Are Scholars Better Bloggers? Bloggership: How Blogs Are Transforming Legal Scholarship

Paul L. Caron

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BLOGGERSHIP: HOW BLOGS ARE TRANSFORMING LEGAL SCHOLARSHIP

ARE SCHOLARS BETTER BLOGGERS?

BLOGGERSHIP: † HOW BLOGS ARE TRANSFORMING LEGAL SCHOLARSHIP ††

PAUL L. CARON *

Admiral James Stockdale, Ross Perot’s Independent Party running mate in 1992, famously opened the vice-presidential debate by asking, “Who am I? Why am I here?”1 I would like to take a few minutes to

† I am grateful to my colleague Rafael Gely, a recovering blogger (he launched the popular Workplace Prof Blog (http://lawprofessors.typepad.com/laborprof_blog) before deciding that blogging was not his cup of tea), who coined the term “bloggership” in early discussions about the organization of this Symposium.

†† These are the edited remarks I delivered at the opening of the Symposium on Bloggership: How Blogs Are Transforming Legal Scholarship at Harvard Law School on April 28, 2006. Unless otherwise noted, the sources and data are current as of that date.


* Associate Dean of Faculty and Charles Hartsoc Professor of Law, University of Cincinnati College of Law. Publisher and Editor-in-Chief, Law Professor Blogs Network (http://www.lawprofessorblogs.com) and TaxProf Blog (http://taxprof.typepad.com).

I want to thank the folks at the Berkman Center for Internet & Society at Harvard Law School who helped make the Symposium such an enjoyable event: Tim Armstrong, Colin Maclay, Charles Nesson, John Palfrey, and Arielle Silver. I am grateful for the financial support of the Berkman Center, Microsoft, the University of Cincinnati College of Law, and the Harold C. Schott Foundation. Special thanks to Drew Marksity, research assistant extraordinaire.

1. A transcript of the debate is available at The 1992 Vice Presidential Debate (Oct. 13, 1992), http://www.pbs.org/newshour/debatingourdostiny/92debates/vpl.html. A video clip of Admiral Stockdale’s opening remarks is available at Allan Louden, Political Debates Video Clips,
describe who I am and what I am doing here, and then describe who our twenty-three panelists are and what they are doing here.

I. WHO AM I? WHY AM I HERE?

As a tax professor, I rarely have so many people voluntarily gathered, both in person and virtually, to hear me talk about tax law. So I am tempted to use my time this morning to talk about the intricacies of this recent tax case. But I will resist the temptation to engage in a bait-and-switch and instead explain how some of my recent tax work has led me to stand before you today.

After several forays into using technology to further tax scholarship, I launched TaxProf Blog on April 15, 2004, as a source of permanent resources and links on, as well as daily news and information about, tax law. The goal of the blog is to create a virtual tax community among tax professors, students, and practitioners who come to the site each day to both access the vast array of tax resources available on the Internet and to learn of new tax developments. Because the site far exceeded my most optimistic expectations, with over 1.5 million visitors in just two years of operation, I created, with Joe Hodnicki, the Law Professor Blogs Network to replicate TaxProf Blog in other areas of the law school.


5. The date, of course, has particular resonance for a tax blog.

6. The daily news and information, and permanent resources and links, are categorized into a variety of topics including bar groups, cases, colloquia, conferences, government reports, graduate tax programs, news, professional organizations, rankings, rulings, scholarship, sources of tax law (federal, state, and foreign), and think tanks.

7. See Tax Prof Blog Site Summary, Visits, http://www.sitemeter.com/?a=stats&s=sm3taxprof (last visited Feb. 10, 2007). As of September 2007, the number of cumulative visitors has grown to over 3.2 million. Id.

II. WHO ARE THE PANELISTS? WHY ARE THEY HERE?

Who are our twenty-three panelists? Twenty-one of them are law professors, one is a lawyer, and one is a journalist. All but one maintain a blog. Why do they do it? Why do they take time out of their busy schedules each day to post entries on their blogs? One possible answer was suggested by Daniel Henninger in the Wall Street Journal last week:

I don’t think the blogosphere is breeding cannibals. But it looks to me as if the world of blogs may be filling up with people who for the previous 200 millennia of human existence kept their weird thoughts more or less to themselves. Now, they don’t have to. They’ve got the Web. Now they can share.

