Secondary Sources in 140 Characters or Less: Blawgs, Twitter, and the Free Access to Law Movement

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Abstract

This paper addresses how the Free Access to Law Movement ("FALM") is being enriched by legal scholars who are utilizing free web platforms to write about law and how law librarians can contribute to the movement by recognizing the strengths of these platforms and making them accessible to users. The outlined analysis is as follows: (1) introduction; (2) brief history of the FALM in the US, the movement toward free primary sources; (3) open access journals and collective expertise, the movement toward secondary materials that are Read/Only[1]; (4) adoption of platforms offering public engagement including blogs and Twitter, secondary materials that are Read/Write; (5) the new role of the legal expert; (6) and efforts that can be and have been taken by law librarians to embrace the new forms of legal information.

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[1] Lawrence Lessig, Remix: Making Art and Commerce Thrive in the Hybrid Economy. 28 (2008). Lessig explains RO and RW: "The analogy is to the permission that might attach to a particular file on a computer. If the user has '[Read/Write]' permissions, then he is allowed to both read the file and make changes to it. If he has 'Read/Only' permission, he is allowed only to read the file."

(1) Introduction

The Free Access to Law Movement ("FALM") maintains that all citizens should have easy and free access to the rules that govern them and to materials that will help them understand those rules. All three branches of the government, as well as Cornell's Legal Information Institute (LII)[2] and Google,[3] moved toward this goal with varying degrees of success, and primary sources (cases, legislation, regulations) have exploded onto the free web. While imperative to an informed and active citizenry, this also results in information that is difficult to understand becoming difficult to sort through.

As lawyers are taught, primary sources are greatly complemented by secondary sources; the focus in this paper will be the secondary sources of scholarly works. These works collect, synthesize, and analyze almost any topic one could imagine and are published in law journals compiled by student law reviews or, more rarely, faculty peer-review committees, as well as other publications. The scholar takes a specific topic within an area of law and breaks down the issues using legislation, regulations, cases, and theory to make a point in documents ranging from ten to over one hundred pages. Due to budget issues, technological advancements, and public demand, the same scholarship created for law journals has been transferred to free spaces online - open access law journals.[4]

While these journals are important to the FALM, a new form of expert legal information is being produced through blogs or "blawgs" and Twitter. Professors are utilizing platforms that

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[2] Legal Information Institute at Cornell Law School, http://www.law.cornell.edu/ (last visited Mar. 8, 2010).
[3] Official Google Blog: Finding the Laws that Govern Us, http://googleblog.blogspot.com/2009/11/finding-laws-that-govern-us.html (last visited Mar. 8, 2010).
[4] A list of open access journals pertaining to law collected by the Directory of Open Access Journals can be found at http://www.doaj.org/doaj?cpid=46&func=subject. The Open Access Law Program, part of the Science Commons list journals that have adopted the Open Access to Law Journal Principles can be found at http://sciencecommons.org/projects/publishing/oalaw/oalawjournals/.

allow for new audiences to be reached and new peers to offer review. In embracing this format

of information exchange, these scholars are redefining their role in society and the profession by

creating a space for conversation, filtering and interpreting legal issues, encouraging new

perspectives to be considered, and altering the shape of legal scholarship. The public

engagement inherent in blogs and Twitter poses an opportunity for legal scholars to create a

more informed, savvy, and involved republic, furthering the goals of the FALM. For example,

legal scholars can use these tools to discuss proposed rules that are open for public comment and

stimulate participation in the process.

Law librarians play a critical role in the technology utilized by a law school. They also play

a critical role in what legal resources are brought to light among books, journals, and loose leafs,

as well as databases, software, and government websites. By recognizing the power of less

traditional forms of legal information, law librarians can make the law more accessible to

professors, students, and the public that wants to break down the barriers to understanding and

contributing to legal issues that impact their lives.

(2) Brief history of the FALM

In 2002[5], a collection of Legal Information Institutes from around the world ("WorldLII")

established a Declaration on Free Access to Law stating the principles as:

> Public legal information from all countries and international
> institutions is part of the common heritage of humanity.
> Maximising access to this information promotes justice and the
> rule of law;

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[5] "This declaration was made by legal information institutes meeting in Montreal in 2002, as amended at meetings in Sydney (2003), Paris (2004) and Montreal (2007)." WorldLII: Declaration of Free Access to Law, http://www.worldlii.org/worldlii/declaration/ (last visited Mar. 8, 2010).

