

# Comment

## **2009: A Blawg Odyssey: Exploring How the Legal Community Is Using Blogs and How Blogs are Changing the Legal Community**

### I. INTRODUCTION

Have you ever wondered what a blog or a blawg is? Have you ever wondered what kind of information you could find on a blog? It is okay to wonder—blogs may be able to help.<sup>1</sup> Have you ever wanted to know who is using blogs or how they are using them? Have you considered starting your own blog but are uncertain about how to get started? How are different jurisdictions treating blogs? This Comment will introduce readers to the world of blogs, and more specifically, blawgs or law blogs, and answer those questions, as well as many others. The blawg is a versatile and powerful new tool that all members of legal community can and should be using, and they can be put to use for scholarship, business, communication, and entertainment. But be warned—the use of blogs can be habit forming and can lead to being well-informed, intellectually stimulated, enjoying a sense of community, and achieving at higher levels.

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1. *See infra* Section II.A.

It is argued that too little is published by legal scholars and practitioners that thoughtfully and thoroughly tracks the development of the law in a way that is useful and practical.<sup>2</sup> Rather, much legal scholarship and publication is moving from the long form to the short form, and from using intermediaries, such as law reviews and journals, to disintermediation.<sup>3</sup> More and more legal scholarship is delivered through rapid-fire soundbytes that give the reader information as opposed to analysis. Just as legal scholarship is now a hybrid of short and long form legal scholarship, the goal of this Comment is to write in the long form, using the traditional intermediary of a law review to provide a practical, thorough explanation of a short form, disintermediated media: law blogs. By explaining and analyzing what law blogs are, who is using them, how they are being used, and why you should be using them too, this Comment seeks to show members of the legal community (judges, attorneys, law professors, and law students) how the new short form of legal scholarship provides the usefulness and practicality they seek.

Even though this Comment advocates for blogs to be regarded as legitimate sources that advance legal education and practice, this Comment also seeks to provide a balanced appraisal of blogs by discussing both their strengths and weaknesses. It is also the Author's hope that this Comment moves readers to action. Get on the internet, navigate to one of the blogs discussed below, and see how you like it. You may find there is a blog particularly suited to your patent law practice. Maybe you will find another 1L who cannot stand the classmate who raises his hand to answer every question in Criminal Law. You may find there is a blog post regarding what Lehman Brothers CEO Dick Fuld knew and when he knew it. Or, you may simply find that blogs are not for you. However, after reading this Comment and exploring the legal "blogosphere,"<sup>4</sup> the Comment will have been a success if you can confidently add law blogs to your toolbox.

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2. Douglas A. Berman, *Scholarship In Action: The Power, Possibilities, And Pitfalls For Law Professor Blogs*, 84 WASH. U.L. REV. 1043, 1047-48 (2006) (citing Harry T. Edwards, *The Growing Disjunction Between Legal Education And The Legal Profession*, 91 MICH. L. REV. 34, 34, 50 (1992)).

3. See Lawrence B. Solum, *Blogging and the Transformation of Legal Scholarship*, 84 WASH. U.L. REV. 1071, 1074 (2006).

4. The "blogosphere" refers to the collective "world of weblogs," or "the community of all weblogs." Dictionary.com, "blogosphere," in *Webster's New Millenium Dictionary of English Preview Edition*, available at <http://dictionary.reference.com/browse/blogosphere>.

## II. BLOGS, BLAWGS, AND BLOGGERS, OH MY!

A. *What Is a Blog? What Is a Blawg?*

“Blog” is an amorphous term. Rather than precisely describing a discrete class of websites, “blog” refers to a style of website that varies widely in format and content. Some say “[a] blog, short for weblog, is an internet website where users interested in a particular topic can post messages for other users interested in the same topic to read and answer if they wish. When users post information on a blog, they often do so using a pseudonym referred to as a ‘user name.’”<sup>5</sup> Alternatively, “Merriam-Webster Dictionary defines a blog as a ‘[w]eb site that contains an online personal journal with reflections, comments, and often hyperlinks.’”<sup>6</sup>

Just like other creatures of the internet age, blogs have developed a lexicon: “blogging” is the act of publishing information on a blog, a “blogger” is a person who maintains or makes “posts” (written contributions) on a blog, and, most importantly, a “blawg,” or law blog, is simply a blog that focuses on the law. As of December 2007 there were 112 million blogs published on the internet,<sup>7</sup> and a new blog comes online every second of every day.<sup>8</sup> Further, there are between 2,000 and 3,000 blawgs on the internet,<sup>9</sup> including well over 235 law professor blogs, or “proflaw blogs.”<sup>10</sup> Blogs have also become a “Third Place” for millions of Americans, providing a vital, albeit virtual, community for social interaction that is both outside the home and outside work.<sup>11</sup>

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5. Cahill v. Doe, 879 A.2d 943, 945 n.1 (Del. Super. Ct. 2005).

6. Sunny Woan, *The Blogosphere: Past, Present, and Future. Preserving the Unfettered Development of Alternative Journalism*, 44 CAL. W. L. REV. 477, 478 n.2 (2008) (alteration in original) (quoting Merriam-Webster Online, “blog,” <http://www.merriamwebster.com/dictionary/blog>).

7. Cathrine M. Castaldi, *The Blogging Juror—Why You Need to Know About Blogs*, 50 ORANGE COUNTY LAW. 7, 7 (Mar. 2008) (citing generally Technorati, <http://technorati.com>).

8. Chris W. McCarty, *Blogging For Evidence*, 43 TENN. B.J. 26, 26 (Apr. 2007) (citing *It's The Links, Stupid: Blogging Is Just Another Word For Having Conversations*, ECONOMIST (Apr. 20, 2006), available at [http://www.economist.com/surveys/displaystory.cfm?story\\_id=6794172](http://www.economist.com/surveys/displaystory.cfm?story_id=6794172)).

9. Molly McDonough & Sarah Randag, ABA Journal Blawg 100, A.B.A.J. (Dec. 2007), [http://abajournal.com/magazine/aba\\_journal\\_blawg\\_100](http://abajournal.com/magazine/aba_journal_blawg_100).

10. See Ian Best, *A Taxonomy of Legal Blogs*, Law X.0, (formerly 3L Epiphany) (Mar. 28, 2006), [http://3lepiphany.typepad.com/3l\\_epiphany/2006/03/a\\_taxonomy\\_of\\_l.html](http://3lepiphany.typepad.com/3l_epiphany/2006/03/a_taxonomy_of_l.html) (listing legal blogs by topic and scope).

11. For more information on the Third Place, see RAY OLDENBURG, *THE GREAT GOOD PLACE* (Da Capo Press 1999) (1989).

Perhaps the most distinguishing feature of blogs as a discrete internet entity is the method of displaying and storing entries, or posts, in reverse-chronological order. Each new blog post is immediately put atop a column of past blog posts, and as a result, the older posts are pushed down toward the bottom of the webpage. While each blog post is identifiable by the date and time at which it was published, the blog is a slave to reverse-chronological order. However, each post on a blog can be given a “tag” such as “securities fraud” or “sentencing.” These tags are labels that organize posts into different categories, cross-referencing the posts and allowing readers to search posts only pertaining to one category or another.

*B. What Kind of Information Can Be Found on Blogs and Blawgs?*

The form and function of blogs and blawgs vary immensely, and it is that variety that may lead some to all-too-quickly dismiss the value of blogs in legal scholarship. For example, the information on a blog could include anything from a teenager blogging about being angry at her mother to a thoughtful argument regarding why the United States Supreme Court should grant certiorari on *Hamdan v. Rumsfeld*.<sup>12</sup> There is even a great degree of variety in legal-themed blogs. For example, posts range from lauding the singing voice of a now-former clerk of Justice Souter<sup>13</sup> to associates comparing pay<sup>14</sup> to whether Sarah Palin’s interpretation of the role of the Vice President of the United States of America adhered to the U.S. Constitution.<sup>15</sup>

While the value of blawgs containing well-researched, serious legal analysis is more evident, even blawgs with somewhat frivolous themes are not without value. For one, they are entertaining and bring levity to a profession and an education that can, at times, be lacking it desperately. While that frivolity may, again, cause some to dismiss the validity of blawgs, taking an honest look at such a noble profession, steeped in tradition, and being able to have a laugh and see things for what they are is a worthwhile exercise. In addition, pulling back the curtain, like Dorothy and Toto, and seeing the “Wizard” operating the machine is valuable as well. Not only is it educational for the reader, but that kind of public disclosure (and exposure) encourages members

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12. 548 U.S. 557 (2006).

13. See Underneath Their Robes, [http://underneaththeirrobes.blogs.com/main/2005/05/article\\_iii\\_gro.html](http://underneaththeirrobes.blogs.com/main/2005/05/article_iii_gro.html) (May 10, 2005, 7:05 EST).

14. See Greedy Associates, <http://www.greedyassociates.com/>.

15. Jonathan Adler, *Was Sarah Palin Right About the Vice Presidency?*, The Volokh Conspiracy, <http://volokh.com/posts/1225125380.shtml> (Oct. 27, 2008 12:36 EST).

of the legal profession to be mindful of the fact that as a member of the legal profession, their actions may be in the public eye.

However, the blawgs that have most influenced the legal profession, in terms of scholarship and practice, are the ones that are cited the most in cases and law reviews, and those are the ones containing serious legal analysis. For example, as of August 6, 2006, Ohio State University law professor Douglas A. Berman's *Sentencing Law and Policy Blog*<sup>16</sup> was cited twenty-four times in nineteen different published opinions.<sup>17</sup> Like the *Sentencing Law and Policy Blog*, most of the other blawgs cited in published opinions deal specifically with one particular subject area. Other such "boutique" blawgs cited include *Crime and Federalism*,<sup>18</sup> University of Missouri law professor Dennis Crouch's *Patently-O*,<sup>19</sup> and *De Novo*.<sup>20</sup> Other heavy hitters that are widely regarded as publishing legitimate legal analysis include *SCOTUSblog*,<sup>21</sup> which chronicles all things United States Supreme Court and is authored by a number of attorneys (most from Akin Gump) and a University of Minnesota law professor; appellate attorney Howard Bashman's *How Appealing*,<sup>22</sup> which strictly addresses federal appellate litigation; and *The Volokh Conspiracy*,<sup>23</sup> which is a general law professor-run blawg with contributions from law professors from around the country.

Many blawgs also publish legal news. There are some blawgs, like *The Wall Street Journal Law Blog*,<sup>24</sup> whose professed focus is legal news, keeping readers abreast of landmark cases, exploring the legal side of prominent business and market issues, and keeping track of different law firms, schools, and practitioners. However, most blawgs cover legal news in some way. The website for the American Bar Association (ABA) contains a thorough and helpfully indexed blawg directory.<sup>25</sup> A user can navigate through the ABA blawg directory and find blawgs that contain legal news in a certain topical area or that are authored by a certain group, such as professors, judges, or law students. For example, a securities lawyer looking for some analysis of the 2008

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16. Sentencing Law and Policy Blog, <http://sentencing.typepad.com/>.

17. Ian Best, *Cases Citing Legal Blogs—Updated List*, Law X.0 (formerly 3L Epiphany) [http://3lepiphany.typepad.com/3l\\_epiphany/2006/08/cases\\_citing\\_le.html](http://3lepiphany.typepad.com/3l_epiphany/2006/08/cases_citing_le.html) (Aug. 6, 2006).