Our panelists have gathered to do more than share their “weird thoughts” with you. They are here to explain how their blog work fits into their professional lives as legal scholars and teachers.

A perennial debate in higher education in general, and in legal education in particular, is whether a robust scholarly life helps or hurts a professor’s teaching performance. Taking inspiration from panelist Jim Lindgren’s work, Are Scholars Better Teachers?, which concludes that...
better scholars are perceived by students to be better teachers, I would like to ask, using our panelists as guinea pigs, “Are Scholars Better Bloggers?” As a tax guy, I like numbers, so let’s look at both scholarship and blogging data to begin to answer that question.

A. Scholarship Data

In a recent article I co-authored with Bernie Black, we surveyed four methods for ranking the scholarly performance of law faculties: reputation surveys, publication counts, citation counts, and SSRN download counts. The existing work on reputation surveys and publication counts focuses on law school faculties as a whole and not on individual law professors. As a result, there are no hard data in these areas on individual law professors. Yet anyone familiar with the law school world would agree that our panelists comprise a glittering array of influential and prolific legal scholars.

In contrast, there are available data on the two other measures of scholarly performance. Using the citation count methodologies deployed by others, our participants include some of the most heavily-cited legal scholars:

15. See id. at 832–33, stating: [T]he odds of being in the top half among instructor ratings is 1.9 times higher for heavily cited scholars (at Boston University, The University of Chicago, and The University of Colorado) than it is for infrequently cited scholars. . . . [T]he odds that those with low numbers of citations to their scholarly work will be in the bottom 25% in instructor ratings are 2.9 times higher.


19. My research assistant compiled the panelists’ publication records, which comprise hundreds of books and articles, published by the most prestigious publishers and in the most prestigious law reviews. (Of course, the reputation of the journal in which an article is published is no guarantee of the article’s quality. See Andrew S. Oswald, An Examination of the Reliability of Prestigious Scholarly Journals: Evidence and Implications for Decision-Makers, 74 ECONOMICA 21 (2007) (concluding that the “best” article in a medium-quality journal “routinely” has more impact than the “poor” article in a more prestigious journal).

20. See, e.g., Theodore Eisenberg & Martin T. Wells, Ranking and Explaining the Scholarly Impact of Law Schools, 27 J. LEGAL STUD. 373 (1998); Leiter’s Law School Rankings, Faculty
Table 1: Citation Counts of Panelists
(through Apr. 1, 2006)\textsuperscript{21}

<table>
<thead>
<tr>
<th>Panelist</th>
<th>Citations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eugene Volokh</td>
<td>1,473</td>
</tr>
<tr>
<td>Randy Barnett</td>
<td>1,439</td>
</tr>
<tr>
<td>Larry Ribstein</td>
<td>1,351</td>
</tr>
<tr>
<td>Michael Froomkin</td>
<td>848</td>
</tr>
<tr>
<td>Glenn Reynolds</td>
<td>604</td>
</tr>
<tr>
<td>Larry Solum</td>
<td>584</td>
</tr>
<tr>
<td>Paul Butler</td>
<td>557</td>
</tr>
<tr>
<td>Jim Lindgren</td>
<td>513</td>
</tr>
<tr>
<td>Ann Althouse</td>
<td>470</td>
</tr>
<tr>
<td>Ellen Podgor</td>
<td>380</td>
</tr>
</tbody>
</table>

These citation statistics understate the scholarly impact of our panelists, as the citation-count measure favors more senior faculty and emphasizes older work that accumulates citations over time,\textsuperscript{22} while our panelists are considerably younger than the law professorate at large.\textsuperscript{23} Indeed, three of our panelists are included in Brian Leiter’s listing of the fifty most-cited young legal scholars (with Eugene Volokh at number three, Michael Froomkin at number eight, and Paul Butler at number twenty-six).\textsuperscript{24}

Our panelists also fare quite well in the SSRN rankings of the Top 1,500 Law Authors as measured by the number of downloads of their scholarship:

\textsuperscript{21} My research assistant compiled this table by using the methodologies described in \textit{supra} note 20.

