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## Writing in Law Reviews, Bar Association Journals, and Blogs (Part II)

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# WRITING IN LAW REVIEWS, BAR ASSOCIATION JOURNALS, AND BLOGS (PART 2)

BY: DOUGLAS E. ABRAMS

Lawyers commonly write as their clients' representatives, but many lawyers also do "extracurricular writing" in non-representational roles. A few years ago in *Precedent* (The Missouri Bar's former quarterly magazine), I wrote about lawyers who publish newspaper op-ed columns (essays appearing "opposite the editorial pages") and letters to the editor.<sup>2</sup>

The present two-part article explores three additional extracurricular writing opportunities open to lawyers. In the *Journal's* January-February issue, Part 1 discussed writing or co-writing in law reviews. Part 2 now concludes by discussing writing opportunities in bar association journals and on blogs.<sup>3</sup>

## Bar Association Journals

Most state and many local bar associations publish monthly, bi-monthly, or quarterly journals such as the *Journal of the Missouri Bar*. As a member of the *Journal's* editorial board for 22 years (including the past 15 as chair), I respect these forums as valuable ways for lawyers to share knowledge with one another. Typically featured in state and local bar journals are researched articles that are written by member lawyers and selected after peer review by a bar committee. Because most bar journal authors are practicing lawyers, articles tend to combine scholarship (including recommendations for law reform where appropriate) with practical perspectives on substantive or procedural matters. The primary audience tends to be lawyers, judges, legislators, and other decision makers.

Part 1 of this article explained how extracurricular writing about law or public policy – including writing in bar journals – can help fulfill the lawyer's *responsibility* to enrich public discussion, and how this writing can *reward* the lawyer by generating business, educating the lawyer, and providing a wide audience. But recall too that the contemplated writing may be *unwise* – for example, because the lawyer's arguments or conclusions might antagonize current and prospective clients, or because the lawyer's employer might discourage or even prohibit such writing. Law review writing may be particularly unwise because it demands time commitments that would intrude unduly on the lawyer's other obligations, including ones to family and clients.

## Wisdom Revisited

Writing a bar journal article may help manage time pressures that (as discussed in Part 1) can discourage busy practitioners from writing or co-writing law review articles. Bar journal articles tend to run about a half dozen printed pages or so, compared with the 30 pages or more that typically characterize law review articles. Bar journal articles also tend to carry a lower volume of notes than most law review articles.

Co-writing bar journal articles with colleagues or others remains an option. Bar journal writers can also help relieve the "time crunch" with manuscripts that concern their practice specialty and remain relevant to other lawyers. Articles sometimes adapt portions of the writer's briefs and other prior court submissions. Peer reviewers typically define relevance broadly, though bar journals generally decline to publish articles that concern matters pending before a court or agency, at least without full disclosure of the pendency, and of any direct or indirect interest that the writer or a client has in the outcome.



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## The Submissions Process

Guidelines for submitting manuscripts usually appear in the bar journal itself or on the bar association's website. An e-mail or telephone call to the editor or other responsible bar staff member can resolve remaining questions. To relieve concern that an article might be pre-empted, the bar journal editor may grant the prospective writer's request to reserve the topic on an exclusive basis for a specified period. The author must generally state that the final manuscript (usually submitted

electronically) has not appeared wholly or substantially in another publication. Authors also generally must acknowledge that they are submitting the manuscript only to the journal, and that they commit to accept a publication offer.

Lawyers typically cultivate face-to-face relationships one colleague at a time or in small groups, but bar journals reach all lawyers who receive a copy with bar association membership. The writer can reach the ultimate audience, however, only by first convincing the peer reviewers, who decide whether to extend an offer to publish the manuscript. The writer's cover letter and abstract must make the case. Because a bar journal's peer reviewers and primary ultimate audience are practitioners



or policymakers, supporting materials demonstrating a practical orientation to the substantive or procedural subject usually stand the best chance.

Bar journals sometimes specify that authors themselves, and not peer reviewers or other bar association officials, remain responsible for the article's accuracy, including the accuracy of quotes and citations.

## Blogs

In the past generation or so, technology has transformed the ways Americans go about their daily affairs. Among the most prominent innovations has been the steady rise of blogs (short for "web logs"), which are essentially online forums that feature continuous commentary and discussion about one or more designated topics. The blogosphere is a 21st century virtual manifestation of the face-to-face and print marketplace of ideas that Justice Oliver Wendell Holmes envisioned decades ago.<sup>4</sup>

Blogs maintained by lawyers or law professors, or ones otherwise concerning legal issues, are sometimes dubbed "blawgs." The *American Bar Association Journal* directory lists more than 4,000 blawgs, a number that seems destined to continue growing.<sup>5</sup> The ABA reports that "law blogging appears to be flourishing."<sup>6</sup>

The blogosphere offers web-based alternatives for disseminating information and for sustaining discussions and online social interaction with readers. Many lawyers maintain sites of their own that seek to reach wide audiences with cutting-edge commentary. Bloggers regularly contribute responses and commentary on interactive sites maintained by others; when visitors sign their names rather than maintain anonymity through pseudonyms, participation in the discussion can increase professional visibility.