18. Crime and Federalism, <http://federalism.typepad.com>. Cited once. See Best, *supra* note 17.

19. Patently-O, <http://www.patentlyo.com>. Cited once. See Best, *supra* note 17.

20. De Novo, <http://www.blogdenovo.org>. Cited once. See Best, *supra* note 17.

21. SCOTUSblog, <http://www.scotusblog.com/wp>.

22. How Appealing, <http://howappealing.law.com>.

23. The Volokh Conspiracy, <http://volokh.com>.

24. Wall Street Journal Law Blog, <http://blogs.wsj.com/law>.

25. See A.B.A.J., "Blawg Directory," <http://abajournal.com/blawgs/>.

“Bailout Bill” could use the ABA website to find analysis by securities lawyers on the *Corporate & Securities Law Blog*.<sup>26</sup>

Some blawgs are published by law firms to promote the firm. Most firms do not publish a blawg and the majority of the law firm blawgs are published by smaller firms. However, publishing a law firm blawg is something attorneys should consider for their own practice. Not only will the publication of a blawg make the firm’s name more likely to be found through an internet search, it will also humanize the firm by allowing the public an opportunity to get to know the lawyers better. In addition, providing well-researched and well-analyzed legal writing may help to establish the firm as a source of information on a particular topic. For example, *Marler Blog*<sup>27</sup> is published by the law firm Marler Clark, which focuses solely on food poisoning outbreaks and the resulting litigation.<sup>28</sup> The firm’s blawg promotes the firm by touting the professional accomplishments of the firm’s lawyers, providing commentary on issues affecting food poisoning litigation, and providing biographical information about the lawyers. Another fine example is the *Immigration Law Blog*<sup>29</sup> published by MVP Law Group, which clearly charts out visa bulletins and provides concise explanations of recent developments in the field of immigration law.

Finally, there are some blawgs with more tenuous connections to the legal world: online journals of members of the legal community and “legal tabloids.” The most notable self-proclaimed legal tabloid is *Above The Law*,<sup>30</sup> which covers everything from the abundant layoffs of Fall 2008 to the marriages of prominent members of the legal profession. While *Above The Law* is not the most reliable source for legal news on the internet, the blawg’s lightning-fast reaction to events affecting the legal world is impressive, often posting breaking legal news before other, more “traditional” blawgs. In addition, the blawg also offers fun surveys, like “How did you do on the New York State Bar Exam?”<sup>31</sup> While this blawg is not recommended for deep legal analysis or well-researched

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26. See *Impact of the Emergency Economic Stabilization Act of 2008 on Executive Compensation Issues*, Corporate & Securities Law Blog, <http://www.corporatesecuritieslawblog.com/155303-print.html> (Oct. 21, 2008). This blog is a good example of a law firm, Sheppard Mullin Richter & Hampton, LLP, publishing thoughtful analysis of legal news in order to establish themselves as a source of information among their peers.

27. Marler Blog, <http://www.marlerblog.com>.

28. See <http://www.marlerblog.com/promo/about>.

29. U.S. Immigration Law Blog, <http://ashwinasharma.com>.

30. Above The Law, <http://www.abovethelaw.com/>.

31. See Elie Mystal, *Reader Poll: How Many People Actually Have Their Bar Results*, ABOVE THE LAW, [http://www.abovethelaw.com/2008/11/reader\\_pd/\\_how?many?people?ac.php](http://www.abovethelaw.com/2008/11/reader_pd/_how?many?people?ac.php) (Nov. 14, 2008, 13:45 EST).

legal publications, it is extremely useful as an up-to-the-minute legal news source serving to inform, not educate, and as a fun legal-themed diversion as well. There is also *Law School for Dummies*,<sup>32</sup> which is the blawg of a Southern third-year law student. This blawg is fairly typical of a 3L personal-journal-style blawg, where the author, Justice Moustache, blogs about everything from drink recipes to giving tips to 1Ls getting ready for finals. The blawg also contains links to similarly styled 3L blogs.

### III. WHO IS USING BLOGS AND HOW ARE THEY USING THEM?

#### A. *Blogging Judges and the Courts*

It might surprise some readers to know that judges are entering the legal blogosphere (blawgosphere). For example, the ABA Journal Blawg Directory lists seven blawgs authored by judges.<sup>33</sup> While the number of judge-authored blawgs is less than the number of blawgs published by other members of the legal community, such as attorneys or law professors, they do have a presence in the blawgosphere that cannot be denied. The question remains whether blogging judges should be seen as rebels or as pioneers. First, essentially all judge-authored blawg content is scholarly.<sup>34</sup> If a judge were to blawg inappropriately about confidential information, or perhaps remark about the appearance or behavior of a particular party or lawyer, then the judge would certainly be in violation of his or her code of judicial conduct. For example, Canon 2 of the ABA Model Code of Judicial Conduct<sup>35</sup> requires that judges avoid impropriety and the appearance of impropriety at all times,<sup>36</sup> and Canon 4<sup>37</sup> states that judges shall conduct extra-judicial activities so as to avoid conflicts with judicial obligations.<sup>38</sup> However, a breach of those guiding principles could hardly be blamed on the medium, and that breach would be no different than the same judge making the same remarks aloud at the health club. Second, judges are some of the most experienced and accomplished members of the legal community, so their scholarly contributions should not be rejected solely on the principal that judges simply should not blog. Third and finally, judges are members of the legal community too. They should not be denied the opportunity

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32. *Law School for Dummies*, <http://lawschool4dummies.blogspot.com>.

33. See A.B.A.J., "Blawg Directory: Judge," <http://abajournal.com/blawgs/judge>.

34. *See id.*

35. MODEL CODE OF JUDICIAL CONDUCT Canon 2 (2004).

36. *Id.*

37. MODEL CODE OF JUDICIAL CONDUCT Canon 4 (2004).

38. *Id.*

to enjoy membership in the *online* legal community simply because of their status.

### 1. *Scholarly Discussion*

The best example of how judges are using blogs is the *Becker-Posner Blog*.<sup>39</sup> Published by Richard Posner, a judge on the United States Court of Appeals for the Seventh Circuit and Senior Lecturer at University of Chicago Law School, and Gary Becker, a Nobel Prize-winning economist and professor of economics at University of Chicago Graduate School of Business, the *Becker-Posner Blog* is serious academic blogging at its best. Founded in 2004, the two professors will often post on the same topic, each offering an argument or explanation of their own, sometimes arguing against each other, and sometimes agreeing. For example, on November 2, 2008, the two each offered their answer to the question, "Does the Free Market Corrode Moral Character?"<sup>40</sup> Judge Posner also contributes to other blawgs. For example, the Judge did a week-long stint as a guest blogger on Stanford law professor Lawrence Lessig's *Lessig Blog*<sup>41</sup> in 2004. Regarding his choice to blog, Judge Posner told the ABA Journal that "[i]f you confine your writing to print media, you're missing a lot of people."<sup>42</sup> The Judge also appreciated the ability for readers to comment on his blog posts anonymously, enabling them to be as honest or blunt as they desired.<sup>43</sup>

While Judge Posner is the most prominent judge-blogger, there are other judges who contribute to blawgs as well. Judge Nancy Gertner of the United States District Court for the District of Massachusetts contributes to *Convictions*,<sup>44</sup> which is the "blog on legal issues" for the online magazine *Slate*.<sup>45</sup> Taking a lighter approach, United States District Judge Jerry Buchmeyer edits *Say What?!*,<sup>46</sup> which is "[a] weblog of classic humor," and it essentially accepts contributions from members of the federal bar in Texas, including typos in pleadings and casebooks, funny comments from potential jurors during voir dire, and priceless misunderstandings during depositions. Along the same vein is California Fourth District Court of Appeals Associate Justice William

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39. The Becker-Posner Blog, <http://www.becker-posner-blog.com>.

40. See The Becker-Posner Blog, <http://www.becker-posner-blog.com/archives/2008/11> (Nov. 2, 2008, 17:12 and 18:51 CST).

41. Lessig Blog, <http://www.lessig.org/blog/>.

42. Stephanie Francis Ward, *The Blogger in the Black Robe*, 3 NO. 35 A.B.A.J. E-REPORT 2 (Sept. 3, 2004).

43. *Id.*

44. Convictions, <http://www.slate.com/blogs/blogs/convictions>.

45. Slate, <http://www.slate.com>.

46. Say What?!, <http://www.texasbar.com/saywhat/weblog/>.

W. Bedsworth, who publishes the hilarious blog, *A Criminal Waste of Space*.<sup>47</sup> The blog covers pressing topics such as an alleged burglar who was accused of breaking into a home, rubbing food seasoning all over the victims, hitting the victims with a sausage, and running away,<sup>48</sup> and the blog also contained a great take on the Elliot Spitzer debacle.<sup>49</sup>

## 2. Rules of Evidence and Reporter's Privilege

The Federal Rules of Evidence do not expressly mention blogs. However, Rule 902(6),<sup>50</sup> which lists self-authenticating documents, states "Newspapers and Periodicals. Printed materials purporting to be newspapers or periodicals."<sup>51</sup> Inserting the word "printed" into the list strongly suggests exclusion of blogs, which are electronic sources; however, there are many blogs that are inextricably linked to newspapers or periodicals, such as the *Wall Street Journal Law Blog*, which is linked, of course, to the *Wall Street Journal*, and *Convictions*, which is linked to the online, daily, general interest magazine, *Slate*. This raises the question of whether the media must be print and only print, or whether it could be a print copy of a legitimate electronic newspaper, or perhaps a print copy of a well-respected newspaper's website. For example, would a printed copy of the online edition of the *New York Times* suffice? Further, Rule 1001(1)<sup>52</sup> addresses what constitutes a writing. A "writing," according to the rule, "consist[s] of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation."<sup>53</sup> Here, a blog must constitute a writing under the rule. Blogs contain letters and words, which are set down by typewriting and compiled electronically. So while blogs are not directly addressed by the Federal Rules of Evidence, there certainly is room within a reasonable interpretation of the rules for blogs. Blogs most likely will be considered a writing by most courts and perhaps will be considered a self-authenticating writing,

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47. *A Criminal Waste of Space*, <http://www.acriminalwasteofspace.com>.

48. *Is That a Kielbasa in Your Pocket?*, *A Criminal Waste of Space*, <http://www.acriminalwasteofspace.com> (Nov 4, 2008, 18:15 EST).

49. *Schaddenfreude a la Spitzer*, *A Criminal Waste of Space*, <http://www.acriminalwasteofspace.com> (May 2, 2008, 17:12 EST).

50. FED. R. EVID. 902(6).

51. *Id.*

52. FED. R. EVID. 1001(1).

53. *Id.*

which gives blogs more credibility as legitimate sources and gives the practicing lawyer one more arrow in his or her quiver.

