

## **Submission NSW LRC – Open Justice - Professor Tania Sourdin**

I enclose a brief submission relating to the NSW LRC ‘Open Justice proposals and Consultation Paper’ (June 2021).

My comments are focussed on two areas:

1. Access to court records and other materials by researchers.
2. Open justice in the context of online hearings and interlocutory court events.

My interest in the first area above is primarily linked to research that I have conducted in 14 Courts and tribunals in Australia. As part of my research which is often funded by government and requires ethics approval, I have accessed court and tribunal files in NSW, Victoria, SA, WA and the Northern Territory. A different regime operates in each state. Increasingly, as more court and tribunal files are digitised, it should be possible to access court file data via technology. At present, in most Courts and Tribunals it is necessary to access hard copy court file material (case management data that is recorded by most courts is often not very helpful and researchers may need to access materials that are not yet fully digitised). The proposals in general are quite helpful however there are some matters that could usefully be expanded upon (see below).

In relation to technology and open justice I refer to more extensive material that I have written as part of a recent publication – Tania Sourdin, ‘Judges, Technology and Artificial Intelligence’, (2021 Edward Elgar). In that book I have discussed the very differing approaches that have been adopted internationally in the pre COVID and COVID period to online hearings and other court events. In my view, the current Chapter 11 material requires significantly more development. I have extracted some material from my book (below).

I turn to each of these areas below:

### **Access to court records and other materials by researchers.**

The proposed legislative approach appears to be well thought out however it does not fully address access to materials and court files by researchers in the early sections of the Paper. It is pleasing to see the material in Chapter 10, however there is a need to consider access to material by researchers in the earlier sections of the Paper. This is an important topic not only because to evaluate the success of the proposal regime, it is probable that researchers would require access to material (for example to consider whether discretion had been exercised in an appropriate manner and to determine how many applications were made etc). The suggested provisions are currently too narrow – eg a researcher would not have standing under this section or any option to seek

access (see for example 4:42 “any other person who, in the appellate court’s opinion, has a sufficient interest in the decision that is the subject of appeal.”)

Some useful general guidance in relation to research requests appears in Chapters 9 and 10 of the paper however these issues need to also be considered in relation to the exercise of discretion. Notably, access to demographic material can be very important to researchers as demographic material can highlight access to court issues (amongst other matters).

Proposal 9.5 does not appear to be well linked to the later material in Chapter 10 relating to researcher access. It is noted that “Individuals or organisations should be entitled to access the register on payment of an annual subscription fee”. This is problematic for most academic researchers who often conduct research with very limited funds. At the very least, there should be an exception in relation to research that is supported by government.

The material in Chapter 10 relating to access to court files is helpful for researchers however Proposal 10.5 – should be amended to enable a researcher to access material where a court order has been made enabling that access (an additional discretionary approach should be considered). It is pleasing to see that the cost of accessing court files is also be considered at 10.2. Where research is being conducted, a no cost, low cost regime should operate.

### **Open Justice**

In my view Chapter 11 requires significantly more development and is critical in terms of open access to courts. I also note that apart from journalists and parties, law students, researchers and the general public also have an interest in observing court processes. This Chapter and accompanying proposals require more development.

The material below is extracted from my book (T.Sourdin, ‘Judges, Technology and Artificial Intelligence’ (2021)):

#### **Opportunities provided by technology**

From Chapter 1 of my book

“Marilyn Warren, former Chief Justice of the Supreme Court of Victoria in Australia, has outlined a number of ‘good reasons’ to urge technological change in the justice system.

These include: cost savings; efficiency/time savings; openness with technology providing ‘an

opportunity for the world to come into the courtroom'; and a potentially higher quality of justice.<sup>1</sup>"

"Access to justice is also informed by 'access to data' developments with significant jurisdictional differences that will be enlarged in the coming years as supportive Judge AI and Judge AI developments becoming more relevant in the next decade. 'Open access' arrangements may,<sup>2</sup> for example, enable more people to better understand court processes and outcomes, invite greater public scrutiny of the judicial role and also foster judicial concern about how such data might be interpreted and used.<sup>3</sup>"

There are issues that are linked to access to court decisions and how data about court decisions can be used. At present the paper does not explore how technology might better enhance justice.

From Chapter 3 of my book

"One concern about how developments will progress, is linked to the issue of who has access to data where cases have been determined by judges. In some jurisdictions there is a lack of clarity about this and, in the USA, there have been arguments that relate to which corporations may control such data. Such an approach is more likely in countries where information about court decisions is not available on public or open data bases. Indeed, issues relating to the ownership and copyright of court decision data have already led to lawsuits in the USA.<sup>4</sup> Other data issues have been raised by judges themselves. For example, in 2019, judges in France who were concerned about the use of data analytics to explore court decisions lobbied successfully to introduce a law that intended to prevent anyone from analyzing data that may be used to evaluate judicial decisions and behaviors (see also Chapter Ten).<sup>5</sup> In this regard, judges in France may have been concerned that

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<sup>1</sup> Justice Marilyn Warren, 'Embracing Technology: The Way Forward for the Courts' (2015) 24 *Journal of Judicial Administration* 227, 235.

<sup>2</sup> See 'Making Chinese Court Filings Public? Some Not-So-Foreign American Insights' (2020) 113 *Harvard Law Review* 1728.

<sup>3</sup> Jena McGill and Amy Salyzyn, 'Judging by Numbers: How will judicial analytics impact the justice system and its stakeholders?' (2021) 44(1) *Dalhousie Law Journal* (forthcoming).

<sup>4</sup> Bob Ambrogi, 'ROSS Comes Out Swinging, Vows To Fight Thomson Reuters' Lawsuit Alleging Data Theft', *LawSites* (Blog Post, 7 May 2020) <<https://www.lawsitesblog.com/2020/05/ross-comes-out-swinging-vows-to-fight-thomson-reuters-lawsuit-alleging-data-theft.html>> accessed 13 August 2020.

<sup>5</sup> In 2019, the French Government enacted new legislation preventing the publication of statistical information about judge's behaviour in relation to court decisions. While the legislation is aimed at anyone who seeks to publish such information, it is noted that legal tech companies focused on litigation prediction and analytics are 'most likely to suffer'. In particular, the legislation provides: '*the identity data of magistrates and member of the judiciary cannot be reused with the purpose or effect of evaluating, analysing, comparing or predicting their actual or alleged professional practices*': see 'France Bans Judge Analytics, 5 Years In Prison For Rule Breakers', *Artificial Lawyer* (Blog Post, 4 June 2019) <<https://www.artificiallawyer.com/2019/06/04/france-bans-judge-analytics-5-years-in-prison-for-rule->

algorithmic *injustice* could arise from access to AI systems that were predictive and that might enable or encourage forum shopping. On the other hand, such moves could be regarded in terms of digital exclusion, that may raise algorithmic *justice* issues as well as digital divide issues (digital divide issues are explored in more detail in Chapter Six).