> Public legal information is digital common property and should be accessible to all on a non-profit basis and free of charge;
>
> Organisations such as legal information institutes have the right to publish public legal information and the government bodies that create or control that information should provide access to it so that it can be published by other parties.[6]

Public legal information refers to information created by a public body that has a duty to create and publish the content and includes primary and secondary sources.[7] When referring to secondary or interpretive sources, it is acknowledged that republication may not always be possible or appropriate due to permission issues.[8]

The movement's beginning is closely tied to the launch of Cornell's LII. Thomas Bruce[9] explains that when he started at Cornell in 1987 "[e]lectronic legal information was what those behemoths said it was, and their assertions went for the most part unchallenged."[10] The judicial branch was the first to embrace free access by cooperating with the Hermes project at Case Western Reserve University, which made court opinions freely available in 1990.[11] However, the site was difficult to navigate, and in 1992, LII was launched in order to provide a more user-friendly site offering free access to select primary and secondary sources.[12]

The Library of Congress and supportive Speaker of the House, Newt Gringrich, recognized the government's role in the FALM and created what is now the Thomas website.[13] Thomas.gov, "in the spirit of Thomas Jefferson," offers free access to legislative materials as

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[6] WorldLII: Declaration of Free Access to Law, http://www.worldlii.org/worldlii/declaration/ (last visited Mar. 8, 2010).

[7] *Id.*

[8] *Id.*

[9] Thomas Bruce can be found on Twitter at http://twitter.com/trbruce.

[10] Tom Bruce, *Public Legal Information: Focus and Future*, J. INFO., L. & TECH., 2000 (1), 2. http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2000_1/bruce/.

[11] Michael Carroll, *The Movement for Open Access Law*, *10* Lewis & Clark L. Rev. 741, 744 (2006), http://works.bepress.com/cgi/viewcontent.cgi?article=1002&context=michael_carroll.

[12] *Id.* at 743-44.

[13] *Id.* at 744.

they travel through the legislative process.[14] Thomas now offers information on bills, resolutions, Congressional activities, schedules and calendars, committee information, presidential nominees, treaties, and more.[15]

The executive branch has also pushed to make their information more accessible and their public involvement less intimidating and the result is the new Regulations.gov page. Historically, participating in the agency rulemaking process required the citizen to be able to locate, sift through, and understand the Federal Register. Once the appropriate proposed rule was found, the citizen had to figure out all the formalities involved in writing a public comment or attending a public hearing. Regulations.gov makes it much easier to locate a proposed rule by doing a keyword search for rules that are open for comment/submission. The user selects the proposed rule and clicks the "submit a comment" link, fills out a simple form, writes in the comment, and hits the "submit" button.[16]

There are many more examples of pioneering open-government initiatives. The American Association of Law Libraries is working with the Law Library of Congress to create a registry and repository of all primary sources,[17] meaning "briefs and opinions from the judiciary; reports, hearings, and laws from the legislative branch; and regulations, audits, grants, and other materials from the executive branch,"[18] at Law.gov. The Government Printing Office website[19] offers a comprehensive place to start, because it offers information on all three branches for which it prints documents. The Forest Service Schedule of Proposed Action page includes a map

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[14] (THOMAS) Library of Congress. http://thomas.gov/ (last visited Mar. 8, 2010).
[15] *Id.*
[16] Regulations.gov, http://www.regulations.gov/search/Regs/home.html#home (last visited Mar. 8, 2010).
[17] AALL E-newsletter – February 2010, http://www.aallnet.org/press/e-newsletter-201002.asp#5 (last visited Mar. 8, 2010).
[18] Law.gov: America's Operating System, Open Source, http://public.resource.org/law.gov/index.html (last visited Mar. 8, 2010).
[19] GPO Access Homepage, www.GPOaccess.gov (last visited Mar. 8, 2010).

that allows users to find proposed action in their area.[20] NASA[21], the Federal Register[22], and the White House[23] all maintain Twitter pages.

Although historically difficult to find without a keen understanding of the branch website or access to Westlaw or LexisNexis, legal opinions have become easily discoverable through the work of Cornell's LII. The LII calls itself a "law-not-com," providing all Supreme Court cases since 1992 and 600 earlier decisions, 10 years of New York Court of Appeals cases, and topical pages offering guidance in subject areas.[24] The full US Code can also be found on the site. Even with its limitations, "search engines and ranking systems identify the LII as the most linked to web resource in the field of law."[25]

In a blog entry titled "Finding the laws that govern us," Google announced that Google Scholar would contain a search mechanism for legal opinions and journals in order to "empower the average citizen by helping everyone learn more about the laws that govern us all."[26] While still in very early stages, Google Scholar Legal does not contain much of the information connected to a case on Westlaw or LexisNexis, but it does offer other opinions and journals that cite the case (although many of these journals may not be accessible without a subscription). The search does not include legislation, regulations, or a way to verify whether a case is still good law. Federal cases go back about 80 years and state cases go back about 50 years on

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[20] USDA Forest Service - SOPA. 2010, http://www.fs.fed.us/sopa/ (last visited Mar. 8, 2010).
[21] NASA (NASA) on Twitter, http://twitter.com/NASA (last visited Mar. 8, 2010).
[22] Federal Register (FederalRegister) on Twitter, http://twitter.com/FedRegister (last visited Mar. 8, 2010).
[23] The White House (whitehouse) on Twitter, http://twitter.com/whitehouse (last visited Mar. 8, 2010).
[24] LII: Overview, http://www.law.cornell.edu/lii.html (last visited Mar. 8, 2010).
[25] *Id.*
[26]Official Google Blog: Finding the Laws that Govern Us, *supra* note 3.

