

You're Doing It Wrong: How the Anti-Law School Scam Blogging Movement Can Shape the Legal Profession¹

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I. INTRODUCTION

One of the biggest social advancements that the Internet has given us is the capacity for an individual's idea to reach a mass audience. Internet-based communication forms, particularly blogs,² enable an idea to gain credence without the involvement of traditional mass media outlets, such as newspapers or television stations. With no "top-down" filter that controls what ideas get disseminated, the Internet can amplify voices speaking from outside the mainstream culture that perhaps would not be heard under the traditional media system. The open network structure of the Internet also allows ideas to reach broad audiences and enables individuals, operating independently, to create communities around ideas in an emergent fashion.

In addition to blogs, anonymity for online speakers and immunized liability for the intermediaries who provide access to Internet forums are two additional forces that have shaped the Internet as a place for the exchange of ideas. The relative anonymity that digital communication affords allows people to critically comment on controversial issues without facing negative career or other reputational consequences that might result if their opinions were voiced non-anonymously. Section

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1. See *You're Doing It Wrong*, KNOW YOUR MEME, <http://knowyourmeme.com/memes/youre-doing-it-wrong> (last visited February 25, 2011).

2. "Weblogs or 'blogs' are personal online diaries managed by easy-to-use software packages that allow single-click publishing of daily entries." Daniel Gruhl, R. Guha, David Liben-Nowell, & Andrew Tomkins, *Information Diffusion Through Blogspace*, in PROCEEDINGS OF THE 13TH INTERNATIONAL WORLD WIDE WEB CONFERENCE 2 (2004).

230³ of the Communications Decency Act,⁴ which limits the liability of Internet service providers and website operators for comments made by ultimate end-users, has encouraged the flow of critical ideas and arguments; a different system, such as a notice and take-down scheme (seen in the Digital Millennium Copyright Act⁵), might have produced a more restrained and conservative Internet and a less robust exchange of ideas.⁶

Concurrently, the way U.S. law and the Internet's open structure have expanded public debate of ideas and policy, and a new culture has grown up around the Internet. An optimistic view of Internet culture holds that it is, for the most part, a warm and open culture dedicated to community, collaboration, and open debate. A more negative take on Internet culture is that its default anonymity sometimes creates a race-to-the-bottom mentality, fostering environments where abusive and offensive comments flourish. In addition to forums that discuss important ideas, there are also forums full of racist, misogynistic, and other ad hominem attacks, which read like graffiti on a public bathroom wall. Another cause for concern is Internet culture's unique approach to norm enforcement. A fairly prevalent practice of online public "shaming" has developed in which Internet mobs fulminate against perceived norm violators and wield frighteningly invasive vigilante-style remedies against them.⁷

In contrast with the ribald and sometimes abusive culture

3. 47 U.S.C. § 230(c) (2006).

4. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, 133-43 (codified as amended in scattered sections of 47 U.S.C.).

5. Digital Millennium Copyright Act, Pub. L. No. 105-304, § 202, 112 Stat. 2860, 2879-2881 (1998) (codified as amended at 17 U.S.C. § 512(c) (2000)).

6. See generally H. Brian Holland, *In Defense of Online Intermediary Immunity: Facilitating Communities of Modified Exceptionalism*, 56 U. KAN. L. REV. 369 (2008) (detailing the impact § 230 of the Communications Decency Act has had in creating an Internet that fosters collaboration and the development of online communities).

7. See *infra* notes 108-121 and accompanying text (discussing Daniel Solove's research into online shaming practices and a recent mob-justice reaction to a law professor's position on repealing the Bush tax cuts); see also Kathy McManus, *Public Intoxication: Shaming Drunk Drivers*, THE RESPONSIBILITY PROJECT (Feb. 19, 2008), <http://www.responsibilityproject.com/blog/public-intoxication-shaming-drunk-drivers#fbid=5qgexMVS1jT> (demonstrating an example of public shaming in which "Internet mobs" can comment on photos of drunk drivers posted on the website).

of the Internet, the culture of the legal profession is restrained, deferential, and committed to resolving disputes through formal legal processes. Thus, there is a potential for conflict between the culture of the Internet and the culture of the legal profession. Specifically, normative conflicts are emerging with respect to blogs where lawyers air caustic, uncensored, and highly critical views of the legal profession. This conflict is exemplified by the so-called Law School Scam Blogging Movement (“Scam Blog Movement” or “Scam Bloggers”), a populist online community calling for reform of the way that law schools market themselves to potential law students.⁸

Using jarring visual rhetoric and public shaming techniques unique to the Internet, the Scam Bloggers argue that there is an oversupply of lawyers in the United States, that law schools are engaging in a type of fraud by purposely over-inflating post-graduation employment data in order to draw in more law students, and that, in essence, law schools and professional institutions, such as the American Bar Association (ABA), should be ashamed of themselves.⁹ Some Scam Blog sites, such as *Temporary Attorney*, call attention to the humiliating job experiences of attorneys who are paid by the hour to perform low-level, systemized legal tasks such as computerized coding of documents for discovery review.¹⁰ Others, such as *Subprime J.D.*, emphasize the distress and anxiety of young J.D.s (Juris Doctors) who are heavily in debt but unable, after months of trying, to land a decent paying law-related job.¹¹ The general theme arising from this collection of web sites is that market forces within legal education and the legal job market have produced a deeply disappointing professional experience for some lawyers.

Despite its nontraditional approach, the Scam Blogging movement has had a palpable effect on the debate of an important issue facing the legal profession. Beginning with a few independent blogs, the movement grew into a community of

8. See, e.g., *My Goals with Respect to this Blog*, LAWYERS AGAINST THE LAW SCHOOL SCAM (Apr. 23, 2010, 12:36 AM) <http://lawschoolscam.blogspot.com/2010/04/my-goals-with-respect-to-this-blog.html> (a blog “dedicated to exposing the ‘law school scam.’”).

9. *Id.*

10. See TEMPORARY ATTY: THE SWEATSHOP EDITION, <http://temporaryattorney.blogspot.com> (last visited Oct. 25, 2010).

11. See SUBPRIME JD, <http://www.subprimejd.blogspot.com> (last visited Oct. 27, 2010).

bloggers, all focusing on the idea of publicizing the problem of an oversupply of lawyers in the job market, the exorbitant expense of legal education, and a lack of transparency in how law schools report and publicize post-J.D. employment data. The ideas publicized by the movement reached an apex in the late summer and fall of 2010, evinced by the number of traditional media outlets covering the Law School Scam Blog story and well-regarded law professors evaluating the movement's contentions.¹²

Why does it matter that the Internet allows alternative voices to comment, criticize, and argue for the reform of the legal profession? There are at least three reasons why New Media¹³ approaches to information dissemination are noteworthy here. First, the Internet's open network architecture and, to a certain extent, the legal rules that govern Internet communication have opened up new channels for voicing an idea to the public. Second, the complex network of the Internet allows a single idea, originating from one or two individuals, to combine with the ideas of other individuals and grow into a community-based movement that exercises a resonant voice in the affairs of the legal profession. The older print-based model of information dissemination would have made it more difficult for an individual to disseminate a reformist idea into the legal profession and to have that idea gain speed and strength. Finally, the Internet provides a valuable community function: the Scam Blogging Movement shows that the Internet provides some outsider lawyers who do not quite fit into mainstream professional communities (such as bar associations and legal education institutions) with a social gathering space.¹⁴

12. See Jack Crittenden, *Angry Law Grads*, THE NAT'L JURIST, Oct. 2010, at 20 (providing statements from Professor William Henderson at Indiana Maurer School of Law and Brian Tamanaha of Washington University indicating that the Scam Blog movement represents a serious problem facing law schools and the legal profession).

