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# THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

ESSAY

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## SURVEYING THE LANDSCAPE AS TECHNOLOGY REVOLUTIONIZES MEDIA COVERAGE OF APPELLATE COURTS

Howard J. Bashman\*

Just as technology has tremendously changed the manner in which appellate lawyers, judges, and their staffs perform legal research over the past twenty-five years, moving from books and physical law libraries to online legal research services and access via computers, hand-held cellular devices, and the like, so too has technology revolutionized the manner in which many people access nearly every other type of information, including news coverage.

If I wanted to read an article appearing in *The New York Times* on any day in 1992, and if I was fortunate enough to have access to a computer that was connected to the internet—probably by a slow-speed dialup service over a telephone modem from home—I could eventually manage to download

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\*Howard J. Bashman, an appellate lawyer who operates an appellate litigation boutique based in Willow Grove, Pennsylvania, writes a monthly column on appellate issues for *The Legal Intelligencer*, Philadelphia's daily newspaper for lawyers. Bashman is widely known for his appellate blog, *How Appealing*, hosted by Breaking Media at <http://appellateblog.com/>. In more than fifteen years of blogging about appellate-court decisions and related news, Bashman has observed first-hand the seismic shifts in mainstream media coverage of appellate-court rulings that are the focus of this article.

and read the article online. But the far more common way to see what was in *The New York Times* in 1992 was to purchase a copy from a newsstand.

More recently, the internet has become ubiquitous, readily available at high speeds on my computer at work, on my computer at home, on my cell phone, and perhaps even on my television. If I want to see what's in today's edition of *The New York Times*, I don't drive to a drugstore or newsstand or library to purchase or peruse a copy of the print edition of that newspaper. Instead I go to [www.nytimes.com](http://www.nytimes.com) and click on the link for "Today's Paper," which will bring me directly to a list of every article appearing in multiple editions of today's newspaper, with full online access to their content.<sup>1</sup>

Now that we can access nearly the full contents of pretty much any newspaper in the world on our cell phones, the number of people who continue to purchase or subscribe to home delivery of an actual print copy of a newspaper continues its steady decline. Indeed, not only has online largely replaced paper when it comes to accessing the contents of newspapers, but popular apps such as Facebook and Twitter tend to be the way in which large numbers of people learn what is happening, instead of directly visiting a newspaper's web site.

The consequences of the digitalization of news coverage are many. Across the nation over the past decade or so, some major newspapers have closed down (see Denver's *Rocky Mountain News*<sup>2</sup>) or abandoned print for online-only coverage

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1. *The New York Times* is not alone in offering this sort of comprehensive online experience. See, e.g., Plain Dealer Staff, *Dear Readers: Information about The Plain Dealer's Delivery Schedule* (May 22, 2013, 7:06 AM CDT), [http://www.cleveland.com/metro/index.ssf/2013/05/dear\\_readers\\_information\\_about.html](http://www.cleveland.com/metro/index.ssf/2013/05/dear_readers_information_about.html) [hereinafter *Plain Dealer Announcement*] (noting, in explanation of *Plain Dealer's* move to fewer daily issues and enhanced digital offerings, that "[w]ith our updated digital edition, you can read The Plain Dealer anytime, anywhere," that "[i]t is an exact digital replica of the morning's paper in the page-by-page format you enjoy, delivered daily to your desktop or mobile device," that it "is faster, includes enhanced search capabilities, and allows you to quickly scan headlines and section fronts," and that it "offers . . . breaking news from our reporters as well as real-time information," and also reminding readers that copies of the paper edition would still be available "at over 2,000 locations every day").

2. See, e.g., Richard Pérez-Peña, *Rocky Mountain News Fails to Find Buyer and Will Close*, N.Y. TIMES (Feb. 26, 2009), <http://www.nytimes.com/2009/02/27/business/media/27paper.htm> (reporting that "[t]he Rocky Mountain News, would, after nearly 150 years of existence," publish its last edition the next day, and that the *News*, "founded in

(see *The Seattle Post-Intelligencer*<sup>3</sup> and *The Ann Arbor News*<sup>4</sup>). Numerous other newspapers—such as *The Birmingham News*<sup>5</sup> in Alabama, *The Plain Dealer* in Cleveland,<sup>6</sup> *The Harrisburg Patriot-News*<sup>7</sup> here in Pennsylvania, and *The New Orleans Times-Picayune*<sup>8</sup>—have managed to remain alive by decreasing

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1859 . . . claim[ed] to be not just the oldest newspaper in the state, but the oldest continuously operating business”).