At present, most courts and litigants do not have the capacity to introduce more sophisticated machine learning systems that can inform court and judicial operations as there may only be a limited available data range (that might only include written judicial decisions).<sup>6</sup> Other court records are often not digitized and are also often incomplete in the sense that they may include little demographic information, particularly in relation to civil disputes and there may be only limited access to any evidentiary material. Even where court records are digitized, there are many issues about whether a court record contains sufficient information to inform a comprehensive (rather than limited and potentially inaccurate) machine reading approach. The shift towards online courts is, however, making it more likely that machine learning approaches could be accommodated in the future. This, in turn, makes it more likely that concerns about algorithmic justice will become more relevant in respect of supportive Judge AI and Judge AI developments (see Chapters Five and Eight).”

Access to courts and ‘open justice’ via apps.

From Chapter 4

4.1. “In general, there appears to be a stronger appetite in China for online courts and more specific supportive technologies have now been adopted that can assist with both case management and also digitization (which, in turn, can support both AI and the development of online courts).<sup>7</sup> Writing in relation to his visit to a local court in China’s Zhejiang Province in 2017, Susskind reported being ‘impressed’ with what he saw, including ‘a static robot in the reception area that offered online

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breakers/#:~:text=In%20a%20startling%20intervention%20that,who%20breaks%20the%20new%20law> accessed 13 August 2020.

<sup>6</sup> The author notes that court records may be sufficient to enable AI systems to operate, see: John Campbell, ‘Ex Machina: Technological Disruption and The Future of Artificial Intelligence in Legal Writing’ (Working Paper No 20-04, University of Denver Sturm College of Law, 25 February 2020).

<sup>7</sup> Supreme People’s Court of China, *Chinese Courts and Internet Judiciary* (White Paper, 4 December 2019) 79–83; Tania Sourdin, Jacqueline Meredith and Bin Li, *Digital Technology and Justice: Justice Apps* (Routledge, 2020).

legal help for court users; on-site facilities for the e-filing of documents; dedicated virtual courtrooms; [and] speaker-independent voice recognition’.<sup>8</sup>

- 4.2. Indeed, many courts in China which are not fully online have a range of supportive technologies that are directed at the public and other court users.<sup>9</sup> Such supportive technologies may: offer general legal information on a specific subject; enable users to create legal documents; streamline conventional legal processes; and help individuals with legal research.<sup>10</sup> This approach has been taken partly because, as noted above, the SPC has led a ‘smart courts’ initiative throughout China by introducing newer technologies into the justice sector since 2016.<sup>11</sup> Local courts at various levels have been required to develop their own online platforms and apps with a focus on enabling judges, the general public and lawyers to engage with each other.<sup>12</sup> For public users, some apps are for educational purposes and provide information about legislation through the *China Court Mobile TV* app,<sup>13</sup> while others such as *Compilation of Chinese Laws (Zhong Guo Fa Lv Hui Bian)* ‘offers users more than 1,000 Chinese laws that are of relevance to daily life, including the Constitution of China, contract law, and marriage law’.<sup>14</sup>
- 4.3. Online court developments in China assume that many can access a mobile court through a smart phone or other device. For example, an app called *Ning Bo Mobile Mini Court (Ning Bo Yi Dong Wei Fa Yuan)* was officially launched by Ning Bo Intermediate

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<sup>8</sup> Richard Susskind, *Online Courts and The Future of Justice* (2020), Oxford University Press, 170–1; Tania Sourdin, Jacqueline Meredith and Bin Li, *Digital Technology and Justice: Justice Apps* (Routledge, 2020) Ch 2.

<sup>9</sup> See Tania Sourdin, Jacqueline Meredith and Bin Li, *Digital Technology and Justice: Justice Apps* (Routledge, 2020) in Ch 3 where the authors note that ‘some justice apps that are oriented towards access to justice are supportive in that their focus is on alerting people to developments in the legal sector and enabling a greater general understanding of the legal sector at low or even no cost. For example, in 2015, China’s SPC launched the free of charge *China Court Mobile TV (Zhong Guo Fa Yuan Shou Ji Dian Shi)* app, with the aim of promoting open justice and disseminating useful information to the public.’ See also: Yang Qing, ‘Promoting Justice Openness: China Court Mobile Phone and TV App Launched (Web Page, 27 February 2015) <<https://www.chinacourt.org/article/detail/2015/02/id/1558524.shtml>> accessed 13 August 2020. This app has five areas of focus: legal news, hot topics, live trials, press conferences and judge talks. ‘Legal News’ reports on laws and the important work of courts across the country, while ‘Hot Topics’ provides in-depth follow-up and analysis on high-profile cases in China. ‘Live Trials’ and ‘Press Conferences’ enable app users to access certain open court trials, and SPC and local court briefings respectively. In ‘Judge Talks’, an online classroom model is adopted where selected judges across the country educate the general public through discussion of legal issues.

<sup>10</sup> See the taxonomy noted by Jena McGill, Suzanne Bouclin and Amy Salyzyn, ‘Mobile and Web-based Legal Apps: Opportunities, Risks and Information Gaps’ (2017) 15 *Canadian Journal of Law and Technology* 229, 239.

<sup>11</sup> Tania Sourdin, Jacqueline Meredith and Bin Li, *Digital Technology and Justice: Justice Apps* (Routledge, 2020).

<sup>12</sup> ‘Smart court’ is a terminology officially raised by the SPC in 2016 with a view to turning China’s court system into a highly intelligent one by rolling out the technology use. This initiative was integrated into China’s *National Strategy for the Informatization Development*, see: ‘Outline of the National Informatization Development Strategy’, *China Copyright and Media* (Web Page, 30 July 2016) <<https://chinacopyrightandmedia.wordpress.com/2016/07/27/outline-of-the-national-informatization-development-strategy/>>.

<sup>13</sup> Tania Sourdin, Jacqueline Meredith and Bin Li, *Digital Technology and Justice: Justice Apps* (Routledge, 2020) ch 3.

