table>
<thead>
<tr>
<th><strong>5</strong></th>
<th>Judges can use microblogging websites, such as Twitter, in their personal lives without compromising professional conduct codes of ethics.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>General response</td>
</tr>
<tr>
<td>strongly agree</td>
<td>7.5</td>
</tr>
<tr>
<td>agree</td>
<td>25.6</td>
</tr>
<tr>
<td>neutral</td>
<td>34.9</td>
</tr>
<tr>
<td>disagree</td>
<td>23.6</td>
</tr>
<tr>
<td>strongly disagree</td>
<td>8.4</td>
</tr>
</tbody>
</table>

Support for judicial officers using visual media sharing (Question 7) for personal use was higher than for microblogging. While the neutral responses again hovered at about one-third, the support from the general respondents rose to 40.4 percent support and judicial officers reflected 46.9 percent.

<table>
<thead>
<tr>
<th><strong>7</strong></th>
<th>Judges can use visual media sharing websites, such as YouTube, in their personal lives without compromising professional conduct codes of ethics.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>General response</td>
</tr>
<tr>
<td>strongly agree</td>
<td>8.3</td>
</tr>
<tr>
<td>agree</td>
<td>32.1</td>
</tr>
<tr>
<td>neutral</td>
<td>33.9</td>
</tr>
<tr>
<td>disagree</td>
<td>18.4</td>
</tr>
<tr>
<td>strongly disagree</td>
<td>7.3</td>
</tr>
</tbody>
</table>
Use of New Media by Court Employees
Results reflected more support for the ability of court employees — nearly double that for the ability of judicial officers — to use social media profile sites, microblogging and visual media sharing in their professional lives without compromising professional ethics.

The responses regarding court employees’ ability to use social media profile sites, microblogging and visual media sharing in their personal lives without compromising professional ethics were strikingly similar between both general respondents and judicial officers. A large majority of both groups, between 86 and 93 percent, agree or are neutral on the subject.

### USE BY COURT EMPLOYEES — PROFESSIONAL LIVES

<table>
<thead>
<tr>
<th>Court employees can use social media profile sites, such as Facebook, in their professional lives without compromising professional ethics.</th>
<th>General response</th>
<th>Judicial officer response</th>
</tr>
</thead>
<tbody>
<tr>
<td>strongly agree</td>
<td>7.2</td>
<td>4.7</td>
</tr>
<tr>
<td>agree</td>
<td>28.3</td>
<td>30.7</td>
</tr>
<tr>
<td>neutral</td>
<td>31.3</td>
<td>30.3</td>
</tr>
<tr>
<td>disagree</td>
<td>23.7</td>
<td>24.8</td>
</tr>
<tr>
<td>strongly disagree</td>
<td>9.5</td>
<td>9.4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Court employees can use microblogging websites, such as Twitter, in their professional lives without compromising professional ethics.</th>
<th>General response</th>
<th>Judicial officer response</th>
</tr>
</thead>
<tbody>
<tr>
<td>strongly agree</td>
<td>7.0</td>
<td>4.3</td>
</tr>
<tr>
<td>agree</td>
<td>25.5</td>
<td>26.4</td>
</tr>
<tr>
<td>neutral</td>
<td>32.1</td>
<td>33.5</td>
</tr>
<tr>
<td>disagree</td>
<td>25.8</td>
<td>26.0</td>
</tr>
<tr>
<td>strongly disagree</td>
<td>9.5</td>
<td>9.8</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Court employees can use visual media sharing websites, such as YouTube, in their professional lives without compromising professional ethics.</th>
<th>General response</th>
<th>Judicial officer response</th>
</tr>
</thead>
<tbody>
<tr>
<td>strongly agree</td>
<td>6.3</td>
<td>3.9</td>
</tr>
<tr>
<td>agree</td>
<td>25.1</td>
<td>27.6</td>
</tr>
<tr>
<td>neutral</td>
<td>32.9</td>
<td>34.3</td>
</tr>
<tr>
<td>disagree</td>
<td>26.3</td>
<td>25.6</td>
</tr>
<tr>
<td>strongly disagree</td>
<td>9.4</td>
<td>8.7</td>
</tr>
</tbody>
</table>
## USE BY COURT EMPLOYEES — PERSONAL LIVES

### 8
Court employees can use social media profile sites, such as Facebook, in their personal lives without compromising professional ethics.