\textsuperscript{22} See Black & Caron, \textit{supra} note 16, at 93.

\textsuperscript{23} The median age of our law professor panelists is 46, compared to the 52 median age of law professors generally. See Eric A. Lustig, \textit{Who We Are: An Empirical Study of the Tax Law Professoriate}, 1 Pitt. Tax Rev. 85, 94–95 (2003).

Table 2: SSRN Download Counts of Panelists
(through Apr. 1, 2006)\textsuperscript{25}

<table>
<thead>
<tr>
<th>Panelist</th>
<th>Rank (Out of 1,500)</th>
<th>Number of Downloads</th>
</tr>
</thead>
<tbody>
<tr>
<td>Orin Kerr</td>
<td>15</td>
<td>16,993</td>
</tr>
<tr>
<td>Dan Solove</td>
<td>17</td>
<td>15,244</td>
</tr>
<tr>
<td>Larry Solum</td>
<td>20</td>
<td>12,911</td>
</tr>
<tr>
<td>Larry Ribstein</td>
<td>23</td>
<td>12,615</td>
</tr>
<tr>
<td>Randy Barnett</td>
<td>26</td>
<td>11,737</td>
</tr>
<tr>
<td>Gordon Smith</td>
<td>116</td>
<td>3,729</td>
</tr>
<tr>
<td>Paul Caron</td>
<td>128</td>
<td>3,455</td>
</tr>
<tr>
<td>Eugene Volokh</td>
<td>143</td>
<td>3,168</td>
</tr>
<tr>
<td>Kate Litvak</td>
<td>164</td>
<td>2,771</td>
</tr>
<tr>
<td>Eric Goldman</td>
<td>245</td>
<td>1,765</td>
</tr>
</tbody>
</table>

\textbf{B. Blogging Data}

According to the most recent data, there are more than 34.5 million U.S. blogs,\textsuperscript{26} \num{600} law-related blogs,\textsuperscript{27} and \num{235} law professor bloggers.\textsuperscript{28} Our panelists run many of the most popular law-related and law professor blogs.

For example, Roger Alford of Opinio Juris has compiled a ranking of the twenty-five most popular law blogs,\textsuperscript{29} based on traffic reports on The Truth Laid Bear.\textsuperscript{30} Seven of the top ten law blogs under this measure are represented in this Symposium:

\textsuperscript{25} My research assistant compiled this table from the data at Social Science Research Network, SSRN Top 1,500 Law Authors, \url{http://www.ssrn.com} (last visited Feb. 10, 2007), follow “Top Authors” hyperlink, then follow “Top Law Authors” hyperlink (free registration required).

\textsuperscript{26} Technorati Weblog, State of the Blogosphere (Apr. 17, 2006), \url{http://www.technorati.com/weblog/2006/04/06.html} (tracking through April 2006 and noting that the Blogosphere doubles about every six months).


\textsuperscript{29} Posting of Roger Alford to Opinio Juris, “Most Popular Law Blogs,” \url{http://www.opiniojuris.org/posts/1141753686.shtml} (Mar. 7, 2006, 12:48 p.m.).

\textsuperscript{30} The Truth Laid Bear, \url{http://truthlaidbear.com/TrafficRanking.php} (last visited Feb. 10, 2007). These traffic statistics are incomplete in several respects. For example, the statistics do not cover law blogs without publicly-available site meters (e.g., Legal Theory Blog, The Right Coast) and

http://openscholarship.wustl.edu/law_lawreview/vol84/iss5/1
Table 3: Panelists’ Blogs Ranking Among Most Popular Law Blogs
Truth-Laid-Bear & Opinio Juris
(as of Mar. 7, 2006)\textsuperscript{31}