3. See Dan Richman & Andrea James, *Seattle P-I to Publish Last Edition Tuesday*, SEATTLE POST-INTELLIGENCER (Mar. 16, 2009), <http://www.seattlepi.com/business/article/Seattle-P-I-to-publish-last-edition-Tuesday-1302597.php> (reporting that the “146-year old newspaper, Seattle’s oldest business,” would end publication but “would maintain seattlepi.com, making it the nation’s largest daily newspaper to shift to an entirely digital news product”); see also *Seattlepi.com*, seattlepi.com (online-only edition of paper including, as of July 2017, sections focused on local news, national and international news, business, sports, arts and entertainment, lifestyle news, travel, comics, education, and real estate).

4. See Stefanie Murray, *Ann Arbor News to Close in July*, MLIVE (Mar. 23, 2009, 9:18 AM EDT), [http://www.mlive.com/news/ann-arbor/index.ssf/2009/03/ann\\_arbor\\_news\\_to\\_close\\_in\\_jul.htm](http://www.mlive.com/news/ann-arbor/index.ssf/2009/03/ann_arbor_news_to_close_in_jul.htm) (reporting that the *News* had been “the city’s daily newspaper since 1835” and that a new web-based media company, AnnArbor.com, would “publish a print edition twice a week” beginning later in 2009); see also *MLiveAnnArbor*, <http://www.mlive.com/ann-arbor/> (online edition of paper offering, as of July 2017, state and local news).

5. See Dawn Kent Azok, *Many Birmingham News Staffers Depart as Paper Ceases Daily Publication, Moves to Three Days a Week*, AL.COM (Sept. 28, 2012, 9:17 PM CST), [http://blog.al.com/businessnews/2012/09/birmingham\\_news\\_staffers\\_depar.html](http://blog.al.com/businessnews/2012/09/birmingham_news_staffers_depar.html) (reporting that the *News* would cease daily publication “after 125 years” but that it and its related papers in Huntsville and Mobile would be “published on Sundays, Wednesdays and Fridays,” and that “there [would] be a greater emphasis on digital news coverage at their online home, al.com”) [hereinafter *Birmingham Reductions*]; see also *AL.com*, [www.al.com](http://www.al.com) (online edition of all three papers, offering, as of July 2017, primarily state and local news).

6. See, e.g., *Plain Dealer* Announcement, *supra* note 1 (explaining that the paper was about to reduce home delivery to three days a week, “with larger news sections and expanded local coverage: a Wednesday edition enriched with more food and dining coverage, a Friday edition with Northeast Ohio’s most comprehensive blueprint for entertainment, and a Sunday edition filled with even more arts, travel, opinion, sports and news,” and that “[a] full subscription of three premium days of home delivery will include access to our new digital edition seven days a week plus the Saturday home-delivered bonus edition [that includes sections focused on autos, high-school sports, and Ohio State football]”).

7. See Ted Sickler, *New Patriot-News Will Offer a Sunday Experience Three Days a Week*, PennLive (Dec. 22, 2012, 12:57 AM EST), [http://www.pennlive.com/midstate/index.ssf/2012/12/pa\\_media\\_group\\_1.html](http://www.pennlive.com/midstate/index.ssf/2012/12/pa_media_group_1.html) (reporting that starting on January 1, 2013, the paper would be “delivered to subscribers’ homes on Tuesdays, Thursdays and Sundays,” and promising both that “[w]hether you read The Patriot-News in print or online at PennLive.com, you’ll find that the depth and reach of coverage will remain the same,” and that “the company’s digital-first approach will create richer stories online and in print”).

8. David Carr & Christine Haughney, *New Orleans Newspaper Scales Back in Sign of Print Upheaval*, N.Y. TIMES (May 25, 2012), <http://www.nytimes.com/2012/05/25/business>

the number of days per week on which they publish print editions. The loss of classified advertising to free online alternatives, such as Craigslist, and the loss of print readers, resulting in a loss of traditional advertisers who have flocked to follow digital-edition readers to online options, have posed tremendous financial challenges to the continued existence of even the largest and most successful newspapers in the United States. The newspapers that have managed to survive have engaged in large staff cuts reducing the number of reporters and editors, and often the most experienced reporters and editors have been at greatest risk of losing their jobs because their salaries and benefits are so much greater (and thus costlier to the employer) than those of the brand-new reporters and editors who replace them.<sup>9</sup> These and the many other consequences of the digitalization of news coverage of course extend to the manner in which the news media cover appellate-court rulings.