Some bar associations maintain blogs that provide easily accessible platforms for their members and others who are drawn to the sites. Blogs also dot the websites of an increasing number of law reviews and other print media. Many newspapers, and many radio and television stations, maintain blogs that enable readers and listeners to discuss matters raised in recent stories, or to stake out new directions.

Some lawyers also maintain blogs devoted to topics that have little or nothing to do with law or public policy, such as cooking, child rearing, sports, or movies.<sup>7</sup> To increase a blog's conversational tone, and to help attract a following, some legal blogs intersperse discussion of such topics among their law-related postings.

### *Responsibility and Rewards*

Blogging about the law or public policy helps lawyers fulfill a personal responsibility to contribute to public discussion. These lawyers can also achieve the usual rewards of extracurricular writing discussed in Part 1 of this article – advertising, learning and education, and professional satisfaction.

One commentator says that blogging "may be the fastest growing client development tool being used by American lawyers."<sup>8</sup> Many law firms and lawyers maintain blogs that advertise expertise in their specialties, increase professional visibility, maintain contact with their clients, and help generate business through communication directed at other lawyers and the general public.

A visible blog can attract "heavy traffic" – a number of readers greater than the number of readers who will likely ever pay close attention to the blogger's writing on their clients' behalf or in law reviews or bar journals. Whether a lawyer practices in a firm or solo, blogging may lead to media interviews or invitations to deliver professional presentations. Blogging can create professional relationships among regular contributors and other bloggers. Sustained presence in the blogosphere has even reportedly led to referrals or lateral employment opportunities for some bloggers who achieve a wide audience that showcases personal reputation.<sup>9</sup>

Blogging can enhance a law practice by continually focusing the writer's thinking, and by disciplining the lawyer to remain current in the blog's field of law.<sup>10</sup> Disciplined writing remains a great way for lawyers to learn, and law reviews, bar association journals, and print media hold no monopoly on this capacity in the 21st century.

*Time constraints.* A lawyer's blogging comes with pluses and minuses. On the minus side, a busy law practice may limit the time available for maintaining a visible blog's allure. The *ABA Journal* says that "[t]he commitment to blogging regularly can be intense."<sup>11</sup>

To stand the best chance of continually generating visitors' traffic, a blog must feature up-to-date content. Some bloggers report posting commentary more than once each day or each week, and interactive blogs must continually be monitored for visitors' objectionable content. The ability to update continually, and to operate at the cutting edge, can create a general expectation. To attract and hold readers who might grow accustomed to the rhythm, a blogger might develop a formal or informal schedule for postings.

Some bloggers strive to meet general expectations by writing in teams of two or more who create a workable division of labor,<sup>12</sup> but each member remains responsible for entries that bear the member's name, and for the blog itself. The team approach resembles co-authorship and, similar to the law review and bar journal co-authorship arrangements discussed earlier, can help balance the rewards of successful blogging, the demands of a busy law practice, and the press of other personal and professional commitments.

*Potential Impermanence.* Another "minus" of blogging is that, unlike traditional print media, blogs may be abandoned or terminated without notice or expectation. In 2013, the *New York Times* reported on a study which found that "49 percent of the hyperlinks in Supreme Court decisions no longer work."<sup>13</sup> The *Times* characterized the disappearing cites as "web links to nowhere," and concluded that "[t]he modern Supreme Court decision is increasingly built on sand."<sup>14</sup> To be on the safe side, bloggers who wish to preserve their writing should maintain hard copies of their contributions or save them onto their own computers.

*Convenience.* Heading blogging's plus side is convenience. On a blog that permits interaction, writers can engage in ongoing give-and-take that, when thoughtfully accomplished, can stimulate participants and other viewers alike. Unlike a print article that is usually cast in stone once it appears, bloggers can continually update postings when new developments occur, new ideas percolate, readers' responses suggest other avenues, or previously unnoticed typographical errors catch the writer's attention. More swiftly than newspaper op-eds or letters to the editor, blogs enable lawyers to write short commentaries about the law (and even about subjects often having little or nothing to do with the law) for legally trained and lay audiences alike.