<table>
<thead>
<tr>
<th>Blog</th>
<th>Traffic</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Law Rank</td>
</tr>
<tr>
<td>The Volokh Conspiracy</td>
<td>1</td>
</tr>
<tr>
<td>How Appealing</td>
<td>2</td>
</tr>
<tr>
<td>TaxProf Blog</td>
<td>4</td>
</tr>
<tr>
<td>Sentencing Law &amp; Policy</td>
<td>6</td>
</tr>
<tr>
<td>Concurring Opinions</td>
<td>7</td>
</tr>
<tr>
<td>Discourse.net</td>
<td>9</td>
</tr>
<tr>
<td>Conglomerate</td>
<td>10</td>
</tr>
<tr>
<td>Ideoblog</td>
<td>16</td>
</tr>
<tr>
<td>Health Law Prof Blog</td>
<td>24</td>
</tr>
</tbody>
</table>

The raw traffic numbers from publicly-available site meters also illustrate the popularity of our participants’ blogs:

Table 4: Site Meter Traffic on Panelists’ Blogs
(through Apr. 1, 2006)\textsuperscript{32}

<table>
<thead>
<tr>
<th>Blog</th>
<th>Total Visitors</th>
</tr>
</thead>
<tbody>
<tr>
<td>InstaPundit</td>
<td>142,700,000</td>
</tr>
<tr>
<td>The Volokh Conspiracy</td>
<td>17,000,000</td>
</tr>
<tr>
<td>Althouse</td>
<td>4,425,000</td>
</tr>
<tr>
<td>How Appealing</td>
<td>4,250,000</td>
</tr>
<tr>
<td>TaxProf Blog</td>
<td>1,550,000</td>
</tr>
<tr>
<td>Sentencing Law &amp; Policy</td>
<td>1,250,000</td>
</tr>
<tr>
<td>Discourse.net</td>
<td>1,100,000</td>
</tr>
<tr>
<td>Conglomerate</td>
<td>675,000</td>
</tr>
<tr>
<td>White Collar Crime Prof Blog</td>
<td>425,000</td>
</tr>
<tr>
<td>Concurring Opinions</td>
<td>375,000</td>
</tr>
</tbody>
</table>

do not measure RSS feeds. In addition, Professor Alford excludes several “blogs by law professors that are not true law blogs” (e.g., Althouse (http://althouse.blogspot.com), InstaPundit (http://instapundit.com)).

\textsuperscript{31} My research assistant compiled this table by using the Truth Laid Bear and Opinio Juris sources listed in supra note 30.

\textsuperscript{32} My research assistant compiled this table by using data from the publicly available site meters on the panelists’ blogs.
Putting together the cumulative data from both the scholarship and blogging fronts, one is struck by the sharp increase in the data points under the newer measures:

<table>
<thead>
<tr>
<th>Rank</th>
<th>Scholarship Data</th>
<th>Blog Data</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Citations</td>
<td>Downloads</td>
</tr>
<tr>
<td>1</td>
<td>1,473</td>
<td>16,933</td>
</tr>
<tr>
<td>2</td>
<td>1,439</td>
<td>15,244</td>
</tr>
<tr>
<td>3</td>
<td>1,351</td>
<td>12,911</td>
</tr>
<tr>
<td>4</td>
<td>848</td>
<td>12,615</td>
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<td>7</td>
<td>557</td>
<td>3,455</td>
</tr>
<tr>
<td>8</td>
<td>513</td>
<td>3,168</td>
</tr>
<tr>
<td>9</td>
<td>470</td>
<td>2,771</td>
</tr>
<tr>
<td>10</td>
<td>380</td>
<td>1,765</td>
</tr>
</tbody>
</table>

33. My research assistant compiled this table by using data from the publicly available site meters on the panelists’ blogs.