<sup>14</sup> Tania Sourdin, Jacqueline Meredith and Bin Li, *Digital Technology and Justice: Justice Apps* (Routledge, 2020) ch 3.

People's Court in Zhejiang Province in January 2018.<sup>15</sup> The app enables litigants to complete the whole litigation process digitally, including case filing, serving legal documents, mediation,<sup>16</sup> evidence exchange, court hearings and any follow up enforcement. Running on social platform *WeChat*, the micro-court allows users to use their smartphone to go through the entire litigation procedure. The court has also launched a virtual judge using AI technology to provide legal consultancy services online.<sup>17</sup> As noted by the author together with Meredith and Li:

'As of August 2018, approximately 70,000 cases had been filed using this app and it was reported that this tool had saved judicial costs and enhanced litigant satisfaction. Because of the success of this app in Ning Bo region, the SPC continued to develop a national version of *Mobile Mini Court* (as opposed to the regional version in Ning Bo) and promoted the new version to other parts of the country from August 2018. In January 2020, Chief Justice Zhanguo Li, President of Zhejiang High People's Court, observed that *Mobile Mini Court* in Zhejiang Province had already dealt with over 1.36 million cases involving around 470,000 litigants and about 90,000 lawyers'.<sup>18</sup>

- 4.4. In the United Kingdom, the Civil Justice Council recommended the introduction of 'Her Majesty's Online Court' for civil disputes under the value of £25,000.<sup>19</sup> Lord Justice Briggs has also suggested a similar model be introduced.<sup>20</sup> In 2016, Her Majesty's Courts and Tribunal Service ('HMCTS') established a program of reform that was intended to introduce new technology, modernize the justice system and reduce costs. Cost reductions were to be realized through a combination of reducing staff, the number of cases held in physical court rooms, a reduction in the size of the court estate, as well as generating efficiency savings through reforming administrative processes.
- 4.5. The HMCTS reform program aims to reduce demand on courts by expanding the use of

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<sup>15</sup> Tania Sourdin, Jacqueline Meredith and Bin Li, *Digital Technology and Justice: Justice Apps* (Routledge, 2020) ch 3.

<sup>16</sup> In China, mediation is usually part of litigation process and is conducted by judges.

<sup>17</sup> Frederick Wilmot-Smith, 'Justice eBay Style' (2019) 41(18) *London Review of Books*.

<sup>18</sup> Tania Sourdin, Jacqueline Meredith and Bin Li, *Digital Technology and Justice: Justice Apps* (Routledge, 2020) ch 3 citing 'Move your finger to fight the lawsuit', *China Court* (Blog Post, 26 August 2018) <<https://www.chinacourt.org/article/detail/2018/08/id/3471944.shtml>>.

<sup>19</sup> United Kingdom Civil Justice Council Online Dispute Resolution Advisory Group, *Online Dispute Resolution for Low Value Civil Claims* (Report, February 2015) 6–7.

<sup>20</sup> Lord Justice Briggs, *Civil Courts Structure Review: Interim Report* (Report, Judiciary of England and Wales, December 2015) 76; Lord Justice Briggs, *Civil Courts Structure Review: Final Report* (Report, Judiciary of England and Wales, July 2016) 58.

video technology, introducing online end-to-end processes, promoting the use of online negotiation, mediation and settlement as well as new asynchronous processes. In this sense, the program aims to capitalize on technological advancements and develop a court system that is ‘just, proportionate and accessible to everyone’.<sup>21</sup> Notably, in more recent years the CEO of HMCTS has made public comment on how these reformed processes ‘future-proof’ court systems:

‘This shift to readily-available, real-time information about how things are working – coupled with the way we are designing our systems, which incorporates an assumption that we will want to change and improve them regularly in future – helps to make our changes future-proof by designing for further improvement’.<sup>22</sup>”

Issues with access and technology – from Chapter 6 of my book

- 6.1. “There can be also be issues relating to the extent to which justice that is supported by technology is ‘open’ and ‘transparent.’ A reduction in transparency can be linked to the use of more disruptive technologies (see Chapter Three) and the opacity of decisions that may be made as a result of forms of AI (see Chapter Five and Chapter Eight). In addition, even the use of some supportive technologies might result in less transparent processes and a reduction in public access to court hearings. In this regard, web-based platforms such as Teams, Skype, Zoom, Google Hangouts and WebEx<sup>23</sup> can lead to an increase in virtual hearings with little public access.<sup>24</sup> Videoconferencing and virtual hearings using such platforms have been embraced by some court systems in response to the COVID-19 pandemic. Indeed, Australia,<sup>25</sup> the United Kingdom,<sup>26</sup> the United

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<sup>21</sup> Natalie Byrom, The Legal Education Foundation, *Digital Justice: HMCTS Data Strategy and Delivering Access to Justice* (Report, October 2019) 2.

<sup>22</sup> HM Courts & Tribunals Service, *Reform Update* (Report, May 2018) 20 cited in Natalie Byrom, The Legal Education Foundation, *Digital Justice: HMCTS Data Strategy and Delivering Access to Justice* (Report, October 2019) 11.

<sup>23</sup> Suzie Forell, Meg Laufer, and Erol Digiusto, ‘Legal Assistance by Video Conferencing: What is Known?’ (Justice Issues Paper 15, Law and Justice Foundation of New South Wales, November 2011) 3.

<sup>24</sup> Frederic Lederer, ‘The Road to the Virtual Courtroom? A Consideration of Today’s and Tomorrow’s High-Technology Courtrooms’ (1999) 50 *South Carolina Law Review* 799, 801.

<sup>25</sup> Family Court of Australia and Federal Circuit Court of Australia Joint Practice Direction (JPD 2 – Special Measures in response to COVID-19, 2020); ‘Supreme Court Changes in Response to COVID-19’, Supreme Court of Victoria (Web Page, 20 March 2020) <<https://www.supremecourt.vic.gov.au/news/supreme-court-changes-in-response-to-covid-19>> accessed 14 August 2020; New South Wales Bar Association, *COVID-19: Information for Attending Court* (6 April 2020).

<sup>26</sup> Judiciary of England and Wales, *Civil Justice in England and Wales: Protocol Regarding Remote Hearings* (Protocol, 26 March 2020).