13. New Media is popularly understood as encompassing such things as "the Internet, web sites, computer multi-media, computer games, CD-ROMs and DVD, virtual reality." LEV MANOVICH, THE LANGUAGE OF NEW MEDIA 19 (2001). A deeper definition of New Media focuses on the process by which information is produced and reproduced—the translation of the information "into numerical data accessible through computers." *Id.* at 20. Thus, New Media includes "graphics, moving images, sounds, shapes, spaces, and texts that have become computable." *Id.*

14. Because these lawyers exist outside the elite levels of the profession,

Even though the rhetoric is often ugly and offensive, these emergent online arguments have changed and are changing the way that ideas are aired and gain credence in the legal profession. The problem is, however, that Scam Blogger arguments usually run afoul of professional norms that emphasize a civil and restrained discourse and de-emphasize the notion that it can be a struggle for an attorney to make ends meet.¹⁵ With respect to online attorney conduct, the ethical rules violations to date relate to instances where lawyers have impugned the integrity of a judge or disclosed confidential information about clients online.¹⁶ In other instances, members of the profession have acted to punish online behavior that, while not illegal per se, does not comply with accepted notions of professional civility and collegiality.¹⁷

With regard to the Scam Blog movement, its shock-value approaches to rhetoric would certainly violate the legal profession's cultural tradition of favoring formal, restrained, and process-oriented debates of legal issues. This Article argues that the good that comes to the profession from Internet culture outweighs the bad. Moreover, the value of the Internet's information diffusion and community functions should not be discounted. This Article ultimately concludes that the legal profession will be strengthened by the new arguments and ideas entering online from the profession's sidelines. Thus, we should, to a certain extent, relax our professional norms and

they can be considered "outsider" attorneys, in the same way that critical theorists use that term to designate minority individuals who do not fit into mainstream or majority culture. See, e.g., Richard Delgado & Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?*, 77 CORNELL L. REV. 1258, 1261–65 (1992).

15. See, e.g., Alfred L. Brophy, *Race, Class, and The Regulation of the Legal Profession in the Progressive Era: The Case of the 1908 Canons*, 12 CORNELL J.L. & PUB. POL'Y 607, 615–19 (2003); Susan D. Carle, *Lawyers' Duty to Do Justice: A New Look at the History of the 1908 Canons*, 24 LAW & SOC. INQUIRY 1, 8–9 (1999) (discussing the enactment of the first Canons of Ethical Conduct and the prevailing view from the elite attorneys who drafted them, that prestige of the legal profession was under attack from uncouth immigrant attorneys actively seeking business through direct solicitation of clients and contingency fee agreements).

16. See, e.g., John Schwartz, *A Legal Battle: Online Attitude vs. Rules of the Bar*, N.Y. TIMES, Sept. 13, 2009, at A1, available at <http://www.nytimes.com/2009/09/13/us/13lawyers.html> (detailing recent conflicts between attorneys who blog about their professional experiences and bar ethics rules).

17. See *infra* notes 125–139 and accompanying text (discussing the professional response to the AutoAdmit.com scandal).

allow these arguments to take shape.

In looking at the story of the Law School Scam Blogging movement, Part I of this Article explains how the technological structure of the Internet enables ideas to solidify and spread in a way that differs from the way information is expressed in traditional media formats. Part II generally describes the attributes of Internet culture, both the good and bad, and contrasts that culture with the culture of the legal profession. Part III looks at the Scam Blogging movement and argues that, when non-traditional members of the legal profession use the Internet as a forum to argue for reform, even if they do so in untoward ways, those arguments do impact the profession and should be listened to by *all* members of the legal profession.

II. NEW MEDIA TECHNOLOGY AND INFORMATION DIFFUSION

The Internet's barebones infrastructure has deeply influenced and revolutionized the way digital information is disseminated. The Internet relies on a simple end-to-end system that pushes most of the complexity, the devices and applications used to access the Internet, to the endpoints.¹⁸ The actual network itself relies on a very simple delivery system, called Transmission Control Protocol/Internet Protocol (TCP/IP), which breaks digital information down into packets, assigns those packets a number representing a "from" address and another number representing a "to" address, and then sends the packets on their way.¹⁹ The system's use of an assigned Internet Protocol (IP) number (rather than requiring identifying credentials) to gain Internet access produces the default anonymity that the Internet affords.²⁰ The system's minimalism allows almost anyone access to the network and the ability to contribute applications at the endpoints through easily programmable devices like Personal Computers (PCs).²¹

18. See JACK GOLDSMITH & TIM WU, WHO CONTROLS THE INTERNET? ILLUSIONS OF A BORDERLESS WORLD 23 (2006); LAWRENCE LESSIG, CODE: VERSION 2.0, at 44 (2006).

19. LESSIG, *supra* note 18, at 44.

20. *Id.* While anonymity is a basic feature that we have come to associate with the Internet, that anonymity is not absolute. Technology has opened up new ways in which one's IP address can be traced, usually through one's commercial Internet Service Provider. See *id.* at 46-47.

21. See JONATHAN ZITTRAIN, THE FUTURE OF THE INTERNET—AND HOW

Enabling a diverse set of actors, access, and contribution is what Jonathan Zittrain refers to as Internet “generativity.”²²

The Internet’s generative structure, at least in the way it has evolved in the United States, limits the ability of a centralized authority to directly control content and access in a “top-down” fashion.²³ Rather, the original idea behind the Internet was to allow a diverse set of machines (the Department of Defense mainframes, university computers, and business computers) access to the Internet, without regard to the specific technological attributes of each endpoint.²⁴ The open network structure of the Internet can thus be contrasted with the closed structure of other systems, such as the network for telephones, which is very limited in terms of what devices are allowed access to the system.²⁵ The closed telephone system provided easy ways for governments to regulate telecommunications, whereas the open structure of the Internet posed some initial challenge for how governments could regulate Internet communication.²⁶ The ability to get on the Internet and become both a user and a contributor outside the control of a “top-down” centralized authority is, perhaps, the biggest technological affordance that supports the “emergent” phenomena on the Internet.

In his 2001 book *Emergence*, Steven Johnson defines Emergence as a “higher-level pattern arising out of parallel complex interactions between local agents.”²⁷ The study of

TO STOP IT 31 (2008) [hereinafter ZITTRAIN, THE FUTURE]; Jonathan L. Zittrain, *The Generative Internet*, 119 HARV. L. REV. 1975, 1976 (2006) [hereinafter Zittrain, *Generative Internet*].

22. Zittrain, *Generative Internet*, *supra* note 21, at 1976.

23. See Jonathan Zittrain, *A History of Online Gatekeeping*, 19 HARV. J.L. & TECH. 253, 257 (2006).

24. GOLDSMITH & WU, *supra* note 18, at 23.

25. ZITTRAIN, THE FUTURE *supra* note 21, at 21 (citing Tim Wu, *Why Have A Telecommunications Law? Anti-Discrimination Norms in Communications*, 5 J. TELECOMM. & HIGH TECH. L. 15, 31–35 (2006)).

26. See *id.* The idea that the Internet simply could not be regulated by the government that was popular in the 1990s has been “largely discredited” at this point. GOLDSMITH & WU, *supra* note 18, at 14. Governments can now regulate the Internet by interfacing with the commercial entities that provide access to the Internet. See *id.* at 1–8 (explaining how France was ultimately able to force Yahoo to comply with its laws prohibiting the sale of Nazi memorabilia, by threatening to seize Yahoo’s assets in France).

27. STEVEN JOHNSON, *EMERGENCE: THE CONNECTED LIVES OF ANTS, BRAINS, CITIES, AND SOFTWARE* 19 (2001).

complex systems, of which the Internet is one,²⁸ has ignited debate over “bottom-up” methods of organizing versus traditional “top-down” command structures.²⁹ In a complex system, order emerges through a bottom-up process, not through the direction of a single individual or entity, but because “disparate agents . . . unwittingly create a higher-level order.”³⁰ As an example, Johnson points to an ant colony, where order is achieved because each individual ant emits pheromones that, when combined together, function as a mass message directing the behavior of each individual ant.³¹ Because it allows hundreds of individual agents to connect through its network, the Internet is a Petri dish for communities that come to exist outside of the direction and control of a hierarchical authority.³²

In addition to allowing collective groups to form, New Media technology has also changed the way information gets disseminated in society. In theory, the Internet allows any individual to publicize an idea and have that idea reach a mass audience with lightning speed. Thus, the Internet provides new opportunities for “civic engagement, political empowerment, and economic advancement.”³³ Internet theorist Yochai Benkler argues that the new information environment has the potential to increase democratic participation and ultimately foster a

28. ALBERT-LASZLO BARABASI, LINKED: HOW EVERYTHING IS CONNECTED TO EVERYTHING ELSE AND WHAT IT MEANS FOR BUSINESS, SCIENCE, AND EVERYDAY LIFE 8, 174 (2002) (explaining how the structure of the web evolves from the individual participation of its millions of users).

