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BLAWGERS

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LAWYERS AND OTHER LEGAL PROFESSIONALS
SPEAK THEIR MINDS ON THE WEB

If you're like most of us, the idea of sifting through more information—in addition to the voice-mail messages; email messages; listserv digests; legal rags; and newspaper, radio, and television reports you're already filtering each day—could be enough to send you screaming off into the non-wired wilderness (if one still exists). But for many lawyers

across the country, a whole new digital frontier is now beckoning: the land of the not-so-nicely-named “blog” (which stands for “Web log”).

Part personal diary, part legal commentary, and, sometimes, part gossip column, blogs are now taking the online legal world by storm. In fact, the savvy name for a legal blog is “blawg” (get it?), and hundreds now exist to address—and receive commentary on—legal topics ranging from appellate proceedings to water law, and from the nitty-gritty details of the Scott Peterson case to philosophical questions raised by copyright disputes on the Web.

BY SUSAN E. DAVIS



“I became aware of blogs in the middle of 2001,” says Denise M. Howell, the appellate and intellectual property lawyer with Reed Smith in Los Angeles who coined the term *blawg* for lawyer blogs and whose own

blawg, Bag and Baggage (bgbg.blogspot.com), is considered one of the best of the blawging bunch. “At that time, I found only ten. Now hundreds of them are posted by all kinds of legal professionals, from highly respected law professors to law students, librarians, paralegals, judges, and judicial clerks. Clearly, the legal profession has embraced this technology.”

BIRTH OF THE BLOGS

The first blogs crept onto the scene in the mid-1990s—a time, remember, when the Internet itself was just taking off.

Susan E. Davis is a contributing writer to this magazine.



Those blogs were oriented to super-techy types who were writing code for software and operating systems, setting up the Internet, or simply chronicling the driven, dronelike lives of people toiling in the computer industry. Regular folks started to blog soon after (mostly about personal topics), but politics seems to have inspired the marked rise in blogging: It spiked first during the period between the 2000 presidential election and the Supreme Court decision one month later in *Bush v. Gore*, then again after 9/11, and then again prior to the launch of the Iraq war.

Today, no one knows how many blogs exist, but estimates range from 4.1 million to 4.8 million sites that cover every topic you can imagine: religion; pets; parenting; Madonna; gardening; motorcycles; cooking; Governor Schwarzenegger; California wildfires; opera; all manner of sports, books, presidential campaigns; and even vascular surgery. Plenty of people just blog about their personal lives. Melanie Griffith, Dave Barry, and novelist William Gibson all have their own blogs, as does rocker Tommy Lee, actor Ian McKellen, and porn queen Asia Carrera. One man even started a blog to chronicle his experiment with penile-enhancing drugs.

Really good bloggers can become famous (The Daily Dish, the blog by Andrew Sullivan, the gay Catholic conservative writer, has near mythic status), but most bloggers don't. (Has anyone else read the recent entry of a blogger named, simply, "Cody,"—you know, the one where he discussed both replacing his toilet and hunting moose?) Even obscure or downright bad blogs, however, can be absorbing, in the same is-this-for-real way that "reality" dating shows can be intriguing. And so, I confess: In the course of researching this article, I got rather caught up in Danelle O'Shea's My Life Is A Mess blog (danelle.blogspot.com), which chronicles the life of a paramedic student and stay-at-home mom in the Denver suburbs. I also investigated the aforementioned fellow's penile problems. And, yes, I spent a little too much time on The Dullest Blog in the World, for which the November 14, 2003, entry reads: "The lace on one of my shoes was undone. I knelt down, took the two ends of the lace in my hand and tied them together. Having tied my lace I stood up again." Look, I was on assignment.

AND THEN THERE WERE BLAGGS

Howell launched her Bag and Baggage site after reading about

blogs and receiving step-by-step setup instructions from an e-zine. Over Thanksgiving weekend in 2001 she decided to try it. "It took me ten minutes to get a blawg set up," she says. "It was far easier than creating a regular website." After a few months, she says, "my blawg took on a life of its own. Readers started asking big-picture legal questions about the sort of issues I might write about for legal publications, and I suddenly realized, 'Hey! I can publish myself, and people can find it just using a search engine! And I can write about things that interest me, like appellate law, the Internet, and technology.'"