- States,<sup>27</sup> Canada,<sup>28</sup> Singapore,<sup>29</sup> Peru<sup>30</sup> and China<sup>31</sup> have all employed videoconferencing technology to advance from a traditional physical presence model of justice and instead conduct hearings on a virtual basis (see Chapter Two and Chapter Ten).
- 6.2. However, the approaches vary significantly from jurisdiction to jurisdiction, with some courts not enabling public access to such hearings, whereas others have posted YouTube links or audio links to hearings in real time. While responses have varied by jurisdiction, with some courts enabling TV or internet coverage of hearings, others have reduced opportunities for ‘open’ and ‘transparent’ access to courts (see additional discussion in Chapter Eight).
- 6.3. For example, in the abovementioned UK study relating to the impact of COVID-19 pandemic arrangements, journalists and court reporters made comments on how principles of open justice had been impacted by the COVID-19 measures.<sup>32</sup> They reported being ‘largely able to attend hearings’ and some indicated that the move to remote hearings had a ‘positive impact’ on the number of hearings they were able to cover.<sup>33</sup> However other media creators such as legal bloggers and also the general public found access to courts to be ‘more problematic’.<sup>34</sup> The CJC also reported concerns about the difficulties in accessing case data to ensure accurate reporting.<sup>35</sup> In this regard, ‘existing deficiencies in the current arrangements for accessing primary legal

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<sup>27</sup> New York State Unified Court System, ‘Virtual Court Operations to Commence in NYC Mid-week’ (Press Release, 22 March 2020).

<sup>28</sup> ‘Consolidated Notice to the Profession, Litigants, Accused Persons, Public and the Media’, *Superior Court of Justice* (Web Page, 13 May 2020) <<https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/consolidated-notice/>> accessed 14 August 2020.

<sup>29</sup> Supreme Court Singapore, *Guide on the Use of Videoconferencing and Telephone Conferencing & Videoconferencing for Hearings before the Duty Registrar* (Guide, 27 March 2020).

<sup>30</sup> ‘Judiciary implements Google Hangouts Platform for Virtual Hearings and Administrative Meetings’, *Poder Judicial Del Peru* (Web Page, 27 March 2020) <[https://www.pj.gob.pe/wps/wcm/connect/cortesuprema/s\\_cortes\\_suprema\\_home/as\\_inicio/as\\_enlaces\\_destacados/as\\_imagen\\_prensa/as\\_notas\\_noticias/2020/cs\\_n-pj-utiliza-plataforma-google-hangouts-para-reuniones-virtuales-27032020](https://www.pj.gob.pe/wps/wcm/connect/cortesuprema/s_cortes_suprema_home/as_inicio/as_enlaces_destacados/as_imagen_prensa/as_notas_noticias/2020/cs_n-pj-utiliza-plataforma-google-hangouts-para-reuniones-virtuales-27032020)> accessed 14 August 2020.

<sup>31</sup> ‘China steps up online litigation services amidst coronavirus epidemic’, *The Supreme People’s Court of the People’s Republic of China* (Web Page, 31 March 2020) <[http://english.court.gov.cn/2020-03/31/content\\_37534820.htm](http://english.court.gov.cn/2020-03/31/content_37534820.htm)> accessed 14 August 2020.

<sup>32</sup> Natalie Byrom, Sarah Beardon and Abby Kenrick, Civil Justice Council, *The Impact of COVID-19 Measures on the Civil Justice System* (Report, May 2020) 10, 70.

<sup>33</sup> Natalie Byrom, Sarah Beardon and Abby Kenrick, Civil Justice Council, *The Impact of COVID-19 Measures on the Civil Justice System* (Report, May 2020) 10-11, 70-71.

<sup>34</sup> Natalie Byrom, Sarah Beardon and Abby Kenrick, Civil Justice Council, *The Impact of COVID-19 Measures on the Civil Justice System* (Report, May 2020) 11, 70.

<sup>35</sup> Natalie Byrom, Sarah Beardon and Abby Kenrick, Civil Justice Council, *The Impact of COVID-19 Measures on the Civil Justice System* (Report, May 2020) 11.



information (listings, judgments, transcripts and case documents where authorised by the court)' were noted by the CJC as exacerbating the current crisis.<sup>36</sup>

- 6.4. At the same time, in relation to open court processes, it is notable that during the COVID-19 pandemic the CRT in Canada was able to keep 'its doors open'<sup>37</sup> while many other courts and tribunals were either unable to operate or required to significantly reduce the services that were available. However, open arrangements in technologically enhanced justice systems may come at the cost of privacy. Notably, in the framing proposed by Susskind there is little reference to confidentiality and privacy (see Chapter Nine) and issues in these areas might not have previously garnered much explicit attention given the paper based processes that previously operated in most courts. However, such issues are more likely to become relevant as technological tools are considered. For example, a review of material relating to COVID-19 changes reveals that there have been some significant issues with videoconferencing tools such as Zoom and Skype that have arguably prioritized openness and commercial viability over privacy and security.<sup>38</sup>

Openness and the closure of physical courts.

From Chapter Seven

- 7.1. "There are also questions that are raised by a reduction of physical courts in terms of social impact and the extent to which the judicial branch of government is accorded status that is equivalent to the other two branches of government. Some may, for example, consider that an online court and the absence of a physical building can have a negative impact on the status of the judicial arm of government. Essentially, where the other two arms of government continue to occupy high status physical premises, and where courts do not, inferences could be drawn about both the importance of the rule of law and the status afforded to independent judges.
- 7.2. Discussions about physical courts and the extent to which their reduction can have an impact on the status of the judicial arm of government have so far been somewhat

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<sup>36</sup> Natalie Byrom, Sarah Beardon and Abby Kenrick, Civil Justice Council, *The Impact of COVID-19 Measures on the Civil Justice System* (Report, May 2020) 11, 74.

<sup>37</sup> Elizabeth Raymer, "B.C.'s Civil Resolution Tribunal Keeps 'Doors Open' During Pandemic", *Canadian Lawyer*, (Blog Post, 27 March 2020 <<https://www.canadianlawyermag.com/practice-areas/adr/b.c.s-civil-resolution-tribunal-keeps-doors-open-during-pandemic/328037>> accessed 14 August 2020.

