## Memoirs of a Blogger

## by Mark Herrmann

Let's start at the end: I'm a fool. Three years ago, I called a friend at another law firm and proposed that we launch a legal blog. I thought I knew what I was doing.

I was wrong. I knew nothing. But we launched the blog anyway, and we learned on the fly.

Here are the half dozen blind spots I had when I launched the Drug and Device Law Blog, <u>http://druganddevicelaw.blogspot</u>.<u>.com</u>. If you choose to launch a legal blog, try to avoid these mistakes—come up with your own, new ones.

**Blind Spot Number 6:** It's technically difficult to launch a blog.

I handle technology as rats handle mazes: Lead me through a software application, and I can repeat what you've shown me. Don't ask for more. Surely a Luddite cannot launch a blog.

Wrong.

Go to Blogger (<u>https://www.blogger.com/start</u>). Sign in. Create a (free) account. Name your blog. Pick a template. Start typing. Click on "publish." Welcome to the blogosphere.

That's what we did. No muss, no fuss, and no charge.

Technophiles will insist that you get what you pay for. Our platform, Blogger, is the barest bones blogging tool available. More than one visitor to the Drug and Device Law Blog has complimented us—we think—by saying that the quality of our content excuses the appearance of our graphics. (No matter. You should see how we dress.)

For a few bucks a month, you could be fancier. You could host your blog at TypePad, which offers a few bells and whistles unavailable on Blogger. For a few more bucks, you could hire a consultant to design a nifty site, set you up, and create links that would make you a master of the blogosphere before you've typed a word. But that wasn't us. We did it oxymoronically: We launched a low-tech blog.

You can do that, too—technophobe or no. Technically, blogging is easy.

**Blind Spot Number 5:** I have plenty of ideas for blog posts that will feed the beast for a long time.

As of late 2006, I had written a few articles. I had a bunch of other publishable ideas, however, that I had not yet written up. A friend at another firm (Jim Beck of Dechert, LLP) had similarly published several articles, and he struck me as the kind of guy who probably also had unpublished thoughts kicking around. We decided to launch a blog about defending pharmaceutical and medical device product liability cases. Each one of us committed to write fresh content regularly. We thought we had ample material to keep the blog up and running for a while.

Wrong.

We launched the blog on October 30, 2006. About six weeks (and 18 or 20 posts) later, we realized just how completely wrong we were. We'd exhausted all of our unpublished ideas, and we'd exhausted ourselves trying to identify new topics. What the heck were we going to write about this coming Monday, and this coming Wednesday, and then this coming Friday, and then the week after that, and the week after that, that would keep our readers coming back?

If you're thinking of launching a legal blog, have your eyes open. Once you launch a blog, you will face the relentless, mind-numbing, never-ending task of finding worthwhile material to publish. That burden begins on the day of your first post and ends only the day you call it quits.

You want people to make your blog part of their daily routine: Turn on lights. Start computer. Grab coffee. Check headlines and professional news on the Web, in part by visiting the Drug and Device Law Blog. Ultimately, you want folks to subscribe to your blog so they receive notice of your posts as

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you publish them. To make that happen, you must regularly have new material on the blog that merits taking a look.

You can take a day off from publishing a post. But you'll see the traffic to your site decrease. You can take a week off. But you'll probably lose many readers permanently. You can take a month off. But when you start up again, you'll essentially be building a new readership from scratch. Whether you are in depositions, in trial, or on vacation, you'd better pre-write some posts and have them published in your absence, or you'll pay a price in readership.

Don't have the blind spot that I did. Go into blogging aware of the Herculean effort it demands.

Blind Spot Number 4: I know the competition.

I had never really explored the blogosphere before I launched my blog, and I had only a general sense of its inhabitants. I figured that we would launch a blog, write a couple of nifty things a few times each week, and immediately draw an audience.

Wrong.

The blogosphere is a brave new world that hath many creatures in it. Your new blog will compete not only with a few other fools at law firms, sitting at their desks—before dawn, or in the wee hours of the night, or at home on a Saturday morning—desperately trying to gin up yet another thesis worth defending. Oh, no. The blogosphere is filled with competitors who are actually paid to create content. And many of your competitors will benefit more directly and immediately than you do from publishing posts that attract readers.