29. Eric Bonabeau, *Predicting the Unpredictable*, HARV. BUS. REV., Mar. 2002, at 109, 116, available at http://www.psych.lse.ac.uk/~lovely/socialpsychology/Research/organisational/complexity/PDFfiles/publication/hbr_unpredictable.pdf (explaining how “bottom-up” approaches to business problems can produce non-intuitive practical solutions that work, whereas a top-down approach might produce the wrong result).

30. JOHNSON, *supra* note 27, at 21.

31. *Id.* at 29–33.

32. Joichi Ito, *Emergent Democracy*, in EXTREME DEMOCRACY 13, 26 (Mitch Ratcliffe & Jon Lebkowsky eds., 2006).

33. Henry Jenkins et al., *Confronting the Challenges of Participatory Culture: Media Education for the 21st Century* 8 (MacArthur Foundation White Paper 2006), available at <http://www.nwp.org/cs/public/print/resource/2713> (follow “Confronting the Challenges of Participatory Culture: Media Education for the 21st Century” hyperlink).

more critical and self-reflective culture.³⁴ It is no longer necessary to be affiliated with a powerful industrial or state institution in order to disseminate information in a mass format.³⁵ The decentralization of information production creates more opportunities for citizens to perform the watchdog function of society: to critique and observe public affairs.³⁶ Thus, the relative ease by which information can be disseminated en masse has led to a more transparent and malleable culture.³⁷ Participants can be more “self-reflective and critical of the culture they occupy, thereby enabling them to become more self-reflective participants in conversations within that culture.”³⁸

However, in recent years, the view that celebrates the democratic power of Internet communication has been questioned because, in practice, there are “power-laws” operating in the network making it so that only a small portion of Internet content ever reaches a mass audience.³⁹ In studies of how these power-laws operate on the Internet, the data shows that eighty-percent of all links point toward only fifteen percent of webpages.⁴⁰ Given these power-laws, some have argued that the Internet does not actually afford much of an amplifying effect because “our voices are too weak to be heard.”⁴¹

Despite the operation of these power-laws, there are instances where information originating with one or a few individuals has been broadly and rapidly diffused.⁴² The Internet’s mechanisms allow an Internet “meme”⁴³ to reach viral dimensions and impact a mass audience in much the same

34. YOUCHAI BENKLER, *THE WEALTH OF NETWORKS: HOW SOCIAL PRODUCTION TRANSFORMS MARKETS AND FREEDOM 2* (2006).

35. *Id.* at 4.

36. *Id.* at 11.

37. *Id.* at 15.

38. *Id.*

39. See BARABASI, *supra* note 28, at 58; Ito, *supra* note 32, at 28.

40. BARABASI, *supra* note 28, at 66.

41. *Id.* at 174.

42. *Id.* at 126.

43. “The term meme was coined by the biologist Richard Dawkins . . . to describe small cultural units, analogous to genes, which spread from person to person by imitation.” Limor Shifman & Mike Thelwall, *Assessing Global Diffusion with Web Memetics: The Spread and Evolution of a Popular Joke*, 60 J. AM. SOC’Y INFO. SCI. & TECH. 2567, 2567 (2009). The Internet is an especially efficient mechanism for large-scale meme transmissions. *Id.* at 2568.

way that a disease gets transmitted to the public.⁴⁴ This process usually begins with action by “innovators,” a small group of Internet users who get “infected” by an idea and link to it.⁴⁵ After the innovators link to the idea, it could get picked up by a “hub,” an influential Internet contributor with numerous other users linking in or viewing the site.⁴⁶ Once the idea gets exposure at the hub level, the idea can reach mass momentum if it is “sticky” enough.⁴⁷ The Internet allows all of this to happen at lightning speed.⁴⁸

In addition, the blog medium is a particularly effective conduit for the rapid diffusion of information because blogging software features, such as blogrolls,⁴⁹ linkback features,⁵⁰ and RSS feeds,⁵¹ facilitate the widespread dissemination of an idea to other users.⁵² A group of like-minded bloggers that have linked up with each other can efficiently reach a mass audience by leveraging all of their individual ties in the network (as opposed to just one individual’s ties).⁵³ Moreover, one blogging community can link up with a different, but related, community network, forming a bridge between two networks,

44. See Eytan Adar & Lada A. Adamic, *Tracking Information Epidemics in Blogspace*, 2005 INST. ELECTRICAL & ELECTRONICS ENG’RS COMPUTER SOC’Y CONF. ON WEB INTELLIGENCE PROC. 1–2, available at www.cond.org/trackingblogepidemics.pdf; David Kempe, Jon Kleinberg & Eva Tardos, *Maximizing the Spread of Influence Through a Social Network*, 9 ASS’N COMPUTING MACHINERY SPECIAL INT. GROUP ON KNOWLEDGE DISCOVERY & DATA MINING PROC. 137 (2003); Shifman & Thelwall, *supra* note 43, at 2567.

45. BARABASI, *supra* note 28, at 127–29.

46. *Id.* at 58, 129.

47. Stickiness refers to the concept that “certain topics are inherently more interesting than others, and thus are more likely to be copied.” Daniel Gruhl et al., *Information Diffusion Through Blogspace*, 13 INT’L CONF. ON WORLD WIDE WEB PROC. 498 (2004).

48. BARABASI, *supra* note 28, at 126.

49. A blogroll is a list of a blogger’s favorite links and blogs. See Ito, *supra* note 32, at 27.

50. A linkback is a feature that allows one blog to manually or automatically link to another blog. *Linkback Definition*, WIKIPEDIA, <http://en.wikipedia.org/wiki/Linkback> (last visited Oct. 26, 2010).

51. RSS stands for “really simple syndication” and is a method for publishing frequently updated information, such as news and blog posts, in a standard format. *RSS Definition*, WIKIPEDIA, <http://en.wikipedia.org/wiki/RSS> (last visited Oct. 26, 2010).

52. See Ito, *supra* note 32, at 26–27.

53. *Id.* at 30.

creating resonance for information in a way that evades general power-law rules.⁵⁴

Although there is debate as to how successful the Internet has been in giving individuals more of a voice in public affairs, Internet technology has undeniably changed the way that society accesses and interfaces with information.⁵⁵ Under the old “one-to-many” model of mass communication, if someone wanted to publish information in print, that person had to convince a mass media institution to publish the story.⁵⁶ That story then had to be written by an employee of the newspaper and be put through the editing process. The newspaper publisher would decide to publish the story (or not), making a management decision about audience and interest.⁵⁷ With Internet technology, a blogger can write a story and publish it on his/her webpage within a matter of seconds. Depending on information diffusion principles (how many links this blogger gets) and the “stickiness” factor of the story, the story could reach thousands by the end of the day.⁵⁸

Thus, in contrast with the older mass-media model of print communication, Internet technology has produced three drastic changes to how information gets disseminated into the public sphere. First, there is now a non-hierarchical “bottom-up” model for information production that competes with a traditional “top-down” hierarchical structure of information production.⁵⁹ Second, information is published with much more immediacy than allowed under older models of print communication, which required extensive editing and filtering before the information could be released.⁶⁰ Finally, the

54. *Id.* at 28–29.

55. See BENKLER, *supra* note 34, 215–19 (describing the tools available via the Internet for information gathering and distribution).