Law review articles can run 30 pages or more, and may feature dense footnotes. Bar journal articles require sustained research and writing. Bloggers may write extended essays or may attach lengthy articles or other documents or links, but thoughtful, provocative blog postings frequently consist of sentences or paragraphs.<sup>15</sup>

Blog postings also appear without the weeks or months of editing and other intermediation that can slow law review articles and other print publications, and that can leave some obsolete before they ever appear. Blog postings can resemble newspaper op-ed articles and letters to the editor in both length and content, but bloggers do not have to continually count words and hope that a newspaper editor will not reject the submission for being a sentence or two over the formal or informal word limit.

Regardless of length, successful law blogging depends on maintaining quality. Some bloggers report that they can some-

times generate postings in a few minutes or an hour or so, but the most effective blog entries are not simply slapdash efforts designed to fill space. Serious visitors expect carefully conceived thoughts that are researched, reviewed, carefully expressed, and well-grounded in doctrine or reasonable argument drawn from doctrine.

Typographical errors, misspellings, and similar flaws can raise doubts about substantive accuracy that occur to readers whenever legal writing fails to measure up. Timeless advice from 18th century British poet, essayist, and biographer Samuel Johnson defines the essence of lawyers' personal responsibility in the 21st century blogosphere: "What is written without effort is in general read without pleasure."<sup>16</sup>

### Conclusion: The Boundaries of Extracurricular Writing

A lawyer might be satisfied with publishing in one extracurricular forum. Provided that the lawyer secures the necessary copyright permissions and fully discloses prior publication, however, expression in one forum need not signal the end.

For example, the lawyer might publish a newspaper op-ed column and then expand all or part of it into a law review article, bar journal article, or blog posting. Or the lawyer might begin with a law review article before spinning off one or more op-ed columns or bar journal articles. Other combinations may present themselves.<sup>17</sup>

One way or another, the lawyer's extracurricular writing demands graceful expression because it is unofficial commentary that ordinarily no one *must* read. 

### Endnotes

1 Douglas E. Abrams, a University of Missouri law professor, has written or co-written five books. Four U.S. Supreme Court decisions have cited his law review articles.

2 Douglas E. Abrams, *Trading in the Marketplace of Ideas: Letters-to-the Editor and Op-Ed Articles (Part I)* 2 PRECEDENT 14 (Fall 2008); available at <http://www.mobar.org/uploadedFiles/Home/Publications/Precedent/2008/fall08.pdf> and Douglas E. Abrams, *Trading in the Marketplace of Ideas: Letters-to-the Editor and Op-Ed Articles (Part II)*, 3 PRECEDENT 25 (Winter 2009); available at <http://www.mobar.org/ThreeColumnPB.aspx?pageid=10546&id=3766>.

3 This two-part article is adapted from Prof. Abrams' upcoming book, *EFFECTIVE LEGAL WRITING: A GUIDE FOR STUDENTS AND PRACTITIONERS*, which West Academic will publish in Spring 2016. Reprinted by permission. Thank you to my colleagues, Professors Dennis D. Crouch and Melody R. Daily, for helpfully reviewing the upcoming book (and thus this article) in draft form. Thank you also to Michael J. Lane, Esq. and *Journal of the Missouri Bar* Editor Gary Toohy for their reviews.

4 *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting) ("[T]he best test of truth is the power of the thought to get itself accepted in the competition of the market.").

5 Sarah Mui & Lee Rawles, *The 2014 ABA Journal Blawg 100*, 100 A.B.A.J. 35, 36 (Dec. 2014).

6 Molly McDonough, *The 2015 ABA Journal Blawg 100: The State of the Legal Blogosphere*, 101 A.B.A.J. 54, 55 (Dec. 2015).

7 E.g., Sarah Kellogg, *Do You Blog?*, 17 S.C. LAW. 30, 38 (July 2005).

8 Kevin O'Keefe, *Law Blogs: The Great Equalizer*, 4 PRECEDENT 22, 22 (Spring 2010).

9 E.g., Margaret M. DiBianca, *Delaware Lawyers Who Blog*, 27 DEL. LAW. 24, 25 (Winter 2009/2010).

10 *Id.*

11 McDonough at 55, 56.

12 E.g., DiBianca at 25.

13 Adam Liptak, *In Supreme Court Decisions, Web Links to Nowhere*, N.Y. TIMES, Sept. 14, 2013, at A13 (reporting study by Jonathan Zittrain and Kendra Albert).

14 *Id.*

15 E.g., Dan X. Nguyen, *Marketing Your Practice*, 52 ORANGE COUNTY LAW. 30 (July 2010).

16 PAUL BOWDEN, *TELLING IT LIKE IT IS* 259 (2011) (quoting Johnson).

17 Thank you to my colleague, Professor Dennis D. Crouch, for suggesting this point.