34. My research assistant compiled this table by using data from Table 1, Table 2, and Table 4.
Of course, these data do not conclusively answer the question raised: *Are Scholars Better Bloggers?* But they do prove that we have gathered together an impressive array of scholar-bloggers to address the subject of this symposium: *How Blogs Are Transforming Legal Scholarship.*

### III. Bloggership: How Blogs Are Transforming Legal Scholarship

Our twenty-three participants gathered on April 28, 2006, at Harvard Law School in the first scholarly conference on the impact of blogs on legal scholarship. The papers and commentary presented at the event and recorded in these pages reflect an array of perspectives on the relationship of blogs and legal scholarship. In the pages that follow, I am confident that you will agree that we have lived up to the billing of the Symposium:

Web logs (“blogs”) are transforming much of American society, including government, politics, journalism, and business. In the past few years, blogs have begun to affect the delivery of legal education, the production and dissemination of legal scholarship, and the practice of law. We are delighted that over twenty of the nation’s leading law professor bloggers have agreed to join with us for the first scholarly conference on the impact of blogs on the legal academy.35

The Symposium papers and commentary make an enormous contribution to our understanding of blogs and their impact on legal scholarship. At the April 28, 2006, event, following a welcome from John Palfrey, Executive Director of the Berkman Center for Internet & Society at Harvard Law School, and this Introduction, we organized the papers and commentary into four panels: (1) Law Blogs as Legal Scholarship,36 (2) The Role of the Law Professor Blogger,37 (3) Law Blogs and the First

Amendment, and (4) The Many Faces of Law Professor Blogs. Now, with the benefit of having heard the presentations and read the final drafts of the papers and commentary, we depart from this organization in places in this Introduction and in the publication of the papers and commentary in this issue to better match the content and themes of the panelists’ contributions.

A. Law Blogs as Legal Scholarship

Doug Berman cautions that this panel—and indeed, the Symposium as a whole—should avoid the silly debate over “whether law blogs can be legal scholarship...” Because blogs are simply a medium of communication, they can be used to advance legal scholarship in the same way as articles and books can. But the blogging phenomena raises bigger (and “scarier”) questions about why legal scholarship is an essential part of a law professor’s vocation and whether blogging should be an accepted part of that vocation. Professor Berman makes a powerful case for both the power and possibilities of blogging by law professors, but he also sounds a cautionary note about some potential pitfalls.


41. Berman, supra note 36, at 1043.

42. The power of law professor blogs includes their role as a new means of expressing scholarly ideas, engaging in a more robust and diverse scholarly community, respecting the diversity of scholarly production, and reconnecting our scholarship to our teaching and service. Id. at 1048–51.

43. The possibilities of law professor blogs include their role as a medium for interdisciplinary
Orin Kerr\textsuperscript{45} sees a more modest role for law professor blogs. He argues that “blogs do not provide a particularly good platform for advancing serious legal scholarship” because of the “tyranny of reverse chronological order”\textsuperscript{46} feature of blogs. As posts are continually pushed further and further down the page, blogs reward writers and readers with short attention spans and preclude the “mulling over” process essential to the production of thoughtful scholarship.\textsuperscript{47} But just as “journalism is the first rough draft of history,” blog posts can be viewed as the “first rough draft of legal scholarship.”\textsuperscript{48} Professor Kerr sees an important role for blogs in providing “promising outlets for legal scholars interested in becoming public intellectuals.”\textsuperscript{49}

Larry Solum\textsuperscript{50} argues that law professor blogs are not transforming legal scholarship but instead are an important indicator of three transformative trends.\textsuperscript{51} He chronicles the shift in legal scholarship from: (1) the “long form” to the “short form”;\textsuperscript{52} (2) exclusive rights to open access;\textsuperscript{53} and (3) intermediaries to disintermediation.\textsuperscript{54} Professor Solum sees blogs as “the medium (or technology) through which the incentives and institutional forces that are pushing legal scholarship toward the short form, open access, and disintermediation are doing their work. If it had not been blogs, it would have been something else.”\textsuperscript{55}
Kate Litvak, the only panelist without a blog and a widely-quoted blog skeptic,\textsuperscript{56} opens her paper by asking “what we mean when we say that blogs are ‘transforming’ something.”\textsuperscript{57} She says:

If we define “transforming” very broadly (“Does blogging have some—however infinitesimal, speculative, indirect, removed in time—impact on legal scholarship?”), the answer is surely yes. But trivial and speculative impacts are not good excuses for a conference. The interesting question is whether blogging has a \textit{meaningful} (or, as an empirical type might put it, a substantively and statistically significant) impact on legal scholarship.\textsuperscript{58}