Blogs established by the conventional press will almost always publish breaking news before you do. *The Wall Street Journal* Law Blog (<u>http://blogs.wsj.com/law</u>), Wall Street Journal Health Blog (<u>http://blogs.wsj.com/health</u>), *The New York Times* online (<u>http://www.nytimes.com</u>), and blogs established by newspapers across the country, for example, will all be posting late-breaking news while you're out meeting a client, arguing a motion, or defending a deposition. In our chosen field of pharmaceutical and medical device product liability litigation, the *Newark Star Ledger* sponsored the blog Pharmalot (<u>http://www .pharmalot.com</u>) from January 2007 through January 2009. That

## Carve out a distinct niche.

was an awfully impressive blog, and the author posted a half dozen times each day. BNET Pharma (<u>http://industry.bnet.com/pharma</u>) also collects breaking news in our field. Meanwhile, the industry trade press stays on the scene, including, for example, the blog hosted by *Pharmaceutical Executive* (<u>http://blog</u>.<u>pharmaexec.com</u>). These folks are all paid to play this game. There is simply no way that a full-time practicing lawyer can hope to attract visitors by regularly being a first source of news.

That is not to say that a topical legal blog can *never* have a scoop. When you launch a blog, you quickly appear to be at the center of the little universe that you've staked out. Your readers begin to send you information about hot news in that area. As a result of tips that we've received from our readers (or other colleagues in our field), we have occasionally managed to be the first to post about important grants of certiorari (even beating the Supreme Court's website on one occasion!), appellate decisions, regulatory developments, and certain other news. On a regular basis, however, an amateur lawyer-blogger simply cannot

compete with the professionals in either quantity or timeliness (in general) of posts.

Those pests from the conventional media are not the only creatures who inhabit the legal blogosphere. The place is also lousy with law professors. An entire network of legal blogs hosted by scholars regularly publishes on every academic field known to man. *See <u>http://www.lawprofessorblogs.com/</u>. In the drug and device world, sites include the Product Liability Prof Blog (<u>http://lawprofessors.typepad.com/products\_liability/</u>), the Torts Prof Blog (<u>http://lawprofessors.typepad.com/tortsprof/</u>), the Mass Tort Litigation Blog (<u>http://lawprofessors.typepad.com/tortsprof/</u>), the Mass Tort Litigation/), the Civil Procedure Prof Blog (<u>http://lawprofessors.typepad.com/tortsprof/</u>), and others too numerous to list.* 

And that's not all! There are also whole teams of like-minded professors who, outside the law professor network, jointly host blogs on topics of mutual interest. Those include, most prominently, The Volokh Conspiracy (<u>http://www.volokh.com</u>) and Balkinization (<u>http://balkin.blogspot.com</u>).

And that's not all! The think tanks host blogs, ranging from the Manhattan Institute on the right (<u>http://www.pointoflaw</u>.<u>.com</u>) to the People for the American Way on the left (<u>http:// rightwingwatch.org</u>), to many, many others in between.

Last but not least are the industry-insider and gossip blogs. In our sandbox, those include In the Pipeline (<u>http://pipeline</u>.<u>corante.com</u>), Pharm Aid (<u>http://pharm-aid.blogspot.com</u>), PharmaGossip (<u>http://pharmagossip.blogspot.com</u>), and many more.

How are you and one other person at another law firm supposed to equal the quantity (or, frankly, the quality) of the *Journal* or the *Times* or a team of eight distinguished scholars from highfalutin law schools who are each posting several times a week?

What's a law firm blogger to do?

Two things: Carve out a distinct niche. Do not routinely try to compete on time-sensitive matters. Do not generally try to compete on the basis of depth of thought. Do not pretend to be an insider. Instead, set your sights on something attainable. You cannot be what you're not, but you can be very good at what you are: a reasonably intelligent lawyer keenly interested in a subject and willing to help others stay abreast of that field. That's a worthwhile role to play, and it's one that's within your grasp.