Google.[27] The benefit of Google Scholar Legal is that it does not fight the natural search practices of the user, because, after all, it is still Google.

(3) Free Scholarship – Read/Only

In its traditional form, the law review (and other subscription-based journals) has been the main mode of scholarly communication on the law. As electronic databases became a major player in legal research and the cost of maintaining numerous law journal subscriptions became economically unrealistic, the open access movement ("OAM") formed. The foundation of the OAM is that scholarly works should be freely available to the public, especially scholarly work paid for with public funds. There are a handful of variations on the specific values held by members of the OAM, but free access is agreed upon. Different fields have embraced the OAM and open access journals with varying degrees of enthusiasm. The appropriateness of free journals has not been agreed upon in the legal scholar community.

Legal scholarship is unique and has been resistant to change. David Rier argued that "the real importance of legal scholarship seems to line in its functions of teaching device, promotion criterion, and badge of identity as a scholarly discipline,"[28] as opposed to science publications driven by exchange of information utilized by researchers and practitioners. "[E]arly explorations acknowledged the 'young professor's dilemma': the tension between publishing in electronic journals and the worry that tenure committees would not give weight to electronic

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[27] Carol Ebbinghouse, *Judicial Opinions Now Available on Google Scholar.* Information Today, Inc. Nov 19, 2009. http://newsbreaks.infotoday.com/NewsBreaks/Judicial-Opinions-Now-Available-in-Google-Scholar-58031.asp

[28] David Rier, *The Future of Legal Scholarship and Scholarly Communication: Publication in the Age of Cyberspace, 30* Akron L. Rev. 183, 188 (1996) http://www.uakron.edu/law/lawreview/v30/docs/rier.pdf (last visited Mar. 8, 2010).

publication."[29] The prestige of law reviews does not need to be removed by making them freely available; it can be a simple change in distribution method.

Scholars generally do not receive publishing royalties for their works. Quality control by peers and student editors also comes free of charge. What matters to the funders is dissemination and citation of the work. "Research in the broader open access movement already has shown a positive correlation between articles available on the Internet and citation counts for such articles in a number of disciplines. There is no reason to think that this correlation would not also hold true in law."[30] Thomas Manz found that placing free articles on the web would not affect subscriptions, because most of the readership already has easy access through law libraries and subscription electronic databases.[31] Solum states "[t]he new world of legal scholarship is about disintermediation, a fancy word for getting rid of the intermediaries."[32]

While resistance is understandable considering the uncertainty surrounding professional prestige associated with open access journals, the principles laid out by the Science Commons Open Access Law Program explains that the benefits to scholars include increasing impact, servicing to an underserved population, improving interdisciplinary dialogue, and improving international impact and dialogue.[33] A list of open access law journals that have accepted the Open Access to Law Journal Principles can be found on the website.[34] Many law professors' papers can also be found on their personal websites. Additionally, two repositories house papers

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[29] Stephanie L. Plotin, *Legal Scholarship, Electronic Publishing, and Open Access: Transformation or Steadfast Stagnation.* Law Library Journal Vol. 101:1 [2009-2] ¶ 29 (2009) (referencing Shawn G. Pearson, Comment, *Hyper or Hypertext? A Plan for the Law Review to Move into the Twenty-First Century*, Utah L. Rev. 798 (1997)) http://www.aallnet.org/products/pub_llj_v101n01/2009-02.pdf

[30] Carroll, *supra* note 8, at 755.

[31] William H. Manz, *Floating 'Free' in Cyberspace: Law Reviews in the Internet Era*, *74* St. John's L. Rev. at 1072 (2000).

[32] Lawrence B. Solum, *Download It While Its Hot: Open Access and Legal Scholarship*. *10* Lewis & Clark Law Review 841, 845 (2006) http://papers.ssrn.com/pape.tar?abstract_id=957237

[33] Carroll, *supra* note 8 at 755-57.