<sup>38</sup> Tania Sourdin and John Zeleznikow, 'Courts, Mediation and COVID-19' (2020) 48 *Australian Business Law Review* 138. The author notes that other specific concerns relating to security and privacy can arise with cloud based platforms and raise issues where sensitive (commercial or personal) material is considered (see also Chapter Nine).

mutated in most jurisdictions, with the majority of discussion in countries such as the UK<sup>39</sup> having focused on the potential impacts of court closures on access to justice.<sup>40</sup> There has, however, been some focus on the potential impacts beyond access to justice issues. In a 2019 Parliamentary Report in the UK, it was noted that:

‘The Senior President of Tribunals, Sir Ernest Ryder, has also placed on record his commitment to preserving open justice. In a speech in 2018, he noted the “staggering” numbers of disputes that are being resolved online by private dispute resolution services, such as those used by eBay and Amazon. He went on to say:

“When justice slips out of sight ... .the prospect of arbitrary, incompetent or unlawful conduct raises its head. Again, if we simply accept the argument that private online dispute resolution is the way in which the majority of disputes, and in some areas all disputes, may be resolved in future we accept this loss of accountability; we further accept the growth of a democratic deficit. And the same is the case if we divert public justice to an unobservable online forum. Our digital courts must be open courts”’.<sup>41</sup>

7.3. In the same report it was noted that ‘Professor Richard Susskind argued that open justice is not an overriding principle, but one of seven aspects of justice that can pull in different directions’.<sup>42</sup> The report also noted that although open justice was seen to be a priority by the HMCTS, their evidence was that ‘the digital court reform programme has never clearly articulated how the principles of open justice will be addressed when physical courts are replaced by online and virtual processes’.<sup>43</sup> In making a series of recommendations, there were concerns expressed about the notion that the setting up of online court processes by the government (and using a government website to access

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<sup>39</sup> See John Morison and Adam Harkens, ‘Re-Engineering Justice? Robot Judges, Computerised Courts and (Semi) Automated Legal Decision-Making’ (2019) 39 (4) *Legal Studies* 618 who note: ‘Her Majesty’s Courts and Tribunal’s Service (HMCTS) are producing new online platforms for divorce and probate applications, small money claims, and traffic penalty appeals, among others, so that issues can be dealt with by individuals in the first instance through a form of ‘do-it-yourself’ justice. This move towards so-called ‘online court’ processes has been accompanied by 86 court closures across England and Wales, with a further 15 identified for future action.’

<sup>40</sup> The author notes that the Law Society of England and Wales made submissions about court closures that included concerns that ‘the reputation of the law may suffer without formal court buildings’ see ‘Court Closures’, *The Law Society* (Web Page, 20 May 2020) <<https://www.lawsociety.org.uk/Campaigns/Court-reform/Whats-Changing/Court-closures>> accessed 14 August 2020.

<sup>41</sup> Justice Committee, *Court and Tribunal Reforms* (House of Commons Paper No 190, Session 2019) 50 [155].

<sup>42</sup> Justice Committee, *Court and Tribunal Reforms* (House of Commons Paper No 190, Session 2019) 51 [158].

<sup>43</sup> Justice Committee, *Court and Tribunal Reforms* (House of Commons Paper No 190, Session 2019) 52 [163].

these) could have a negative impact on the separation of powers<sup>44</sup> with a general finding and a specific recommendation that:

‘Modernisation of the court and tribunal system has potential constitutional implications which merit the scrutiny of Parliament.

Given the importance of preserving and communicating the independence of the justice system from the Executive, we recommend that existing access to online justice processes only via the gov.uk website be discontinued and replaced without delay’.<sup>45</sup>

- 7.4. Clearly the decline in the availability of physical courts raises issues that are linked to ‘open’ courts and the capacity of people within a community to see and attend a court hearing. Such issues have emerged in relation to the COVID-19 changes where many courts have undertaken work via a range of videoconferencing apps that are not ‘open’ to the public. The varying responses of courts are discussed in some detail in Chapter Two. However, ‘open’ processes have not been perceived to be a priority in many jurisdictions as courts have worked to address other priorities – such as the work involved in hearing cases (see also Chapter Nine and Ten).
- 7.5. On the one hand, technological developments have the potential to make courts more open by providing opportunities for court proceedings to be live streamed or recorded and reported on more widely than where physical courts are available. On the other hand, as in the UK, it has been noted that digital transformation and court closures have led to less open court processes rather than the ‘opening up’ of courts.
- 7.6. In many jurisdictions, concepts relating to ‘open’ justice are linked to the independence and impartiality required by the judicial arm of government. For example, in the USA, it has been said that:

‘The presumption of openness of judicial proceedings is embodied in the Sixth Amendment to the U.S. Constitution, which guarantees the accused in every criminal case the right to a public trial. In the words of Justice Hugo Black, the

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<sup>44</sup> The author notes that in a number of jurisdictions there have been concerns expressed about the relationship between courts and public management areas see in particular. Former Chief Justice (NZ) Dame Sian Elias “Managing Criminal Justice” [2017] *NZCLR* 31.

<sup>45</sup> Justice Committee, *Court and Tribunal Reforms* (House of Commons Paper No 190, Session 2019) 56 [177], [178].

Sixth Amendment is “a safeguard against any attempt to employ our courts as instruments of persecution. The knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power”<sup>46</sup>.

- 7.7. As noted above, developments in technology and a reduction in physical courts can result in both a reduction in access to courts and a negative impact on principles relating to open justice. This is partly because they may limit opportunities for the public (and the media) to be involved in interlocutory matters even if a final hearing is livestreamed.<sup>47</sup> Technological approaches to both online courts and Judge AI therefore require consideration of principles relating to open access to justice (see Chapter Nine).
- 7.8. Clearly such principles will be more relevant in some jurisdictions than others and, in many democratic countries, the impacts of newer technologies on both the rule of law and the judicial arm of the government are intertwined. As the late Lord Bingham remarked in his famous speech relating to the rule of law and open hearings:

‘The general arguments in favour of open hearings are familiar, summed up on this side of the Atlantic by the dictum that justice must manifestly and undoubtedly be seen to be done and on the American side by the observation that **“Democracies die behind closed doors”**’<sup>48</sup> (my emphasis)

Openness and the use of algorithmic material by courts. This is not considered in the paper but should be.

From Chapter 8

- 8.1. “Judicial transparency – ‘the commitment to openness and candour’ – is one of the most widely accepted judicial values (in relation to openness in the context of courts see also

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<sup>46</sup> Peter Winn, ‘Online Court Records: Balancing Judicial Accountability and Privacy in an Age of Electronic Information’ (2004) 79(1) *Washington Law Review* 307, 308 citing *In re Oliver*, 333 US 257, 270 (1948).

<sup>47</sup> See for example Michelle Hamlyn, ‘A Health Check on Open Justice in the Age of COVID-19: The Case for the Ongoing Relevance of Court Reporters’ (2020) 42(5) *Bulletin (Law Society of South Australia)* 6.