56. See CLAY SHIRKY, *HERE COMES EVERYBODY* 77 (2008) (“Publishing used to require access to a printing press . . .”).

57. See *id.* at 97 (explaining the filtering process performed by a newspaper company).

58. See *supra* notes 48–48 and accompanying text (discussing online information epidemics).

59. The quintessential top-down organizational model is the corporate firm: vertically integrated, hierarchical, and slow to change. See Gillian Hadfield, *Law for a Flat World: Legal Infrastructure and the New Economy* 10–11 (Mar. 11, 2010) (unpublished manuscript), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1567712; see also SHIRKY, *supra* note 56, at 42–46 (describing a typical organizational structure for a modern business).

60. See MANUEL CASTELLS, *THE RISE OF THE NETWORK SOCIETY* 491

structure of the Internet enables an idea to speed through the network, creating a rapid cultural resonance as the idea “infects” various individuals.⁶¹

The Internet’s bottom-up methods of production, its immediacy, and its propensity for rapid and exponential dissemination operate in contrast with how information is produced within the legal profession. The legal profession, for the most part, has embraced a top-down organizational structure. With respect to this point and the discussion that follows, the historical context matters.

In the late 19th Century, the ABA and various other local bar associations were formed as a way to impose ethical standards from above on what was perceived to be an unruly profession.⁶² That the ethical standards were imposed on the profession “from above” comes from the fact that at the time of its inception, membership into the ABA was limited to lawyers considered to be “leaders of the bar,” attorneys with upper-class social credentials who either represented wealthy individuals and corporations or taught at elite law schools.⁶³ This group of lawyers, committed to protecting the sanctity of the profession, sought to impose its view of professional conduct by regulating, for the first time, all lawyers. The first Ethical Canons, produced during the Progressive Era, can be viewed “as part of a larger ethos of regulation.”⁶⁴ Moreover, at this time there was

(2010) (explaining the trend toward immediacy with Internet communication); SHIRKY, *supra* note 56, at 97 (explaining the traditional media’s filtering process).

61. BARABASI, *supra* note 28, at 58, 126-29.

62. See JEROLD S. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* 40-42, 48-52 (1st ed. 1976) (explaining that many jurisdictions adopted ethics codes in response to perceived threats that immigrant attorneys practicing in urban areas were lowering the status of the legal profession as a whole); Brophy, *supra* note 15, at 609 (explaining that the ABA’s first Canon of Ethics proposal, in 1908, was driven by a desire by elite attorneys to “raise professional standards, to bring stability to the profession, and to protect the public.”)

63. See AUERBACH, *supra* note 62, at 63 (explaining the exclusivity of the ABA at the turn of the century and how its leadership came to be dominated by lawyers with enough wealth and leisure time to pay fees, attend the meetings, and participate in committees); Carle, *supra* note 15, at 33 (explaining that, in analyzing the debates over the content of the first Canons of Ethical Conduct, “all the participants . . . shared a common background as members of the bar’s so-called elite, defined on lines of religion, race, gender, and socio-economic class.”)

64. Brophy, *supra* note 15, at 609.

a view that only elite attorneys coming out of selective law schools that had adopted Harvard's Langdellian method were in a position to initiate reform within society.⁶⁵

One of the lasting influences wrought by the elite lawyers who crafted the first Canons of Ethics is the idea that it is unseemly for lawyers to exert themselves in order to generate fees and make a living:

Comfortable in the business that came their way by virtue of their social connections, the lawyers who made up the membership of the ABA looked with disdain on the scrambling, ungraceful efforts to gain business engaged in by some newcomers to the bar, and condemned these lawyers for lacking proper socialization into "American" values.⁶⁶

In response to nativist fears about the wrong elements muddying up the "noble" and "sacred" profession of the law,⁶⁷ the ABA proposed rules restricting contingency fees and prohibiting lawyer advertising and the active solicitation of clients—rules that still exist, in some strain, in our current Rules of Professional Responsibility.⁶⁸ In this historical context, we see the development of a professional norm—good lawyers

65. See ALFRED REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 418 (1921) (remarking that the selective Langdellian law schools (following Harvard's lead) served the role of being a "nursery for judges" whose graduates had the ability to reform the law into what it should be); see also AUERBACH, *supra* note 62, at 83–84 (explaining how, during the first half of the 20th Century, professors at selective Langdellian schools developed an "elitist claim of expertise" of the ability to conduct reform).

66. Carle, *supra* note 15, at 8 (citing AUERBACH, *supra* note 62, at 43–130; RICHARD HOFSTADTER, THE AGE OF REFORM: FROM BRYAN TO FDR 155 (1955)).

67. ROBERT STEVENS, LAW SCHOOL LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S 101 (1983) ("[W]herever one looks in the literature of the period, the establishment expressed concern about the background of those who were alleged to be demeaning the bar.") For a discussion of the nobleness and sacredness of the legal profession, see Brophy, *supra* note 15, at 616–17. Brophy quotes Henry St. George Tucker, an early ABA president, addressing the association:

My closing appeal to the representatives of the American Bar Association, who stand forth clothed in priestly robes, as ministers of the altar of justice, is for the vindication of the claim that the profession of the law is the most ennobling and powerful for good of all the secular professions.

68. Brophy, *supra* note 15, at 615. Some argue that elite interests continue to monopolize the process of making the rules that govern the legal profession, as evidenced by the heavy influence that corporate lawyers exercise within the ABA. See Amy Mashburn, *Professionalism as Class Ideology: Civility Codes and Bar Hierarchy*, 28 VAL. U. L. REV. 672, 675–76 (1994).

should not be actively concerned with making ends meet.

Top-down regulation has also shaped the structure of legal education in the United States. During the early part of the 20th Century, there was concern about the quality of law graduates, mostly immigrants, entering the profession from inexpensive, part-time “night” law schools.⁶⁹ Due to this concern, the ABA, together with the American Association of Law Schools, created a body of accreditation requirements that excluded many of the part-time schools because their admissions requirements and curricular offerings were deemed too relaxed.⁷⁰ Some have argued that the ABA’s regulation of American law schools has driven up the cost of legal education in a way that unduly harms underserved students.⁷¹ The division between top-tier law schools and non-elite institutions continues to this day, although the effect of the ABA’s accreditation requirements has led to all law schools adopting the expensive three-year educational model pioneered by Christopher Langdell at Harvard.⁷²

Furthermore, although it may be on its way to obsolescence,⁷³ the large law firm is another example of a classic top-down institution within the law profession.⁷⁴ The “big-law” model of law practice still clings to nineteenth and

69. See STEVENS, *supra* note 67, at 75, 92–93.

70. *Id.* at 115; Warren A. Seavey, *The Association of American Law Schools in Retrospect*, 3 J. LEGAL EDUC. 153, 153–67 (1950).

71. See, Harry First, *Competition in the Legal Education Industry*, 53 N.Y.U. L. REV. 311, 358–60 (1978); George B. Shepherd, *No African-American Lawyers Allowed: The Inefficient Racism of the ABA’s Accreditation of Law Schools*, 53 J. LEGAL EDUC. 103, 136–37 (2003); George B. Shepherd & William G. Shepherd, *Scholarly Restraints? ABA Accreditation and Legal Education*, 19 CARDOZO L. REV. 2091, 2125 (1998).

72. See, e.g., Shepherd & Shepherd, *supra* note 71, at 2181. (“[The ABA law school accreditation system] locks in place the Harvard model of legal education, and so it prevents innovative competition from other law schools.”); STEVENS, *supra* note 67, at 75 (explaining how the ABA, together with the American Association of Law Schools, imposed standards that required law students to adopt Harvard’s three-year case-method teaching system).

73. See, e.g., Larry Ribstein, *The Death of Big Law* 55–56 (Univ. of Ill. L. Sch. Research Paper No. LE09-025, 2010), available at www.law.georgetown.edu/LegalProfession/documents/Ribstein.pdf (explaining that the big-law model may soon be obsolete due to global competition and structural problems).