[34] Science Commons >> Open Access to Law: Adopting Journals. http://sciencecommons.org/projects/publishing/oalaw/oalawjournals/ (last visited Mar. 8, 2010)

that have either been accepted for publication or are working papers: the Social Science Research Network's Legal Scholarship Network[35] and the Berkeley Electronic Press Legal Repository.[36]

Although experts are incredibly influential, "[o]n wikis, status is largely irrelevant; what matters is what you know, not who you are."[37] If what you know is what matters on Wikipedia, the expert should still be influential. The quality of law-related Wikipedia pages is not nearly as impressive as technology-related pages (to name one of many). For whatever reason, it is clear that Wikipedia has not drawn as many legal experts as other areas. Jurispedia is an international initiative dedicated to creating a universal legal encyclopedia. Jurispedia differs from Wikipedia articles on legal topics, because it is moderated. While anyone with a legal background can contribute, the project is based on universities utilizing collective intelligence among their institutions with involvement by the lay-person to make the information accessible and useful for everyone.[38] Currently Jurispedia is available in Chinese, Arabic, French, German, Spanish, Dutch, and English.[39]

(4) New Legal Conversations – Read/Write

Up to this point, the legal information discussed has been for public consumption only. It is only to be discovered and read – it is Read/Only as Lessig would say.[40] Originally blogs, while representing a Read/Write creativity, were Read/Only. The comment box quickly became custom and the platform evolved into a Read/Write source. "[B]y adding a way to talk back, blogs changed how they were read."[41] Blogs are now platforms for debate and conversation.

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[35] SSSN - Legal Scholarship Network, http://www.ssrn.com/lsn/index.html (last visited Mar. 8, 2010)
[36] bepress Legal Repository, http://law.bepress.com/repository (last visited Mar. 8, 2010)
[37] Cass Sustein, Infotopia 206 (2006).
[38] Jurispedia:About – Jurispedia, The Shared Law, http://en.jurispedia.org/index.php/Jurispedia:About (last visited Mar. 8, 2010).
[39] *Id.*
[40] Lawrence Lessig, Remix 26 (2008).
[41] *Id.* At 59.

Twitter adds an interesting twist to Read/Write formats, because it is not anonymous. Blogs

mentioned below have thousands of visitors so it is likely that they are not *all* law professors,

legal professionals, or law students. Twitter allows the author to verify that they are reaching

new communities.

a. Blawgs[42]

"Get used to it. Blogs are changing the face of legal scholarship"[43] states J. Robert

Brown. He explains that blogs reach small and large groups interested on legal topics, are more

widely read than law reviews, and have an official blue book citation format.[44] Glen Reynolds,

the Blawgfather, gets more than one hundred thousand visits a day to his blawg, Instapundit.[45]

Compare Reynold's blawg to appeals judge Richard A. Posner and Noble Prize winner Gary

Becker's blawg, the Becker-Posner Blog.[46] Posner and Beckers entries are long and analytical

writings on specific topics, while Reynold's entries are short and informal comments with a link.

Both are useful forms of legal information and display the freedom in format for the author,

different from the confines of a law journal.

The current nature of blogs gives them more power over media coverage and policy

issues than the traditional law journal. "It allows focused commentaries on recent state and

lower federal court decisions that most law professors would not want to spend an entire law

review article addressing, and that most student-edited law reviews […] would not be interested

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[42] Law blogs are sometimes referred to as blawgs.

[43] J. Robert Brown., Jr. *Of Empires, Independents, and Captives: Law Blogging, Law Scholarship, and Law School Rankings 1.* (U Denver Legal Studies Research Paper No. 08-04, 2008), *available at* http://ssrn.com/abstract=1096606

[44] *Id.*

[45] Sustein, *supra* note 34, at 181.

[46] The Becker-Posner Blog. http://uchicagolaw.typepad.com/beckerposner/(moved from http://www.becker-posner-blog.com/ Nov. 29, 2009) (last visited Mar. 8, 2010).

in publishing."[47] This is not a place to create entries or comments that encourage taking a long view perspective, which is why law journals can be supplemented, but certainly not replaced, by blogs.[48]

The writing style can be more casual and can take any form; this sense of liberation allows the author to "write to be free, write for the joy of it, and don't think too hard about how you might make the blog work count as scholarship or to advance your professionally."[49] D. Gordon Smith discusses how his posts related to the *In re The Walt Disney Company Derivative Litigation*[50] on the collaborative blog *Conglomerate*[51] changed his perspective on the duty of good faith. In efforts to write about the issue under blog conditions and exchange commentary with commenters and other bloggers, his views were enriched by the added element of a responsive audience. Miranda Perry calls this "pre-scholarship"[52] and Randy Barnett refers to blawgs as a "virtual faculty lounge."[53]

Comments are the heart of blogging, "[i]ndeed, the blogosphere might be seen as a kind of gigantic town meeting, or series of such meetings."[54] The benefit of Read/Write culture is outlined by Lawrence Lessig in his newest book *Remix*.[55] After showing how a period of Read/Only culture had pervaded our daily lives, Lessig explains that new platforms allow us to take in the information differently, more actively. Reading a blog and knowing that thoughtful critiques and comments are welcome and encouraged, changes the act of reading the

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[47] Jack M. Balkin, *Online Legal Scholarship: The Medium and the Message*, 116 Yale L. J. Pocket Part 20, 27. (2006) http://www.thepocketpart.org/2006/09/06/balkin.html

[48] Blogs on the long-view legal theory have an important place on the web as well, but as a niche, not likely to attract hundreds of thousands of visitors.