The decline in traditional newspaper coverage of appellate courts, and of civics topics in general, is difficult to measure empirically, but it seems to be an unavoidable consequence of declines in newspaper readership and newspaper coverage of local government entities, including state and federal courts, as a result of the disappearance in many areas of reporters primarily assigned to cover the business of the courts for general-interest newspapers.<sup>10</sup>

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/media/in-latest-sign-of-print-upheaval-new-orleans-paper-scaling-back.html (reporting that the 175-year-old paper would “scale back the printed edition to three days a week”).

9. See, e.g., Birmingham Reductions, *supra* note 5 (reporting that “more than 100 employees were laid off, roughly a quarter of the total workforce,” when three jointly held Alabama papers substituted a more robust online presence for some of their print editions and that “[t]he majority of the layoffs—about 60—were reporters, editors, photographers, copy editors and others in the newsroom,” while also noting that “the loss of institutional knowledge with the departures of many veteran journalists is a challenge”).

10. While recognizing that it is all but impossible to empirically study the extent to which job losses and other cutbacks in the journalism industry have affected journalistic coverage of appellate courts, Christopher J. Davey—a former newspaper journalist who later worked as the Director of Public Information for the Supreme Court of Ohio—collected many relevant and informative details in a must-read article. Christopher J. Davey, *The Future of Online Legal Journalism: The Courts Speak Only Through Their Opinions?* 8 I/S 575, 583–84 (2013) (noting that over 40,000 journalism jobs had disappeared by the middle of 2012 and that insiders had by then observed that “the ranks of professional journalists dedicated to covering the courts and legal affairs have been decimated”), 584 (discussing both the disappearance of beat reporters whose responsibilities included “check[ing] in daily” on state supreme courts and the formation of

Despite the gloomy economic reality for newspapers and the unlikelihood of any turnaround in that regard, at present a substantial number of experienced journalists who regularly cover the courts continue to ply their trade. Although space limitations prevent me from listing all who deserve to be mentioned here, I must include Bob Egelko of *The San Francisco Chronicle*,<sup>11</sup> Maura Dolan of *The Los Angeles Times*,<sup>12</sup> Bill Rankin of *The Atlanta Journal-Constitution*,<sup>13</sup> Chuck Lindell of *The Austin American-Statesman*,<sup>14</sup> Kent Faulk

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a Federal Judicial Conference committee charged with “study[ing] ways that the federal courts can still support public understanding with less coverage from the media”).

As to news coverage of state supreme courts, Davey offered this sobering summary of his own state’s situation:

From 2003 to 2006, the average number of news stories in the major metropolitan Ohio newspapers combined featuring the term “Ohio Supreme Court” was 1,224.5 per year. From 2007 to 2011, the average was 925 per year.

In 2011, there were only 783 stories written about the Ohio Supreme Court in these newspapers, a forty-one percent drop from the peak year (2006: 1,332).

*Id.* at 385. A quick Lexis/Nexis search of *The Akron Beacon Journal*, *The Cincinnati Enquirer*, the *Dayton Daily News*, and *The Repository* of Canton, Ohio, undertaken for this article revealed that only 619 of those papers’ news stories from 2016 contained the words “Ohio Supreme Court.” (Because of database limitations, it was impossible to add *The Plain Dealer* (Cleveland) and *The Columbus Dispatch* to that search. Using the search function on their individual websites turned up an additional thirty *Dispatch* stories from 2016 that mention the Ohio Supreme Court and an additional twenty-eight *Plain Dealer* stories from mid-July 2016 through mid-July 2017 that mention it.)

11. See *Bob Egelko, Courts Reporter*, SFCHRONICLE.COM, <http://www.sfchronicle.com/author/bob-egelko/> (noting that Egelko’s beat includes “state and federal courts in California, the Supreme Court and the State Bar,” and that he has covered “the passage of Proposition 13 in 1978, the appointment of Rose Bird to the state Supreme Court and her removal by the voters, the death penalty in California and the battles over gay rights and same-sex marriage”).

12. See *Maura Dolan, Writer*, LATIMES.COM, <http://www.latimes.com/la-bio-mauradolan-staff.html> (noting that Dolan covers “covers the California Supreme Court and the U.S. 9th Circuit Court of Appeals,” and collecting recent articles).