74. Gillian Hadfield, *Law for a Flat World: Legal Infrastructure and the New Economy* 10–13 (USC Law Legal Studies Paper No. 10–8, 2010), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1567712.

twentieth century ideals, formed when the traditional corporation was the organizing factor of economic and cultural production.⁷⁵ At this stage, Internet technology has shown that the rigid top-down organizational structure may not be the most efficient structure for businesses to take.⁷⁶

With respect to commonly accepted narratives for the legal profession and proper legal analysis in the classroom or courtroom, an analogy can be made to the “one-to-many” model of mass media communication, where a few large entities control most of the information.⁷⁷ Cultural meanings, such as what it means to be a lawyer and the correct legal analysis that flows from a case, are tightly controlled by law professors,⁷⁸ judges,⁷⁹ and institutions.⁸⁰ Moreover, the legal profession favors dispute resolution through formal legal processes and reasoned deliberation.⁸¹ Thus, the immediacy with which users can distribute information is something that contrasts with the way ideas have traditionally been debated in the profession.⁸²

75. *See id.* at 10–13, 32–33, 40.

76. *See id.* at 13.

77. *See, e.g.,* BENKLER, *supra* note 34, at 3 (explaining how new technology now allows non-market participants to produce information in a decentralized way, in contrast with the older mass-media regime); CLAY SHIRKY, *supra* note 56, at 86–87 (explaining traditional mass media communication as a “one-to-many” model).

78. A law professor controls legal meanings by structuring the classroom dialogue to emphasize precedent and procedure which tends to greatly limit the story of what happens in a case. *See* ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL* 54–56 (2007).

79. Critics of legal formalism argue that judicial authors use the clipped prose of legal formalism to strip all personal information and social context from a case. One example often cited is the “most famous tort case of modern times,” *Palsgraf v. Long Island Railroad Company*, decided by Judge Benjamin Cardozo. *See* JOHN T. NOONAN, JR., *PERSONS AND MASKS OF THE LAW* 112–13 (1976).

80. Through its Model Rules of Professional Conduct, the ABA is an institution that controls meanings with respect to legal professionalism. *See* Mashburn, *supra* note 68, at 657, 672–73.

81. In our common law system, the Burkean view that we should be conservative in straying from longstanding rules illustrates that lawyers are acculturated to favor slow-moving formal processes over more immediate and informal methods of solving problems. *See* Oona Hathaway, *Path Dependence in the Law: The Course and Pattern of Legal Change in a Common Law System*, 86 IOWA L. REV. 601, 652–53 (2001); Goutam U. Jois, *Stare Decisis is Cognitive Error*, 75 BROOK. L. REV. 63, 64 (2009) (*citing* ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 268 (George Lawrence trans. J.P. Mayer ed. 1969) (“Change comes slowly to the common lawyer Innovation is anathema to him.”)).

82. The increasing popularity of law-related blogs has changed this to

Finally, the mass audience that online communication brings does not have an analogue in the legal profession. For instance, ideas about reforming the profession have traditionally been debated by experts in printed law reviews and ABA committees.⁸³ In terms of the profession as a whole, the audience for a debate on changing a rule of professional responsibility is a limited one.

Technology has redirected the way we access and distribute information on a day-to-day basis. Some of the changes have created a gap in the way meaning is created within the legal profession, which utilizes slower top-down approaches and a smaller scale. Perhaps a greater contrast is to compare the *culture* of the legal profession to the culture of the Internet, with its sharing and community values, its embrace of collective norms and concomitant distrust of rigid rules, and its unfiltered shock-value approach to rhetoric. The next section describes the relevant attributes of the Internet's culture.

III. INTERNET CULTURE

Internet culture has been described as a "participatory culture," which "contrasts with older notions of passive media spectatorship."⁸⁴ Consumers and media producers no longer operate in separate roles; instead, they interact with each other under a new paradigm.⁸⁵ On the Internet, "[t]he producers are

some degree. Nonetheless, the legal profession is still heavily reliant on distribution of ideas in a print format, through court opinions and law review articles.

83. With respect to law professors imparting their expertise on professional issues, there is a well-established practice of posing an argument in a law journal article and then having another professor respond in an article, several months to a year later. This process, of course, predates the advent of law professor blogs. Even with law professor blogs, most would agree that online debates about issues facing the legal profession center around law professors discussing ideas with *other law professors*. See, e.g., *Roundtable Weighs In on Legal Blogs*, L. TECH. NEWS (October 11, 2007), <http://www.law.com/jsp/lawtechnologynews/PubArticleLTN.jsp?id=1192006997478>. Participant Professor Paul Butler is quoted as saying "Well, unfortunately, ladies and gentlemen [addressing practicing lawyers], we don't get a whole lot of credit for writing for you, at least at my school. In fact, it's kind of bad if we do. We're supposed to write for each other."

84. HENRY JENKINS, CONVERGENCE CULTURE: WHERE OLD AND NEW MEDIA COLLIDE 3 (2006).

85. *Id.*

the audience, the act of making is the act of watching, and every link [on the web] is both a point of departure and destination.”⁸⁶ Three of the major hallmarks of Internet culture center around (1) sharing, collaboration, and community; (2) a distaste for legal regulation, but a zest for norm enforcement; and (3) a vibrant and robust style of commentary, which can sometimes turn vulgar and abusive.

Internet culture places value on sharing and collaborating, often outside traditional economic incentives. This focus on collaborative activity derives in part from the open structure of the Internet network, which has created a “remarkable increase in our ability to share, to cooperate with one another, and to take collective action, all outside the framework of traditional institutions and organizations.”⁸⁷ With the advent of “bottom-up” production models, participants are demonstrating an eagerness to contribute to online social projects even though they do not receive direct economic compensation from these activities.⁸⁸ Instead of economic fruits, persons contribute to projects out of simple altruistic desire or because of the ego-boost that comes from seeing their work online.⁸⁹ Clay Shirky offers Wikipedia and Linux as examples of successful projects that have capitalized on the phenomenon of people desiring to collectively participate and contribute to reach an end goal.⁹⁰ In the case of open-source software, such as Linux, companies like IBM have demonstrated that it is possible to profit from a product that is not owned in the traditional sense.⁹¹

Community is another central theme within Internet culture.⁹² The emphasis on community is also traced back to the ideals of the Internet’s technical founders and its early theorists who foresaw cyber-communities as “fully liberated from physical space and the constraints of physical identity—

86. Kevin Kelly, *We Are the Web*, WIRED MAGAZINE, August 2005, available at <http://www.wired.com/wired/archive/13.08/tech.html>.

87. SHIRKY, *supra* note 56, at 20–21.

88. *Id.* at 143–33; *see also* BENKLER, *supra* note 34, at 6–7.

89. ERIC S. RAYMOND, *THE CATHEDRAL AND THE BAZAAR* 53 (2001); SHIRKY, *supra* note 56, at 132–33.

90. SHIRKY, *supra* note 56, at 130–37, 239–40.

91. BENKLER, *supra* note 34, at 124; SHIRKY, *supra* note 56, at 252–53.

92. Mary Chayko defines a “community” as a “set of people who share a special kind of identity and culture and regular, patterned social interaction.” MARY CHAYKO, *PORTABLE COMMUNITIES: THE SOCIAL DYNAMICS OF ONLINE AND MOBILE CONNECTEDNESS* 6 (2008) (stating that in a community, there is a sense of “neighborliness, of warmth and support and belonging.”).

the first truly liberated communities in human history.”⁹³ New interactive media technology enables the creation of different kinds of social communities, defined by common interests rather than geography.⁹⁴ People can now customize their social relations in ways that fit them better. Instead of relying on pre-existing institutions such as schools, religious institutions, churches or the Rotary Club to meet one’s need for social connectivity, individuals can seek out new community relationships based on subjects that interest them.⁹⁵ In online communities, members develop a shared repertoire and language,⁹⁶ often developing “in-jokes” and specialized jargon that apply to the group’s identity.⁹⁷ While some critics argue that technology has made life more alienating and lonely,⁹⁸ others argue that the Internet enables people to “form *real, consequential* bonds with people [they] have never met face to face—and in this world of wireless computers and mobile devices [they] can do it nearly all the time, everywhere [they] go.”⁹⁹

Related to the concept of community is the idea that cyberspace communities should not be subject to regulation by sovereign governments, but instead, Internet norms should be allowed to emerge organically through a process of collaborative consensus.¹⁰⁰ Known either as cyber-

93. GOLDSMITH & WU, *supra* note 18, at 17.

94. CHAYKO, *supra* note 92, at 29; Jenkins et al., *supra* note 33, at 50.

95. BENKLER, *supra* note 34, at 367. One example of a robust online community would be the some 10 million persons who play the online game World of Warcraft. See CASTELLS, *supra* note 60, at xxix.