<sup>48</sup> Lord Bingham, ‘The Rule of Law’ (Speech, The Sixth Sir David Williams Lecture, 16 November 2006) 26 citing *R v Sussex Justices, Ex p McCarthy* [1924] 1 KB 256, 259 and *Detroit Free Press v Ashcroft* 303 F 3d 681 (6<sup>th</sup> Cir 2002) 683.

discussion in Chapter Seven).<sup>49</sup> In theory, automated systems offer the potential to make transparent many aspects of judicial decision-making. Susskind has argued that automated decision-making systems, if designed correctly, can render transparent each and every step of the decision-making process.<sup>50</sup> Nevertheless, many commentators remain unconvinced when it comes to the transparency of automated tools.

- 8.2. As noted by Deeks, transparency is important because shedding light on how an algorithm produces its recommendations or determinations can simultaneously allow observers to identify biases and errors in the algorithm.<sup>51</sup> Surden has also noted that transparency can impact on the ability to appeal a decision.<sup>52</sup>
- 8.3. One of the key issues that arises in this context is known as the ‘black box’ problem. As noted by Deeks, if algorithms remain opaque, they can impact on people’s sense of fairness and trust, particularly when used in government decision-making. In the criminal justice setting, opaque algorithms can undercut a defendant’s right to a defence.<sup>53</sup> As explained by Deeks:

‘Because a machine learning system learns on its own and adjusts its parameters in ways its programmers do not specifically dictate, it often remains unclear precisely how the system reaches its predictions or recommendations. This is particularly true for “deep learning” systems that use “neural networks,” which are intended to replicate neural processes in the human brain’.<sup>54</sup>

- 8.4. On the other hand, Huq has doubted whether a transparency gap exists between human and algorithmic decision-making.<sup>55</sup> He argues that although specialized tools are needed to interrogate algorithmic results, ‘the elaborate evidentiary rules that courts have developed for evaluating human testimony suggests that experts are just as needful to the task of understanding human testimony’.<sup>56</sup>

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<sup>49</sup> Monika Zalnieriute and Felicity Bell, ‘Technology and Judicial Role’, in Gabrielle Appleby and Andrew Lynch (eds), *The Judge, the Judiciary and the Court: Individual, Collegial and Institutional Judicial Dynamics in Australia* (Cambridge University Press, 2020).

<sup>50</sup> Richard Susskind, *Expert Systems in Law: A Jurisprudential Inquiry* (Clarendon Press, 1987) 114–15.

<sup>51</sup> Ashley Deeks, ‘The Judicial Demand for Explainable Artificial Intelligence’ (2019) 119 *Columbia Law Review* 1829, 1833.

<sup>52</sup> Harry Surden, ‘The Ethics of Artificial Intelligence in Law: Basic Questions’ (Research Paper No 19-29, Legal Studies, University of Colorado Law, 22 August 2019).

<sup>53</sup> Ashley Deeks, ‘The Judicial Demand for Explainable Artificial Intelligence’ (2019) 119 *Columbia Law Review* 1829, 1833.

<sup>54</sup> Ashley Deeks, ‘The Judicial Demand for Explainable Artificial Intelligence’ (2019) 119 *Columbia Law Review* 1829, 1832.

<sup>55</sup> Aziz Z Huq, ‘A Right to a Human Decision’ (2020) 105 *Virginia Law Review* (forthcoming).

<sup>56</sup> Aziz Z Huq, ‘A Right to a Human Decision’ (2020) 105 *Virginia Law Review* (forthcoming).

- 8.5. Nevertheless, some commentators have questioned whether AI can ever be truly explainable.<sup>57</sup> Burrell, for instance, has argued that because humans reason differently to machines, they cannot always understand or interpret the interactions among data and algorithms, regardless of whether or not they are suitably trained. One reason for this is the process a machine learning system goes through in refining its results and adjusting the ‘weight’ accorded to a multitude of variables.<sup>58</sup> Surden argues that while some machine learning techniques based on decision tree approaches produce answers that are easy to understand and inspect, neural-network and deep learning approaches can be extremely difficult (if not impossible) for humans to understand, including for the programmers who created them.<sup>59</sup> Deeks has also recognized this problem, noting that an explainable AI approach which simply reveals the source code for the machine learning model will rarely be satisfactory as most people will be unable to understand the code.<sup>60</sup>
- 8.6. More recently, some progress has been made toward the development of ‘explainable AI’. Deeks argues this refers to ‘efforts to explain — or help humans interpret — how a particular machine learning model reached its conclusion’.<sup>61</sup> However, other researchers have recognised that there is little consensus on the definition of ‘explainability’ in the context of AI and machine learning.<sup>62</sup> Recognising the need to ‘open’ the black box, Bhatt et al conducted a focus group study (n = 33) aimed at developing a shared language around the explainability of AI in the context of external stakeholders. They found that:

‘All definitions of explainability included notions of context (the scenario in which the model is deployed), stakeholders (those affected by the model and those with a vested interest in the model’s explanatory nature), interaction (the goal the

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<sup>57</sup> It has been suggested that explainability levels can vary and that this can impact on the extent to which outcomes are considered to be fair. Jonathan Dodge, Vera Liao, Yunfeng Zhang, Rachel Bellamy, Casey Dugan, ‘Explaining Models: An Empirical Study of How Explanations Impact Fairness Judgment’ (2019) *Paper*, IUI '19: Proceedings of the 24th International Conference on Intelligent User Interfaces, Pages 275–285 available at < <https://dl.acm.org/doi/10.1145/3301275.3302310> > accessed 24 September 2020.

<sup>58</sup> Jenna Burrell, ‘How the machine ‘thinks’: Understanding opacity in machine learning algorithms’ (2016) 3(1) *Big Data & Society* 1.

<sup>59</sup> Harry Surden, ‘The Ethics of Artificial Intelligence in Law: Basic Questions’ (Research Paper No 19-29, Legal Studies, University of Colorado Law, 22 August 2019).

<sup>60</sup> See Reuben Binns, Max Van Kleek, Michael Veale, Ulrik Lyngs, Jun Zhao and Nigel Shadbolt, ‘It’s Reducing a Human Being to a Percentage’: Perceptions of Justice in Algorithmic Decisions’ (Conference Paper, CHI Conference on Human Factors in Computing Systems, 21-26 April 2018) which also explores these issues in the context of accountability.