She contends that the impact of blogging on legal scholarship pales in comparison to other recent developments (e.g., the availability of data, influx of Ph.D.’s into the legal academy, long-distance and cross-disciplinary co-authorship, internationalization of legal scholarship and faculties, and the shift of practitioner-oriented scholarship to practitioner authors). Professor Litvak argues that because blogs lack privacy and establish rules punishing the silence of participants, they cannot succeed in fostering cyberworkshops.\textsuperscript{59}

The commentators take a more optimistic view of the role that blogs can play in legal scholarship. Jim Lindgren\textsuperscript{60} concedes that “[v]ery few

\textsuperscript{56} An increasing number of law professors are using blogs . . . to break free from traditional modes of legal scholarship. With an immediacy and ability to reach millions of readers, blogs are proving an attractive vehicle among legal scholars for spouting and sharing ideas. But they are also raising concerns that they may lead to a dumbing down of the profession. “They have nothing to do with scholarship,” said Katherine Litvak, a professor at the University of Texas School of Law. . . .

. . .

. . . Litvak and others . . . see the need for new ways to publish legal scholarship but say blogs are not the answer.

. . .

The amount of time professors devote to blogging is not the real problem with blogs, said Litvak, of the University of Texas. She added that if faculty members want to pass the time on nonscholarly pursuits, they will find a way to do it, blogging or not. Calling the traditional law review system “fundamentally corrupt,” she said that scholars might better spend their time writing for peer-reviewed journals, though the numbers of those kinds of publications are limited. . . .


\textsuperscript{57} Litvak, \textit{supra} note 36, at 1061.

\textsuperscript{58} \textit{Id}.

\textsuperscript{59} \textit{Id.} at 1067–69.

\textsuperscript{60} The Volokh Conspiracy, http://volokh.com.
blogs or blog posts have the same form, style, and content as traditionally published legal scholarship[,]” but he explains that “if one looks closer at law blogs, one can see that blog posts often serve the same purposes as traditional legal scholarship: to generate and disseminate knowledge about the law and legal institutions.”

Ellen Podgor suggests that blogs can “count” as both scholarship and service for purposes of a promotion and tenure letter.

B. The Role of the Law Professor Blogger

Gail Heriot says that we should not quibble over whether blogging constitutes legal scholarship but instead should ask whether law schools should encourage faculty to blog. She finds value in law professors using blogging to serve as public intellectuals, with a proud history tracing back to the Federalist Papers written by Alexander Hamilton, John Jay, and James Madison. Professor Heriot believes that law schools should support faculty blogging because “it both provides useful commentary on pressing contemporary legal issues of a kind that would be available nowhere else and helps to prevent hyper-scholasticism in the legal academy.”

Gordon Smith uses blogging about The Walt Disney Company Derivative Litigation to illustrate the potential of blogging as a scholarly medium. Although blogs can serve a “pre-scholarship” function in germinating and developing ideas that eventually flower into traditional long-form scholarship, the public nature of blogs makes them more akin to presenting at an academic conference or publishing an op-ed. Professor Smith notes:

The term “bloggership” in the title of this essay and conference is a useful neologism because it distinguishes this sort of scholarship from the traditional, long-form scholarship that appears in law reviews and scholarly journals and because it distinguishes blogging that has scholarly aspirations from other forms of blogging.

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61. Lindgren, supra note 36, at 1108.
63. Podgor, supra note 36, at 1110–11.
65. She notes that this is “no more useful a question than that perennial conversation stopper, ‘Yes, but is it art?’” It doesn’t matter whether [blogging] gets called ‘scholarship’ or ‘Fred.’” Heriot, supra note 37, at 1125.
66. Id. at 1113–15.
67. Id. at 1125.
70. See Smith, supra note 37.
71. Professor Smith notes: The term “bloggership” in the title of this essay and conference is a useful neologism because it distinguishes this sort of scholarship from the traditional, long-form scholarship that appears in law reviews and scholarly journals and because it distinguishes blogging that has scholarly aspirations from other forms of blogging.
72. Id. at 1139–40.
Smith argues that “[i]f scholarship is about making a ‘contribution to knowledge,’ and the receptacle for that contribution is a scholarly community, then blogs seem well positioned to serve as delivery mechanisms.”