96. K. Guldberg & R. Pilkington, *A Community of Practice Approach to the Development of Non-Traditional Learners Through Networked Learning*, 22 J. COMPUTER ASSISTED LEARNING 159, 161 (2006).

97. One example of a shared jargon would be the term “hacker,” which originated at the Massachusetts Institute of Technology Tech model railroad club but came to mean a computer “enthusiast, . . . artist, tinkerer, problem solver, [and] an expert.” RAYMOND, *supra* note 89, at xii, 4. Computer acronyms, such as “lol” (laugh out loud), “imho” (in my humble opinion), and “rofl” (roll on the floor laughing) also originated as a shared vocabulary within the hacker community but have now entered mainstream culture. See, e.g., LOL, WIKIPEDIA, <http://en.wikipedia.org/wiki/LOL> (last visited Jan. 23, 2011).

98. CASTELLS, *supra* note 60, at 387.

99. CHAYKO, *supra* note 92, at 3 (emphasis in original).

100. See, e.g., GOLDSMITH & WU, *supra* note 18, at 17–25 (explaining how libertarian notions that the Internet should not be subject to the regulation of territorial governments was derived from the writings of early Internet theorists like John Perry Barlow and the Internet’s technical founders who

libertarianism or Internet exceptionalism, the concept is that cyberspace should be allowed to develop its own way of solving social problems, through norms and consensus building, outside top-down governmental rules and enforcement.¹⁰¹ Again, Wikipedia is a model for how a cyber-community can develop its own norms and enforcement mechanisms to achieve a collective goal.¹⁰² For instance, Wikipedia users should not write entries about themselves¹⁰³ and an editor cannot undo someone else's edits to an article more than three times per day.¹⁰⁴ These norms encourage the efficient collaborative production of objective encyclopedia entries.¹⁰⁵ Enforcement of those norms is achieved by giving certain Wikipedia members the ability to create locks on certain controversial articles and impose temporary blocks on users who have shown a propensity for vandalizing an article.¹⁰⁶ Disputes are resolved through a consensus building process; direct democracy approaches, such as voting, are rejected as unreliable in a digital environment where ballot stuffing can easily occur.¹⁰⁷

Looking beyond the actual norms that emerge to govern the relations between online community members, one can say that norms and norm enforcement has grown to be a bit of an obsession on the Internet. Daniel Solove has investigated and documented various "shaming" and "gripping" practices that have arisen on the Internet in recent years.¹⁰⁸ Websites like BitterWaitress.com (identifying "shitty tippers")¹⁰⁹ and DontDateHimGirl.com (identifying men who were bad dates)¹¹⁰ allow people to exact revenge, in a highly public way, upon individuals who have slighted them.¹¹¹ In other instances, after

built the Internet network as an open system, incapable of being controlled by any one entity, in part because of disdain for centralized control).

101. See *id.*, at 17–25; Holland, *supra* note 6, at 388–91.

102. See ZITTRAIN, THE FUTURE, *supra* note 21, at 135–47; Holland, *supra* note 6, at 399–403.

103. ZITTRAIN, THE FUTURE, *supra* note 21, at 139.

104. *Id.* at 135.

105. *Id.* at 133–142.

106. *Id.* at 135–36.

107. *Id.* at 147.

108. DANIEL SOLOVE, THE FUTURE OF REPUTATION 76-102 (2007).

109. BITTER WAITRESS, <http://bitterwaitress.com/forums/forum.php> (last visited Nov. 9, 2010). The "Shitty Tipper Database" appears to be defunct, but see SOLOVE, *supra* note 108, at 87–89, for a description.

110. DON'T DATE HIM GIRL, <http://dontdatehimgirl.com/home> (last visited Nov. 9, 2010).

111. See SOLOVE, *supra* note 108, at 87–90 (describing how commentators

an Internet user publicly identifies a wrongdoer, a collective mob materializes and dispenses remedies for the violation. Professor Solove gives the example of an Internet user who caught wind of a college student trying to purchase an essay on Hinduism to submit for a class assignment.¹¹² Once the Internet user identified the student by name, there was a swift and brutal response, with other users calling the student's school administrators and bombarding her parents' home with phone calls expressing opprobrium for her dishonest actions.¹¹³ Recently, in the context of discussing possible tax increases for families making over \$250,000, University of Chicago Law Professor Todd Henderson authored a blog post expressing the view that individuals making over \$250,000 do not feel "rich."¹¹⁴ Professor Henderson reported that he was forced to dismantle his blog after a mob of internet users, a "blogocane" (in his words), bore down and sent numerous threatening e-mails to his family.¹¹⁵ Professor Henderson had violated populist norms holding that wealthy persons should not complain about feeling "poor" when so many individuals are struggling to make ends meet.¹¹⁶

Thus, the Internet's affordances that enable collective action can sometimes create a very scary type of mob-justice action. There is now an easy way to shame someone in front of a mass audience and have an angry crowd assemble from all over the world. Such a method of shaming contrasts with more contained "Scarlet Letter" methods of shaming that were common in Colonial times, where a person would be subject to public ridicule at the village pillory.¹¹⁷ The problem with digital shaming, argues Professor Solove, is that the punishment for

on websites like *Bitter Waitress* and *Don't Date Him Girl* use real names and circumstances to identify the people they seek to shame).

112. *Id.* at 76–78.

113. *Id.* at 77.

114. Debra Cassens Weiss, *Law Prof's Deleted Post: I'm not 'Super Rich Enough' for Higher Taxes*, A.B.A. J. ONLINE (Sept. 21, 2010, 6:03 AM), http://www.abajournal.com/news/article/law_profs_page_not_found_post_im_not_super_rich_enough_for_higher_taxes.

115. *Id.*

116. See Paul Krugman, *Rat Race America*, N.Y. TIMES (Sept. 19, 2010, 3:09 PM), <http://krugman.blogs.nytimes.com/2010/09/19/rat-race-america> (attributing to Henderson a "Gordon Gekko" mentality that looks up at those with more and not down at those with less).

117. SOLOVE, *supra* note 108, at 91.

norm violations often outpaces the alleged crime.¹¹⁸

Outside the context of shaming individuals, the practice of “gripping” usually refers to a shaming process in which consumers use the Internet to publicize complaints against a business. With gripping, consumers build so-called gripe sites to document a defect in customer service or a product.¹¹⁹ A gripe-site usually appends the word “sucks” to the name of a company being complained about.¹²⁰ Professor Solove expresses less of a concern for the “gripping” against large businesses and institutions because they are better able to change their image in response to public relations concerns.¹²¹

Emergent norms and norm enforcement procedures (which can sometimes veer out of control) are a core feature of the Internet. However sometimes norms, which would protect core principles of individual dignity and privacy, fail to emerge in the Internet’s unregulated, bottom-up environment. The basic anonymity afforded to Internet participants, as well as legal immunity for Internet intermediaries who set up Internet forums, can produce malignant ecologies where abusive, derogatory, and defamatory speech festers and ferments.¹²² Anonymity, in particular, can unlock “something ugly and menacing in ostensibly normal people.”¹²³ Moreover, in contrast with the idealistic view that Internet participants work collectively to develop and enforce norms that benefit and protect all community members, there is also a virulently anti-social Internet subculture that promotes the intentional disruption of online communities; this subculture is known as “trolling.”¹²⁴

118. *Id.* at 96–101 (suggesting that the lack of due process and the permanency of internet publicity often cause enforcement by shaming to do more harm than good).