[49] Anne Althouse, *Why a Narrowly Defined legal Scholarship Blog is Not What I Want: An Argument in Pseudo-Blog Form*, *84* Wash. U. L. Rev. 1221 (2006) http://papers.ssrn.com/sol3/papers.cfm?abstract_id=898171

[50] *In re The Walt Disney Company Derivative Litigation*, 907 A.2d 693 (Del. Ch. 2005).

[51] The Conglomerate Blog: Business, Law, Economics, & Society, http://www.theconglomerate.org/ (last visited Mar. 8, 2010).

[52] D. Gordon Smith, *A Case Study in Bloggership, 84* Wash. U. L. Rev. 1139 (2006).

[53] *Id.*

[54] Sustein, *supra* note 34, at 185.

[55] Lessig, *supra* note 37, at 36-83

information. It becomes an exercise in creativity, understanding, and analysis. "Over the years, legal scholarship has become an increasingly self-contained community where scholars write only for each other. Bloggers have burst out of that model: they talk to many different audiences, they teach the world about law, and they perform a public service by drawing attention to the legal policy issues of the day."[56]

b. Twitter

Although blawgs and open journals are free and hopeful for public readership, the anonymous status of the reader makes it difficult to determine public readership. Twitter proves that the public is interested in information from legal scholars.[57] Twitter is a micro-blogging service that enables users to post messages ("Tweets") of up to 140 characters that can be seen by those following the user. Tweets can be directed at individuals, groups, or the public. Law professors have utilized Twitter to give opinions on or direct followers to areas of interest. Some law professors have tens of thousands of followers, while others have a few hundred, but the important characteristic of these followers is that they are not all law professors and law students. By exploring the follower pages of legal scholars, it is clear that most followers are not experts in any area of law, but citizens interested in, affected by, or curious about the scholar's area of expertise.

Tweets can be directed at others using the "@*user*" or designated a topic by using hashtags (#'s).[58] A message originally posted by another user can be reTweeted so that it

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[56] Balkin, *supra* note 43, at 29.
[57] Jonathan Zittrain has 6,643 followers as of April 1, 2010. An investigation into Zittrain's followers shows variation in the profession, geography, and age of followers. Twitter/people who follow zittrain, http://twitter.com/zittrain/followers (last visited April 1, 2010).
[58] boyd, danah, Scott Golder, and Gilad Lotan, *Tweet, Tweet, ReTweet: Conversational Aspects of ReTweeting on Twitter.* Proceedings of HICSS-43, Kauai, HI: IEEE Computer Society, January 6, 2010. *Available at* http://www.danah.org/papers/TweetTweetReTweet.pdf

appears to a new group of followers (this is the email equivalent of forwarding an email received from one person to your address book).[59]

By looking at the Twitter pages for law professors, it is clear that their commentary reaches a wide range of readers. For instance, as of March 8, 2010, Lawrence Lessig, a Harvard law professor and famous copyright critic, has 22,131 followers.[60] Included in this large list are writers for Wired, New York Times, and the Village Voice, researchers, non-profit directors, artists, musicians, authors like Yochai Benkler (of *The Wealth of Networks[61]*), and innovators like Jimmy Wales (of Wikipedia).[62] Paul Ohm, Silicon Flatiron Center for Law and Technology Director at the University of Colorado, School of Law, has 218 followers including many researchers in other disciplines and practicing attorneys.[63] Joel Eisen, environmental and energy law professor at the University of Richmond, has followers from around the world including Hamburg, Hong Kong, London, Melbourne, and Mexico.[64]

As mentioned earlier Tweets can include hashtags so that Tweets on that tag can be easily pulled together by searching or clicking the hashtag.   For instance if you search #iPad, results from a wide range of users will be found. In fact, 70 more Tweets were added with the #iPad hashtag in the time it took to type the previous sentence. If you search #usbill and/or #hr*bill number*, you will retrieve Tweets discussing, promoting, and updating that bill. Washingtonwatch Tweets "House floor now: #hr4626 The Health Insurance Industry Fair

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[59] *Id.* at 1.

[60] Lessig (lessig) on Twitter, http://twitter.com/lessig (last visited Mar. 8, 2010).

[61] Yochai Benkler, The Wealth of Networks (2006).

[62] Twitter/ The people who follow lessig, http://twitter.com/lessig/followers (must be signed in to view) (last visited Mar. 8, 2010).