<table>
<thead>
<tr>
<th></th>
<th>General response</th>
<th>Judicial officer response</th>
</tr>
</thead>
<tbody>
<tr>
<td>strongly agree</td>
<td>13.7</td>
<td>10.2</td>
</tr>
<tr>
<td>agree</td>
<td>49.2</td>
<td>52.4</td>
</tr>
<tr>
<td>neutral</td>
<td>23.7</td>
<td>26.0</td>
</tr>
<tr>
<td>disagree</td>
<td>9.6</td>
<td>7.5</td>
</tr>
<tr>
<td>strongly disagree</td>
<td>3.7</td>
<td>3.9</td>
</tr>
</tbody>
</table>

### 10
Court employees can use microblogging websites, such as Twitter, in their personal lives without compromising professional ethics.

<table>
<thead>
<tr>
<th></th>
<th>General response</th>
<th>Judicial officer response</th>
</tr>
</thead>
<tbody>
<tr>
<td>strongly agree</td>
<td>11.7</td>
<td>9.1</td>
</tr>
<tr>
<td>agree</td>
<td>48.0</td>
<td>52.4</td>
</tr>
<tr>
<td>neutral</td>
<td>30.2</td>
<td>29.1</td>
</tr>
<tr>
<td>disagree</td>
<td>7.7</td>
<td>5.5</td>
</tr>
<tr>
<td>strongly disagree</td>
<td>2.5</td>
<td>3.9</td>
</tr>
</tbody>
</table>

### 12
Court employees can use visual media sharing websites, such as YouTube, in their personal lives without compromising professional ethics.

<table>
<thead>
<tr>
<th></th>
<th>General response</th>
<th>Judicial officer response</th>
</tr>
</thead>
<tbody>
<tr>
<td>strongly agree</td>
<td>12.4</td>
<td>10.6</td>
</tr>
<tr>
<td>agree</td>
<td>49.9</td>
<td>56.3</td>
</tr>
<tr>
<td>neutral</td>
<td>27.7</td>
<td>26.0</td>
</tr>
<tr>
<td>disagree</td>
<td>7.7</td>
<td>3.9</td>
</tr>
<tr>
<td>strongly disagree</td>
<td>2.3</td>
<td>3.1</td>
</tr>
</tbody>
</table>
**Use of New Media by Courts as Institutions**

About three-quarters of all respondents agree or are neutral that courts as institutions can maintain a social media profile site (Question 14), or use microblogging technologies (Question 15) or visual media sharing (Question 16) without compromising ethics.

<table>
<thead>
<tr>
<th>Question</th>
<th>General response</th>
<th>Judicial officer response</th>
</tr>
</thead>
<tbody>
<tr>
<td>14 Courts as institutions can maintain social media profile sites, such as Facebook, MySpace, LinkedIn and Ning, without compromising ethics.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>strongly agree</td>
<td>9.1</td>
<td>5.1</td>
</tr>
<tr>
<td>agree</td>
<td>32.6</td>
<td>35.0</td>
</tr>
<tr>
<td>neutral</td>
<td>34.5</td>
<td>31.9</td>
</tr>
<tr>
<td>disagree</td>
<td>16.3</td>
<td>19.3</td>
</tr>
<tr>
<td>strongly disagree</td>
<td>7.4</td>
<td>8.7</td>
</tr>
<tr>
<td>15 Courts as institutions can use microblogging websites, such as Twitter, Tumblr and Plurk, without compromising ethics.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>strongly agree</td>
<td>8.5</td>
<td>5.1</td>
</tr>
<tr>
<td>agree</td>
<td>26.6</td>
<td>24.8</td>
</tr>
<tr>
<td>neutral</td>
<td>38.8</td>
<td>38.6</td>
</tr>
<tr>
<td>disagree</td>
<td>19.2</td>
<td>24.0</td>
</tr>
<tr>
<td>strongly disagree</td>
<td>6.9</td>
<td>7.5</td>
</tr>
<tr>
<td>16 Courts as institutions can use visual media sharing websites, such as YouTube, Vimeo and Flikr, for sharing visual media without compromising ethics.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>strongly agree</td>
<td>8.7</td>
<td>4.7</td>
</tr>
<tr>
<td>agree</td>
<td>30.5</td>
<td>31.1</td>
</tr>
<tr>
<td>neutral</td>
<td>38.6</td>
<td>38.2</td>
</tr>
<tr>
<td>disagree</td>
<td>15.7</td>
<td>18.9</td>
</tr>
<tr>
<td>strongly disagree</td>
<td>6.6</td>
<td>7.1</td>
</tr>
</tbody>
</table>
Only about one-quarter of the general respondents, however, feel these are necessary court tools for public outreach, and only 17.7 percent of the judicial officers thought the same (Question 17). Respectively, 36.1 percent and 38.6 percent are neutral, and 37.8 percent and 43.7 percent feel the technologies are not a necessary component for public outreach.