13. See *Bill Rankin, Reporter for Enterprise*, AJC.COM, <http://www.ajc.com/news/state-regional/bill-rankin/1w5wIqT8YSqQHL6m14V68I/> (noting that Rankin joined the paper in 1989, and that “[f]or most of his time at the AJC, Bill has covered criminal justice, legal affairs and Georgia and federal courts”).

14. See *Chuck Lindell, State Capitol Reporter*, STATESMAN.COM, <http://www.statesman.com/online/contacts/chuck-lindell/wkKwTLAbogmwBOBJvdPaDN/> (noting that Lindell “covers legal issues, appellate courts, politics, the Texas Senate and criminal justice”).

of *The Birmingham News*,<sup>15</sup> and Jim Provance of *The Toledo Blade*.<sup>16</sup>

All of these newspaper reporters, and various others like them, regularly cover the rulings of the federal and state appellate courts in the places where their newspapers are located. And even though, thanks to the internet, their news coverage of those courts is now more widely available online than perhaps ever before, declining newspaper circulation and readership have unquestionably curtailed the number of local readers who are consuming that coverage.

Of course, some exceptions exist to the overall trend of declining newspaper coverage of local courts. For example, *The Washington Post* has recently assigned experienced journalist Ann Marimow to cover the D.C. Circuit, the Fourth Circuit, and the state-level appellate courts of Virginia and the District of Columbia.<sup>17</sup> And Zoe Tillman, who covered appellate courts for *The National Law Journal*—a publication whose contents largely exist beyond a subscription-only paywall—recently began covering appellate courts nationwide for BuzzFeed, an online-only news publisher whose content is freely available to all.<sup>18</sup>

Moreover, thanks to Twitter, news of newly issued federal appellate court decisions is often disseminated earlier than ever, often as promptly as the attorneys in a case will be advised of the rulings, and even before the opinions become publicly available on the courts' own sites.<sup>19</sup> Journalists can register for

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15. See Kent Faulk, AL.COM, <http://connect.al.com/staff/krfaulk/> (noting that Faulk has been a reporter since 1985 and now covers “the courts beat” for both the *Birmingham News* and the Alabama Media Group).

16. See Contact Us, TOLEDOBLADE.COM, <http://www.toledoblade.com/contactus> (noting that Provance is the *Blade*'s Columbus Bureau Chief); <http://www.toledoblade.com/JimProvance> (collecting recent articles).

17. See Ann E. Marimow, Reporter, Washington, D.C., WASHINGTONPOST.COM, [https://www.washingtonpost.com/people/ann-e-marimow/?utm\\_term=.1104909b215f](https://www.washingtonpost.com/people/ann-e-marimow/?utm_term=.1104909b215f) (indicating that Marimow “covers legal affairs in the District and Maryland for the Washington Post,” and collecting her recent stories).

18. See Zoe Tillman, BUZZFEED.COM, <https://www.buzzfeed.com/zoetillman> (noting that Tillman is a BuzzFeed News reporter based in Washington, D.C., and collecting recent stories).

19. To view just a few examples from the Twitter feed of Mike Scarcella, a reporter for *The National Law Journal*, see <https://twitter.com/MikeScarcella/status/885505774704832512> (“Twitter account—purportedly belonging to a judge—that follows US attorney is not grounds for recusal: appeals court”), <https://twitter.com/MikeScarella/status/883323145788>

alerts from a federal appellate court's electronic filing system to be notified of new filings, including the court's filing of particular opinions, just as quickly as the lawyers in a case will be notified. Journalists such as Tillman,<sup>20</sup> along with Brad Heath of *USA Today*<sup>21</sup> and Mike Scarcella of *The National Law Journal*,<sup>22</sup> frequently tweet out news and links to new appellate-court rulings before anyone else has done so.

At the same time that technology has resulted in a decrease in newspaper coverage of appellate-court rulings, the internet has made access to those rulings and to appellate oral arguments more freely available than ever before. Every federal appellate court and state appellate court makes its published opinions freely accessible online. Nearly all federal appellate courts, and many state appellate courts, also make oral-argument audio freely available online. The Ninth Circuit livestreams its oral arguments on YouTube,<sup>23</sup> and some state appellate courts also provide live and archived online access to oral-argument recordings.<sup>24</sup>

Hundreds of thousands—if not millions—of interested people watched online and on television in February 2017 when

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284928 (“New: US appeals court says 1st Amendment protects photographing, recording police officers”), <https://twitter.com/MikeScarcella/status/879360209713549312> (“Now—Ninth Circuit overturns Oregon ruling that said DEA administrative subpoenas violated privacy”), and <https://twitter.com/MikeScarcella/status/877901875202277377> (“Now: US appeals court overturns injunction that was blocking Mississippi ‘religious liberty’ law”).