The California Evidence Code, however, allows for blogs to play a greater role. For example, § 1070<sup>54</sup> addresses the reporter's privilege, stating the following:

A publisher, editor, reporter, or other person connected with or employed upon a newspaper, magazine, or other periodical publication . . . cannot be adjudged in contempt by a judicial, legislative, [or] administrative body . . . for refusing to disclose . . . the source of any information procured while so connected or employed for publication in a newspaper, magazine or other periodical publication, or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.<sup>55</sup>

While there are no cases that give blawgs the official blessing as legitimate or admissible sources, California, as you might imagine, is on the cutting edge of recognizing the new form of legal scholarship. In *O'Grady v. Superior Court*,<sup>56</sup> the California Court of Appeals addressed three issues: "(1) whether blogs constitute journalism; (2) whether bloggers should be treated as journalists and thus be afforded protection under the state shield law; and (3) whether blogs are a covered medium, such as magazines and newspapers."<sup>57</sup> In its opinion, the court of appeals addressed the California Evidence Code and California Constitution sections addressed above.<sup>58</sup>

Jason O'Grady and others published "O'Grady's PowerPage," which was an "online news magazine" that published news and information regarding Apple Computers and related products. Because O'Grady's identity was unknown at the time, Apple Computers, Inc. sued John Doe One and twenty-four other Does for misappropriating trade secrets and posting confidential information regarding unreleased Apple products.<sup>59</sup> Along with its complaint, Apple filed motions for "orders empowering it to 'serve [s]ubpoenas on Powerpage.org'" and affiliated websites, arguing

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54. CAL. EVID. CODE § 1070 (West 2008).

55. *Id.* § 1070(a). Article I, section 2, subdivision (b) of the California Constitution contains an almost identical passage. See CAL. CONST. art. I, § 2(b). As of Spring 2008, California was the only state that included a reporter's privilege in its constitution. Woan, *supra* note 6, at 488 n.73 (citing Joseph S. Alonzo, Note, *Restoring the Ideal Marketplace: How Recognizing Bloggers as Journalists Can Save the Press*, 9 N.Y.U. J. LEGIS. & PUB. POL'Y 751, 752 (2006)).

56. 139 Cal. App. 4th 1423 (2006).

57. Woan, *supra* note 6, at 487 (citing *O'Grady*, 139 Cal. App. 4th at 1460).

58. See *O'Grady*, 139 Cal. App. 4th at 1460.

59. *Id.* at 1432, 1436.

that the identities of the unknown defendants could not be ascertained any other way.<sup>60</sup> In response, O'Grady and several codefendants moved for a protective order to prevent the disclosure of their true identities on the grounds that this information was protected by California's Reporter Shield Statute.<sup>61</sup>

Article I, section 2, subdivision (b) of the California Constitution provides, "A publisher, editor, reporter, or other person connected with or employed upon a newspaper, magazine, or other periodical publication . . . shall not be adjudged in contempt . . . for refusing to disclose the source of any information procured while so connected or employed for publication in a newspaper, magazine, or other periodical publication, or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public."<sup>62</sup>

The defendants further asserted that their identities were also protected by California Evidence Code § 1070(a), which mirrors the statute above.<sup>63</sup> The trial court granted Apple's request to issue subpoenas to the unknown defendants, thereby identifying them, and denied the defendants' motion for a protective order to keep their identities concealed.<sup>64</sup> The defendants appealed, seeking "a writ of mandate or prohibition to compel the trial court to set aside its denial of [their] motion for protective order."<sup>65</sup>

On appeal, Apple asserted that the protections of the Reporter's Shield Statute and California Evidence Code § 1070 did not extend to the blogger-appellants "because (1) they were not engaged in legitimate journalistic activities when they acquired the offending information; and (2) they are not among the classes of persons protected by the statute."<sup>66</sup>

In ruling, the court of appeals explained that the issue was not whether the blogger-appellants were engaged in "legitimate journalism" but rather whether they were engaged in "dissemination of *news*," which in fact the blogger-appellants were.<sup>67</sup> The court of appeals also refused to distinguish "the open and deliberate publication on a news-oriented

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60. *Id.* at 1436.

61. CAL. CONST. art. I, § 2(b).

62. *O'Grady*, 139 Cal. App. 4th at 1456 (ellipses in original) (quoting CAL. CONST. art. I, § 2(b)).

63. *Id.*

64. *Id.* at 1438.

65. *Id.*

66. *Id.* at 1456.

67. *Id.* at 1457.

Web site of news gathered for that purpose by the site's operators" from "publishing a newspaper."<sup>68</sup> Employing the plain language doctrine, the court of appeals held that the operator of a public website was a "publisher" within the meaning of the California Reporter Shield Statute.<sup>69</sup>

Next, the court of appeals applied the canon of *ejusdem generis*<sup>70</sup> and held that if an electronic magazine did not fall under "magazine" in the Reporter Shield Statute, then surely it would fall under "other periodical publication."<sup>71</sup> The court of appeals explained that electronic news magazines are more similar to traditional print media than are television and radio, and the electronic publication in question was a periodical, regardless of the fact that it was not published at regular intervals.<sup>72</sup> Finally, the court of appeals held that the blogger-appellants were entitled to the protection of the Reporter Shield Statute.<sup>73</sup>

However, in a lengthy footnote, the court stated that it purposely avoided the term "blog" . . . because of its rapidly evolving and currently amorphous meaning.<sup>74</sup> The dicta recognized that blogs were published periodically, but unlike a electronic magazine, they were organized in reverse-chronological format.<sup>75</sup> In other words, an electronic magazine is more like a print media than a blog because of the format in which information is organized and presented. While the court of appeals declined to rule on whether a blog would pass the same analysis as the blogger-appellants' electronic magazine, the language of the opinion suggests that certain types of blogs with the same characteristics as the blogger-appellants' electronic magazine would receive protection under the Reporter Shield Statute, and that declining to rule on the issue was more a matter of practical justiciability rather than an opinion that the same protections would not apply to blogs.

While it has not directly addressed reporter's privilege in the context of bloggers, the United States Court of Appeals for the Second Circuit has a test for whether the reporter's privilege applies, the broad

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68. *Id.* at 1459.

69. *Id.* at 1459-60.

70. Black's Law Dictionary defines "*ejusdem generis*" as "[a] canon of construction that when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same type as those listed." BLACK'S LAW DICTIONARY 556 (8th ed. 2004).

71. *O'Grady*, 139 Cal. App. 4th at 1461-62.

72. *Id.* at 1462.

73. *Id.* at 1466.

74. *Id.* at 1463 n.21.

75. *Id.*

language of which suggests that it may apply to a blogger.<sup>76</sup> The party seeking the reporter's privilege must show "(1) 'the intent to use [the] material . . . to disseminate information to the public' and (2) 'that such intent existed at the inception of the newsgathering process.'"<sup>77</sup>

Further, § 250 of the California Evidence Code<sup>78</sup> defines "writing" in a very similar fashion to the Federal Rules of Evidence, except it is broader and includes more electronic media forms. That code section states,

"Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and *every* other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record been stored.<sup>79</sup>

Section 250 appears to include just about everything. However, unlike the Federal Rules of Evidence definition of "writing," the California definition has been affirmatively and specifically broadened to include more electronic sources. Finally, the California Evidence Code definition of "original" most likely includes the printed pages of a blog. Section 255<sup>80</sup> states that "[o]riginal' means the writing itself or any counterpart intended to have the same effect by a person executing or issuing it. . . . If data are stored in a computer or similar device, any printout . . . readable by sight, shown to reflect the data accurately, is an 'original.'"<sup>81</sup>

However, as liberal as the California Evidence Code is regarding the reporter's privilege, the California Trial Court Rules, Civil Rules, Criminal Rules, and Appellate Rules make no reference, directly or indirectly, to blogs or even electronic sources.

Focusing on the Southeast, the Georgia Supreme Court Rules, Rules of the Court of Appeals of the State of Georgia, and Georgia Uniform Rules of the Superior Court do not address blogs or electronic sources. However, Georgia's Code does include a reporter's privilege, but it appears that it would not apply to electronic journalists and thus would not apply to bloggers. Official Code of Georgia Annotated (O.C.G.A.)

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76. Woan, *supra* note 6, at 488.

77. *Id.* (ellipsis in original) (quoting von Bulow v. von Bulow, 811 F.2d 136, 144 (2d Cir. 1987)).

78. CAL. EVID. CODE § 250 (West 1995 & Supp. 2009).

79. *Id.* (emphasis added).

80. CAL. EVID. CODE § 255 (West 1995).

81. *Id.*

§ 24-9-30<sup>82</sup> applies to “[a]ny person, company, or other entity engaged in the gathering and dissemination of news for the public through a newspaper, book, magazine, or radio or television broadcast.”<sup>83</sup> Unlike the more progressive California Reporter Shield Statute, Georgia’s reporter’s privilege conspicuously excludes any electronic media. Further, the Georgia reporter’s privilege is not absolute, as it allows an exception for when the information sought “(1) [i]s material and relevant; (2) [c]annot be reasonably obtained by alternative means; and (3) [i]s necessary to the proper preparation or presentation of the case of a party seeking the information, document, or item.”<sup>84</sup>

Alabama, Florida, North Carolina, South Carolina, and Tennessee also have state reporter shield laws, and the courts of all those states—except for South Carolina—have recognized a reporter privilege.<sup>85</sup> However, the Florida Statutes § 90.5015<sup>86</sup> defines a “professional journalist” as the following:

[A] person regularly engaged in collecting, photographing, recording, writing, editing, reporting or publishing news, for gain or livelihood, who obtained the information sought while working as a salaried employee of, or independent contractor for, a newspaper, news journal, news agency, press association, wire service, radio or television station, network, or news magazine.<sup>87</sup>

Here again, like Georgia, the Florida reporter privilege does not include electronic journalists, expressly or impliedly. However, book authors are explicitly excluded from the reporter’s privilege. So, it could be argued that because the Florida legislature expressly excluded book authors and not electronic journalists, they purposely meant to leave that area open for interpretation. But the Florida privilege is not left open-ended with a clause like “or any other news media,” but rather is relatively precise and closed-ended.

Alabama’s reporter privilege statute is probably the most narrow in the Southeast, applying only to “person[s] engaged in, connected with or employed on any newspaper, radio broadcasting station or television station, while engaged in a news-gathering capacity.”<sup>88</sup> However, South Carolina’s version includes the catch-all that Florida and

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82. O.C.G.A. § 24-9-30 (2006).

83. *Id.*

84. *Id.*

85. See Legal Protections for Journalists’ Sources and Information, <http://www.splc.org/legalresearch.asp?id=31>.

86. FLA. STAT. ANN. § 90.5015 (West 1999).

87. *Id.* § 90.5015(1)(a).

88. ALA. CODE § 12-21-142 (LexisNexis 2005).

Alabama's statutes do not. South Carolina's reporter privilege statute applies to "[a] person, company, or entity engaged in or that has been engaged in the gathering and dissemination of news for the public through a newspaper, book, magazine, radio, television, news or wire service, or other medium."<sup>89</sup> North Carolina also includes an even broader catch-all in its reporter's privilege statute, applying it to journalists disseminating news "via any news medium."<sup>90</sup> The "news medium" can include "[a]ny entity regularly engaged in the business of publication or distribution of news via print, broadcast, or other electronic means accessible to the general public."<sup>91</sup> Unlike the statutes in neighboring states, the North Carolina reporter's shield statute almost certainly applies to bloggers. Tennessee's reporter's shield is the most unclear in the Southeast regarding whether it would apply to bloggers, extending its protections to "person[s] engaged in gathering information for publication or broadcast connected with or employed by the news media or press, or who is independently engaged in gathering information for publication or broadcast."<sup>92</sup>

## B. *Blawging Attorneys*

### 1. *Third Place*

Many attorneys—not to mention judges, professors, and law students—work long hours. On top of work responsibilities, many attorneys also have family responsibilities, civic responsibilities, or simply other personal commitments such as physical fitness, religion, or volunteer work. For those attorneys, a Third Place aside from home and work may become increasingly difficult to find and enjoy. An Atlanta attorney once told the Author that he did everything he could to finish his work in time to make it home for his children's bath time. What time does that leave for socialization? Personal commitments such as family and religion are certainly worthwhile, but perhaps blawgs can provide a virtual Third Place for those busy attorneys who do not have time to visit a real Third Place. Blawging in this way could provide the lawyer with a sense of community, put him or her in touch with other lawyers who share the same challenges and triumphs, or simply provide a social outlet.