<table>
<thead>
<tr>
<th>New media, such as Facebook, Twitter and YouTube, are necessary court tools for public outreach.</th>
<th>General response</th>
<th>Judicial officer response</th>
</tr>
</thead>
<tbody>
<tr>
<td>strongly agree</td>
<td>7.9</td>
<td>4.3</td>
</tr>
<tr>
<td>agree</td>
<td>18.2</td>
<td>13.4</td>
</tr>
<tr>
<td>neutral</td>
<td>36.1</td>
<td>38.6</td>
</tr>
<tr>
<td>disagree</td>
<td>29.3</td>
<td>33.9</td>
</tr>
<tr>
<td>strongly disagree</td>
<td>8.5</td>
<td>9.8</td>
</tr>
</tbody>
</table>
CONCLUSIONS AND FUTURE TRENDS

CONCLUSIONS
We began by detailing the myriad activities by various groups in the judicial community in the area of new media and the courts. CCPIO hopes this report offers a useful framework for these and other groups interested in the ongoing discussion about how courts can respond to the phenomena of new media and the digital information revolution in productive ways that support public trust and confidence in the judicial branch.

The foregoing demonstrates that new media technologies bring both challenges and opportunities to the judicial system. CCPIO hopes the other members of the judicial community will recognize the publication of this report as an invitation to participate in a continuing national discussion among judges, journalists, PIOs and court administrators on how to leverage the opportunities, meet the challenges and mitigate the risks of new media and the courts.

To that end, we offer here five predictions for the future of new media and the courts and five recommendations for further action. We invite interested parties to participate in the conversation by joining the Ning site, http://ccpionewmedia.ning.com/.

FUTURE TRENDS
New media will continue to evolve, and the courts will need to respond. Here is where we are headed:

- **More courts and state administrative offices of the courts will be re-examining rules and procedures.** This report details how jury instructions, judicial and professional codes of conduct, and courtroom media rules are already being re-evaluated by some courts to account for the changes in the new media environment. Clearly this trend will continue and likely will accelerate. Courts will benefit from sharing information and experiences and collaborating on developing best practices and model rules in this area. In the coming years, we will see revisions to state judicial codes, model jury instructions, rules on cameras in the courtroom and in other areas.

- **More courts will develop official presences on Facebook, Twitter, YouTube and other social media sites.** This report details that currently a very small number of courts are using social media. This is already changing. In July 2010, the California Administrative Office of the Courts launched the California Courts YouTube Channel and Twitter feed “to complement its ongoing public education and outreach efforts about the judicial branch of government and access to justice.” In the coming years, as courts learn to reconcile some of the inherent differences between the judicial and new media cultures, more courts will join California and the other pioneering courts using social media for public information and community outreach.

- **More judges will be on Facebook, both professionally and personally.** About 40 percent of judges in the survey report using social media profile sites. The percentage of the general adult population is about 40 percent and growing, according to the Pew Internet
It is reasonable to expect that use among judges will continue to rise.

- **Courts will continue to become primary content providers and develop more sophisticated multimedia communications capabilities.** The rapid developments in media technology detailed in this report, along with the well documented decline in the traditional, legacy media, mean that courts must continue to find ways to communicate and connect directly with the public. In the coming years, courts will continue to develop these capabilities if they are to succeed in continuing to support public understanding of the judicial system. Courts will develop increased capabilities in the use of RSS, blogs, embedded video, social media, image sharing, microblogging and other multimedia technologies that facilitate direct connections with the public. The new media environment is changing public expectations. To succeed in reaching distracted, increasingly fragmented audiences, courts will have to think of public communication as not just imparting raw information but also as telling compelling stories about the judicial system and its impact on society.