[63] Twitter/The people who follow paulohm, http://twitter.com/paulohm/followers (must be signed in to view) (last visited Mar. 8, 2010).

[64] Joel B. Eisen (joeleisen) on Twitter, http://twitter.com/joeleisen (last visited Mar. 8, 2010).

Competition Act - no cost estimate yet http://tinyurl.com/111-HR-4626 **#usbill**."[65] By searching

"SCOTUS," you will find an abundance of links and opinions about the part of the State of the

Union when President Obama directly criticized the *Citizens United v. Federal Election*

Commission[66] and resulted in Justice Samual A. Alito Jr. possibly mouthing the words "not

true." There is a huge public audience exchanging information about legal issues on Twitter. By

participating in the exchange, experts can greatly improve the conversation.

One of the best ways that scholars can utilize hashtags is by Tweeting about conferences

they are attending. By Tweeting with the tag #flatirons, Paul Ohm keeps his followers up to date

with panel debates and his opinion of other speakers' perspectives. For example, Ohm Tweets

"Microsoft wants to amend CFAA: Statutory damages; more civil suit rights. Don't more civil

suits lead to the next Lori Drew? #flatirons," as part of a string of updates he is posting about the

conference. By clicking the #flatirons link, users can see all of the Tweets posted by attendees to

get other updates and opinions. So when Paul Ohm Tweets "Padden keeps calling Copyright

Clause a "Constitutionally protected right" to pursue infringers. **#flatirons**" the user can see

Crosbie Fitch's reply Tweet "@paulohm re **#flatirons**, US constitution doesn't even sanction

granting of monopolies such as copyright, let alone pursuit of infringers." This type of legal

communication has never been open to the public and could bring a new audience, not only to

the digital conversation, but also to the physical conversation happening at conferences and other

events.

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[65] This Tweet was found by searching #usbill (http://twitter.com/#search?q=%23usbill). Within a minute of this, washingtonwatch had Tweeted "Passed House today: #hres944, Expressing sense of House of Reps on religious minorities in Iraqhttp://tinyurl.com/111-HE-944 **#usbill**." This information was posted while it was happening, but can be retrieved now using the hashtag search.
[66] *Citizens United v. Federal Election Commission*, 558 U. S. ____ (2010). http://www.supremecourtus.gov/opinions/09pdf/08-205.pdf

Law professors utilize Twitter differently. Some interact more with individual users by replying to their Tweets. This is a conversation open to the public, like a blog, but with less content and less inviting for other users to add their two cents. However, it is an intimate way for law professors to interact with members outside of their profession. Legal Tweets are interwoven with other interests entertained by law professors including sports, food, television, and everything else. While others strictly adhere to Tweeting about their subject area. Jonathan Zittrain, author of *The Future of the Internet and How to Stop It* and professor at Harvard,[67] strays less than many and his involvement in so many cyber law related activities makes his Tweets incredibly valuable. There are also many law professors Tweeting through their universities, research centers, and other organizations.

(5) New role of the expert in FALM

a. Filter/Curator/Policymaker

In the introduction, I pointed out the need for guidance through the massive amount of legal information reported on the web after primary sources were added to the already endless amount of news, gossip, and anecdotes. Open access, blogs, and twitter may seem like they are simply adding more mess to sort through, but they serve as organizing, mapping, and filtering mechanisms.

Blogs and Twitter pages of law professors usually revolve around a specific subject matter. A legal professor's blog may recap the holding in a case, remark on it, and add links to pleadings, briefs, or news on the case. On Twitter, by following Siva Vaidhyanathan[68]

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[67] Jonathan Zittrain, Blog The Future of the Internet – and How to Stop It, http://futureoftheinternet.org/blog (last visited Mar. 8, 2010).

[68] Siva Vaidhyanathan (sivavaid) on Twitter, http://twitter.com/sivavaid (last visited Mar. 8, 2010).

(professor at Virginia Law and author of *Copyrights and Copywrongs*[69]) one can be directed to censorship and information policy issues/news as he comes across them in his daily life. By following enough experts on the subject you will not likely miss much happening in their given area of expertise. A great deal may be missed if the citizens are left to sort through Congressional hearing records, court opinions, proposed rules, etc. on their own. Legal scholars become curators by drawing attention to and praising/criticizing other scholars, politicians, legislation, court decisions through blawgs and Tweets.