Eugene Volokh questions how much time he should spend composing posts for his blog, which attracts 20,000 unique visitors per day, compared to writing law review articles, whose readership is substantially less. He explains that blogs can further the academic functions of discovering, disseminating, and doing. Blogging also produces a “prominence dividend,” which increases the likelihood that people will read the blogger’s law review articles, law review editors will accept his next article and invite him to participate in symposia, staffers will seek his input on legislation, and lawyers will seek his assistance on interesting cases. But he doubts that blogging is “even close to the most efficient way of spending one’s time if one is interested purely in discovering or in doing. . . . If you just want to write more law review articles and place them in more prominent places, spend your time thinking about articles and writing articles, not blogging.”

Professor Volokh concludes that “we blog because we enjoy it. . . . And we blog because of the possibility, however rarely realized, that we might actually persuade someone.”

The commentators offer very different perspectives on this topic. Randy Barnett fears that blogging may contribute to a “flight from scholarship” as law professors use blogging as an excuse to flee from the arduous task of doing long-form scholarship. Michael Froomkin first cautions that “[w]e should be careful to avoid being carried away by our

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72. Id.
74. Volokh, supra note 36, 1089.
75. Id. at 1089–90. Discovering knowledge fits within the scholarship triad. Id. at 1090 n.1.
76. Id. at 1089–90. Disseminating knowledge fits within both the teaching and service triads. Id. at 1090 n.1.
77. Doing (e.g., litigating landmark cases, helping to draft statutes) fits within the service triad. Id.
78. Id. at 1092–93.
79. Id. at 1100.
80. Id.
82. Barnett, supra note 37, at 1146. Professor Barnett observes, “[t]here is a dirty little secret in the legal academy: most law professors do not like doing legal scholarship,” because “it is hard, it is very hard to do well, and it is extremely hard to do well enough to receive much external recognition for having done it.” Id. at 1146, 1147.
new toys,” and he bemoans the absence of blogs dedicated to awareness of, and reactions to, topical legal scholarship.\(^{84}\)

C. Blogs, First Amendment Law, and Co-Blogging Law

Glenn Reynolds\(^{85}\) explores the odd phenomenon of the paucity of blog-related libel cases despite the proliferation of blogs.\(^{86}\) He attributes this to a variety of factors, including the lack of deep blogger pockets in most cases, the difficulty of obtaining personal jurisdiction over out-of-state bloggers, and the shield provided to bloggers by the Communications Decency Act\(^{87}\) for defamatory comments by readers published on blogs as comments.\(^{88}\) He also explains that the blogging community frowns upon libel suits and that the blog medium allows fast correction of incorrect information.\(^{89}\) But as blogs mutate and become more commercial and journalistic, such defamation suits are likely to increase. Professor Reynolds argues that courts should employ the more deferential legal standard applied to slander (spoken defamation) because of the special characteristics of blogs.\(^{90}\)

The commentators contend that the First Amendment rights of bloggers should yield to other interests. Dan Solove\(^{91}\) believes that the free speech rights of bloggers should be balanced against the legitimate privacy interests of those written about on blogs by holding bloggers to a reasonable standard of care to avoid revealing private information on the Internet.\(^{92}\) Betsy Malloy\(^{93}\) argues that defamation victims should be given greater rights to bring lawsuits against anonymous bloggers.\(^{94}\)

