

LEGAL AND APPELLATE WEBLOGS: WHAT THEY ARE, WHY YOU SHOULD READ THEM, AND WHY YOU SHOULD CONSIDER STARTING YOUR OWN

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Most appellate judges and attorneys are familiar with at least some of the ways in which the Internet has affected legal practice in the last several years. Many appellate courts, including the Supreme Court, post their opinions on their own websites, on which many of them also allow attorneys to access their dockets sheets and other information. The major electronic legal research tools can be used via the Internet. And many law firms have set up their own websites.

However, there is a relatively recent Internet-related development with which many judges and attorneys may not be familiar—law-related weblogs.¹ Weblogs are often referred to as “blogs” (or, in the case of law-related weblogs, “blawgs”) and the people who set up and maintain weblogs are called “bloggers.” The purpose of this article is to introduce readers to

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1. A number of prominent legal publications have recently run articles about weblogs. See e.g. Tony Mauro, *Courtside: Court Blogs*, Leg. Times 11 (Nov. 18, 2002); Jason Krause, *Lawyers who 'Blawg': Attorneys Are Finding Fans (and Some Fame) Posting Legal Commentary on the Net*, 89 A.B.A. J. 42 (March 2003); Robert J. Ambrogi, *Blawgs: More Than Just Fluff—There's a Surprising Amount of Good Content for Harvesting*, 229 N.Y. L.J. 5 (March 11, 2003). However, so far, only a few law review articles have included a significant discussion of weblogs. See e.g. A. Michael Froomkin, *Habermas@Discourse.net: Toward A Critical Theory Of Cyberspace*, 116 Harv. L. Rev. 749, 859-60 (2003).

weblogs and to encourage judges and attorneys to read them and to consider setting up their own.

WHAT IS A WEBLOG?

An accurate but incomplete answer is that a weblog is a kind of website. Like other websites, to get access to one, all you have to do is type in the web address. Like other websites, you can find them by using major search engines like Yahoo! and Google.

What distinguishes weblogs from other websites is the way in which they present information. Weblogs are generally in a diary format—that is, in chronological order, with the most recent entry at the top and with the date of each entry indicated on the weblog. The entries, known as posts, vary widely in frequency. Some bloggers add new material to their weblogs several times a day. Others may add new material only every few weeks.

One way to describe bloggers would be to characterize them as the Samuel Pepys of the Internet.² Like Pepys, webloggers frequently comment on the events of the day—both large and small. Also like Pepys, webloggers, especially the more popular ones, can achieve a kind of fame as a result of their online “diaries.”³ Indeed, in a very seventeenth-century-meets-twenty-first-century kind of phenomenon, someone has

2. Samuel Pepys (as some English majors and trivia buffs may already know) was born in 1633, died in 1703, and is famous for two things: creating the British navy and keeping a diary. He started his diary on New Year's Day in 1660, when he was twenty-six. He wrote down, in a shorthand code, a day-by-day account of everything he saw, felt, or heard for the next nine years. The completed diary, which fills six 282-page notebooks, is “the longest, most personal account we have of life in the seventeenth century,” and includes his impressions of some of the great moments in English history: the Restoration, the plague of 1665, the Great Fire, and the Glorious Revolution of 1688. Charles McGrath, *I've Seen Fire, I've Seen Plague*, N.Y. Times Book Rev. § 7, 12 (Dec. 29, 2002) (reviewing Claire Tomalin, *Samuel Pepys: The Unequalled Self* (Alfred A. Knopf 2002)).

3. Two extremely popular weblogs are, for example, run by law professors. See Instapundit (<<http://www.instapundit.com>>), the blog run by University of Tennessee law professor Glenn Reynolds, and The Volokh Conspiracy (<<http://www.volokh.blogspot.com>>), the blog run by UCLA law professor Eugene Volokh and several others (both accessed April 11, 2003).

even set up a weblog that presents Pepys's 350-year-old diary in weblog format, perhaps enhancing even his fame as a diarist.⁴

Weblogs range in style from quite formal and impersonal to quite informal and personal. The weblog of one of the authors, Statutory Construction Zone,⁵ is toward the formal end of the spectrum, focusing primarily on recent federal statutory construction cases. The posts cover two-week periods, and present the information in a format that is similar for each two-week period: first, a quotation of the week, then in-depth summaries of recent cases, brief summaries of other cases, a law-review article recommendation, and a pre-1789 English common-law trivia question.

At the other end of the spectrum are weblogs like blueblanketblog,⁶ which is run by the other author of this article. There is no rigid structure for the posts on this weblog, and they are much more personal in nature. The posts range in topic from reports from Supreme Court oral arguments and recent environmental law opinions to descriptions of vacations or outings to clubs to hear indie rock bands.

WHY SHOULD I READ WEBLOGS?