20. See @zoetillman, <https://twitter.com/ZoeTillman> (describing Tillman as a reporter “covering courts and justice for BuzzFeedNews” and, of course, cataloguing her tweets).

21. See @bradheath, <https://twitter.com/bradheath> (describing Heath as an investigative reporter for USA Today who covers “law and justice”).

22. See @mikescarcella, <https://twitter.com/mikescarcella> (describing Scarcella as a senior editor at @lawdotcom, @TheNLJ and @Legal\_Times, and describing his beat as “[f]ederal enforcement,” “regulatory,” and “courts”).

23. See *United States Court of Appeals for the Ninth Circuit*, YOUTUBE, <https://www.youtube.com/user/9thcir/videos> (including an unusually sophisticated search function: the first hit produced by the distinctly non-legal term “travel ban” is the audio-only recording of the oral argument in *Washington v. Trump*, no. 17-35105 (9th Cir. Feb. 7, 2017) (motion to stay TRO pending appeal)). Readers will recall that this hearing was conducted telephonically, so there was no courtroom video for the Ninth Circuit to upload to its YouTube channel.

24. The National Center for State Courts has compiled a list of links to the online resources of those states that make their appellate court oral arguments available in this manner. *Appellate Procedure—State Links*, NAT'L CTR. FOR STATE COURTS, <http://www.ncsc.org/topics/appellate/appellate-procedure/state-links.aspx?cat=Appellate%20Court%20Oral%20Arguments%20Online>.



the Ninth Circuit livestreamed its first oral argument concerning President Trump's so-called travel ban.<sup>25</sup> And despite the tremendous interest in the subject matter of the travel-ban oral argument, it may have been one of the least visually interesting oral arguments of all times, with the attorneys participating remotely by telephone and the judges themselves also participating from off-camera locations.<sup>26</sup>

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25. See, e.g., Richard Wolf & Alan Gomez, *Trump's Travel Ban Court Hearing: Five Takeaways*, USATODAY.COM (Feb. 7, 2017, 9:23 PM EST), <https://www.usatoday.com/story/news/politics/2017/02/07/takeaways-president-donald-trump-court-of-appeals-hearing-hearing-travel-ban/97616664/>. Wolf and Gomez reported that the hearing

offered a rare opportunity for the general public to hear the federal court system in action, and listeners far and wide were eager to tune in. A court spokesman said 137,000 people from as far away as France, Germany and Japan listened to the live audio stream on the court's YouTube channel. David Madden said that was "by far" the largest audience for an oral argument since the court began live-streaming oral arguments two years ago. The feed also was carried live on CNN, MSNBC, Fox News and on USA TODAY's web site.

*Id.* The news media's making this important oral argument available in real time illustrates the power—and the civic value—of online news at its best. And yet there remains room for measured analysis released hours or days after an important appellate decision, some of those more reflective assessments even appearing in the print editions of newspapers that still produce them. See, e.g., Adam Liptak, *After the Ruling, and the Tweet, What Comes Next?* N.Y. TIMES, Feb. 11, 2017, at A8 (discussing consequences of travel-ban hearing and decision).

Despite the advantages of real-time reporting, experience shows that the pressure to be first to post a story can lead to errors. The best-known example may be the confusion surrounding early online reporting on the Supreme Court's Obamacare ruling. E.g., Chenda Ngak, *Getting it Wrong: Media Rushes to Report Supreme Court's Health Care Decision*, CBSNEWS.COM (June 29, 2012, 4:59 PM), <http://www.cbsnews.com/news/getting-it-wrong-media-rushes-to-report-on-supreme-courts-health-care-decision/> (showing screen shots of Breaking News banner on CNN.com website announcing that "[t]he Supreme Court has struck down the individual mandate for health care"; reporting that other online news stories—like the Huffington Post's assertion "that the Supreme Court had ruled the mandate unconstitutional"—conveyed "the opposite of the court's opinion"; also reporting that "NPR and Time re-tweeted CNN's [erroneous] report"; and noting that "[w]ith all of the confusion created by mixed reports, a handful of politicians tweeted out the misinterpreted Supreme Court ruling, later rushing to delete").