119. Entry for Gripe Site, WIKIPEDIA, http://en.wikipedia.org/wiki/Gripe_site (last visited Nov. 9, 2010); *see also* SOLOVE, *supra* note 108, at 93.

120. Gripe Site, *supra* note 119.

121. SOLOVE, *supra* note 108, at 95 (“Companies can readily reinvent themselves, and they routinely do so after their reputation suffers damage.”).

122. *See generally* David Margolick, *Slimed Online*, PORTFOLIO (Feb. 11, 2009), <http://www.portfolio.com/news-markets/national-news/portfolio/2009/02/11/Two-Lawyers-Fight-Cyber-Bullying> (quoting Professor Brian Leiter as calling section 230 of the Communications Decency Act, which provides broad immunity for intermediaries who set up and maintain abusive Internet forums, a “disaster.”).

123. *Id.*

124. Mattathias Schwartz, *Malwebolence: Inside the world of Online Trolls*,

The *AutoAdmit*¹²⁵ scandal is a spectacular example of an instance where an absence of community-based norms, together with a malignant trolling subculture, caused serious harm to several individuals. *AutoAdmit* was (and still is) a discussion board for potential law students, billing itself as the “most prestigious law school admissions discussion board in the world.”¹²⁶ In this forum, mostly-anonymous commentators discuss subjects related to legal education and the law job market.¹²⁷ The un-moderated forum also contains threads featuring derogatory comments about women, Blacks, gays, Asians, and Jewish persons.¹²⁸ In line with abusive trolling culture, forum participants copied photographs of specific women from social networking sites like Facebook, reposted those photographs to the forum, and then made highly offensive, defamatory, and sexist comments about the women and their photographs.¹²⁹ Two victims of this practice sued their anonymous tormentors, and through the subpoena process, successfully traced several wrongdoers’ identities through their IP addresses.¹³⁰ The plaintiffs initially named Anthony Ciolli, a University of Pennsylvania student affiliated with *AutoAdmit*, as a defendant, but later dropped him from the suit.¹³¹ By most accounts, Mr. Ciolli was unresponsive to the plaintiff’s pleas to take down the defamatory posts.¹³² After

who Use the Internet to Harass, Humiliate, and Torment Strangers, N.Y. TIMES MAG., Aug. 3, 2008, at 24, 26, available at <http://www.nytimes.com/2008/08/03/magazine/03trolls-t.html> (“In the late 1980s, internet users adopted the word ‘troll’ to denote someone who intentionally disrupts online communities.”).

125. AUTOADMIT, <http://www.autoadmit.com> (last visited Nov. 9, 2010).

126. *Id.*; see also Ellen Nakashima, *Harsh Words Die Hard on the Web*, WASH. POST, Mar. 7, 2007, at A1, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/03/06/AR2007030602705.html>; Margolick, *supra* note 122.

127. See generally Nakashima, *supra* note 126.

128. Margolick, *supra* note 122. On October 25, 2010, the author of this Article performed searches on *AutoAdmit* looking for threads containing inflammatory words related to race and gender. She found multiple examples of offensive threads flourishing on the site. AUTOADMIT, *supra* note 125.

129. Margolick, *supra* note 122.

130. *Id.*

131. Amir Efrati, *AutoAdmit Lawsuit Update: Ciolli Dropped*, WALL ST. J. L. BLOG (Nov. 9, 2007, 11:50 AM), <http://blogs.wsj.com/law/2007/11/09/autoadmit-lawsuit-update-ciolli-dropped>.

132. Margolick, *supra* note 122 (reporting that Mr. Ciolli initially

settling with several other defendants, the plaintiffs dismissed their lawsuit.¹³³ The *AutoAdmit* scandal generated calls for the reform of section 230 of the Communications Decency Act so that online intermediaries such as Ciolli could be held liable for knowingly allowing tortious conduct to occur on forums they operate.¹³⁴ The deepest irony of the *AutoAdmit* story is that it involved current law students and potential law students, raising the question of what role, if any, our legal culture may have played in fermenting this online cesspool.¹³⁵

The lesson from the *AutoAdmit* scandal is that sometimes we cannot rely on emergent norms to protect individuals in cyberspace. What happened in this case was that the victims turned to sovereign law to remedy the harm done to them. Some would argue that the law did not go far enough because Anthony Ciolli was able to escape liability for refusing to remove the harmful posts. What should not be overlooked, however, is that where cyberspace norms and territorial law failed to fully hold Mr. Ciolli accountable for his actions, the law profession's own set of norms operated to sanction him. For instance, the Boston law firm that had extended an offer to Mr. Ciolli withdrew its offer because of his *AutoAdmit* affiliation.¹³⁶

responded to the plaintiffs' pleas by commenting on his website that, as a matter of policy, he will not remove material that has been posted to the site).

133. Edmund M. Mahony, *Web-post Suit Settled*, HARTFORD COURANT (Oct. 22, 2009), http://articles.courant.com/2009-10-22/news/autoadmit1022.art_1_law-students-law-school-message-board.

134. See, e.g., Danielle Citron, *Cyber Civil Rights*, 89 B.U. L. REV. 61, 117–25 (2009) (arguing that a narrowly crafted duty of care for website operators will help victims of online abuse pursue their attackers while limiting the restriction of internet cultural values like free speech and anonymity); SOLOVE, *supra* note 108, at 191.

135. Brian Leiter first used the term “cyber-cesspool” to describe websites such as *AutoAdmit*. Danielle Citron, *Law's Expressive Value in Combating Cyber Gender Harassment*, 108 MICH. L. REV. 373, 377 n.22 (2009). In the words of one of the *AutoAdmit* users who posted crude and offensive material: “We're lawyers and lawyers-in-training, dude. Of course we follow the law, not morals.” Nakashima, *supra* note 126. In the context of violent school rampages, Helen DeHaven posits that harsh and alienating academic environments may lead to a greater likelihood of a violent incident. Helen DeHaven, *The Elephant in the Ivory Tower: Rampages in Higher Education and the Case for Institutional Liability*, 35 J.C. & U.L. 503, 605–06 (2009). A similar connection might explain why such shocking incivility erupted in the *AutoAdmit* online forum for aspiring members of the legal profession.

136. Amir Efrati, *Law Firm Rescinds Offer to Ex-AutoAdmit Executive*, WALL ST. J. L. BLOG (May 3, 2007, 11:02 AM), <http://blogs.wsj.com/law/2007/05/03/law-firm-rescinds-offer-to-ex-autoadmit-director>.

In the words of the firm's managing partner, Ciolli's offer was rescinded because he passively acquiesced to the nefarious content on the *AutoAdmit* board, which was "antithetical" to the values of the firm and the "principles of collegiality and respect that members of the legal profession should observe in their dealings with other lawyers."¹³⁷ In addition, a group of concerned Yale Law School students presented concerns over Mr. Ciolli to the New York Bar Fitness Committee.¹³⁸ As a result, for several years after graduating from law school, Mr. Ciolli was in a type of legal "exile," clerking in Guam and the Virgin Islands.¹³⁹ Thus, in this instance, where emergent norms and the law failed to effectively control Mr. Ciolli, normative sanctions did result in negative consequences for Ciolli's failure to comply with professional mores.

The last attribute of Internet culture relevant for this analysis is its unfiltered and no-holds-barred approach to communication and argument. For one, bloggers tend to show a lot less restraint in what they write about than the mainstream media.¹⁴⁰ In part because they are operating outside of traditional institutions that adhere to filtering and editing procedures, bloggers "are not afraid to offend and do not water down their message to appeal to the greatest number of audience members."¹⁴¹ Discourse on the Internet has been described as resembling the conversations you might hear in a neighborhood bar—"insights, arguments and occasional obnoxiousness."¹⁴² At its worst, the pungent vulgarity that pervades many Internet websites causes Internet discourse (if we can call it that) to resemble bathroom wall graffiti.¹⁴³

137. *Id.*

138. Margolick, *supra* note 122.

139. *Id.* A recent search of New York State Bar Association's website indicates that Mr. Ciolli did eventually receive certification to practice law in New York. New York State Bar Registration for Anthony Ciolli, NEW YORK STATE UNIFIED COURT SYSTEM, <http://www.courts.state.ny.us/attorneys/registration/index.shtml> (follow "Check Registration Status" hyperlink; then search "First Name" for "Anthony" and search "Last Name" for "Ciolli").