- **Public information officers and information technology officers will form stronger partnerships and collaborative operations.** Courts will need to use the latest best technical practices to maximize the portability of Web content through application programming interface (API), mobile-ready and other technologies. This can be facilitated by coordinating the operations of communications and IT professionals.

**Recommendations**

CCPIO is uniquely positioned to assist the judicial community in responding to new media. This report represents the beginning of an ongoing effort by CCPIO to bring together the various members of the judicial community to explore the potential benefits and risks of the new media environment.

Following are specific recommendations for further action in this area:

- **Continuation of CCPIO New Media Ning site.** More than 120 people participated in the nearly yearlong online conversation about new media at [http://ccpionewmedia.ning.com/](http://ccpionewmedia.ning.com/). The site proved an invaluable tool for sharing timely information, news stories, and research concepts and ideas. CCPIO should continue to maintain this site and take steps to encourage even broader participation.

- **National coordination and collaboration among the judicial associations.** New media will continue to evolve rapidly in the coming years, and the courts will benefit from an ongoing, coordinated national response in this area. CCPIO proposes that NCSC, CCJ and COSCA, in partnership with CCPIO, form a standing committee to study and report on new media issues on an ongoing basis. The effort should invite the participation of other partner organizations with designated liaisons to the CCPIO New Media Project, including: NACM, National Association of Women Judges, Court Information Technology Officers Consortium, National Association of State Judicial Educators, and the National Conference of Appellate Court Clerks.
• **Administer the survey as a longitudinal study.** The survey of judges and court administrators was the first of its kind and was designed to allow for trend data to be collected and compared over time. CCPIO should plan to administer the survey annually to measure changes in court use of, experiences with and attitudes toward new media.

• **Develop survey for the general public.** While we now have a baseline measurement of what courts experience with new media, a valuable comparison would be a look at how some of these same questions are viewed by the general public. CCPIO should work with NCSC to develop and administer a similar survey of the general U.S. population.

• **Develop tools.** To help courts maintain the delicate balance between free speech and open access to courts on one side and fair trial issues on the other, the CCPIO New Media Committee should be established as a standing committee to develop online resources, checklists (see Appendix B), best practices and other tools for courts responding to and managing new media.
APPENDIX A: ONLINE PARTICIPANTS

CCPIO thanks the following individuals for their contributions to the CCPIO New Media Project through participation in the online community on Ning:

Daniel Anderson — Wisconsin Court of Appeals, District 11, Pewaukee, Wis.
Kathy Arberg — U.S. Supreme Court, District of Columbia
Karen Arra — Superior Court of Arizona, Phoenix, Ariz.
Lee Ann Barnhardt — North Dakota Supreme Court, Bismarck, N.D.
Craig Berke — Rhode Island Supreme Court, Providence, R.I.
Dean Boland — Attorney at Law, Lakewood, Ohio
Douglas Bray — Oregon Judicial Department, Fourth Judicial District, Portland, Ore.
John G. Browning — Thompson, Coe, Cousins & Irons, Dallas, Texas
Pam Burton — National Center for State Courts, Williamsburg, Va.
Todd E. Calaway — Montgomery County Juvenile Court, Dayton, Ohio
Giovanni Cambareri — Cambareri Giovanni, Webster, N.Y.
Lowell Castleton — Idaho Supreme Court, Boise, Idaho
Maria T. Cenzon — Judiciary of Guam, Hagatna, Guam
Laura Click — Tennessee Supreme Court, Nashville, Tenn.
Winnie Comfort — New Jersey Judiciary, Trenton, N.J.
Annette Corallo — Arizona Supreme Court, Phoenix, Ariz.
Elizabeth Cutting — Scottish Court Service, Edinburgh, Scotland
Christopher Davey — Supreme Court of Ohio, Columbus, Ohio
Steve Davis — Iowa Judicial Branch, Des Moines, Iowa
Nora R. Day — Young Conaway Stargatt & Taylor, LLP, Wilmington, Del.
Susan Dill — Writers Inc., Los Angeles, Calif.
Anita Dincesen — State Court Administrator’s Office, Saint Paul, Minn.
Kathryn Dolan — Indiana Supreme Court, Indianapolis, Ind.
Ann E. Donlan — San Francisco Superior Court, San Francisco, Calif.
Kerrie Douglass — New South Wales Supreme Court, New South Wales, Australia
Brian Eddy — New Hampshire Judicial Branch, Concord, N.H.
Nelly Fedde — U.S. District Court, Kansas City, Kan.
Lissa Finne — Minnesota Judicial Branch, Saint Paul, Minn.
Lisa Fitzpatrick — Alaska Court System, Anchorage, Alaska
Pamela Gagel — Institute for the Advancement of the American Legal System, Denver, Colo.
James T. Gleason — District Court, Fourth Judicial District, Omaha, Neb.
Kathy Lynn Gray — The Columbus Dispatch, Columbus, Ohio
Mark Harrill — Travis County Courts, Austin, Texas
Jerrianne Hayslett — Media Relations Consultant, South Milwaukee, Wis.
Bruce Hermes — Texas Office of Court Administration, Austin, Texas
Leigh Anne Hiatt — Kentucky Administrative Office of the Courts, Frankfort, Ky.
Andy Hirsch — WBNS-TV, Columbus, Ohio
Tom Hodson — E.W. Scripps School of Journalism, Ohio University, Athens, Ohio
Thaddeus Hoffmeister — University of Dayton Law School, Cincinnati, Ohio
Steven Hollon — Supreme Court of Ohio, Columbus, Ohio
Barbara J. Hood — Alaska Court System, Anchorage, Alaska
Rebecca Hulse — Center for Legal & Court Technology, College of William & Mary Law, Williamsburg, Va.
Dominic Jaar — Canadian Centre for Court Technology, Montreal, Quebec, Canada
Frederick James — U.S.
Frederick Jonah — Google.com, District of Columbia
Molly Justice — Seventh Judicial Circuit Court of Florida, Daytona Beach, Fla.
Joan Kenney — Massachusetts Supreme Judicial Court, Boston, Mass.
Laura Kiernan — New Hampshire Judicial Branch, Concord, N.H.
John Kostouros — Minnesota Judicial Branch, Minneapolis, Minn.
Nick Kuntz — Court of Common Pleas, Juvenile Division, Dayton, Ohio
Joanna Kyler — New York, N.Y.
Keith Lane — California Court of Appeal, San Diego, Calif.
Judith Ann Lanzinger — Supreme Court of Ohio, Columbus, Ohio
Carole Levitzky — Superior Court of California, County of Orange, Santa Ana, Calif.
Jennifer Liewer — Arizona Supreme Court, Phoenix, Ariz.
Christina Locke — University of Florida, Gainesville, Fla.
Mary Majich Davis — Superior Court of California, County of San Bernardino, San Bernardino, Calif.
Michael H. Marcus — Oregon Judicial Department, Portland, Ore.
Tracie Mauriello — Pittsburgh Post-Gazette, Lemoyne, Pa.
Donna Mazzanti — Burlington County Superior Court, Mount Holly, N.J.
Michael R. Merz — U.S. District Court, Southern District of Ohio, Dayton, Ohio
R. Micklewright — New York State Courts, New York, N.Y.
Jamie Mininni — University of Phoenix, Nampa, Idaho
Emma Morehart — Ohio University, Athens, Ohio
Matt Murphy — St. Louis Circuit Court, Saint Louis, Mo.
Allan Parachini — Los Angeles Superior Court, Los Angeles, Calif.
Angelita Plemmer — Maryland Judiciary, Annapolis, Md.
Don Plummer — Superior Court of Fulton County, Atlanta, Ga.
Carl Reynolds — Office of Court Administration, Austin, Texas
David Richert — American Judicature Society, Chicago, Ill.
David Ricker — Pima County Superior Court, Tucson, Ariz.
Beth Riggert — Supreme Court of Missouri, Mo.
Alyce Roberts — Alaska Court System, Anchorage, Alaska
Eric P. Robinson — Citizen Media Law Project, Forest Hills, N.Y.
Linda Romero Soles — Stanislaus, Modesto, Calif.
Gerry Root — Superior Court of California, County of Sacramento, Sacramento, Calif.
Bob Roper — Colorado Judicial Branch, Denver, Colo.
Karen Salaz — 19th Judicial District, Greeley, Colo.
Jon Sarche — Colorado Judicial Department, Denver, Colo.
Jordan Schwartz — Suffolk University Law School, Boston, Mass.
Patricia Seguin — Maricopa County Superior Court, Phoenix, Ariz.
David Sellers — Federal Courts, U.S.
Tom Sheehan — Wisconsin Court System, Madison, Wis.
Carrie A. Shelton — Thompson, Coe, Cousins & Irons, Dallas, Texas
David Slayton — Lubbock County Administrative Office of the Courts, Lubbock, Texas
Larry Smukler — New Hampshire Superior Court, Concord, N.H
Michael Somermeyer — Clark County Courts, Las Vegas, N.H.
Elizabeth W. Stephenson — Tuscarawas County Court of Common Pleas, General Division, New Philadelphia, Ohio
Ashley G. Stollar — Administrative Office of the Courts, Atlanta, Ga.
Susanne Stushnoff — Court of Appeal of Alberta, Edmonton, Alberta, Canada
Robin Sweet — Nevada Administrative Office of the Courts, Carson City, Nev.
Lyn Tolan-Barbin — Multi-Media Journalist, Columbus, Ohio
Robert J. Torres — Supreme Court of Guam, Hagatna, Guam
Dan Trevas — Ohio State Bar Association, Media Law Committee, Columbus, Ohio
John P. Vander Feer — Superior Court of California, County of San Bernardino, Joshua Tree, Calif.
Peter S. Vogel — Supreme Court of Texas, Dallas, Texas
Kateri Walsh — Oregon State Bar, Portland, Ore.
Matt Wapnick — CourtCall, LLC, Los Angeles, Calif.
Craig Waters — Florida Supreme Court, Tallahassee, Fla.
Eric Westerman — Civil Liberties, Fayetteville, Ark.
Russell Wheeler — Brookings Institution, U.S.
Burma Wilkins — U.S. District court, Eastern District of Missouri, Portage Des Sioux, Mo.
Leeanna Young — King County District Court, Seattle, Wash.
Marie Yuvienco — Phil Maburay News, Philippines
Steven Zansberg — Colorado Press Association, Denver, Colo.
Gene A. Zmuda — Lucas County Court of Common Pleas, General Division, Toledo, Ohio
National Association of Women Judges (NAWJ), District of Columbia
Marlene — Court TV, New York, N.Y.
APPENDIX B: SOCIAL MEDIA CHECKLIST