<sup>61</sup> Ashley Deeks, ‘The Judicial Demand for Explainable Artificial Intelligence’ (2019) 119 *Columbia Law Review* 1829, 1834.

<sup>62</sup> Umang Bhatt, McKane Andrus, Adrian Weller and Alice Xiang, ‘Machine Learning Explainability for External Stakeholders’ (Workshop Paper, ICML Workshop on Extending Explainable AI, 2020) 1.

model and its explanation serve), and summary (the notion that an explanation should compress the model into digestible chunks). Therefore, explainability loosely refers to tools that empower a stakeholder to understand and, when necessary, contest the reasoning of model outcomes'.<sup>63</sup>

- 8.7. Specific to the legal domain, a number of professional organisations, academics and others have noted that the notion of explainable AI remains a significant issue in the development of AI in law.<sup>64</sup> For example, the American Bar Association's Resolution 112 involving AI and Ethics (2019) urges courts and lawyers to address emerging ethical and legal issues related to the use of AI in law, including through the explainability of automated decisions made by AI.<sup>65</sup> As outlined by Deeks, explainable AI can 'foster trust between humans and the system, identify cases in which the system appears to be biased or unfair, and bolster our own knowledge of how the world works'.<sup>66</sup> At the same time, however, it has been suggested that explainable AI can be costly to build and may decrease algorithmic accuracy.
- 8.8. Coglianese and Lehr have also challenged the notion that complex AI processes can never be completely explainable:

'Analysts can, and do, possess full knowledge of algorithms' inner workings, and they can mathematically explain how these algorithms optimize their objective functions. What they lack is simply an interpretive ability to describe this optimization in conventional, intuitive terms'.<sup>67</sup>

- 8.9. In this regard, Deeks has outlined two alternative approaches to explainable AI: a model-centric approach and a subject-centric approach. The former attempts to explain the

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<sup>63</sup> Umang Bhatt, McKane Andrus, Adrian Weller and Alice Xiang, 'Machine Learning Explainability for External Stakeholders' (Workshop Paper, ICML Workshop on Extending Explainable AI, 2020) 2.

<sup>64</sup> Note – see previous comments. It has been suggested that explainability levels can vary and that this can impact on the extent to which outcomes are considered to be fair. Jonathan Dodge, Vera Liao, Yunfeng Zhang, Rachel Bellamy, Casey Dugan, 'Explaining Models: An Empirical Study of How Explanations Impact Fairness Judgment' (2019) *Paper*, IUI '19: Proceedings of the 24th International Conference on Intelligent User Interfaces, Pages 275–285 available at <<https://dl.acm.org/doi/10.1145/3301275.3302310>> accessed 24 September 2020.

<sup>65</sup> See Legal Talk Network, 'The Intersection of Ethics and Artificial Intelligence' (Podcast, 30 January 2020) <<https://legaltalknetwork.com/podcasts/digital-detectives/2020/01/the-intersection-of-ethics-and-artificial-intelligence/>> accessed 14 August 2020.

<sup>66</sup> Ashley Deeks, 'The Judicial Demand for Explainable Artificial Intelligence' (2019) 119 *Columbia Law Review* 1829, 1834.

<sup>67</sup> Cary Coglianese and David Lehr, 'Regulating by Robot: Administrative Decision Making in the Machine-Learning Era' (2017) 105 *The Georgetown Law Journal* 1147, 1206–1207.

whole model through, for example, revealing the creator’s intentions or the parameters specified by the creators. The latter focuses on the model’s performance in a particular case, and might, for instance, provide the subject of a decision with information about the characteristics of individuals who received similar decisions.<sup>68</sup>

8.10. It seems likely that Judge AI is more likely to become explainable using this second subject centric approach. However, as noted in Chapter Five, there are issues that remain regarding how and to what extent Judge AI can produce ‘reasons’ for judgment or an ‘opinion’ (see also Chapter Ten).<sup>69</sup> In addition, whilst approaches by judges vary significantly around the world, often the form of a written judgment in a civil matter can involve additional and extensive individual judicial variation<sup>70</sup> and this variation can be useful in the context of the creation of law (see discussion in Chapter Seven relating to the importance of judicial dissent).

8.11. For example, there are a number of famous judges who are regarded as ‘storytellers’<sup>71</sup> in part for their ability to convey in a compelling manner the circumstances surrounding the people, the dispute and their humanity. Whilst some might argue that Judge AI could replicate such approaches at some point in the future, others will note that the creativity is evident not only because of the outcome that is reached but also because of the way in which the analysis and decision is expressed.<sup>72</sup> It is this creativity that will be difficult to replicate and mimic in terms of AI developments for some years. The author notes however that judicial creativity and, by extension, judicial responsiveness (see discussion later in this Chapter), may not be as valued as much in lower court levels or in some jurisdictions.”

## From Chapter 10

10.1. “In addition, for some judges and courts, the changed arrangements have meant that

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<sup>68</sup> Ashley Deeks, ‘The Judicial Demand for Explainable Artificial Intelligence’ (2019) 119 *Columbia Law Review* 1829, 1835–1837.

<sup>69</sup> See Ariel Rosenfeld and Sair Kraus, *Predicting Human Decision-Making: From Prediction to Action* (Morgan and Claypole, 2018).

<sup>70</sup> The author notes that it seems likely that in the coming years there will be a focus on producing more machine readable judicial decisions. See Jameson Dempsey and Gabriel Teninbaum, ‘May it Please the Bot?’, Paper, MIT 15 August 2020, < <https://law.mit.edu/pub/mayitpleasethebot/release/1> > (Accessed 20 September 2020).

<sup>71</sup> Norman Stockmeyer Jr, ‘Beloved Are the Storytellers’ (2002) *Plain Language* 54 available at < [https://www.michbar.org/file/generalinfo/plainenglish/pdfs/02\\_jan.pdf](https://www.michbar.org/file/generalinfo/plainenglish/pdfs/02_jan.pdf) > accessed 22 September 2020.

<sup>72</sup> See discussion in Chapter 10 of this book and also in; Will Douglas Heaven, ‘OpenAI’s new language generator GPT-3 is shockingly good—and completely mindless,’ *MIT Technology Review*, 20 July 2020 at <https://www.technologyreview.com/2020/07/20/1005454/openai-machine-learning-language-generator-gpt-3-nlp/>



court processes have been more 'open'. In some instances, court hearings and judgment processes have been live streamed or audio recordings have been made available.<sup>73</sup> These approaches may have generated more public interest in both judge and court activities and are aligned with justice objectives relating to transparency and open justice. In other instances, the lack of a physical open court has meant that proceedings have been conducted with no public exposure and this has led to the 'closure' of some courts in terms of public access. As discussed in Chapter Seven, this remains a serious issue in terms of how courts and judges may operate remotely.