26. See United States Court of Appeals for the Ninth Circuit, *17-35105 State of Washington, et al. v. Donald J. Trump et al.*, YOUTUBE, <https://www.youtube.com/watch?v=RPOFowWqFGU> (providing oral-argument audio). The motions panel to which the matter was assigned did not sit together: Judge Canby was in his chambers in Phoenix, Judge Clifton was in his chambers in Honolulu, and Judge Friedland was in her chambers in San Jose, California, when they heard the argument by telephone. Similarly, Mr. Flentje, Special Counsel to the Assistant Attorney General, argued for the federal government from Washington, D.C., while Mr. Purcell, Solicitor General of the State of Washington, argued from Olympia, Washington, and his co-counsel from the office of the Minnesota Attorney General (who was on the line, but did not argue) was in St. Paul, Minnesota. Email from Susan V. Gelmis, Chief Deputy Clerk for Operations, U.S. Ct. of App. for the 9th Cir., to

Appellate judges and lawyers with the talent and time to write opinions and briefs in language accessible to people who are not lawyers are thus providing a wonderful service to those members of the general public who take advantage of their technology-facilitated ability to access those briefs and opinions online. Although the writing styles of many judges and lawyers remain afflicted by legalese, one can hope that over time more and more appellate opinions and briefs will be written so that they can be easily understood by intelligent members of the general public.<sup>27</sup>

To summarize, technological innovations have severely undermined the economic model of the newspaper industry because fewer readers subscribe to and read actual newspapers, preferring to get their news online. As a result, many newspapers have significantly reduced their staffs and cut back on publication schedules, and some have even gone out of business entirely. These changes have had a negative impact on even the most renowned and seemingly strongest newspapers, financially speaking, such as *The New York Times*, *The Washington Post*, *The Los Angeles Times*, and *The Wall Street Journal*.<sup>28</sup>

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Howard J. Bashman, Author, & Nancy Bellhouse May, Editor, J. App. Prac. & Process, *Physical Locations of Participants in Travel-Ban Hearing* (Aug. 11, 2017, 6:49 PM CDT) (copy on file with author). Ms. Gelmis can be heard at the start of the oral-argument recording describing the applicable procedures to counsel. She spent the hearing on the telephone while seated at the courtroom deputy's desk in Courtroom 1 of the James R. Browning Courthouse in San Francisco. *Id.*

27. Cf. Price Marshall, *Tribute to the Honorable Richard S. Arnold*, 1 J. App. Prac. & Process, 199, 203 (1999) (noting that Judge Arnold was mindful of this aspect of the appellate judge's role, always writing with such care that his opinions were "understandable to the losing party—not only to his lawyer, but also to the litigant himself").

28. On the other hand, markers of financial health like subscription numbers, profits, and share prices at those very papers have increased dramatically in the first half of 2017. See, e.g., Michael Barthel, *Despite Subscription Surges for Largest U.S. Newspapers, Circulation and Revenue Fall for Industry Overall*, PEWRESEARCH.ORG—FACTTANK (June 1, 2017), <http://www.pewresearch.org/fact-tank/2017/06/01/circulation-and-revenue-fall-for-newspaper-industry/> (reporting that "[y]early financial statements show that The New York Times added more than 500,000 digital subscriptions in 2016—a 47% year-over-year rise" and that "[t]he Wall Street Journal added more than 150,000 digital subscriptions, a 23% rise, according to audited statements produced by Dow Jones"; noting as well that Tronc, the parent company of both the *Los Angeles Times* and the *Chicago Tribune*, "saw an 8% decline in advertising revenue and a 4% decline in total revenue, though circulation revenue increased 5%," and also pointing out that although the

Although it appears beyond dispute that traditional newspaper coverage of federal and state appellate-court rulings has decreased as a result of the financial setbacks that the newspaper industry has suffered, those same technological innovations have resulted in faster real-time coverage of appellate-court rulings and faster and easier access to them, in addition to providing direct access to the oral arguments that may have preceded those rulings.

As someone who appreciates high-quality newspaper coverage of appellate-court rulings, I am perhaps more prone than younger lawyers to reminisce about the good old days. Yet, at the same time, I also very much appreciate the speed at which news of appellate-court rulings can be widely disseminated today via Twitter and the ease of accessing oral arguments and appellate rulings in digital form.