Find topics of interest to your audience that merit the sort of posts that you can publish after a day or two of thought. When a case comes down, read it and then publish a post describing the decision, praising or criticizing it, placing it in context, and suggesting how other lawyers might use this new precedent in the future. Take ideas from briefs you're writing and turn them into short think-pieces on the issues. Post an occasional 50-state survey to create a research tool that will help others in the future.

Be more aggressive about the few hot cases that everyone in your field is monitoring. Read those opinions as soon as they come down and publish analyses within an hour or two. If you're quick enough on the draw, all of the later online reports that cover that new decision will link to your post, and you'll attract a slew of new visitors, some of whom will become regular readers.

Publish often enough to ensure that there is always fresh content at your site, but not so often as to exhaust yourself by the end of the day. In addition to finding your niche, you must find your voice. *The New York Times* online doesn't need a voice. It's the *Times*, for heaven's sake. And Professors Volokh (of the Conspiracy) and Balkin (of Balkinization) don't need distinctive voices. They're just smart. Really smart. You, unfortunately, are just you. You need a voice.

At the Drug and Device Law Blog, we try not to take ourselves too seriously. We refer to ourselves as "Beck and Herrmann, the blogging Luddites," or "Beck and Herrmann, the blogging morons," or "your dynamic blogging duo."

We write informally, using abbreviations and contractions and slang and all the other stuff that offends the editors of LITIGATION magazine. Some things get us really p!\*!#d off and, aw shucks, sometimes we write "aw shucks." (We had an awful lot of fun writing that last sentence. We're looking forward to seeing what our editor at LITIGATION does with it and how it ultimately appears in print.) [Editor's Note: Fortunately for this author, we aren't that easily offended.]

You get the point. Be provocative; be funny; be distinctive. Perhaps most importantly, don't be staid. A blog written by a committee of starched-shirt, bureaucratic lawyers might proclaim: "Our firm has the utmost respect for our learned adversaries, whose experience in complex, multi-jurisdictional litigation nearly matches our own." We'd write: "Those clowns couldn't spell 'FDA' if you spotted 'em two letters." We might not have much institutional gravitas, but we sure as heck have readers.

The Internet now hosts over 100 million blogs and several thousand blogs devoted exclusively to legal issues. It's an awfully crowded field, and you must find both your niche and your voice to make your space.

Blind Spot Number 3: I know the audience I'll attract.

Surely, if we publish posts about defending pharmaceutical and medical device product liability cases, our readers will be like-minded people who also defend such lawsuits.

Wrong.

Google Analytics, a free tracking device, gives us a general sense of who's visiting our blog. We know the number of visitors (20,000 to 30,000 page views per month as of summer 2009) and the general location from which those visitors come.

After we'd been blogging for about six months, I proudly showed my teenage son that we had attracted visitors from every continent except Antarctica. He cheerfully noted, "That's why they call it the *world*-wide web, loser."

No prophet is revered in his own home.

Anyway, we were not surprised (in fact, we were delighted) to see regular visits from in-house lawyers at most of the major drug and device companies. That was, after all, our presumptive target audience. Nor were we surprised to find that we were creating a resource relied upon by our competitors. Most of the other large law firms with significant drug and device product liability practices visit our site regularly. That's actually a secondary benefit of the blog. We're happy to share ideas to help others defend these cases successfully.

Moreover, our relationship with those readers is mutual. Because we share all of our useful thoughts (and then some) about this field of law, our competitors are surprisingly generous with their thoughts, too. We have had folks from other large firms submit guest posts for our blog, send us copies of briefs that they've written or decisions in cases they've won, submit ideas for posts, and otherwise contribute to the cause. We've been pleasantly surprised by the generosity of many people we've never met but who are our online kindred spirits. There is, of course, the other side of the coin. The American Association for Justice (formerly known as ATLA) regularly visits our blog, as do other plaintiff's-side interest groups and members of the plaintiff's bar itself. If you want to second-guess every word that you write, remember that your opponents may well be reading those words minutes after you hit the "publish" icon—and they may be itching to quote your words back at you, your partners, or your clients in court some day.