Proper planning and management of new media technologies provide opportunities for courts and judges to foster public trust and confidence. Whether a court wants to use new media in a comprehensive communications and education plan, or judges want to address potential problems these technologies present in the courtroom, the following checklist provides an outline of issues to be considered.

**WHAT IS THE NEED WE WANT ADDRESSED BY USING SOCIAL MEDIA TECHNOLOGIES?**

- What do you want to achieve?
  - Public education
  - Release decisions
  - Highlight the activities of individual judges or courts
  - Explain court processes and procedures
  - Notify public of emergency situations
  - Post calendars
  - Job postings
  - Media outreach
  - Develop ongoing dialogues with the public to increase transparency
  - Educational videos and vignettes
  - Self-help videos and vignettes
  - Other?

- Is there an organizational hierarchy that needs to be consulted in making the decision to use the various technologies?

- Is there an organizational strategic plan that needs to be developed or considered?

- How will you know if the resources you are dedicating to social media technologies are a good investment of time and money?

- How will you know three, to six, to 12 months down the road if the investment of time and money is worthwhile?

- Do you have an efficient mechanism to monitor these technologies on a regular basis to ensure quality control?

- Does your organization have a policy on how to handle defamatory or inappropriate remarks posted to social media sites outside the department?

- In investigating the use of social media, is there consideration given as to advertising incorporated in the technology, e.g., on YouTube, local, targeted advertising appears when the link displays.