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89. S.C. CODE ANN. § 19-11-100(A) (Supp. 2008) (emphasis added).

90. N.C. GEN. STAT. § 8-53.11(a)(1) (2007).

91. *Id.* § 3-53.11 (a)(3) (emphasis added).

92. TENN. CODE ANN. § 24-1-208(a) (West 2000).

This applies especially to attorneys who have a unique or specialized practice area. Here, the blawg steps in where the French salons of the seventeenth and eighteenth centuries left off. At the salons of the French Enlightenment, intellectually minded citizens would gather to discuss literature, politics, and philosophy, partly to learn and develop as scholars and partly as an amusement. Some salons would focus on one specific issue, such as a particular variety of poetry, or a particular theory of government. Today, lawyers take part in the same tradition, though with fewer powdered wigs and glasses of sherry. Nowhere is this tradition seen more than in blawgs that focus on one practice area. For attorneys who practice in one unique or specialized area of the law, a blawg dealing only with that particular area can be a useful tool for sharing ideas and developing arguments, staying abreast of news, and simply finding others who share the same professional interests and passions.

One of the most prominent such blawgs is *Patently-O*, the Patent Law Blog.<sup>93</sup> According to the blawg, it is “a daily read for over fifteen thousand patent law professionals from every major innovative corporation, [intellectual property law firm,] and world patent office.”<sup>94</sup> Not only does *Patently-O* contain patent law news about developments in the law, what major players are up to, and the status of major cases and decisions, but it also has a patent law job board. So while fifteen thousand patent law professionals is slightly larger than the French salons of the past, such a blawg allows a place for members of a discrete and specialized area of the legal profession to share ideas, develop ideas and arguments, search for jobs, and stay current with the news. In addition, there inevitably are patent attorneys who do not work for an intellectual property (IP) boutique or large firm with an established IP practice. For those patent attorneys, who do not have the daily, regular contact with many other patent attorneys and the heavy hitters in the field, such a blawg may prove even more valuable.

*Law Firm Associates and Their Blawgs.* Law firm associates are entering the blogosphere in great numbers now as well. Probably the most well-known associate blawg is *Greedy Associates*.<sup>95</sup> This blawg has a message board for associates to communicate, job listings for those looking to make a lateral move, and of course, a space for associates to compare pay at different firms and in different cities. In 2006 when Weil, Gotshal & Manges raised starting associate salary to \$145,000, the *New York Times* cited *Greedy Associates*, as well as BlackBerries and

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93. Patently-O, <http://www.patentlyo.com/>.

94. *Id.*

95. Greedy Associates, <http://www.greedyassociates.com>.

Vault.com, as one of the ways news of the pay hike spread like wildfire, putting pressure on other firms to follow suit.<sup>96</sup> In addition, the *New York Times* article suggests that outlets like *Greedy Associates* make practicing law unique, in that everyone knows how much everyone else makes.<sup>97</sup>

Just as news of a salary hike can spread like wildfire in this age of electronic communication, so can news of a considered merger or associate layoffs. For example, on November 20, 2008, *Above The Law*<sup>98</sup> broke the news that global law firm Mayer Brown was to fire thirty-three lawyers,<sup>99</sup> and immediately after that story broke, the *Wall Street Journal Law Blog*<sup>100</sup> covered the story as well.<sup>101</sup> An associate at a firm that was laying off lawyers has a great interest in knowing the details and circumstances surrounding the layoffs as his or her job may be at stake. In addition, associates at other firms would take a great interest in the details and circumstances of the layoffs so they can know the market conditions and perhaps take the information into account if the associate is considering a lateral move. Here, the blawg may serve as a virtual water cooler. Employees of the same firm could gather together at the blawg and share information about their own firm. The ability to remain anonymous may encourage more frank discussion, and in addition to learning more about the firm, each lawyer would be enjoying a sort of community at the same time.

Law firms are also using associate blawgs as a tool to humanize their firm and shed more light on the life of the average associate. While many of the blawg posts are highly sanitized, they do shed a little light on associate life, and confirm some of the conceptions about life at a law firm. For example, the “Careers” page of Wilmer Hale’s website offers blogs and blog-style biographies of summer associates, new associates, and lawyers.<sup>102</sup> According to the *Wall Street Journal Law Blog*, the purpose of law firm blogs is to give “a good sense of what might [new associates’ lives] be like were they to join [Wilmer Hale],” and to “per-

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96. See Ellen Rosen, *For New Lawyers, the Going Rate Has Gone Up*, N.Y. TIMES, Sept. 1, 2006, available at [http://www.nytimes.com/2006/09/01/business/01legal.html?\\_r=1](http://www.nytimes.com/2006/09/01/business/01legal.html?_r=1).

97. See *id.*

98. Above The Law, <http://www.abovethelaw.com/>.

99. See Elie Mystal, *Nationwide Layoff Watch: Mayer Brown Update*, Above The Law, <http://www.abovethelaw.com/2008/11> (Nov. 20, 2008 17:03 EST).

100. Wall Street Journal Law Blog, <http://blogs.wsj.com/law>.

101. See Ashby Jones, *Hatchet Falls on 33 Lawyers at Mayer Brown*, Wall Street Journal Law Blog, <http://blogs.wsj.com/law/2002/11/20> (Nov. 20, 2008 17:41 EST).

102. See <http://www.wilmerhalecareers.com>.

sonalize” the firm.<sup>103</sup> Not only could these blawgs be used to provide more information for law students considering applying to the firm, but they can also help practicing attorneys looking to make a lateral move.

## 2. *Legal News*

*What About the Law Review?* More and more members of Generation Y, or Millennials, are entering the legal community as practicing lawyers, and virtually every one of them is at least internet- and computer-literate; many are downright internet-savvy. This is the generation that grew up with cell phones, the internet, texting, and real-time news coverage of current events from around the world. Millennials “are accustomed to constant visual and auditory stimulation,”<sup>104</sup> and are “far less accustomed . . . to print resources and non-computerized activities.”<sup>105</sup> As a result, expecting a twenty-seven year old lawyer to read an entire law review is like tilting at windmills. Even for more experienced lawyers, sitting down and reading a law review from cover to cover in hard copy must be extremely rare. Perhaps reading an article here or there in order to brush up on a certain issue or a certain area of law is more common. But outside of education, nobody has ever expected Millennials to read much.

Instead of reading a law review article regarding the *previous* year’s developments in a certain area of the law, why not read a blawg? A blawg gets news to the reader faster, involves less work for the reader, and is more easily and cheaply accessed, whether in print or on Westlaw or Lexis, than a law review. The blawg post would inform rather than educate the reader, which is fine. If the reader needed thorough education in that particular area of law, it is certain more research would be necessary despite the blawg. However, there is always a risk here of inaccuracy. Because most blawgs are disintermediated, the reader would not always be able to verify the validity of the information therein. So let the reader beware. Stick to the bigger names in blawgs, beware of that bias that exists in all secondary sources, and *al-*

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103. Ashby Jones, *Associates Gone Wild! On Web Sites, Firms Lift Veil on Young Lawyers*, Wall Street Journal Law Blog, <http://blogs.wsj.com/law/2008/09/04> (Sept. 4, 2008, 16:34 EST) (quoting Interview with Heather Hayes, Legal Personnel and Recruiting Communications Manager for Wilmer Hale).

104. Tracy L. McGaugh, *Generation X in Law School: The Dying of the Light or the Dawn of a New Day?*, 9 J. LEGAL WRITING INST. 119, 143 (2003) (citing NEIL HOWE & WILLIAM STRAUSS, *MILLENNIALS RISING: THE NEXT GREAT GENERATION* 250, 257-58 (Vintage Books 2000)).

105. *Id.*

ways double check the information before including it in a brief or repeating it to a partner.

This is not to say that the prominence of law reviews will go the way of the car phone. Some legal scholars are concerned that the familiarity and dependency of Millennials on electronic technology could prevent Millennials from effectively researching legal issues. For example, Syracuse University law professor Ian Gallacher asserted that law students relying solely on electronic research of legal issues could lead to “overconfidence and incomplete research . . . [and] the belief that there is nothing to find.”<sup>106</sup> While this may cause some to lament, it remains true that from a practical use standpoint, if the practicing lawyer is looking to stay abreast of recent developments in a particular area of law, a blawg is cheaper, faster, and easier. It would be shocking, and a telling example of the antiquation of many areas of the law, if the closest legal scholarship and publication got to real time information was a law review. In addition, it would be a profound, though not a terribly surprising, shame if we members of the legal community were hanging onto law reviews merely because those practicing law went through law review and feel that law students should do the same, or to uphold the legal profession’s tradition of upholding traditions.

### 3. *Making it Rain*

Practicing lawyers can use blawgs in three ways that will build their practice: gaining credibility, legal education, and generating business.<sup>107</sup> Many BigLaw clients are corporations who may come to those firms because of the duration of the relationship between the firm and the company, the success rate in the desired practice area, or perhaps simply because of the name, history, and reputation of the firm.<sup>108</sup> For those clients, it is not likely that a blawg would increase the perceived value in the client’s eyes, build the firm’s credibility, or entice the corporate client to bring its business there.<sup>109</sup> However, for smaller

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106. Ian Gallacher, *Forty-Two: The Hitchhiker’s Guide to Teaching Legal Research to the Google Generation*, 39 AKRON L. REV. 151, 204 (2006).

107. Andrew Updegrove, *The Essentials of Starting a Law Firm Blog*, 70 TEX. B.J. 766, 766 (Oct. 2007).

108. See Andrew Bruck & Andrew Canter, Note, *Supply, Demand, and the Changing Economics of Large Law Firms*, 60 STAN. L. REV. 2087, 2090 (2008).

109. However, Andrew Bruck argues that corporate clients have started seeking out the most family-friendly, mother-friendly, and diverse firms with the best quality of life, and in doing so the corporations have used their power in the market to force workplace reforms in large firms. See *id.* at 2090-92. So in theory, a large firm blawg that touts the firm’s success in the aforementioned metrics could help to entice a potential corporate client to hire one firm over another.

firms who deal with individual clients on a regular basis, which make up the majority of the law firms in the United States, a blawg could actually make a difference.

A lawyer or law firm blawg may also position that lawyer or firm's blawg as a place clients and other lawyers go to for information.<sup>110</sup> Other lawyers using a firm's blawg as a source of information bolsters that firm's reputation in the legal community, and potential clients—seeing that the firm is a source of information on a particular area of the law—would be more inclined to hire that firm over another. In addition, reputation is of key importance for lawyers. Lawyers and various state bars have gone to great lengths to boost the reputation of lawyers.<sup>111</sup> To that end, blawgs may help lawyers sculpt and manage their reputations on the web.

Further, a lawyer may generate business with a blawg. As more members of the Millennial Generation enter the work force, start their own businesses, get married, adopt or have children, and buy homes, the more likely it is that they will need lawyers. However, word of mouth is just as powerful now as it ever was. Just as Millennials are entering the legal profession with a greater comfort with and dependency on electronic information, Millennials are also clients who now require the services of lawyers, and they too are more likely to search the internet for a lawyer rather than other means.<sup>112</sup> Think of blawgs as electronic word of mouth.