10.2. The author notes that there are risks in televising court processes that have been considered by various commentators for more than three decades.<sup>74</sup> There has also been some judicial hostility towards developments in this area.<sup>75</sup> Despite this, some jurisdictions have implemented court TV and online arrangements and, in other jurisdictions, judges have considered limited televised hearings (although such consideration has often been focused on access to televised court proceedings by the media rather than the public).<sup>76</sup> These developments have meant that in some jurisdictions, judges have attained almost a 'movie star' like status with some commentators suggesting that such shifts have supported the role of courts and the rule of law within a democracy,<sup>77</sup> while others have suggested that televised judicial quarrels and the development of a 'cult of personality' have had negative impacts on the judiciary.<sup>78</sup> The author notes that whilst some courts have moved to livestreamed

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<sup>73</sup> See, for example: Kathleen Arberg, 'Media Advisory Regarding May Teleconference Argument Audio' (Press Release, Supreme Court of the United States, 30 April 2020) <[https://www.supremecourt.gov/publicinfo/press/pressreleases/pr\\_04-30-20](https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_04-30-20)> accessed 19 August 2020.

<sup>74</sup> Paul Raymond, 'The Impact of a Televised Trial on Individuals' Information and Attitudes' (1992) 75(4) *Judicature* 204; Brandon Smith, 'The Least Televised Branch: A Separation of powers Analysis of Legislation to Televising the Supreme Court' (2009) 97 *Georgetown Law Journal* 1409; Ronald Goldfarb, *TV or Not TV: Television, Justice, and the Courts* (New York University Press, 1998); Susanna Barber, 'Televised Trials: Weighing Advantages Against Disadvantages' (1985) 10 *Justice System Journal* 279; Audrey Maness, 'Does the First Amendment's "Right of Access" Require Court Proceedings to be Televised? A Constitutional and Practical Discussion' (2007) 34 *Pepperdine Law Review* 123.

<sup>75</sup> Kyu Ho Youm, 'Cameras in the Courtroom in the Twenty-First Century: The U.S. Supreme Court Learning from Abroad' (2012) 6 *Brigham Young University Law Review* 1989.

<sup>76</sup> Joseph Bolton and Christopher Kromphardt, 'Black Robes in the Limelight: New Values and Requests to Televising Oral Arguments in the Ninth Circuit Court of Appeals, 1991-2005' in Rorie Solberg, Jennifer Diasco and Eric Waltenburg (eds), *Open Judicial Politics* (Oregon State University, 2020).

<sup>77</sup> Gregory Michener and Carlos Pereira, 'A Great Leap Forward for Democracy and the Rule of Law? Brazil's Mensalão Trial' (2016) 48(3) *Journal of Latin American Studies* 477.

<sup>78</sup> Paula Góes, 'Brazil: Judges quarrel live on TV and scandalize the country', *GlobalVoices* (Blog Post, 25 April 2009) <<https://globalvoices.org/2009/04/25/brazil-judges-quarrel-live-on-tv-and-scandalize-the-country/>> accessed 19 August 2020.

approaches,<sup>79</sup> posted material on YouTube,<sup>80</sup> or added website audio or live audio facilities, there is currently no uniformity in terms of court approaches (see Table 2.1 in Chapter Two).

10.3. Despite discussion to date about televising or streaming judicial hearings, the COVID-19 arrangements that have been introduced have mainly relied on commercial videoconferencing platforms. This has meant that many courts are closed to public scrutiny and raises questions about how judicial hearings can be ‘open’ in a modern technological age. There may be some benefit in all courts within a jurisdiction creating dedicated services to ensure that public access to courts via the internet remains available. The author notes that, in some courts, rather than visual material, audio (only) material is made available on court websites and this material is often only available for a restricted period.<sup>81</sup>

10.4. Online judging also requires judges to consider the arrangements that surround video conferencing and remote hearings. This may require a consideration of the virtual backgrounds that might be used and also the impacts on those who may be present or who may be observing a hearing. For example, there have been concerns expressed in the UK that children may have unintentionally been exposed to parental conflict while adults have given evidence in court proceedings.<sup>82</sup> Ideally, protocols could be developed on a national basis to ensure that there is some consistency between courts. There are also issues relating to which court cases should never be the subject of a video conferencing process and require either face to face judicial attention or some modified broader access to public arrangements.<sup>83</sup> Supportive arrangements for court users, in view of digital divide issues also require attention and the author notes that some courts have been investing in alternative support mechanisms (see Chapter Six).<sup>84</sup>

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<sup>79</sup> Kathleen Arberg, ‘Media Advisory Regarding May Teleconference Argument Audio’ (Press Release, Supreme Court of the United States, 30 April 2020) <[https://www.supremecourt.gov/publicinfo/press/pressreleases/pr\\_04-30-20](https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_04-30-20)> accessed 19 August 2020.

<sup>80</sup> See for example: Texas Court of Criminal Appeals, ‘PD-1096-19- Ex Parte Christopher Rion’ (YouTube, 17 June 2020) <<https://www.youtube.com/watch?v=6qRBhOcqwj8>> accessed 19 August 2020.

<sup>81</sup> See for example: ‘Supreme Court Sentences and Judgments Video Portal’, *Supreme Court of Victoria* (Web Page) <<http://www.scvwebcast.com/sentences/>> accessed 19 August 2020.

<sup>82</sup> Tania Sourdin, Bin Li, Stephanie Simm and Alexander Connolly, ‘COVID-19, Technology and Family Dispute Resolution’ (2020) 30 *Australasian Dispute Resolution Journal* (forthcoming).

<sup>83</sup> Milena Heinsch, Tania Sourdin, Caragh Brosnan and Hannah Cootes, ‘Death Sentencing by Zoom: An Actor-Network Theory Analysis’ (2020) *Alternative Law Journal* (forthcoming).

<sup>84</sup> See for example, article in the Brooklyn Daily Eagle, 2 September 2020, ‘Chief Judge highlights Technology in the Courts as Jury Trials resume this month’ available at <<https://brooklyneagle.com/articles/2020/09/02/chief-judge-highlights-technology-in-the-courts-as-jury-trials-resume-this-month/>> accessed 9 September 2020.