When it comes to online coverage of appellate-court rulings, *BuzzFeed* is not the only new entrant in the arena. *Ars Technica* frequently covers rulings involving legal issues touching on technology.<sup>29</sup> *The Hollywood Reporter* operates a blog titled “THR, Esq.” that covers appellate court rulings affecting the entertainment industry.<sup>30</sup> Any number of blogs closely cover appellate court rulings that touch on issues of

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*Washington Post* is privately held and does not release financial data, its leaders expect 2017 to be its “third straight year of double-digit revenue growth”); James B. Stewart, *Washington Post, Breaking News, Is Also Breaking New Ground*, NYTIMES.COM (May 19, 2017), <https://www.nytimes.com/2017/05/19/business/washington-post-digital-news.html> (reporting that the *Post* “has said that it was profitable last year—and not through cost-cutting”; that in May 2017, it “trailed only CNN and the New York Times” among news organizations in unique users and digital page views; that its “digital ad revenue is . . . in excess of \$100 million”; and that it expects 2017 to be its “third straight year of double-digit revenue growth”); Natalia Wojcik, *Trump Has Been “Rocket Fuel” for NYT Digital Subscriptions, CEO Says*, CNBC.COM—MARKET INSIDER (May 3, 2017, 4:41 PM EDT), <http://www.cnbc.com/2017/05/03/shares-of-new-york-times-surge-after-subscriber-growth.html> (reporting of the *New York Times* that “quarterly circulation revenue increased by 11.2 percent,” that “[p]aid subscriptions for digital-only surpassed 2.2 million, up 62.2 percent year over year,” and that “shares . . . were up 21 percent year to date, and have risen about 29 percent over the past 12 months”).

29. See *Ars Technica—Policy*, <https://arstechnica.com/tech-policy> (including legal news among topics covered from tech-policy perspective and maintaining archive that includes site’s tech-related legal coverage).

30. See *The Hollywood Reporter—THR Esq.*, <http://www.hollywoodreporter.com/blogs/thr-esq> (updating Hollywood-related legal coverage frequently and maintaining archive of past coverage).

national security.<sup>31</sup> Professor Hasen's *Election Law Blog* thoroughly covers cases within its realm.<sup>32</sup> And various other blogs, including my own *How Appealing*,<sup>33</sup> regularly cover interesting state and federal appellate-court rulings.

Even old-line newspapers have entered the law-blog arena. Bill Rankin writes a blog concerning legal issues on AJC.com, the web site of *The Atlanta Journal-Constitution*.<sup>34</sup> The *Proof and Hearsay* blog of the *Milwaukee Journal Sentinel* offers coverage of appellate court rulings from time to time.<sup>35</sup> And even Bob Egelko of *The San Francisco Chronicle* blogs about legal issues on that publication's web site from time to time.<sup>36</sup> Until recently, WSJ.com operated its own *Law Blog* supplementing *The Wall Street Journal's* already very strong coverage of federal and state courts.<sup>37</sup>

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31. See, e.g., *Just Security*, <https://www.justsecurity.org/aboutus> (indicating that blog is “based at the Center for Human Rights and Global Justice at New York University School of Law” and characterizing it as “an online forum for the rigorous analysis of U.S. national security law and policy”); *Lawfare*, <http://www.lawfareblog.com/> (indicating that blog is published in cooperation with Brookings and characterizing it as focused on “hard national security issues”); *Take Care*, <https://takecareblog.com/> (characterizing blog’s mission as “[e]nsuring the President ‘shall take Care that the Laws be faithfully executed’” and indicating that it provides “a platform for incisive legal analysis of a wide range of issues”).

32. See *Election Law Blog*, <http://electionlawblog.org/> (indicating that blog covers “[t]he law of politics and the politics of law: election law, campaign finance, legislation, voting rights, legislation, redistricting, and the Supreme Court nomination process”).

33. See *How Appealing*, <http://appellateblog.com/> (describing blog—in light of its May 6, 2002, founding date—as “[t]he Web’s first blog devoted to appellate litigation”). That founding date can be confirmed in the blog’s archive at [http://howappealing.abovethelaw.com/2002\\_05\\_01\\_appellateblog\\_archive.html](http://howappealing.abovethelaw.com/2002_05_01_appellateblog_archive.html) (scroll down to see archived initial post).