Rather than shying away from the until-now unorthodox practice of blogging for business, practicing lawyers can use this to their advantage and use the internet to build their practice. “All things being equal, people will do business with a friend; all things being unequal, people will still do business with a friend.”<sup>113</sup> While lawyers are not likely to be friends with every single client they ever have, a blawg can help potential and existing clients feel as though they know you by offering a better window into your personality, values, and other information that may not come out on a simple website biographical. The desired result is that potential clients may feel they know and trust you more than your competitors. If a client can make some kind of connection

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110. Grant D. Griffiths, *Top 10 Strategic Benefits of Blogging for the Law Firm*, 76 J. KAN. B.A. 14, 14 (June 2007).

111. See Colin Samuels, *Humanizing the Profession: Lawyers Find Their Public Voices Through Blogging*, 11 NEXUS 89 (2006).

112. See McGaugh, *supra* note 104, at 143.

113. Benjamin W. Glass III, *Build Your Practice With a Blog*, 44 TRIAL 30, 33 (Jan. 2008) (quoting Mark McCormack, founder and chairman of the International Management Group).

with the lawyer on a personal level, such as the two growing up in the same area or the lawyer's child playing sports on the same teams as the client's child, tenuous as it may be, it will still be more of a connection than the lawyer who, to the client, is faceless.

In addition, an individual lawyer's name or a law firm's name appearing more than once after a Google search not only reassuringly suggests prominence to the potential client, but it also increases the likelihood the potential client will click on the lawyer's link and contact that lawyer.<sup>114</sup> And while legal advertising is a sticky issue, a blawg can serve as an affordable and ethically acceptable form of advertising.<sup>115</sup> Such an internet presence could also allow the firm or lawyer to manage its reputation. If everything on the internet says that the firm's name is associated with ethics, personal attention, and value, it serves as constant reinforcement of the firm's values. For example, it is no accident that "Swiss timepiece" is synonymous with precision—for hundreds of years, the idea of Swiss watches has been bundled with the ideas of precision, quality, and craftsmanship.

This works the other way too, though. For example, many are familiar with the ethics hypothetical involving an advertisement for a "pit bull" lawyer, and if not, virtually all are familiar with the lawyer archetype. So if a lawyer's advertisements emphasize aggression and ferociousness, there is a good chance the public will associate those traits with the lawyer in the same way. A lawyer casting himself or herself as a pit bull is not wise because the lawyer is likely to either violate the rules of professional conduct by truly acting like a pit bull or by misleading members of the public by suggesting he or she will be overly aggressive when, in fact, he or she will not. But poor choices in advertising aside, this goes to show that a lawyer or firm can manage its reputation.

To further illustrate, a simple Google search for "Atlanta Georgia law firm" returned 3,380,000 results, and just on the first page, the phrases that appear with links to the websites of various law firms include the following: "ethical standards," "legal ability," "dedicated," "successful," "aggressive," "highly respected," "highest caliber legal counsel," and "top rated." If a potential client did a Google search for a lawyer in Atlanta seeking a pit bull type of lawyer, then the link containing the phrase "aggressive" would probably be more appealing. On the other hand, a different potential client may put more stock in ethics and fair dealing, in which case the link containing the phrase "ethical" would probably be more appealing. For the readers of this Comment who are practicing attorneys, perform a Google search for your firm or practice, and see

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114. See Griffiths, *supra* note 110, at 14.

115. See Updegrave, *supra* note 107, at 766-67.

what kinds of phrases and emotions are associated with your firm's name. Are those phrases and emotions the ones you want associated with your practice?

For those readers who would like to start a law firm blawg, whether it be to more actively manage your reputation or to create greater appeal and rapport in a different market segment, you may be wondering where to start. Fear not. But first, a few considerations.

The cost of starting a blawg is largely up to the blogger. The most inexpensive way to start a blawg is to go to Wordpress.com or Blogger.com, where a blawg can be started up in a matter of minutes for free.<sup>116</sup> However, the free base package can be relatively stark. So, you may purchase different upgrades that will not only spruce up the aesthetics of your blawg but will also make the blawg more attractive to search engines, such as Google.<sup>117</sup> This could, in turn, make the new blawg appear as a result of more searches and appear higher in the results when it does. Alternatively, if you are willing to spend the money on it, you may use a website like Typepad.com, which will charge different rates for different packages (including an expensive, but impressive, "business" platform). While this will cost more, the package to which you subscribe will include more "bells and whistles," technical support, and likely a more professional aesthetic and organization. Going up market, you can also use websites like Lexblog.com or Justia.com, which will offer advice and services to help you build, use, and promote your blawg.<sup>118</sup> Again, this will cost more, but their marketing services will ensure you have a top rate blawg. Finally, you can join a blogging network. These are described as the "Cadillac of blogging" and are very similar to buying a franchise, where you run your own branch but you benefit from the reputation of the well-established brand.<sup>119</sup> This costs the most money but really only requires the blogger to post articles or comments. And as an added bonus, each individual blogger benefits from the relative attractiveness of the network to search engines.

When starting a blawg, you really get what you pay for unless you are extremely computer savvy and have a lot of free time to spend on your blawg. You should consider the time you have to spend on the blawg as another cost. Quite simply, regularly contributing to a blawg takes time. In addition, as the blawg moderator or publisher, you will be in control of the content that is posted on the blawg, which is an additional time

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116. Glass, *supra* note 113, at 32.

117. *Id.*

118. *Id.*

119. *Id.*

commitment. If you are only interested in posting and do not want to mess with the other duties that come along with blog publication, or if you simply want to test the waters, a good place to start is regularly contributing to another blawg. If you decide you do not like it, no harm done. If you decide after contributing to other blawgs that you want to publish your own, you will have already established yourself as a personality in the blawgosphere.

In addition, consider what to name your blawg. I suggest thinking about what potential client-readers would type into Google when looking for an attorney. For example, if you are a personal injury attorney in Macon, Georgia, the clients you are seeking may type “personal injury lawyer macon” into Google. So, you would want to consider putting those phrases in the title, subtitle, or heading of your new blawg. If you seek to be a prime time player in patent law in the Atlanta area, you should consider putting the words “Atlanta patent law” in the heading of your new blawg. If you want everyone in the world to know that ethics is your top priority, let blawg readers know through the title of your blawg.

Once you have your blawg up and running, consider taking a few steps to increase its strength. Some blawgs contain lists or banks of other blawgs to which users can navigate. You can have your blawg registered on one such list, making it simple and easy for users to go from one blawg to another, related blawg (hopefully yours) and increase your traffic. In addition, you can post your blawg’s internet address on your already-existing law firm website or personal website. Or you can put your blawg’s internet address on your business cards or as part of your electronic signature. Finally, if you already contribute, officially or unofficially, to other blawgs, sign your posts with your name and the internet address of your blawg.

#### 4. *Putting Blawgs to Work*

**a. Blawgs and Caselaw.** Blawgs are used in published court opinions in a manner similar to the way law review articles are used—to offer focused analysis of and commentary on one specific area of the law. Often, citations to blawgs are in footnotes. For example, in *United States v. Penaranda*,<sup>120</sup> the United States Court of Appeals for the Second Circuit considered a Sixth Amendment sentencing issue, and footnote nine stated, “Many techniques currently being implemented by district judges in the aftermath of *Blakely* can be found on the Internet

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120. 375 F.3d 238 (2d Cir. 2004).

at Sentencing Law and Policy.”<sup>121</sup> Professor Douglas A. Berman’s *Sentencing Law and Policy Blog*<sup>122</sup> is a popular one for courts to cite. While citing to the blawg, the United States Court of Appeals for the Tenth Circuit called Berman “a leading academic chronicler of sentencing decisions.”<sup>123</sup> Other blawgs, such as *De Novo Blog*,<sup>124</sup> have been cited as the mouthpiece for a certain cross-section of the legal community. For instance, Ninth Circuit Judge Callahan’s dissent in *United States v. Scott*<sup>125</sup> describes the defense bar’s displeasure with the majority opinion, as evidenced by *De Novo Blog*.<sup>126</sup>

**b. Bluebook and ALWD.** One indicator of a source’s legitimacy is the inclusion of that source in the Bluebook or ALWD citation manuals and the extent of development of the sections pertaining to the source. A source that is not included in Bluebook would not make the attorney seeking to cite to the source in a brief feel comfortable, and the citation likely would not bring much comfort to a judge reading the same brief either. Moreover, citation manuals may have difficulty keeping up with the development of a new, more technologically advanced source like a blawg or an electronic magazine. Trying to establish a uniform system of citation for a rapidly evolving area of legal scholarship could be like trying to nail Jell-o to a tree. Just as blawgs as a source develop and the way members of the legal community use blawgs develops, so too must the legal citation manuals adapt and respond. But it remains that having an established system of citation for a particular source would tend to make including that source in legal scholarship or documents prepared by practicing attorneys more legitimate. The Bluebook, a new edition of which is published every five years, “retroactively ratif[ies] changes in how scholars are doing research and in the sources they use.”<sup>127</sup>

For example, the Bluebook addresses how to cite a blawg with a four sentence explanation and two examples—one example for citing to blawgs with one author and the other for citing to blogs with multiple

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121. *Id.* at 247 n.9.

122. Sentencing Law and Policy Blog, <http://sentencing.typepad.com>.

123. *United States v. Cage*, 451 F.3d 585, 595 n.5 (10th Cir. 2006).

124. *De Novo Blog*, <http://blogdenovo.org>.

125. 450 F.3d 863 (9th Cir. 2006). Interestingly, the majority opinion was written by Judge Kozinski, who made waves in the blawgosphere this year for his personal behavior. Amir Efrati, *Kozinski Calls for Investigation of Himself*, Wall Street Journal Law Blog, <http://blogs.wsj.com/law/2008/06/12> (June 12, 2008, 17:21 EST).

126. See *Scott*, 450 F.3d at 894 n.5 (Callahan, J., dissenting).

127. Christine Hurt, *The Bluebook at Eighteen: Reflecting and Ratifying Current Trends in Legal Scholarship*, 82 IND. L.J. 49, 56 (2007).

authors.<sup>128</sup> While this is a short treatment compared to other sources, it is actually sufficient. It reassuringly validates the user, saying “Go ahead, cite your blog.” But other than illustrating how to cite a blawg, Bluebook does not really provide any other kind of guidance about how blawgs can be used in legal scholarship, and thus it does not reaffirm or define more concretely the role of blawgs in legal scholarship. Likewise, ALWD briefly but sufficiently addresses the citation of blogs in half a page, recommending that the user “[a]nalogize to World Wide Web sites” for both full citations and short citations.<sup>129</sup>

### C. *Blogging Law Professors*

#### 1. *Third Place*

While practicing attorneys may use blawgs as a place to enjoy a sense of community, share ideas and experiences, and stay in touch with other members of the profession, law professors may use blawgs in the same way. Blawgs may be especially useful to law professors for sharing scholarship. For example, one of the most popular blawgs on the internet is the *Volokh Conspiracy*.<sup>130</sup> Twenty different authors contribute to the *Volokh Conspiracy*, all of whom are law professors from various universities. Where else can twenty law professors collaborate and share ideas and analysis of relevant legal issues, and at the same time serve the legal community with their insights? In addition, for the law professors who focus on one specific area of law or for the law professors who are the only professor at his or her school who teaches a particular subject, there are more specialized lawprofblogs. For example, Tulane Law School professor S. Alan Childress and three other law professors publish the *Legal Profession Blog*,<sup>131</sup> which as the title implies, deals strictly with the legal profession, legal ethics, and the law of lawyering. This blawg is perfect for the law professor who strictly focuses on teaching and writing about legal ethics. Not only could that professor get in touch with other similarly focused scholars, but he or she could also stay up to date on news and get ideas for teaching. Another good example is the *Feminist Law Professors*<sup>132</sup> blog, published by South Carolina law professor Ann Bartow. The goal of

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128. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION 158 (Columbia Law Review Ass’n et al. eds., 18th ed. 2005).