The fact that your blog is open to the public will affect you in one other way: You'll be driven to the extreme in your posts. We cannot, for example, criticize a decision that helps the defense. That post would likely alienate a client (or potential client) and might help the plaintiff in some later case that we or our colleagues were defending.

We cannot say that an argument works in one state but not another, or in the context of drugs but not devices, or for prescription drugs but not those sold over the counter. The day after we published those words, we'd surely be retained in the wrong state by the device or over-the-counter manufacturer, and we'd be eating our words.

It's only fair to tell your readers that you're not a neutral source of information and that if you ever had a thought favoring the plaintiff's side (and you don't—ever!), you could never publish it. If you don't make fun of yourself, your blog's relentless drumbeat in favor of your clients' positions may become unbearable.

Finally, and perhaps most surprisingly, our blog has received innumerable visits from the press. The mainstream media has an insatiable appetite for both news stories and experts to comment on those stories. Our blog thus regularly (many times every day) receives visits from mainstream media, the pharmaceutical trade press, other online news sources, and the like, searching for news and ideas in our field of law.

You'll be surprised by the audience you attract.

Blind Spot Number 2: I am not a compulsive personality.

Blogging is addictive. You can watch readers post comments on your blog, reacting to a new post within minutes of its publication. Google Analytics gives nearly instantaneous feedback on the broader results of your work. If you publish a post that attracts attention, you see an immediate surge in traffic to your blog.

In addition to drawing individual readers, a sexy post can also attract interest across the Web. If another widely read blog—such as How Appealing (<u>http://howappealing.law.com</u>), Overlawyered (<u>http://overlawyered.com</u>), law.com (<u>http://law.com</u>), or the legal tabloid Above the Law (<u>http://www.abovethelaw</u>.<u>com</u>)—links to your site, your blog will immediately jump in the rankings (<u>http://technorati.com</u>), and you'll see people scurrying into your blog through the new link.

This is quite unlike publishing an article in the traditional print media. I have no idea which, if any, of the 75,000 people who receive LITIGATION will read this article. Of those who bother to read it, I won't know who liked it or who hated it. No reader of this magazine will send me an e-mail reacting to this article. If this article is ever cited by someone, that won't happen for weeks or months or years. Not so on the Web. I can go online and see if you love me now—this very instant. Or now. Or now. And, if you don't love me enough, I can gin up a new post to see if I can reclaim your affection. Do you love me now?

The immediacy of reactions on the Web, and your ability to monitor and influence those reactions in real time, can become addictive. You can find yourself checking your rankings and scrambling to generate new content to improve those rankings, regularly.

People with compulsive personalities should not launch blogs.

**Blind Spot Number 1:** Blogging is for everyone at a large law firm.

At first blush, blogging at a large law firm appears to make sense. Establishing the blog and developing a readership raise your profile in the relevant legal community. Blogging also raises your profile in the mainstream media as reporters call for comments on breaking news and often quote you (and identify your law firm) in respected publications. (Much to our surprise, we have been quoted by *The Wall Street Journal, The New York Times, Investors Business Daily*, and countless regional newspapers in the three years that we've been blogging.)

Blogging also imposes a rigor on—or perhaps "clenches a death grip to"—your professional reading. No longer can you scan the headlines of the topical reporters to keep gently abreast of your field of law. Instead, the relentless need to generate fresh content will force you to analyze opinions start to finish in the hope of finding a publishable thesis. The need to feed the beast compels you to become a better student of the law.

The blog also inserts you into the public debate surrounding the issues you cover. Bloggers and the print media will regularly cite your posts. Over time, your posts may be cited (as ours have been) in more serious scholarly literature, such as law reviews. Other blogs (although not ours, sadly) have been cited in judicial opinions. Blogging lets you influence the law. Surely all lawyers at big firms should blog.

Wrong.

First, people have different strengths. Unless you take pleasure from thinking and writing about the law, don't blog. Blogging is for paper people, not people people. Partly for that reason, blogging is also not an immediate, potent business development tool. If you want to get retained tomorrow or next week, then never dine alone. Time invested in eating lunch with the right person will yield a more immediate business payoff than time invested in writing a blog post. Once you've had lunch, however, a blog is a nice way of staying in touch with people. Several regular visitors to our blog have said that they feel like they talk to us every day, even though they haven't spoken to us for months. They read our posts, hear our voices, and think of us.