**TECHNOLOGICAL INFRASTRUCTURE**

- Is your information technology division involved in the discussion and ultimately decision to use social media technologies?

- Is your IT division involved in making critical infrastructure decisions?

- What are the server requirements?

- What are the software and hardware requirements?

- Does the social media technology have the potential to interfere with or increase the vulnerability of critical computer systems such as document and records archiving, case management, accounting?
□ Is there ample bandwidth to support each of the technologies?
□ Can some technologies be used while others are not supported?
□ How many employees will have access to the technology?
□ If access is limited, who will have access?
□ Are there security precautions in place adequate to protect the network?
□ Are there any Continuity of Operations Plan considerations needed?

ORGANIZATIONAL INFRASTRUCTURE
FOR BUSINESS USE OF SOCIAL MEDIA TECHNOLOGIES
□ How will it be funded and maintained?
□ Who will have the ability or authority to post information?
□ Are there criteria in place as to what topics can and cannot be discussed?
□ Is there a forbidden topic list?
□ How will inappropriate comments by the public be handled?
□ How will inappropriate comments by employees be handled?
□ What will be the procedure in the event a threatening remark is posted?
□ What safeguards are in place to ensure nothing is posted that jeopardizes a case or trial?
□ Will members of the public be required to register before posting comments?
□ Who will have the authority to make postings private or public?
□ Is it necessary to develop an archive policy to comply with your records management policies?
□ What is your archive policy and have you shared it with employees?
□ Will judges and court employees be allowed to post personal comments to a court’s business microblog?
□ What types of posts will be allowed, e.g., text comments, video images, still images?
□ Does your service provider give you the opportunity to conduct private, members-only discussions, collaborative projects, or safely transmit sensitive materials?
□ Has your organization investigated legal ramifications to using some technologies? e.g., Facebook might pose potential legal liability as users must agree to indemnify, releasing the social networking site for any legal action against a user including slander or libel.

JUDICIAL EMPLOYEES
□ Does your employee code of conduct provide guidance on the appropriate or inappropriate use of social media at the workplace on state-owned equipment?
□ Does your judicial code of conduct provide guidance on the appropriate or inappropriate use of social media at the workplace on state-owned equipment?
□ Have you carefully considered First Amendment issues related to your policies?
□ Has your organization communicated to its employees the appropriate and inappropriate use of social media technologies both at work and for personal use?
□ Do you have a policy in place outlining personal use of social media technologies in the workplace on personal devices such as smart phones?
□ Have you met with employees to increase their awareness of the presence of microbloggers in the courtroom or in corridors, e.g., the possibility that a blogger will pick up and blog a seemingly benign comment that traditionally would have gone unreported?
COURTHOUSES
☐ Does your courthouse post on its website the policy on new media technology (e.g., cell phones) not allowed in the courthouse?
☐ Does your courthouse post warnings at each entrance and at security as to new media technologies allowed or not allowed in the facility?
☐ Do you have special rules for courthouse security or law enforcement officers inside the facility outlining appropriate/inappropriate technology use?
☐ Do you have posted signs indicating your camera policy both in the courthouse and courtroom?
☐ If policies vary from courtroom to courtroom, are they clearly posted at the entrance to the courtroom as to what technology is allowed or not allowed inside?
☐ Have you communicated your policy to people who are routinely in the courthouse, including employees, law enforcement, attorneys, victim advocates, the media?

COURTROOMS AND JURORS
☐ Does your court post on the juror page of your website cautionary warnings regarding improper use of social media, such as “Jurors are not allowed to bring smart phones when reporting to jury duty” or “Jurors are not allowed to bring smart phones into the courtroom”?
☐ Have you developed an admonishment outlining juror use or avoidance of new media technologies?
☐ Do your judges discuss with seated jurors the potential issues of using social media technologies both during and after a trial?
☐ Have you adequately notified all spectators of your witness photo policy if you allow camera phones in the courtroom?
☐ Have you communicated this policy to all court employees, parties appearing in your courtroom, and law enforcement?
☐ Do you have a standing order outlining your policies for the media?
☐ Have you met with the media that routinely covers cases in your courtroom to discuss your expectations?
☐ Do you have a prepared plan of action in place in the event a spectator is inappropriately using new media technology in your courtroom?
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