129. ALWD & Darby Dickerson, ALWD CITATION MANUAL 307 (3d ed., Aspen Publishers 2006).

130. The Volokh Conspiracy, <http://volokh.com>.

131. Legal Profession Blog, [http://lawprofessors.typepad.com/legal\\_profession](http://lawprofessors.typepad.com/legal_profession).

132. Feminist Law Professors, <http://feministlawprofs.law.sc.edu>.

*Feminist Law Professors* “is to build a stronger feminist law prof [sic] community across scholarly subject areas.”<sup>133</sup> So a law professor who teaches about or is simply interested in feminism and feminist issues in the law could connect with other professors and scholars through this very well-organized blawg.

## 2. Scholarship

As of March 15, 2006, there were 235 law professor blogs published on the internet.<sup>134</sup> There are bound to be many more in 2008. *Law Professor Blogs*<sup>135</sup> is an online collection of—you guessed it—law professor blogs aimed at helping law professors in scholarship and teaching. Sponsored by West and administrated by an editor in chief, *Law Professor Blogs* offers links to over fifty “lawprofblawgs” (law professor blogs) with the goal of becoming a source that law professors will visit “as part of their daily routine.”<sup>136</sup> There are a lot of law professors blogging, and the overall quality of their work makes the blawgs listed on *Law Professor Blogs* well worth reading.

Taking a more official approach, University of Wisconsin law professor Ann Althouse suggests setting up faculty blawgs in addition to the traditional law review.<sup>137</sup> She argues that a structured and official faculty blog that is aesthetically appealing and aesthetically related to the law school’s website would be a positive addition for interested law professors, but she cautions that requiring professors to contribute would not be a good idea.<sup>138</sup> Rather, such a requirement would make for forced and dull blawg commentary.<sup>139</sup> If a law school were to decline setting up a voluntary, official faculty blawg, the better (and more prevalent) route would be to allow those professors actually interested in the activity to set up their own blawg on their own time.<sup>140</sup>

Professor Douglas A. Berman argues that blawgs are simply another means of communication, and as a result, they can be used for scholarship, just like other means of communication.<sup>141</sup> Berman argues that

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133. *Feminist Law Professors, About This Blog*, [http://feministlawprofs.law.sc.edu/?page\\_id=4668](http://feministlawprofs.law.sc.edu/?page_id=4668).

134. Daniel J. Solove, *Law Professor Blogger Census (Version 4.3)*, Concurring Opinions, <http://www.concurringopinions.com/archives/2006/03> (Mar. 7, 2006, 23:06 EST).

135. *Law Professor Blogs*, <http://www.lawprofessorblogs.com>.

136. *Id.*

137. Ann Althouse, *Let the Law Journal Be the Law Journal and the Blog Be the Blog*, 116 YALE L.J. POCKET PART 11, 13-14 (Sept. 6, 2006).

138. *Id.* at 14.

139. *Id.*

140. *Id.*

141. Berman, *supra* note 2, at 1043.

law professor scholarship helps professors teach students and serve the legal community outside of law school.<sup>142</sup> In a factors-test format that any law student would appreciate, Berman lists the powers of blogging by law professors: for expressing scholarly ideas, for engaging in a more robust and diverse scholarly community, for respecting the diversity of scholarly production, and for reconnecting scholarship to teaching and service.<sup>143</sup> Next, Berman identifies the possibilities of blogging by law professors: for interdisciplinary collaborative scholarship, for professor-student collaborative scholarship, for supplemental scholarship, for web treatises, and for professor-practitioner collaborative scholarship.<sup>144</sup> Finally, Berman addresses the pitfalls of blogging by law professors: as a “time suck” and an addiction, as a distorting popularity contest, and as a limitation rather than liberation.<sup>145</sup> In conclusion, Berman agrees with Althouse that blogging should not be a burden for professors who would rather engage in other scholarly media and essentially argues that it will not hurt legal scholarship and it might even help.<sup>146</sup>

In addition, blogs have provided an alternative to law professors submitting opinion-editorial pieces to newspapers for publication. The best example is Professor Ian Ayres of Yale Law School, who had written op-ed pieces for the *New York Times* but has since made the jump to blogging; he now regularly contributes to the *New York Times' Freakonomics Blog*.<sup>147</sup> The blog can essentially provide the same type of forum that an op-ed piece can offer, but with one distinct advantage—comments, rebuttals, and feedback can all be immediate with a blog. Another prolific op-ed writing law professor is Professor David G. Oedel of Mercer University's Walter F. George School of Law. *The Philadelphia Inquirer* recently published an op-ed piece written by Professor Oedel criticizing the credit policies that led up to the 2008 financial crisis.<sup>148</sup> This well-written opinion piece could have easily been published on a myriad of different law professor blawgs, and perhaps it could have reached a broader audience.

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142. *Id.* at 1046.

143. *See id.* at 1048-51.

144. *See id.* at 1051-53.

145. *See id.* at 1053-54.

146. *Id.* at 1059.

147. Freakonomics Blog, <http://freakonomics.blogs.nytimes.com>.

148. *See* David G. Oedel, Op-Ed, *Easy Credit Is To Blame For Our Economic Crisis*, PHILA. INQUIRER, Oct. 19, 2008, available at <http://www.philly.com/inquirer/currents/31243594.html>.

Stetson College of Law professor and associate dean Ellen S. Podgor (who also publishes the *White Collar Crime Prof Blog*<sup>149</sup>) argues that in considering tenure or promotions for law school professors, the content should be evaluated, not the medium.<sup>150</sup> However, those blawg posts should be well researched and cited.<sup>151</sup> In addition, a law professor blawg would certainly count as service, bringing recognition to the professor or to the law school.<sup>152</sup> Podgor asserts simply that if the blawg publication “advances the legal landscape,” it should be considered scholarship for the purpose of promotions and tenure.<sup>153</sup>

#### D. *Blogging Law Students*

##### 1. *Third Place*

Law school is difficult. Like legal practitioners who spend most of their days at work, most of a student’s time is spent at the law school, taking classes and studying. There is also some time spent at home, resting, relaxing, and having meals. For many, the stress and difficulty of law school makes a Third Place very attractive. This is an affordable social space where law students can go to talk, eat, drink, and share stories and frustrations. For many law students, this solace exists at the gym, intramural sports, clubs, or with our old friend, the local bar (the type with drinks, not lawyers). But for others who are not so inclined, or even those who do enjoy the bar, there is often still more to be shared and vented. Blawgs provide an outlet for law students seeking to embrace their newly minted membership in the legal community. To some, the anonymity may be appealing, allowing the student to freely write about a particular class, subject, professor, classmate, or personal story without fear of those same parties finding out. In addition, the use of a blawg allows the author to access a wider audience with his or her ideas, and blawgs expose the author to a wider array of ideas in return. Finally, blawgs can be a lot of fun—or at least more fun than a contracts outline.

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149. White Collar Crime Prof Blog, [http://lawprofessors.typepad.com/whitecollarcrime\\_blog](http://lawprofessors.typepad.com/whitecollarcrime_blog).

150. Ellen S. Podgor, *Blogs and the Promotion and Tenure Letter*, 84 WASH. U.L. REV. 1109, 1110 (2006).

151. *Id.*

152. *Id.* at 1110-11.

153. *Id.* at 1111.

## 2. Law School and Law Firm Shopping

Another suggested use for blawgs is “blawg-as-travel-guide” for students shopping law schools and firms.<sup>154</sup> In an Indiana Law Journal commentary, Sam Kamin argued that *U.S. News & World Report* law school rankings correlate very closely with LSAT scores.<sup>155</sup> The author described a metaphor used by Professor Russell Korobkin which explains that students use the *U.S. News* rankings like a travel guide for a foreign city.<sup>156</sup> If all tourists use the same guide book to the same city, they will all wind up at the same attractions. Similarly, if all students use the same ranking system for law schools, they will all wind up at the same school: the most highly ranked school they can get into. Kamin argues that this phenomena will lead to students going to law schools solely on the basis of the *U.S. News* ranking “regardless of whether that is the best school for them.”<sup>157</sup> This is like thousands of tourists in Paris using the same old travel guide, only to all wind up at the Eiffel Tower.<sup>158</sup> While nothing is to be taken away from the Eiffel Tower, Paris does have more to offer travelers.<sup>159</sup>

However, if there are other sources of information, other travel guides, travelers will venture away from the Eiffel Tower and see the beautiful architecture on side streets, visit the botanical gardens, or taste the most decadent desserts. In the same way, if law students have other ways to evaluate and compare law schools and are more aware of what their options are, then students will start being appealed to and thus start to select schools that are better fits or schools that excel in the students’ particular areas of interest.<sup>160</sup> A simple example is the Mercer Law School blawgs listed on the ABA Journal’s Blawg Directory.<sup>161</sup> While only three blawgs are listed under Mercer Law, two out of three blawgs pertain to legal ethics. So for a potential law student who wants to go to a school that stresses ethics throughout the curriculum, the potential student gets a more in depth look at Mercer’s priorities from the blawgs listed than he or she would from the *U.S. News* ranking.

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154. See Sam Kamin, *How the Blogs Saved Law School: Why a Diversity of Voices Will Undermine the U.S. News & World Report Rankings*, 81 IND. L.J. 375, 378-79 (Winter, 2006).

155. *Id.* at 375.

156. *Id.* at 378.

157. *Id.* at 379 (emphasis omitted).

158. *Id.* at 378.

159. *Id.* at 379.

160. *Id.* at 378-79.

161. ABA Journal: Blawg Directory: Mercer University, Walter F. George School of Law, <http://abajournal.com/blawgs/mercer+university+walter+f.+george+school+of+law>.

Blawgs should perform the same function for law firms as they do for law schools. The *Vault 100* offers a law firm ranking system similar to the *U.S. News* rankings, though it is not based solely on some test grade.<sup>162</sup> In addition, no firm's website or promotional information is going to describe their mergers and acquisitions department or quality of life as "pretty average" or "middle of the pack," so solely using law firm websites as a source of information should not be seen as a reliable way to compare firms. Rather, blawgs that address the strengths of law schools and firms, their weaknesses, what they value, and perhaps most importantly, the accomplishments of the school or firm and its constituents are vital to objective school or firm shopping.

**a. Hiring and Firing.** Blogs have also bled into the sometimes dreaded law student job search. Clearly, few law firms would be inclined to tell prospective associates, "Oh, by the way, we just fired twenty associates just like you due to economic downturns." Likewise, few prospective associates would feel comfortable asking a law firm recruiter, who, at that moment, has a great degree of control over prospective associate's future or lack thereof, whether the firm had indeed just fired twenty associates and whether the prospective associate would have to worry about suffering the same fate. So, law students may turn to blawgs.