34. See *AJC—Bill Rankin’s Legal Brief*, <http://legal.blog.ajc.com/>.

35. See *Journal Sentinel—Proof and Hearsay*, <https://www.jsonline.com/blog/proofandhearsay/> (indicating that blog covers “crime, courts and legal issues in Milwaukee and throughout Wisconsin”).

36. See *SFGate—Politics Blog, Author: Bob Egelko*, <http://blog.sfgate.com/politics/author/begelko/> (collecting Egelko posts); *SFGate—Blog*, <http://blog.sfgate.com/stew/author/begelko/> (same).

37. See *The Wall Street Journal—Blogs, Law Blog*, <https://blogs.wsj.com/law/> (featuring headlined announcement of “The WSJ Law Blog: 2006–2017,” and suggesting at paywall that full article to which headline refers will reveal *Law Blog's* demise); see also Debra Cassens Weiss, *Wall Street Journal’s Law Blog Shuts Down*, ABAJOURNAL.COM (JULY 5, 2017, 11:18 AM CDT), [http://www.abajournal.com/news/article/wall\\_street\\_journals\\_law\\_blog\\_shuts\\_down](http://www.abajournal.com/news/article/wall_street_journals_law_blog_shuts_down) (reporting that “[t]he Wall Street Journal Law Blog has shut down after more than a decade . . . [m]ore than 20,000 posts and five lead writers,” and acknowledging that *Law Blog* had often been “a source for articles appearing at ABAJournal.com”).

For all of these reasons, I am reluctant to opine concerning whether news coverage of federal and state appellate courts' rulings is now better or worse than it was fifteen or even twenty-five years ago. The coverage is certainly different, often relying more heavily on wire services such as The Associated Press, Reuters, and Bloomberg News. At the same time, new providers such as Courthouse News Service, Law360.com (whose content is largely behind paywalls), new online outlets associated with longstanding legal-information sources such as the *ABA Journal's* online edition,<sup>38</sup> and various regional law-focused publications, such as *The Indiana Lawyer*,<sup>39</sup> have arisen to fill parts of the gap.

The only thing that is certain about the future is continued change. No doubt many of the concerns raised in this article will seem quaint—if not trivial—ten or fifteen years from now. But the topic will remain of utmost importance. The appellate judiciary depends on the faith and trust of the general public to carry out its important role as an impartial arbiter of public and private disputes.<sup>40</sup> Whether the general public will continue to have the same amount of faith and trust in the judiciary as has historically been the case,<sup>41</sup> or will have more or less confidence in our legal institutions now that the manner in which news

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38. See *ABA Journal*, <http://www.abajournal.com/> (offering news and information in categories that include “featured news,” “latest headlines,” “in-depth reporting,” “topics” in “legal technology,” and subscriber access to the digital edition of the print magazine).

39. See *The Indiana Lawyer*, <http://www.theindianalawyer.com/> (offering constantly updated legal reporting pertaining to Indiana in categories of “latest news,” “in depth,” and “trial reports,” and also offering access to the contents of the print edition of the paper).

40. See Davey, *supra* note 10, at 589–94 (acknowledging decline in news media, discussing relevant research into decline's effect on public knowledge about and perceptions of courts and judges, and urging courts to make their processes more transparent and judges to take a more active role in educating the public about the role of the courts).

41. See, e.g., Stephen G. Breyer, *Reflections on the Role of the Appellate Courts: A View from the Supreme Court*, 8 J. App. Prac. & Process 91, 94, 98 (2006) (pointing out that the Supreme Court's long history has given it “tremendous prestige,” asserting that “the result of that prestige is that people who would otherwise be in the streets fighting one another submit their disputes to the rule of law,” characterizing this acquiescence to the rule of law as “important for the stability of the United States,” and warning that “[p]ersistent attacks pose a problem because although the courts will weather thoughtful criticism of specific judicial opinions, courts cannot survive a constant deluge of negative comments intended to undermine popular support for the entire judiciary”).

about the judiciary is collected and disseminated has changed so much remains to be seen.

To end on what I hope is an encouraging note, if electronic media continues to be the manner in which the vast majority of information is communicated in the future, as all signs suggest it will be, then we should be heartened by the fact that coverage of appellate courts and appellate-court rulings has made the transition from print-only publications to electronic media. Let us hope that electronic media's coverage of appellate matters will continue to expand and grow so that digital journalists' knowledge of the appellate courts will come to rival the expertise that existed across the nation back when local and regional newspapers—and not just large national publications—could assign experienced journalists to cover the work of the appellate courts.