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84. Froomkin, supra note 37, at 1151. Professor Froomkin is developing a new online blog-based journal to provide this service—the Journal of Things We Like Lots (Jotwell), http://jotwell.com.
86. See Reynolds, supra note 38.
89. Id. at 1159–60.
90. Professor Reynolds argues that courts should set the threshold of reputational harm fairly high; treat swift correction as remedying the problem; take into account the ease with which plaintiffs can get their own story out; and recognize that the blogosphere is “a rough-and-tumble world, not a place where Marquis of Queensbury rules apply.” Id.
92. See Solove, supra note 38. He makes this case through “A Tale of Two Bloggers”—Symposium participant Eugene Volokh’s The Volokh Conspiracy blog and Senate staffer Jessica Cutler’s The Washingtonienne blog. Professor Solove concludes:
    We often speak and think of blogging with a romantic image of scholars like Eugene in mind. But for many bloggers, blogging has nothing at all to do with scholarship. Therefore, when we think about the legal regulation of blogging, we should not just have the Eugenes in mind, but we should also be thinking of the Jessicas.
Eric Goldman discusses the special legal problems faced by bloggers who work collaboratively with other bloggers. After defining “co-blogging,” he explores the legal characterization of co-bloggers as partners, employers-employees, co-authors of joint works under copyright law, and independent contractors. He then discusses the legal liability faced by co-bloggers for copyright infringement, misappropriated trade secrets, and other claims, as well as co-bloggers’ interests in copyright, domain names and trademarks, and advertising revenue. Finally, Professor Goldman offers specific recommendations to co-bloggers.

D. The Many Faces of Law Professor Blogs

The papers and commentaries in this panel present a wide array of perspectives. Ann Althouse argues that law professor blogs should not be constrained by the conventions of legal scholarship and should be allowed to flower in a playful, spontaneous fashion. Writing in “pseudo-blog form,” she notes, “[b]logging sounds rather dangerous for a scholar . . . . But dangerous things are exciting, and if you do them, you’ll feel daring.” Professor Althouse concludes, “[b]logging is life—in writing, in public. It’s not a job or a break from a job. It’s everything you might think about. Blogging is art.”

Christine Hurt and Tung Yin argue that the benefits of pre-tenured blogging can outweigh the costs. They first recount the conventional wisdom that blogging can be hazardous to an untenured professor’s career...
and then distinguish among four types of law blogs: single purpose law blogs, legal blogs with personality, personality blogs with legal aspects, and non-legal blogs. They quantify the risks of pre-tenured blogging but contend that the risks are outweighed by the advantages in the increased exposure and contributions that blogging can make to traditional scholarship. Professors Hurt and Yin conclude, “[f]or the majority of pre-tenured law professors, blogging may be a great way to become a part of the dialogue in a given area. And is that not why we became law professors in the first place?”

Larry Ribstein explores the relationship of academic blogs to journalism. He describes the role of law professor bloggers as amateur journalists in four different types of blog posts: recreational expression, short scholarly writing (“blogicles”), self-promotion, and publicly-engaged academic posts (“PEAPs”). He then describes how PEAPs are likely to affect professional journalism and concludes that law professor bloggers “may help both reshape professional journalism and motivate traditional scholarship. Blogs thus may enable academics to climb down from the ivory tower, while bringing some of their purer air with them.”

The commentators provide an outsider’s perspective and attest to the powerful potential of law professor blogs.

As the only non-law professor appearing in these pages, Howard Bashman notes “[f]or me and many others outside of the legal academy who enjoy reading law-related blogs, the battle over whether law professor blogs should count as scholarship or public service borders on the irrelevant.” What matters is that “the law professor segment of the law blog world generates a great deal of interesting content on a daily basis.”

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107. Id. at 1241–42.
108. These risks include spending excessive amounts of time blogging, being controversial, and being wrong. Id. at 1242–46.
109. Id. at 1247–48. They also provide practical advice on how to explain blogging to a tenure committee. Id. at 1253–55.
110. Id. at 1255.
112. See Ribstein, supra note 39.
113. Id. at 1202-05.
114. Id. at 1220.
117. Bashman, supra note 39, at 1260.
118. Id.
Paul Butler explains that he and his co-bloggers searched “[f]or the illusion of safety [as] we ran from this law school to that People of Color Conference, hoping at some point we would locate the one group of really cool people we could trust with our stuff.” He says that “[a]t some point before we arrived at BlackProf, we realized we were never going to be safe.” He argues, “Blogs are walking up to legal scholarship and slapping it in the face. Blogs say to legal scholarship: ‘How dare you! Evolve or Die!’” He notes, “Blogging is not a luxury. At its best it’s a way of bringing power to the people.”

120. Butler, supra note 36, at 1102.
121. Id.
122. Id. at 1101.
123. Id. at 1103.