Weblogs can be interesting, informative, and timely. They can supply information from other weblogs that is impossible to obtain elsewhere. They can act as filters for cases and legal developments of interest to a specialized audience. They can provide perspectives that readers are unlikely to get anywhere else and often provide them more quickly than would be possible or practical with other media. E-mail and the comment system used on many weblogs allow readers to interact with academics and practitioners who would otherwise be inaccessible to them. And best of all, they are free.

4. See The Diary of Samuel Pepys (available at <<http://www.pepysdiary.com>> (accessed April 8, 2003).

5. <<http://www.statconblog.blogspot.com>> (accessed April 8, 2003).

6. <<http://www.blueblanket.net/Steph/blogger.com>> (accessed April 8, 2003).

WHICH WEBLOGS MIGHT INTEREST ME?

First, a caveat. There are thousands of weblogs out there. More are being added every day. In fact, between the time that this article goes to press and the day on which this issue is mailed to subscribers, several new legal weblogs will probably have started and others may cease to exist. Any list will necessarily be incomplete.

Without a doubt, the best place to start exploring appellate weblogs is with Howard Bashman's "How Appealing" weblog.⁷ Bashman chairs the Appellate Group at Buchanan Ingersoll in Philadelphia. His weblog is a constant source of recent opinions, personal observations, appellate news, gossip and more. Other weblogs also have a primarily appellate content, but are more narrowly focused than Bashman's "How Appealing." SCOTUSblog,⁸ for example, provides thorough coverage of the Supreme Court. The primary SCOTUSblog blogger, Tom Goldstein, is, like Bashman, an appellate insider. He's a partner in a small specialty firm that practices only before the Supreme Court. In addition, some other legal weblogs, including those maintained by the authors,⁹ consist primarily of appellate content.

Of course, there are many legal weblogs that do not primarily focus on appellate practice. To explore other areas, a good place to start is with weblogs that have good lists or outlines of other legal weblogs. In addition to the "How Appealing" weblog, which includes links to many other weblogs, the following weblogs have excellent lists of legal weblogs: Bag and Baggage,¹⁰ ChessLaw,¹¹ Ernie the Attorney,¹² Inter-Alia,¹³ Jurist,¹⁴ and Lawsites.¹⁵

7. <<http://appellateblog.blogspot.com/>> (accessed April 8, 2003).

8. <<http://www.goldsteinhowe.com/blog/index.cfm>> (accessed April 8, 2003); *see also* <<http://scotus.blogspot.com/>> (focusing on the Supreme Court) (accessed April 21, 2003).

9. *See* Statutory Construction Zone, *supra* n. 5; Blueblanket Blog, *supra* n. 6.

10. <<http://bgbg.blogspot.com/>> (accessed April 8, 2003).

11. <<http://www.chesslaw.com/lawblogs.htm>> (accessed April 8, 2003).

12. <<http://radio.weblogs.com/0104634>> (accessed April 8, 2003).

13. <<http://www.inter-alia.net/>> (accessed April 8, 2003).

14. <<http://jurist.law.pitt.edu/>> (accessed April 8, 2003).

15. <<http://www.legaline.com/lawsites.html>> (accessed April 8, 2003).

WHY SHOULD I START MY OWN WEBLOG?

After looking at a few weblogs, you might think to yourself “Hey, I would like to start my own weblog.” Weblogs are especially suited for “I find it fascinating, but most people I know, including my significant other, find it unbelievably boring” kinds of topics. Consider, for example, the statutory construction blog run by one of the authors. Another example is a weblog focusing solely on a single statute—the Health Insurance Portability and Accountability Act of 1996 (known already to the cognoscenti, and soon to become known to more of us, as “HIPAA”).¹⁶ Weblogs are a good way of finding other people who share your interests.

Moreover, weblogs can allow you to organize your Internet bookmarks in a way that is useful not only to you, but potentially also to others, and to refine your thoughts on a particular issue. You might, for instance, already be collecting links related to a particular area of law—admiralty and maritime law, maybe. By making those links public and providing your analysis of each, you not only spread your ideas, but you also get practice articulating and revising them.

Weblogs can also be a path to your fifteen minutes of Pepys-esque Internet fame. We know from experience that it can be very gratifying to have complete strangers e-mail you from hundreds or thousands of miles away to tell you that they think your blog is great and that they appreciate the work you are doing. How often does that happen in the average lawyer’s practice? Even if your weblog has only a few dozen visitors a day or week, that is probably more exposure than you would get for the average brief or a law review article.

Finally, weblogs can be a forum for the exchange of ideas. Groups and teams, as well as individuals, can start their own weblogs,¹⁷ and use them to discuss issues in a roundtable fashion. Moreover, other appellate advocates, experienced and inexperienced, surf the web too. And, on occasion, they even comment on particular blogs or e-mail bloggers when they come across posts in which they are interested, or that relate to their

16. <<http://www.hipaablog.blogspot.com>> (accessed April 8, 2003).