For example, between July 2008 and September 2008, *The Wall Street Journal Law Blog* reported that Fried Frank fired less than ten percent of the staff employees at its Washington, D.C. and New York City offices,<sup>163</sup> Akin Gump closed offices in Taipei and Silicon Valley,<sup>164</sup> the Hartford, Connecticut office of Bingham McCutchen laid off ten staff employees,<sup>165</sup> and the New York City, Charlotte, London, and Washington, D.C. offices of Cadwalader, Wickersham & Taft laid off ninety-six lawyers.<sup>166</sup> As if many of those lawyers still being on the job market

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162. Rather, the Vault 100 ranking are based on a combination of feedback from previous surveys and lists, information in legal newspapers, viewing other rankings, and 13,350 anonymous attorney surveys. See Vault, "Rankings Methodology," [http://www.vault.com/nr/lawrankings.jsp?law2008=7&ch\\_id=242](http://www.vault.com/nr/lawrankings.jsp?law2008=7&ch_id=242).

163. Dan Slater, *Fried Frank Trimming 'Less Than 10 Percent' of Firm's Staff*, Wall Street Journal Law Blog, <http://blogs.wsj.com/law/2008/08/20> (Aug. 20, 2008, 9:10 EST).

164. Dan Slater, *Akin To Shutter Offices in Taipei, Silicon Valley; Lawyers to Alston & Bird*, Wall Street Journal Law Blog, <http://blogs.wsj.com/law/2008/07/31> (July 31, 2008, 15:44 EST). In an interesting move, Akin Gump arranged for some of the lawyers to be immediately hired by Alston & Bird and Greenberg and Traurig. *Id.*

165. Dan Slater, *Bingham McCutchen Lays Off 10 Staff Members*, Wall Street Journal Law Blog, <http://blogs.wsj.com/law/2008/07/30> (July 30, 2008, 10:20 EST).

166. Dan Slater, *Cadwalader to Cut 96 Lawyers*, Wall Street Journal Law Blog, <http://blogs.wsj.com/law/2008/07/30> (July 30, 2008, 8:52 EST).

was not enough competition for the soon-to-graduate 3L, Heller Ehrman winded up business over a month earlier than expected, and White & Case laid off seventy lawyers and a hundred staff members.<sup>167</sup> And while these examples of New York City law firms may feel a little far from home for some readers, for those who doubt that New York City firms do not affect the practice of law in Macon, Atlanta, or the Southeast, just look at associate pay over the past ten years. Yes, there is a fascinating blog post about it.<sup>168</sup>

One way or the other, it is an understatement that any third-year law student who has not yet found employment probably considers hundreds of lawyers with BigLaw experience entering the job market at the same time to be information worth knowing. In addition, Millennials are using the internet when looking for jobs. Just look at law firm websites: virtually every medium- or large-sized firm has a section on their website about careers. This would not be the case if there was no demand for career information online, and firms recognize that law students and lawyers looking to make lateral moves are indeed shopping around on the internet. Students are taking advantage of the internet to find jobs as well, some even placing online advertisements for themselves. For instance, the law student blawg *Ashley M. Elmore Drew*,<sup>169</sup> which is published by a Stetson Law School 3L, devotes one-third of her blawg to marketing herself.<sup>170</sup> While it is little more than a detailed resume and a description of the author's interests, it does serve as an example of tech-savvy Millennials using blawgs as part of their job search.

**b. Dispelling the Horatio Alger Myth.** Everyone knows or remembers the students in their first year law school class who were “plucky,” said on the first day of legal ethics that they wanted to “help people and change the world,” and believed that if they just worked hard enough, they would make partner at BigLaw solely on merit. These are

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167. Ashby Jones, *Heller Ehrman Winding Things Down Quickly*, The Wall Street Journal Law Blog, <http://blogs.wsj.com/law/2008/10/10> (Oct. 10, 2008, 14:19 EST). The post described a “downright chilling” memo sent to employees, stating, “[W]e will not be able to pay you for work performed after today, . . . an as a result, . . . your employment with the firm will be terminated today.” *Id.*; see also Martha Neil, *After 170 Layoffs, White & Case Pares Down \$250k Holiday Party; No Fireworks*, A.B.A.J., Nov. 2008, [http://abajournal.com/news/after\\_layoffs\\_white\\_case\\_to\\_trim\\_holiday\\_party\\_only\\_250k\\_no\\_fireworks](http://abajournal.com/news/after_layoffs_white_case_to_trim_holiday_party_only_250k_no_fireworks).

168. See Bill Henderson, *How the “Cravath System” Created the Bi-modal Distribution*, Legal Profession Blog, [http://lawprofessors.typepad.com/legal\\_profession/2008/07/how-the-cravath.html](http://lawprofessors.typepad.com/legal_profession/2008/07/how-the-cravath.html) (July 18, 2008).

169. Ashley M. Elmore Drew, <http://ashleydrew.wordpress.com>.

170. See Ashley M. Elmore Drew, *Hire Me!*, <http://ashleydrew.wordpress.com/about>.

the Horatio Alger types. For more and more law students, those Horatio Alger ideas are extinguished quickly, especially during this current deep economic recession. In addition, whether it be in law school or once they enter the work force, more and more lawyers are becoming jaded with the profession and find that their careers have nothing to do with why they decided to enter the law. For example, a survey by the ABA Young Lawyer's Division revealed that "less than one-fifth of lawyers felt that the profession had met their expectations to contribute to the social good."<sup>171</sup> A 2005 National Association for Law Placement (NALP) study surveyed 91.3 percent of graduating law students and found that only 4.8 percent of graduates were entering jobs in public interest despite many studies over the last thirty years, suggesting that a great many more law students enter law school aspiring to serve the public.<sup>172</sup> Further, "[t]wo-thirds to three-quarters of lawyers report high levels of stress, and one-third acknowledge that it is damaging their physical and emotional well-being."<sup>173</sup> Women only make up approximately thirteen percent of full partners in law firms, minorities only make up three percent of law firm partners, and women are half as likely to achieve partnership as their male counterparts.<sup>174</sup> Even Mercer Law School's Dean Daisy Hurst Floyd concluded that "law school causes students to lose the sense of purpose that made them want to become lawyers."<sup>175</sup>

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171. DEBORAH L. RHODE, *IN THE INTEREST OF JUSTICE: REFORMING THE LEGAL PROFESSION* 25 (Oxford University Press 2000) (citing ABA, *YOUNG LAWYER'S DIVISION SURVEY: CAREER SATISFACTION* 20 (Chicago: ABA, 1995)).

172. NALP Class of 2005 Selected Findings 1 (NALP 2006), *available at* [http://www.nalp.org/assets/316\\_ersselectedfindings05.pdf](http://www.nalp.org/assets/316_ersselectedfindings05.pdf); *see also* Tan N. Nguyen, *An Affair to Forget: Law School's Deleterious Effect on Student's Public Interest Aspirations*, 7 *CONN. PUB. INT. L.J.* 251 (2008).

173. Rhode, *supra* note 171, at 25.

174. *Id.* at 39.

175. ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION* 31 (quoting Daisy Hurst Floyd, *Reclaiming Purpose: Our Students' and Our Own*, 10 *THE LAW TEACHER* 1 (2003)). The full quotation from Dean Floyd bears drawing out here:

Students come to law school with an idea that being a lawyer is something meaningful, something important and valuable. They are drawn to a vision that includes a job undertaken in relationship with and on behalf of other people, helping clients to solve problems or move through difficult times. While they may not have a detailed or even realistic picture of what lawyers do, students envision themselves engaged in professional work that is intellectually challenging and that has value and meaning. They arrive at law school with hope and expectation that their work as lawyers will have a positive impact for society as a whole.

Upon beginning law school, students quickly learn that law school values rational, objective analysis to the exclusion of other qualities, such as self-awareness and interpersonal relationships. They also learn that winning — as

While the facts above may come across as overly pessimistic, they are facts, and it is a vitally important part of legal education to be aware of the state of the legal profession. In fact, the sooner one can form realistic expectations of what he or she is capable of, what areas of the law he or she realistically would be comfortable working in, and what the day-to-day work of a lawyer is really like, the better. The reality is that many law students have been academically successful for the majority of their lives. They did well in high school, so they were able to get into a good college, did well there, and were able to get into a good law school. But like the Mercer University School of Law Career Services Manual states, as few as ten to fifteen percent of law students in the United States get jobs through on-campus interviews.<sup>176</sup> Further, only twenty percent of law school graduates in the United States get jobs right out of law school at firms with more than ten lawyers.<sup>177</sup> Seventy-seven percent of law firm associates leave their firms within the first five years.<sup>178</sup> Further, just using logic, there needs to be many more associates than partners in a law firm for the leveraged law firm structure to work. According to NALP, law firms across the United States have an average of 2.21 lawyers for each partner.<sup>179</sup> It should be noted, though, that firms with fifty or fewer lawyers are the least leveraged, and firms with seven hundred or more lawyers are the most leveraged.<sup>180</sup> Moreover, around forty-two percent of 2007 graduates will get jobs that pay between \$40,000 and \$60,000 per year, making that salary range more likely than any other.<sup>181</sup> On the other hand, around twenty-two percent of the class of 2007 got jobs paying between \$145,000 and \$160,000 per year.<sup>182</sup> While jobs that

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measured by the prizes of grades, law review membership, and certain jobs — is the most important goal. They believe that they must adopt those values as part of their changing professional identities. They believe that their personal visions of lawyering are naive and unrealistic. As a result, students replace their hopeful expectations for finding meaning and purpose in their work. They will accept unfulfilling work environments because they think there is no other option.

*Id.* at 30-31 (ellipsis in original).

176. Mercer University School of Law, Career Services Manual, 2006-2007, at 1.

177. *Id.*

178. Janet Ellen Raasch, *Making Partner—Or Not: Is it in, up or Over in the 21st Century?* ABA LAW PRACTICE, June 2007, at 32, available at <http://www.abanet.org/lpm/magazine/articles/v33/is4/an1.shtml>.

179. NALP, “Law Firm Leverage Drops to Levels Last Seen 10 Years Ago” (Dec. 18, 2007), available at <http://www.nalp.org/lawfirmleveragedrops>.

180. *Id.*

181. NALP, “Another Picture Worth 1,000 Words” (July 2008), available at <http://www.nalp.org/anotherpicture>.

182. *Id.*

pay between \$40,000 and \$60,000 are certainly no less meaningful or valuable than jobs that pay more, the figure suggests that a recent law school graduate is about two times more likely to get a job that pays \$50,000 per year than one that pays \$150,000 per year. So, it can be difficult for some students to realize that after graduation, they probably will not be swimming in money like Scrooge McDuck. The odds are that the law school graduates will not get a BigLaw job through on-campus interviews and probably will not make partner, especially if they are minorities or women. In other words, legal education, searching for a job, and then practicing the law can be a series of tough pills to swallow.

However, blawgs may offer some relief. For example, consider the blawg post discussing whether lawyers suffer from “Preparing to Live Syndrome,” wherein a person sees life as an endless chain of meaningless experiences that eventually lead to one future moment when “life will again take on sparkle and value.”<sup>183</sup> Or consider the post addressing one lawyer’s theory that summer associateships are no more than glorified drinking binges underpinned by the “quiet bargain” that if the summer associate does a minimal amount of satisfactory work, he or she will be offered an associate position.<sup>184</sup> These two examples offer particularly cynical outlooks on the young associate’s life in the law and are likely more sensational than reality. Surely not every BigLaw attorney is “preparing to live,” and he or she rather enjoys the fast-paced, challenging, and complex work they do every day. Likewise, there are undoubtedly thousands of BigLaw summer associates who had very meaningful experiences filled with rewarding work. However, a prospective or current law student being exposed to those ideas at an early stage is valuable. While the myths about BigLaw may just be myths, it is likely that they did not precipitate out of thin air either, and they likely bear at least some resemblance to reality. But just like a summer associateship allows a student to see what lawyers actually do every day, blawg posts addressing the less savory side of practicing law can help a student by allowing him or her to at least consider the law, warts and all.

