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CATCHING THE WAVE: STATE SUPREME COURT ONLINE OUTREACH EFFORTS

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State supreme courts have begun to grasp the many ways technology can connect the public with courts. This article will review some of the main trends in state supreme courts' use of the Internet to educate the public about their work.

State supreme courts are courts of last resort for the overwhelming majority of disputes in this country ranging from family issues to property law to criminal cases. Yet surprisingly few Americans are aware of the function of state supreme courts or the relevance state supreme courts have in their lives. This article will examine the use of technology to help the public better understand the important work of state supreme courts.

Not surprisingly, there is a broad continuum in state supreme courts' use of technology to disseminate information to the public. Online information from state supreme courts comes in all shapes and sizes. Some states have sophisticated state supreme court Web sites offering plentiful information about the court, its justices, and its output. Other states, not so much. Many states' sites appear as placeholders, featuring barely more than a static listing of the court's address and justices. Often, information about a state's supreme court is scattered within the state judiciary's broader Web site or is grouped on an "appellate courts" Web page.

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Why more state supreme courts have not taken advantage of the Internet to disseminate information about their work is a tricky question. As has been the case with trial courts, the impulse to "put everything online" is tempered by many factors, ranging from a lack of technical sophistication to resource constraints to privacy concerns. Even with these challenges, state supreme courts are increasingly tapping the power of the Internet to give the public better access to the workings of the court. Aside from the ease with which the Internet enables dissemination, courts at every level have long recognized its potential for cost savings and unprecedented public education.

This article describes two distinct waves in the use of technology to disseminate information about state supreme courts.¹ The "first wave" is the release of unfiltered, unedited documents and data to the public about the court. The "second wave" refers to efforts to distill court information to help the public better follow the happenings of the court.

The First Wave

First-wave efforts to place selected information online allow the public easy access to an unprecedented volume of information about state supreme courts. Access to this raw data holds great benefit for lawyers, judges, and other court professionals, but can prove difficult for untrained members of the public to digest.²

A basic example of first-wave outreach is releasing opinions online. While this would appear a straightforward service, there is surprising variety in how state supreme court opinions are made available (and not made available) on state judicial Web sites. Most state supreme courts publish opinions on their court Web sites, through the state judiciary's main Web site, or through a third-party host such as a law school. While most state supreme court opinions are available from a certain date forward, those dates vary considerably. Alaska's online opinion archive starts in 1960; California's in 1850. Georgia's site makes available opinions from the current and previous year only. The majority of states that offer archived opinions do so from 1980 and after.

State supreme court sites also vary widely in how readily accessible opinions are. Most state supreme courts publish opinions online free of charge. Others

charge for access. Alabama, for example, charges a \$200-per-year subscription fee for access to its opinions.³ Some state supreme courts allow broad, term-based searching. Others, such as Virginia, Maryland, and Nevada, require users to know case-specific information, such as a party name, to search the opinion database. Georgia provides another example of constricted searching, allowing its opinions to be searched only by date.

Another variable is the format in which state supreme courts release opinions online. Some release opinions in HTML, or “hypertext markup language.” This is the basic format most Web sites use; all Web browsers can view HTML. However, not all Web browsers will render HTML the same way. This can create pagination and citation problems in the case of court opinions. To remedy this, some courts have begun numbering paragraphs of opinions, allowing for “medium-neutral” citation. As of this writing, nine states make opinions available in HTML.

Other courts release documents in PDF format. True to the name, “portable document format” documents appear in the same format regardless of the computer used. Most browsers cannot view a PDF document without a separate extension. PDF documents often take longer to load and require more computer memory to display—a special problem for users who can only access the Internet from public libraries, which often have slow Internet connections and small amounts of memory and forbid users from installing additional programs or extensions. Some PDF documents are searchable, others are not. When a hard-copy document is scanned and converted into PDF, as is still the practice in many courts, the resulting PDF may not be searchable. The majority of states make opinions available in a searchable PDF format.

First-Wave Efforts

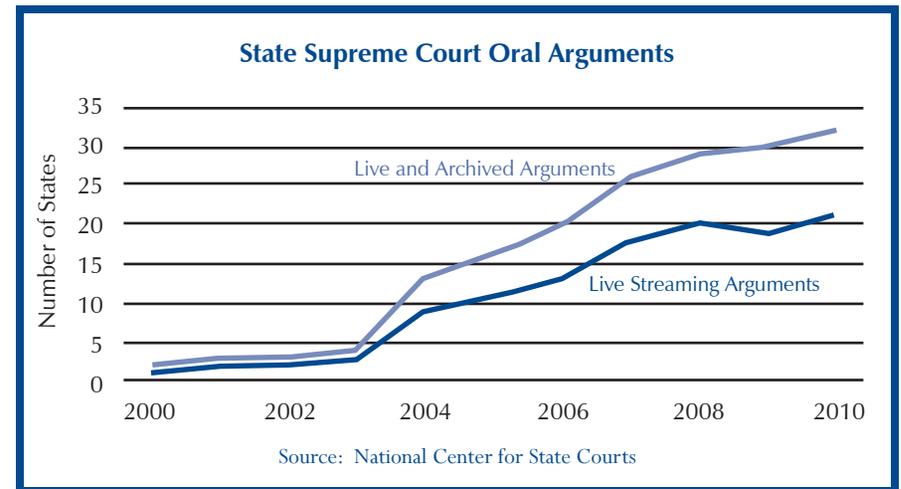
Release selected information online to allow the public easy access:

- Opinions
- Court’s calendar information
- Oral-argument schedule

Online access to archived arguments
Web streaming

Some state supreme courts are experimenting with releasing briefs and other case-specific documents online. Particularly in states that use e-filing procedures, it seems a logical next step to make at least some of these digital documents available online.⁴ Publishing information online about the court’s calendar and oral-argument schedule is another first-wave innovation that has made it much easier for the public to follow the workings of the court. Many courts post schedules on their Web sites that list information about oral-argument dates, opinion-release schedules, and other relevant court dates. True to the first wave, many state supreme court calendars are bare-bones, monthly listings of the days in which the court will hear oral arguments (often without listing which cases will be heard when) or are simply PDFs of the schedule document the court puts out on paper. The Illinois Supreme Court Web site, for example, links users to the term’s “Call of the Docket,” which appears to be a PDF of the oral-arguments schedule.

Another good example of first-wave data distribution is Web streaming. While trial courts have proven more cautious, state supreme courts have been on the forefront in Web streaming proceedings, both in live and archived format. A big reason state supreme courts have so readily embraced Web streaming relates to the nature of supreme court proceedings. Oral arguments do not feature witnesses and other trial theatrics that judges might be wary of posting online.⁵ In contrast, cerebral and (let us face it) often dry supreme court oral-argument broadcasts



do not threaten to undercut the dignity of the court.⁶ Currently, at least 29 state supreme courts provide Web streams of oral arguments. In some instances, such as in Florida, Indiana, Kansas, Kentucky, Massachusetts, Mississippi, New Mexico, and Ohio, the court broadcasts oral arguments live. Some state supreme court Web sites provide oral-argument audio only.⁷ The number of state supreme courts Web streaming oral arguments has steadily risen.

The Second Wave

As revolutionary as first-wave efforts are, sifting through a brief or watching an argument Web stream requires a level of ability and training (not to mention commitment of time) that many in the public simply do not have. These challenges call into question the ability of first-wave efforts to truly inform the public about the work of state supreme courts. In the past, courts often relied on members of the media to sift through information about the courts and inform the public. But as media budgets dwindle and the “court beat” becomes a thing of the past, fewer and fewer journalists have the skills to cover the courts adequately. Additionally, state supreme court outcomes, even before the recent downturn in media economics, have long been under-reported (see Haltom, 1998). Responding to the perceived need to do a better job of translating the work of the court for journalists and members of the public more generally, some state supreme courts are experimenting with “second-wave” approaches.

Second-wave efforts come in different forms.

A perfect example is case summarization.

At least 16 states currently provide case summaries of decisions handed down (Arizona, Colorado, Georgia, Illinois, Indiana, Iowa, Kentucky, Missouri, Minnesota, New York, Ohio, Rhode Island, South Carolina, Washington, West Virginia, and Wisconsin).

Taking yet a further step, at least 13 states provide summaries of *upcoming* cases on their Web sites (Arizona, California, Connecticut, Michigan, Minnesota, Missouri, North Dakota, Nebraska, Ohio, South Carolina, Washington, West Virginia, and Wisconsin). Many state public information officers (PIOs) report being wary of case summarization. Assuming a court does

Second-Wave Efforts

Case Summarization

State Supreme Court Blogs

Integrated Online Calendar

not elect to summarize all cases it decides, one difficulty is identifying which cases to summarize. Another concern is that cases will be summarized inaccurately or with a perceived bias. The hesitation to summarize cases may be exacerbated at many courts by the lack of staff able to distill complex cases; not all PIOs and court clerks have legal training.

Another second-wave example is the state supreme court blog. North Dakota provides an excellent example of how state supreme courts can use blogs to interface with the public (see www.ndcourts.com). North Dakota’s state supreme court Web site features a blog that provides information about upcoming cases and released opinions (linking to summaries of new opinions and a searchable archive), appellate practice tips, rule amendments, justices, and so forth.

The Ohio State Supreme Court Web site provides another variation. Its Web site features “Ohio Judicial System News,” which includes general information and announcements about the judiciary statewide, and “Supreme Court Case Announcements,” which offers summaries of cases handed down, notices of dismissal, and so forth. The site provides the public an effective portal into the business of the court, updated daily and with useful links to dig deeper.

Some outsiders have taken it upon themselves to feed the second wave by creating “unofficial” state supreme court blogs that follow state supreme courts in their states. Examples include SCOTXBlog run by a Texas appellate attorney and Virginia’s SCOVAblog run by a Virginia legal periodical.