Second, blogs attract an unusual readership. We would be startled if a typical general counsel, or head of litigation, of a Fortune 500 company spends much time each day surfing the Web. Although a few key in-house folks visit our blog, it seems likely that our readership is a fairly young demographic and therefore not yet in a position to retain counsel and provide the direct economic payoff that the host of a blog might desire.

Third, blogging may make less sense as a business development tool for large law firms than it does for small ones. Large firms often market to potential clients the breadth of their geographic coverage and the depth of their expertise. Those firms are not based on a cult of personality—where individual lawyers are trying to sell themselves. Moreover, large firms are not generally marketing to a broad audience. Big firms often seek to serve big clients; a Fortune 500 company is a good catch. Targeted marketing to that narrower audience may yield more economic benefits than the blunderbuss presence to the world at large created by a blog. The calculus may be different for solo practitioners or lawyers at small firms. Those firms are often marketing to a mass audience—there's a reason why small shops advertise on billboards and the back pages of phone books, but large firms do not. A presence in the blogosphere may thus be a more effective business development tool for small firms than for large ones.

One other benefit of blogging—proving the blogger's expertise in a field—may also be less relevant to lawyers at large firms than lawyers at small ones. When a lawyer at a multinational firm says that his institution has experience in, say, class action defense, clients may tend to accept that assertion unchallenged. The fact that the lawyer also blogs in the field provides little additional validation. Small firms, with less brand recognition, may benefit more from a blog's value in accrediting its host.

Moreover, large firms may affirmatively choose to distance themselves from their lawyers' blogs. Bloggers write a lot of words; eventually, they will misspeak. Even the strongest disclaimer will not stop opposing counsel from quoting unfortunate words against the firm's clients or other lawyers. Firms have more flexibility to distance themselves from an individual blogger's inadvertent miscues if blogs are not firm-branded.

The Drug and Device Law Blog may be unique in the blogosphere in the distance it places between its hosts and their firms. My co-host and I work for two different large international firms. We sign all posts jointly as Beck/Herrmann, rather than identify a particular author. That relative anonymity serves a purpose. If one of us misspeaks, we can always implicitly blame the other. And because we don't work at the same firm, blaming the other guy can get our whole institution off the hook.

On the other hand, our joint approach to blogging probably imposes a cost. Solo practitioners operating in different cities often join together to co-host blogs; those lawyers do not compete with each other for business. Large international firms, by contrast, may be head-to-head competitors for business around the globe. Isn't it crazy for lawyers from two such competing firms to co-host a blog? And doesn't the joint nature of the endeavor deprive both firms of the blog's marketing value?

Maybe. Our approach to blogging does appear to be a minority view. As of the end of 2008, 71 of the Am Law 200 firms were blogging, to the tune of 159 separate blogs in all. Of those 159 blogs, 122 were "firm-branded," so firms were willing to run the risk of blame in return for the marketing benefit. Thirty-seven blogs hosted by Am Law 200 lawyers were not firm-branded. Only one of the 159 blogs—ours—is co-hosted by lawyers working at competitive firms. Either we're pioneers or we're nuts; time will tell.

There's one other drawback to blogging at a large firm: Blogging narrows your apparent expertise. For a legal blog to succeed, it must occupy a niche; we chose pharmaceutical product liability defense. If your blog succeeds, however, you will become known as a specialist in the field you cover. Some generalist trial lawyers may prefer not to limit their apparent expertise. At our blog, for example, we've been tempted to write: "Yo! World! Beck and Herrmann can spell *both* 'FDA' *and* '10b-5.' Try us." So far, we've resisted the temptation.

Is that to say that blogging at a big firm is not worthwhile? Not at all. However, the spoils of blogging may not be precisely those that you anticipate when you start. Anyone who chooses to launch a blog should, unlike us, start the endeavor with their eyes open.

Ultimately, and more than anything else: Blog for love, not for money. At least, that's why I do it. But then again, I'm a fool,  $\square$