Not only do legal experts bring to light that which is noteworthy, they also impact the public's understanding of those events. An example is a story told by Jack Balkin about the impact of a few blogging legal scholars, including himself, on a proposed bill. After expertly fingering through the bill it was clear that it was being misrepresented to the public. "[T]he reporters who covered the story didn't have the time or the expertise to figure out how they had been snookered."[70] *Balkinization* published the scholar's take on the bill and reported on the bill change resulting in mounting media criticism.[71] Although the internet allows for many more opinions to be heard, the inundation of data users are exposed to daily makes the role of the expert even more important. Voters, reporters, law students and professors, and policymakers will search for help in understanding difficult legal matters and their repercussions. The law professor has a new channel for impacting ideas about the law with legal scholarship.

b. The Franklin D. Roosevelt Role

Law professors are leaders in the legal community based on their experience and knowledge in a specified field. In group dynamics, some people are more likely to be silenced or

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[69] Siva Vaidhyanathan, Copyrights and Copywrongs: The Rise of Intellectual Property and How It Threatens Creativity (2001).
[70] Balkin, *supra* note 43, at 24.
[71] *Id.*

receive little attention.[72]   High stature or extremely confident members of a deliberation are more likely to speak up and carry more influence.[73]   But there is a great deal of information dispersed among all of us. The duty of the leader is to make sure those with information reveal it. Counteracting the problems of unshared information can lead to a richer market-place of ideas. "[T]hose with higher status or competence are less subject to the reputational pressures that lead people to silence themselves."[74]

President Franklin Delano Roosevelt was famous for privately and separately indicating agreement with advisors that had conflicting views.[75] This confidence allowed the advisors to divulge all relevant information in the form of a vigorous, well developed argument. The president did not make a decision until all points of all sides had been thoroughly hashed out. By distilling faith in the advisors, the president counteracted the problem of unshared information. Law professors can encourage and foster information from less influential voices by engaging conversation on blogs and Twitter – spreading confidence to the public that the information they hold is valuable.

c. Changing the Information – Changing the Scholar

An important element of R/W formats is how they change the creator. Lessig remarks on the solace and freedom he found in writing traditional scholarship journals because he knew that no one was reading it.[76] For most journal articles, only a handful of scholars and law students

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[72] Sustein, *supra* note 34, at 206.
[73] *Id.*
[74] *Id*. at 207.
[75] *Id*.
[76] Lessig, *supra* note 37, at 64.

will read the work[77] – and there is no comment box. For those that can handle the comment box and find value in criticism, they may find that Twitter and blogs are good for the writing. "To write in this medium is to know that anything one writes is open to debate."[78] Or as Balkin says "Being able to write on the blog you read creates loyalty and community. It makes authors feel in touch with readers, and therefore more directly responsible to them."[79]

Law professor blawgs and Twitter pages are relied upon for up-to-date commentary on everything from pending legislation to conference events. For instance, I can wait a few weeks for Silicon Flatirons, a research center at the University of Colorado School of Law, to put out the recap of its panel discussions on privacy issues, but Twitter allows me to follow the discussions and see the reactions of audience members in real-time. While the panel is occurring I can follow Professor Paul Ohm's Tweets as he sits in on the conversation.[80] Audience members will put up links and news mentioned by speakers. There is often a debate occurring on Twitter while a different debate is occurring at the conference, both offering valuable insight.

This medium also impacts what and how legal scholars write. Most precisely put, these mediums produce "a cultural ethos of 'see for yourself.'"[81] Blogs contain descriptions or impressions of something current usually presented in a link. Even long entries like those found on the Becker-Posner blog push the reader to reflect on an accessible analysis. Twitter allows for only a very short description of impression (140 characters) and points the reader in the right direction. "Online media – and particularly blogging [and more particularly Tweeting] – drive

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[77] Paul L. Caron, *The Long Tail of Legal Scholarship, 116* Yale L.J. Pocket Part 38 (2006) http://thepocketpart.org/conten/view/59/6/. 17% of articles get 79% of citations; top 5.2% get 50% of citations; 40% of articles are never cited.
[78] Lessig, *supra* note 37, at 67.
[79] Balkin, supra note 43, at 25.
[80] Looking at Ohm's Twitter page, you can see the hashtag #flatirons for Silicon Flatirons events. Paul Ohm (paul ohm) on Twitter, http://twitter.com/paulohm (last visited April 1, 2010).
[81] *Id.*

legal writing toward issues that are timely and particularly important to practitioners, policy analysts, journalists, and politicians."[82] The normative and interdisciplinary nature of these writings, as opposed to spending countless hours on high theory, can have an impact on the scholar. As Balkin explains, "if online media have helped turn a deconstructionalist into a doctrinalist, imagine what they will do to everyone else."[83]

(6) Law Librarian Efforts to Highlight, Organize, and Contribute

In the Winter 2010 edition of the Law Library Journal, Bernard Hibbits discusses the librarians role in the technology of the law.[84] Hibbit explains that many of the efforts made by law schools have limited themselves to using technology in ways that are not distinguishable from traditional legal education tactics, outside of the fact that they require electricity. The power point is not that different than the chalkboard; dictation on a laptop is not different than penned dictation from a slowly presented lecture; legal databases are "legacy technologies left over from the 1970s that are now simply being delivered over the internet."[85] Although "the vast majority of legal scholars have not recognized or reconceived their scholarship for cyberspace,"[86] the law professors that are creating a new form of legal expression are not necessarily being recognized or rewarded for their efforts.