Another interesting second-wave technique is the integrated online calendar. North Dakota’s calendar function lists dates on which oral arguments for specific cases will be heard. Clicking on a case listed on the calendar links users to a range of information: a case summary, appellee and appellant’s own summary of the issues presented, and links to case-specific documents and materials. On January 9, 2011, for example, had any member of the public clicked on calendar listing *Interest of Vondal* (a case scheduled to be heard on January 10, 2011), the following impressively helpful information would appear:⁸

North Dakota Supreme Court Oral Arguments Calendar

9:00am Monday, January 10, 2011
In the Interest of Richard Raymond Vondal

20100221 State of North Dakota, Petitioner and Appellee v.
Richard Raymond Vondal, Respondent and Appellant

Appeal from: [South Central Judicial District, Morton County,
Judge Bruce A. Romanick](#)

Nature of Action: [Civil Commit of Sexual Predator](#)

Counsel: Appellant: [Susan Schmidt](#)
Appellee: [Brian David Grosinger](#), Asst. State's Attorney

Issues: Appellant's Statement of the Issues:
Did the Petitioner show by clear and convincing evidence that R.V.
is a sexually dangerous individual?

Appellee's Statement of the Issues:
Whether there was clear and convincing evidence that respondent
is a sexually dangerous individual.

Briefs: [Case Summary](#)
[Appellant Brief](#)
[Appellee Brief](#)

[Go to Docket](#)

Source: www.ndcourts.com/Calendar

Clicking on the link for counsel brings the user to a picture and contact information for attorneys arguing the case. Clicking on “Nature of Action” brings the user to a list of summaries and links to other cases that deal with civil commitment of sexual predators. In short, North Dakota’s calendar provides a gateway that allows users to research cases before the court from a number of angles with extraordinary ease and accessibility.

So far, relatively few state supreme courts have developed second-wave innovations. Because such efforts are so often personality driven (a motivated chief justice, an active and Internet-savvy clerk or PIO), it is unclear how many states supreme courts will do so going forward. What seems certain is that the more courts engage in first-wave dissemination, second-wave efforts—both inside and outside the court—will be needed to translate the work of the courts adequately for the public.

Taking up this call, the State Supreme Court Initiative, a joint project of the William & Mary Law School and the National Center for State Courts, is developing a state supreme court Web site that will feature both first- and second-wave information about state supreme courts. The site will serve as a repository for raw data about all 50 state supreme courts. The site will also include second-wave resources, such as a blog that analyzes state supreme court opinions and identifies trends in the supreme courts of the 50 states. This free resource will provide journalists, scholars, lawyers, and members of the public a centralized resource for first- and second-wave information about state supreme courts.⁹

ENDNOTES

¹ Although this categorization implies a continuum, the author would like to emphasize the nonlinear nature of information-dissemination technologies. Depending on what the future holds, some states may bypass the “first wave” and proceed directly to the second, third, fourth, or fifth.

² Several innovative, open-government organizations are using abundant raw government data, see, e.g., the Sunlight Foundation.

³ Those interested in subscribing to Alabama’s opinion database must fill out a paper form (the Web site will not process credit-card payments online).

⁴ State supreme courts already experimenting with releasing case documents online include Alaska, Connecticut, Florida, Kentucky, Missouri, Mississippi, Montana, New Hampshire, North Dakota, Ohio, Texas, West Virginia, and Wisconsin. It is important to note that some of these resources are available at a designated law school or state bar association Web site—i.e., not released directly from the court.

⁵ Starting in the late 1990s, some trial courts have offered trial Web casts. Florida’s 9th Judicial Circuit was an early innovator in bringing its first live trial to the Internet in 1999 (see Wickham, 2000). As of February 2004, the Florida Supreme Court placed a moratorium on trial Web casts and other releases of electronic court records (see Committee on Privacy and Court Records, Amended Administrative Order No. AOSC04-4, [Fla. 2004]). In 2005 the Florida Committee on Privacy and Court Records (2005) found that even a Florida state constitutional right of public access did “not include an affirmative right to compel publication of records on the Internet or the dissemination of records in electronic form.” Today, Florida’s Ninth Judicial Circuit provides Web casts of daily arraignments. Other courts have also experimented with broadcasting trials. For example, the Delaware Municipal Court in Delaware, Ohio used to Web cast trials but discontinued the program. Some courts are experimenting with Web casts of select archived hearings, i.e., not live (see, e.g., the Medina County Domestic Relations Court at Inside the Court Blogspot, 2008, and Kropko, 2005, about Web streaming trials in Medina County).

⁶ Note, of course, that this remains a big reason why the U.S. Supreme Court refuses to Web cast its oral arguments.

⁷ Since 2000, the U.S. Supreme Court has experimented with same-day audio release of selective oral arguments, but it has remained unclear how the Court chooses which cases it will release. In September 2010, the Court announced plans to release oral argument audios for all cases the Friday following the argument date.

⁸ Note that once the argument on North Dakota’s calendar is heard, information about the case is moved to the site’s searchable database with links to the recording of oral argument.

⁹ The Web site is currently under construction thanks to a generous grant from the State Justice Institute. Another of the State Supreme Court Initiative’s projects is to publish a set of best practices for court Web sites to help state supreme courts take advantage of the numerous ways technology can help state supreme courts inform the public.

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