By the same token, prospective law students can use blawgs as a way to see what law school is going to be like. For example, take a hypothetical student from Pennsylvania who has been accepted by Stanford Law.

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183. Dan Slater, *Carpe Diem & The Law: A Look at Preparing to Live Syndrome*, The Wall Street Journal Law Blog, <http://blogs.wsj.com/law/2008/07/29> (quoting professional coach and psychotherapist James Dolan) (July 29, 2008, 10:49 EST).

184. Dan Slater, *The Summer: Learning to Build Your Career or Learning to Drink*, The Wall Street Journal Law Blog, <http://blogs.wsj.com/law/2008/07/24> (July 24, 2008, 11:02 EST).

Being in Pennsylvania, this student likely does not have regular contact with a great many Stanford Law alumni. Here, the student could turn to a blawg to get a better idea of what to take, what school is going to be like, and other concerns that any similarly situated student would be sure to have. But it does not even have to be such a stretch. A student who grew up in Macon, Georgia, may be planning to attend Mercer Law in the fall but does not know any law students. That student could search the internet for a blawg by a Mercer student or professor as well.

A useful resource for our curious student is the ABA Journal Blawg Directory,<sup>185</sup> which has indexed blawgs by law school. So, our student who has been accepted by Stanford can look on the ABA website, and choose one of the six listed blogs by Stanford professors.<sup>186</sup> Or, our student from Macon who will be attending Mercer can go to the same website; see the three blawgs listed under Mercer, and learn more about the school's focus on professionalism and ethics.<sup>187</sup> Alternatively, the ABA also indexes blawgs by author type, so our prospective student could look at all the blawgs published by law students.<sup>188</sup> Topics range from "mitigat[ion of] crippling law school debt"<sup>189</sup> to funny exchanges between law students<sup>190</sup> to law students "building a better legal profession" by seeking workplace reforms in large firms.<sup>191</sup> The authors of some of these blawgs remain anonymous, others provide a region of the country in which they attend law school (for example, New York, Southeast, California), and others provide their full identity and their school. In addition, almost every blawg provides links to other related blawgs. So if a student accessed one particular blawg he or she was interested in, he or she could link to several other useful blawgs as well. While prospective students may glean some information from currently enrolled students' Facebook profiles, blawgs have one distinct advantage—they are accessible by anyone. Access to Facebook profiles can be limited by the user and they often are, especially by the conscientious law student who does not want any potential future employer or colleague to see personal pictures or private information.

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185. ABA Journal Blawg Directory, <http://abajournal.com/blawgs/>.

186. See ABA Journal Blawg Directory, Stanford University, <http://abajournal.com/blawgs/stanford+university>.

187. See ABA Journal Blawg Directory, Mercer University, Walter F. George School of Law, <http://abajournal.com/blawgs/mercer+university+walter+f+george+school+of+law>.

188. See ABA Journal Blawg Directory, Law Student, <http://abajournal.com/blawgs/law+student>.

189. See The Frugal Law Student, <http://www.frugallawstudent.com/>.

190. See Overheard in Law School, <http://overheardinlawschool.blogspot.com/>.

191. See Building a Better Legal Profession, <http://refirmation.wordpress.com/>.

### 3. *Scholarship and News*

Blawgs are also creeping into law review articles, student-written and otherwise, as sources. According to Ian Best, the founding editor of *Law X.0*<sup>192</sup> (formerly *3L Epiphany*) as of August 17, 2006, 75 different blawgs had been cited 489 times in law review articles.<sup>193</sup> Further, forty-five of those citations were in student-written law review articles.<sup>194</sup> While this Comment clearly advocates on behalf of blawgs, make no mistake—blawgs are used purely as secondary authority, to provide commentary on, and for analysis of the law. In addition to using blawgs in their own writing, law students can use blawgs as a news source. Law school is a great time to examine and evaluate the profession and learn as much about it as possible. In the same way that a first-year legal ethics course introduces many students to what life in the law is really like, a blawg could help do the same thing. Reading a blawg such as the *Wall Street Journal Law Blog* for daily news from the legal world could help the law student learn more about and stay up to date on what is going on in the profession he or she is about to enter.

### 4. *Blawg as Alternative to Law Review Publication*

Another way law students can and are using blawgs is as an alternative to law review publication. Blawgs offer publication opportunities for students who are not on a journal, or perhaps do not care for the journal editing process and would rather publish directly on the internet. For example, the Law Librarians at Southern Illinois University School of Law publish the *Law Dawg Blawg*,<sup>195</sup> which posts links to student-written articles. This is a positive exercise for those students and the world of legal scholarship. Not only will those students who choose to publish well-researched and well-analyzed papers set themselves up to reap the professional benefits (not unlike publication in a law review), but their scholarship will also make more thoughtful legal analysis available to members of the legal community, exposing us all to new points of view and perhaps spurring additional research and publication in certain areas.

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192. Law X.0, <http://3lepiphany.typepad.com>.

193. Ian Best, *Law Review Articles Citing Legal Blogs*, Law X.0 (formerly 3L Epiphany), [http://3lepiphany.typepad.com/3l\\_epiphany/2006/08/law\\_review\\_arti.html](http://3lepiphany.typepad.com/3l_epiphany/2006/08/law_review_arti.html) (Aug. 16, 2006).

194. *Id.*

195. Law Dawg Blawg, <http://lawdawglib.blogspot.com/2007/06/siu-law-student-publications.html>.

However, publication on a blawg is mainly disintermediated, especially if the author of the piece is also the author of the blawg. So, there is a risk that poor legal analysis will be published. There is no other party to read the piece for clarity, to ensure each point argued is supported in law or fact, and to ensure the legal analysis meets a certain level of quality before publication. In addition, there is a risk here of an “availability cascade,” in which a particular opinion, no matter how ignorant or poorly supported, is perceived as being increasingly plausible because of its increasing availability.<sup>196</sup> This is not unlike Stephen Colbert’s term, “Wikiality,” which describes a user of Wikipedia, the online, public encyclopedia, stating a fact, and if enough people go along with it, then it becomes true. While Leiter is correct that publication of weak legal analysis and poorly supported opinions may water down the entire body of legal commentary, it is unlikely that the publication of poor legal scholarship on blawgs will change the standards of the legal profession for what constitutes quality legal analysis.

In addition, both student scholarship—like comments published in law reviews—and student-published blawgs focus on legal developments.<sup>197</sup> However, the two seek to do so in different ways. On one hand, law review comments give the reader a great depth and breadth of information and gives it to a limited audience: the practitioners who subscribe to that particular law review and the students who happen to read it.<sup>198</sup> Blawgs, on the other hand, give a more succinct rendition of a particular issue, do so quickly and responsively, and once the information is published, it is immediately available to millions and can be easily accessed using any internet search engine.<sup>199</sup>

There are many different reactions to the above phenomenon. It could be argued that the law blog is a threat to the existence of the law review. While the proliferation of law blogs has certainly made preemption checking a much more rigorous (and irritating) exercise for student authors, the rise of the blawg will not threaten the existence of the law review. The main reason for this is that the law review will always be the law review.

Virtually no student would decline an invitation to be published in a law review because he or she would rather publish the same piece on his

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196. Brian Leiter, *Why Blogs Are Bad For Legal Scholarship*, 116 YALE L.J. POCKET PART 53, 53-54 (Sept. 20, 2006) (quoting Timur Kuran & Cass R. Sunstein, *Availability Cascades and Risk Regulation*, 51 STAN. L. REV. 683, 683 (1999)).

197. Anthony Ciolli, *Much Ado About Nothing: Why Student Scholarship Has Nothing to Fear From Blogs*, 116 YALE L.J. POCKET PART 210, 210 (Dec. 18, 2006).

198. *Id.* at 211.

199. *Id.*

or her blog. For a law student, membership and publication in a journal still carries a great amount of clout and credibility, which is something that blawgs have yet to attain. In addition, there simply remains a demand for law reviews and their unique style of scholarship. Law students use them as a starting point for researching briefs and memos; law review members and the firms with which they are interviewing use membership and publication as benchmarks, proving the student has a certain analytical capacity and allowing interviewers to separate the wheat from the chaff; and attorneys and judges still use them to get a strong foundation and good understanding of a particular issue before diving into researching a new area for a client or matter.<sup>200</sup> “Attorneys may count on blogs to alert them . . . to developing legal issues . . . like a clock radio spitting out the headlines,” but “[t]he careful attorney will generally have to do additional research” to get the necessary “detailed and applied legal analysis.”<sup>201</sup> Further, the young attorneys who often interview 2Ls for summer associateships might have been on law review, so they would expect the interviewees to be on law review as well and would look to law review membership as an objective indicator of legal aptitude. Conversely, a 2L interviewee wants to be able to say he or she is on law review so he or she can establish common ground, enjoy the credibility that law review membership imparts on the student, and break the ice by talking about a recent monster Bluebooking assignment. In addition, there are many students who are proud to serve on the law review, doing their part to advance their future alma mater and taking part in a reputable tradition. This is yet another reason that blawgs simply will not take the place of the law review.

#### IV. CONCLUSION

Now our blawg odyssey must come to an end—but hopefully the journey has changed you. You are now familiar with blawgs of all varieties. You know who publishes blawgs and the purposes for which they publish them. You have learned what kinds of information can be found on those blawgs and how you can use it. Now, use it. Add blawgs to your lawyer’s tool box. Read blawgs that interest you, whether they

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200. While there is evidence that judges read and analyze student-written law review articles, evidence suggests that student-written law review articles are rarely incorporated into written judicial opinions, and when they are, they rarely have an influence on judicial decision making. Bart Sloan, Note, *What Are We Writing For? Student Works as Authority and Their Citation by the Federal Bench, 1986-1990*, 61 GEO. WASH. L. REV. 221, 251-52 (1992).

201. Tom W. Bell, *The Impact of Blogging on the Practice of Law: Hit the Snooze Button*, 11 NEXUS 75, 76-77 2006.

are for entertainment, news, or scholarly discussion. Create your own blawg and use it to publish scholarly articles or to relate to potential clients and get more business, or simply just to socialize with a group of people who have shared many of the same experiences as you.

While you are adding blawgs to your lawyer's tool box, remember that it is to be added *in addition* to other tools. Relying solely on print resources for news, research, and scholarly discussion is not wise, given the availability, quality, and timeliness of electronic resources. By the same token, relying solely on electronic resources, such as blawgs, is also not wise. Print resources, whether they offer help researching, describing recent legal developments, or engage in academic pursuits, have lasted for a reason—they are helpful and they are high quality. Instead of relying on one or the other, use both print resources and electronic sources—the more traditional electronic resources and cutting edge electronic resources like blawgs. Just because the common law develops and new cases are stacked upon the old ones like bricks, the old cases are not simply dismissed or ignored. In the same way, new forms of communication in the legal community like blawgs build upon traditional print resources, but the value of traditional print resources should not be ignored. Sometimes you need a hammer, sometimes you need a screwdriver, and often times, you need both. So give blogging a shot. Read a law blawg for your legal news, start up that blawg for your firm that you have been thinking about, publish a draft of that paper you have been working on, or just tell a funny story. It will not hurt, and it might even help.

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