Indeed, the relative ease of blawging is fueling its skyrocketing popularity. Most blogging software (which can also be used for blawging, of course), makes updating a site remarkably easy. "It doesn't take much time," Howell says, "because it's such an **easy** process. It's just like sending an email. You type in a little text and push a button that says 'publish.' " It's also relatively cheap: Blog software (like Radio UserLand) costs about \$40, and TypePad, a personal publishing service quickly gaining popularity among bloggers, costs between \$5 and \$15 a month, depending on what you want to do. Or you can use Google's Blogger to self-publish for free. "Plenty of lawyers and other legal professionals want to be on the Web," Howell says. "But not all of them are proficient enough technically to manage a website. Blawging makes it very easy."

Blawging also makes airing one's opinions easy, much easier than publishing in newspapers or magazines. "Part of my job as a professor is to articulate ideas to scholars, other lawyers, and the general population," says Eugene Volokh, a professor of law at UCLA School of Law and founder and coauthor of The Volokh Conspiracy (volokh.com), another highly regarded legal (and political) blog. "And I often do write articles or op-ed columns for mainstream newspapers, like the *Wall Street Journal* and the *Los Angeles Times*. But a lot of things I think about can't be made into an op-ed piece, either because they are too small to frame that way or they're too timely to get published. Or maybe I don't want to deal with a 700-word format. Posting my thoughts on a blawg is faster and probably gets more dedicated, albeit fewer, readers than doing it for a mainstream publication."

In the best cases, such self-publishing makes for good marketing. Let's say you're an expert on water law in California, and on your blawg you manage to post breaking news on current cases, relevant links to other legal or environmental websites, and insightful commentary on existing or proposed legislation. You're now well on your way to setting yourself up as an expert. And if you're honing your analysis by keeping up to date on current issues—and considering the feedback from your audience—you're even further along. "Maintaining a blawg forces me to read the *Daily Journal* advance sheets every day concerning decisions

of note so I can race to be the 'first blawg' to post about them," says Jeff Lewis, owner and operator of The Southern California Law Blog (socallawblog.com) and an associate at Enterprise Counsel Group in Irvine. "That has obvious benefits to my practice. So, too, does 'meeting' other good blawgers who visit and comment on my site."

What's more, blawgs show up high on search engines because they're updated frequently and they're usually heavily linked, even if only to each other. That means that if you've created a blawg on, say, the validity of a recall election, you may attract even more readers because anyone who Googles "recall" will get your site relatively quickly. As Howell wrote recently, "By publishing consistently and currently on your areas of interest, expertise, and practice, you cannot avoid being on the radar. A blog is the equivalent of a 20-person PR staff, singularly devoted to you. Better still, there's no room for the 'staffers' to misunderstand or misrepresent your message."

When your blawg covers high-profile current events, you may become very well known indeed. The already highly respected Stanford Law School professor Lawrence Lessig generated considerable discussion when he started posting news about his U.S. Supreme Court copyright case,

Eldred v. Ashcroft, before the judges rendered a decision. And the SoCalLaw blawg garnered more than 1,000 hits a day when Lewis started covering the Kobe Bryant case, up from just 40 or 50 a day. In this case, it wasn't just the news of the case that drew an audience, it was the debate about whether or not the media should protect the name of Bryant's accuser, among other issues.

Blawgs are becoming so authoritative, in fact, that at least two blawgs have been cited in opinions and briefs: When Howard J. Bashman, an appellate lawyer in Fort Washington, Pennsylvania, whose two-year-old How Appealing site (appellateblog.com) boasts more than 10,000 visits a day, used his blawg to point out an error in a footnote to an opinion published by the U.S. Fifth Circuit Court of Appeals, the judge fixed the mistake and then emailed Bashman a thank-you note. Bashman's blawg, along with several others, has also been cited in a U.S. Ninth Circuit Court of Appeals opinion, *Batzel v. Smith* (351 F.3d 904, 906 n.3 (2003)). And in an attempt to show that old-fashioned punch-card ballots could be more accurate than new voting systems, lawyers for recall advocate Ted Costa referenced both The Volokh Conspiracy and How Appealing in a brief submitted to the Ninth Circuit.

PERSONALITY A PLUS

Being authoritative is **one** key to successful blawging, but so, too, is having a winning blawg personality. What works? Consider the example of Associate Justice William W. Bedsworth of the Fourth Appellate District Court in Santa

**"A BLOG IS THE EQUIVALENT
OF A 20-PERSON
PR STAFF, SINGULARLY
DEVOTED TO YOU."**

Continued on page 62

Ana. Bedsworth's A Criminal Waste of Space column—now an adjunct to the May It Please the Court blog of the Williams Law Firm in Newport Beach (acriminalwasteofspace.net)—combines sharp legal analysis with a love of the quirkiest aspects of life. When you open his blawg, you may be asked to ponder questions that have arisen in recent legal cases, like, Is giving someone the finger a criminal breach of the peace? (*Coggin v. State*, 123 S.W.3d 82 (2003)) and What happens if you receive your dead father's leg in the mail instead of the lobster you ordered? (as happened to one Alaskan plaintiff).