Initiatives to organize, highlight, and teach non-traditional legal information have been undertaken by many different libraries and librarians. Just as law professors helping to sift through the massive amount of information on legal issues using open access journals, blawgs, and Twitter, law librarians can help to organize these efforts and make them easily retrievable.

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[82] *Id.* at 27.
[83] *Id*. at 28.
[84] Bernard Hibbitts, *The Technology of Law*, Law Library Journal, Winter 2010, at 101-115.
[85] *Id.* at 102.
[86] *Id.* at 103.

Law librarians and law libraries have taken up blogging, Tweeting, RSS feeds, electronic mailing lists, and other social networking without much hesitation. Therefore, I will not be discussing law library-created content except to say that it should be included in collections of non-traditional legal scholarship. The following efforts relate to collecting faculty blawgs, Twitter pages, and free scholarship.

There are a lot of innovative examples of the ways in which law libraries are bringing order to scattered forms of free scholarly works. The Sandra Day O'Connor Law Library at Arizona State University created a Faculty Scholarship Repository, which can be accessed from the homepage.[87] The repository is searchable by author, subject, year, publication type, and keyword. The results page includes different databases where the work is housed, including free versions on SSRN.   Lists of free law reviews/journals created by the school or organized by subject can be highlighted on the library website. The American Bar Association Legal Technology Resource Center has created a "Free Full-text Online Law Review/Law Journal Search Engine"[88] that searches over 300 free sources and includes a list of included publications.

Albany Law School has a created a page called "Faculty and Staff Blogs"[89] that lists the title of the blog and a short description of its creator and content. The University of Illinois School of Law has a page for Faculty Blogs stating "The College of Law faculty are active members in the online law community. Below you will find faculty members who regularly post to their blogs."[90] However, the law libraries do not link to this information as a source for legal research or source for learning the law. The George Washington University School of Law Library,

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[87] The Sandra Day O'Connor College of Law Faculty Scholarship Repository, http://www.law.asu.edu/apps/repository/Default.aspx (last visited Mar. 8, 2010).
[88] Free Full-text Online Law Review/Law Journal Search Engine, http://www.abanet.org/tech/ltrc/lawreviewsearch.html (last visited Mar. 8, 2010).
[89] Faculty and Staff Blogs- Albany Law School of New York, http://www.albanylaw.edu/sub.php?navigation_id=1489 (last visited Mar. 8, 2010).
[90] University of Illinois College of Law: Faculty Blogs, http://www.law.illinois.edu/global/blogs.asp (last visited Mar. 8, 2010).

however, houses the collection of blogs, organized by subject area and GW faculty blogs,[91] under research along with all the other print and electronic sources.[92]

Many law schools and law libraries have created a presence on Twitter, but examples of collections of scholars using Twitter have not been put together the way faculty and staff blogs have. Similarly to law school blogs, Twitter pages are not presented as a form of legal information. The University of Chicago Law School has a page of students and professors on Twitter explaining "our Tweeters provide you with a continuously updated snapshot of daily life at Chicago Law."[93] However, the content of these Tweets are informative on law subjects. For instance, Professor M. Todd Henderson Tweeted "President Obama's newest health care idea -- price controls! Welcome back to the 1970s. The upside: the Steelers won 4 titles in the 1970s."[94]

Teaching students how to search for content in free spaces could be a way to make them more appealing to employers. There is certainly a great deal of room for guidance in the realm of free legal content. Understanding and contextualizing government sites, searching cases in free databases, or retrieving free versions of law review articles are money-saving skills that may be the most important for students and attorneys during economic downturn. Teaching what Hibbitts calls "neteracy"[95] requires teaching both reading and writing skills. "[F]ifteen years after the initial popularization of the web, […] we still aren't teacing law students how to express themselves in this medium."[96] Free scholarship, blawgs, and Twitter feeds are important to the

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[91] The George Washington University Law School, Legal Blogs, http://www.law.gwu.edu/Library/Research/Current_Awareness/Pages/Blogs.aspx (last visited Mar. 8, 2010).
[92] The George Washington University Law School, Research, http://www.law.gwu.edu/Library/Research/Pages/default.aspx (last visited Mar. 8, 2010).
[93] TweetChicago: The University of Chicago Law School in 140 Characters or Less, http://webcast-law.uchicago.edu/Tweetchicago/ (last visited Mar. 8, 2010).
[94] *Id.*
[95] Hibbitts, *supra* note 78, at 106.
[96] *Id.* at 108

growing community of voices, and law librarians have the opportunity to teach students, as well

as faculty, the skills to appreciate, maintain, and broaden that community.