17. See e.g. Volokh Conspiracy, *supra* n. 3; SCOTUSblog, *supra* n. 8.

practices. In addition, most blogs regularly reference other blogs, creating through their posts virtual conversations of responses and commentary. Thus weblogs can be catalysts for meeting people on line you might never have met in real life.

WHAT KINDS OF WEBLOGS ARE OUT THERE, AND WHERE WOULD MINE FIT?

Here are a few categories of weblogs that have plenty of room for more entries. (This listing is intended to be illustrative, not exhaustive.)

First, there are law-related weblogs that focus on particular states, including Alaska,¹⁸ California,¹⁹ Delaware,²⁰ Indiana,²¹ Louisiana,²² Michigan,²³ Texas,²⁴ Virginia,²⁵ and West Virginia.²⁶ That leaves forty-one more states (and the District of Columbia) without legal weblogs.

Second, there are weblogs that focus on particular legal specialties. There are weblogs that focus on corporate law,²⁷ criminal law,²⁸ education law,²⁹ election law,³⁰ employment law,³¹

18. Alaska Blog, <<http://touchngo.com/lglcntr/index.htm>> (accessed April 8, 2003).

19. California (Southern), <<http://socallaw.blogspot.com/>> (accessed April 8, 2003).

20. Delaware Law Office, <<http://www.delawoffice.com/news.html>>(accessed April 8, 2003).

21. Indiana Law Blog, <<http://www.marciaoddi.com/indianalawblog/>> (accessed April 8, 2003).

22. Louisiana Law, <<http://www.nakedownership.com/>> (accessed April 8, 2003).

23. Michigan: LitiGator, <<http://radio.weblogs.com/0110436/>> (accessed April 8, 2003).

24. Texas, <<http://www.texfamlawblawg.com/>> (accessed April 8, 2003).

25. Virginia (Southwest) Blog, <<http://swvalaw.blogspot.com/>> (accessed April 8, 2003).

26. West Virginia Legal Weblog, <<http://legalweblog.blogspot.com/>>; Rory Perry's Weblog, <<http://radio.weblogs.com/0103705/>> (both accessed April 8, 2003).

27. <<http://www.thecorporatecounsel.net/blog/blogindex.html>> (restricted-access site; registration required).

28. Crimlaw, <<http://crimlaw.blogspot.com/>>; Gideon's Promise, <radio.weblogs.com/0108274/>; TalkLeft, <<http://www.talkleft.com>> (all accessed April 8, 2003).

29. UnivAtty, <<http://univatty.blogspot.com/>> (accessed April 8, 2003).

30. Election Law, <<http://www.electionlaw.blogspot.com/>>; VoteLaw, <<http://www.votelaw.blogspot.com>> (both accessed April 8, 2003).

31. Jottings By An Employer's Lawyer, <<http://employerslawyer.blogspot.com/>> (accessed April 8, 2003).

environmental law,³² evidence,³³ immigration law,³⁴ and intellectual property and technology issues.³⁵ Obviously there are many other practice areas. One can easily imagine a weblog for ERISA or FERC law, or on the voluminous case law construing the federal sentencing guidelines.

Third, there are weblogs that focus on particular types of legal practice. A couple of weblogs focus on solo or small firm practice.³⁶ Although none seems to exist yet, readers might eventually expect to find weblogs focusing on medium to large firms, or government work.

Fourth, a few weblogs focus on particular areas of constitutional law. So far, the First³⁷ and Fourth Amendments³⁸ have their own weblogs. It is easy to imagine other areas that a blogger might choose to focus on—sovereign immunity, for example, or takings law.

Fifth, a couple of weblogs focus on individual Supreme Court justices. So far, there are two—focusing on Scalia and Thomas.³⁹ That leaves seven more Supreme Court justices, and, of course, many other appellate judges.

Sixth, some weblogs focus on particular kinds of legal analysis. There is already a weblog devoted to federal statutory construction, but a weblog focusing on statutory construction in

32. Blueblanketblog, *supra* n. 6; How Green Is My Country, <<http://greenlaw.blogspot.com/>> (accessed April 8, 2003).

33. Tillers on Evidence, <<http://jurist.law.pitt.edu/views/blogs/tillers/index.htm>> (accessed April 8, 2003).

34. The Manifest Border, <<http://manifestborder.blogspot.com/>> (accessed April 8, 2003).

35. This is an especially popular area. *See* BeSpacific.com, <<http://www.bespacific.com>>; DennisKennedy.blog, <<http://www.denniskennedy.com/blog>>; COPYFIGHT: The Politics of IP, <<http://corante.com/copyfight>>; Dark Goddess of Replevin (one of the best weblog names), <<http://ruthedlund.blogspot.com/>>; GrepLaw, <<http://grep.law.harvard.edu>>; icann.Blog, <<http://icann.blog.us>>; ICANNWatch, <<http://www.icannwatch.org>>; KinsellaLaw, <<http://www.kinsellalaw.com>>; LawMeme, <<http://research.yale.edu/lawmeme>>; LessigBlog, <<http://cyberlaw.stanford.edu/lessig/blog>>; Techlawadvisor, <<http://techlawadvisor.blogspot.com/>>; Trademark blog, <<http://trademark.blog.us/blog/>>; Weatherall's Law, <<http://weatherall.blogspot.com>> (all accessed April 8, 2003).