Granted, some attorneys could make even those legal issues boring. But Bedsworth's talent with words (and his apparent love of them) makes his column both informative and hilarious. As he explained in one column last fall, his writing is a "safety valve," because, "I write it to get the basic lunacy which is a large part of my psyche out of my system. Writing about seal penises and monkey smugglers and Kirk Kerkorian's divorce in this space bleeds off the silliness, so I don't feel the need to write opinions that say, 'Your sentence of 25 years to life is affirmed, but did you hear the one about the nun and the rabbi and the parrot?'"

Similarly, Howell's blawg provides an excellent roundup of legal news and analysis, including discussions of copyright legislation, cases, conferences, and blawging developments. But she has also discussed the best online source of chocolate; the legal plots of Fox Broadcasting Company's new hit drama, *The O.C.*; how much furniture she had in her nursery (she was ten days from her due date at the time); links to another blogger's fairly long and fairly graphic birth story; and then, not surprisingly, a picture of Howell's newborn. That's the kind of personal touch that brings people back again and again.

But wait a minute: Is talk of television drama, chocolate, and babies professional? "Frankly, the law firm knows what I'm doing, and they see it as an interesting experiment in Web technology for lawyers," Howell says. "I'm very aware that the partners are reading it, so I don't put up anything that I wouldn't want them to see. But in real life I think there's not that much separation between lawyers' personal lives and their professional lives. We're all so involved in our jobs, and we talk about legal issues outside the office. Why maintain an artificial divide?"

WILL BLAWGS CONSUME THE EARTH? (Or at Least All Billable Hours?)

In an era when attorneys and everyone else are grinding their teeth over the harried pace of modern life, does

anyone truly have time to maintain or read these blawgs? My sources pooh-pooed my concern about time drains. Howell, for instance, says it can take as little as a few minutes a day to update her blawg, and though reading others' blawgs regularly can take an hour or two, the quality of the information is well worth the time. Volokh says reading blawgs can actually replace the need to browse various news and legal sites because good blawgs have links to articles of interest—and it can save him time.

Still, judging from my own experience, just perusing—never mind creating—a good blawg is time-consuming, in part because it's so interesting. For example, as a mother myself, I loved the birth story on Howell's blog. Bedsworth's analysis of the dead-leg-instead-of-lobster story? Couldn't stop reading it! Lewis's compilation of news and notes about

the Scott Peterson case? Fascinating ... including reading his reference to the suspect as "a first-class prick."

Lewis says he chose the term because he felt blawgers and reporters have focused too heavily on the question of sufficient evidence in this case while neglecting the question of Peterson's worth as a husband. "No one else out there is taking a position on what a crappy thing it is to do to go fishing on Christmas Eve, leaving your pregnant wife at home, and to be cheating on that wife with multiple girlfriends," Lewis wrote in an email when I asked him about his word choice. "Just my humble opinion."

And therein lies a significant disadvantage of blawgs. At some point, it's possible that potential clients or potential judges or even **your** actual audience will be turned off by your opinions, or, perhaps, your language. It's even possible that if you're blawging about a case you're working on, you'll either betray a client confidence, alert an opponent to your strategy, or piss off the judge. "If you're putting stuff on the Web that ranks high on search engines for particular issues, anybody can read it," Howell notes, "including those deciding those issues. That could go either way."

Adds Volokh, "The downside of writing in any medium is that if you screw up, make errors, or otherwise make yourself look like a fool, it could be bad for your reputation. Howard Bashman's reputation has improved, but not everyone is as smart as he is." In other words, sending your observations and opinions directly to the Web may make a lively, interesting, authoritative, and even entertaining blawg. Or it could mean you **post** things you later regret. Lewis's blawg is well written and well regarded, but for lesser blawgs, who knows? Sometimes, as **one** *Arkansas Democrat Gazette* columnist wrote in October, "Our own definition of a blog would be professional suicide." **CL**

BLAWGS

Bag and Baggage
bgbg.blogspot.com

The Volokh Conspiracy
volokh.com

The Southern California Law Blog
socallawblog.com

Lessig Blog
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