36. MyShingle.com, <<http://myshingle.com>>; Soho Attorney, <<http://sohoattorney.com/>> (both accessed April 8, 2003).

37. <<http://actualmalice.blogspot.com/>> (accessed April 8, 2003).

38. <<http://www.wallywaller.com/4th>>; <<http://www.fourthamendment.com/>> (both accessed April 8, 2003).

39. <<http://ninomania.blogspot.com/>> (accessed April 8, 2003); <<http://justicethomas.tripod.com/>> (accessed April 21, 2003).

state courts in general, or in the courts of a particular state, could be helpful to lawyers who practice there. At least one weblog focuses on legal theory.⁴⁰ This is an area that could lead to more weblogs—perhaps devoted to law and economics, law and literature, feminist theory, public-choice theory, and the like.

The possibilities, in short, are almost endless. Any appellate lawyer interested in blogging should be able to think of an appropriate topic.

HOW CAN I START MY OWN WEBLOG?

The good news is that you do not have to know a lot about computers to start your own weblog. Bloggers have a wide range of computer experience. For example, one of the authors of this article has an extensive background in computers, has had her own weblog for years, and was familiar with HTML before launching it. The other had a background in computers that could be charitably described as basic—just enough to use Microsoft Word, send e-mail, and surf the Web, but no knowledge of HTML. But a reader looking at both weblogs would not realize that there was such a difference in the bloggers' backgrounds. More good news is that starting a blog is not expensive, and can even be free (if you don't mind having ads on your weblog). There are a number of websites that host weblogs.

Many websites provide information on starting your own weblog.⁴¹ These websites provide information on how to set up your own blog using either web-based services, such as Blogger, or downloadable-software-based services, such as Moveable Type and Radio Userland. Similarly, the websites for each of

40. Legal theory, <<http://solum.blogspot.com/>> (accessed April 14, 2003).

41. *E.g.* <<http://3gear.web1000.com/blogging101>> (offering a basic course); <<http://blogplates.net/tutorials.html>> (providing links to various weblog tutorials); <<http://www.geeksworld.net/Tips/2002/03.htm>> (describing how to set up a weblog); <<http://www.cnet.com/software/0-3228341-8-9496937-1.html>> (comparing blogging tools); <<http://hotwired.lycos.com/webmonkey/02/18/index3a.html?tw=authoring>> (outlining how to start your own weblog using tools such as Blogger (<<http://www.blogger.com/>>), Moveable Type (<<http://www.moveabletype.org/>>), and Radio Userland (<<http://radio.userland.com/>>)) (all accessed April 21, 2003).

these major services contain their own how-to pages, each providing detailed information on how to use their software.⁴²

In general, most of the work involved in setting up a weblog is at the beginning. You will either provide the service information about your web host, or, if the blog service provides its own hosting service, you will provide it information on how you want your page set up. For example, the blogging service may ask you to provide a title for your blog, to select from several possibilities for blog graphics, or to decide how often you want your blog to be archived. After that, it is fairly simple to update your blog simply by using new posts to enter the text you want.

The various blog services vary in ease of use, and in the types of features they offer. Some blogging services, for example, will host the weblogs themselves, while for others, you need to host the weblog. Other blogging services will make it easier to track changes on your weblogs, or to customize the way in which your posts are archived. Still other services allow you to send e-mail newsletters based on your weblogs. If you're interested in blogging, you might want to visit each of these sites to see which tool is best for you, or to check out a web page that compares the various features of different blog tools.⁴³

CONCLUSION

We hope that our readers will at least check out a few of the weblogs we have mentioned, and we will be delighted if some start their own. And if this article leads any of them to look at weblogs or start their own, we would love to hear about it—we might even post their comments on our own weblogs.



42. See <<http://www.blogger.com/about.pyra>> (Blogger); <http://www.moveabletype.org/about_moveable_type.shtml> (Moveable Type); <<http://radio.userland.com/faq>> (Radio Userland).

43. E.g. <<http://www.cnet.com/software/0-3228341-8-9496937-3.html>>; <<http://www.urldir.com/bt/>> (both accessed April 14, 2003).