140. SOLOVE, *supra* note 108, at 194 (sketching the development of institutional norms for proper reporting in the mainstream media, a process that is in its "infancy" for internet media).

141. Melissa Wall, 'Blogs of War' Weblogs as News, 6 JOURNALISM 162, 162 (2005), available at <http://jou.sagepub.com/content/6/2/153>.

142. *Id.* at 163.

143. See Schwartz, *supra* note 124.

Moreover, the ease of copying and posting digital images has created a deeply visual culture on the Internet.¹⁴⁴ Consonant with the race-to-the-bottom style of Internet discourse, bloggers often use images, sometimes vulgar and distasteful, to illustrate their points.¹⁴⁵

The question to consider now is what happens when Internet culture collides with the more restrained culture of the legal profession? Unlike the freedom-loving and hierarchy-hating culture of the Internet, the legal culture within the United States is a straight-laced culture, highly dependent on formalism and hierarchy.¹⁴⁶ The *AutoAdmit* case shows that an individual's noncompliance with the norms of the legal profession can lead to appreciable extra-legal consequences. What, then, happens if normative beliefs held by some lawyers, expressing themselves on the Internet, clash with the traditional (and majority) norms of the profession? The next section of this article will explore these issues, using the Law School Scam Blogging movement as an example.

IV. THE LAW SCHOOL SCAM BLOGGING MOVEMENT

A. THE SCAM BLOGGING COMMUNITY

The law school scam blogging movement is a community of mostly lower-tier¹⁴⁷ law school graduates who believe that they made a mistake in going to law school and want to prevent other law students from making the same mistake they did.¹⁴⁸

144. See, e.g., Meredith Badger, *Visual Blogs*, INTO THE BLOGOSPHERE, http://blog.lib.umn.edu/blogosphere/visual_blogs.html (last visited Jan. 23, 2011) (arguing that images have a powerful effect on how we experience information on the internet, affording a sort of credibility to material that otherwise has none).

145. See *infra* Part IV.A and note 159.

146. See generally Lucille Jewel, *Bourdieu and American Legal Education: How Law Schools Reproduce Social Stratification and Class Hierarchy*, 56 BUFF. L. REV. 1155, 1115 (2008) (noting that "professional style and manners," i.e. upper-class style and manners, are, at the current moment, a critical part of learning to be a lawyer).

147. One exception here would be FIRST TIER TOILET!, the author of which, while remaining anonymous, claims to be a graduate of a law school in the top twenty-five schools listed in U.S. News & World Report's rankings. FIRST TIER TOILET!, <http://firsttiertoilet.blogspot.com> (last visited Oct. 27, 2010).

148. Bruce Carton, *Anti-Law School Blogs Seek to Keep Others from Making 'Same Mistake We Did'*, LEGAL BLOG WATCH (Mar. 26, 2010, 12:31PM), http://legalblogwatch.typepad.com/legal_blog_watch/2010/03/antilaw-school-

These bloggers argue that law schools “scammed” them into borrowing excessive sums of money to attend law school by painting too rosy of a picture of the legal job market, a picture that does not accurately reflect the placement and salary statistics for a school’s graduates.¹⁴⁹ The scam bloggers also focus on the exorbitantly high cost of law school;¹⁵⁰ the shockingly low salaries paid by some legal employers;¹⁵¹ and the “sweat-shop” type work environments experienced by attorneys working at temporary jobs, performing systemized due-diligence or discovery-related tasks.¹⁵² Across this network of blogs, lawyers and former lawyers tell stories of beginning law school as idealistic lawyers-to-be, looking forward to a career that would allow them to make a comfortable living doing good things in society.¹⁵³ They then

blogs-[seek-to-keep-others-from-making-same-mistake-we-did.html](#). The Law School Scam website explains the law school scam movement’s mission as follows:

[A] coalition of lawyers (Lawyers Against the Law School Scam) dedicated to exposing the “law school scam.”

In particular, we are interested in exposing the dramatic oversupply of lawyers, and how that oversupply has been caused by bogus employment and income/salary statistics used by most law schools to induce applicants to apply to law school. Also, we are concerned with how the legal establishment is complicit in this “law school scam.”

EXPOSING THE LAW SCHOOL SCAM, <http://lawschoolscam.blogspot.com> (last visited Oct. 25, 2010).

149. See, e.g., Leslie Kwoh, *Irate Law School Grads Say They Were Misled About Job Prospects*, NJ.COM, (Aug. 15, 2010), http://www.nj.com/business/index.ssf/2010/08/irate_law_school_grads_say_the.html.

150. See, e.g., THIRD TIER REALITY, <http://thirtierreality.blogspot.com> (last visited Oct. 25, 2010). In an interview with THE NATIONAL JURIST, Nando, the author of the Third Tier Reality blog states that “[t]he cost is the biggest thing that upsets us. If tuition were more reasonable, it would not be such a scam.” Crittenden, *supra* note 12, at 20.

151. See, e.g., SHIT LAW JOBS, <http://www.shitlawjobs.com> (last visited Oct. 25, 2010) (collecting law job advertisements, across the United States, that are low paying with long hours); Helpme123, *Document Review to \$12 an Hour*, TEMPORARY ATT’Y (Oct. 5, 2010, 12:06 AM), <http://temporaryattorney.blogspot.com/2010/10/document-review-to-12-hour.html>.

152. See, e.g., Helpme123, *17 Hour Workdays*, TEMPORARY ATT’Y, <http://temporaryattorney.blogspot.com/2010/10/17-hour-workdays.html> (Oct. 29, 2010).

153. See generally ANTHONY KRONMAN, *THE LOST LAWYER* 299 (1993) (suggesting the ability to exercise practical wisdom on behalf of a client requires lawyers to suspend their own financial self-interest and “clear an effective space in which his client’s interests may be entertained with real

contrast their initial ideas of what the practice of law would be like with descriptions of a post-graduation reality featuring high debt loads and few job opportunities,¹⁵⁴ or job environments in which professional autonomy and dignity is absent.¹⁵⁵

The Law School Scam Bloggers are an interlinked community. There are over twenty blogs within the network and the bloggers routinely comment on each other's posts and list each other in their blogrolls.¹⁵⁶ The movement also illustrates emergence principles in that the movement started with a few early individual bloggers, and eventually grew into a community of like-minded bloggers.¹⁵⁷ As with other online communities, members of the Scam Blogging movement employ a unique jargon to refer to their subject matter.¹⁵⁸ Though its

feeling."); Susan Carle, *Structure and Integrity*, 93 CORNELL L. REV. 1311, 1313 (2008) (citing DAVID LUBAN, *LEGAL ETHICS AND HUMAN DIGNITY* 65, 87 (Gerald Postema ed., 2007)) (presenting David Luban's conceptions of a lawyer's professionalism, wherein the lawyer should always strive to promote human dignity, as being based on a philosophy of liberal individualism).

154. Angel, *Top Law School Grad Sells Movies and Music On-Line From Parent's Basement!*, BUT I DID EVERYTHING RIGHT! (May 7, 2010, 7:57 PM), <http://butidideverythingrightorsoithought.blogspot.com/2010/05/top-law-school-grad-sells-movies-and.html>.

155. See *supra* note 152 and accompanying text.

156. See, e.g., LAW SCHOOL SCAMBUSTING RESOURCES, <http://jdsacam.blogspot.com> (last visited Oct. 25, 2010) (this website lists twenty three law school scam blogs).

157. TEMPORARY ATTORNEY, which began in 2005, is the oldest blog within the community. See Helpme123, *Random Ravings of a White Collar Day Laborer*, TEMPORARY ATTY (Dec. 4, 2005, 11:35 PM), http://temporaryattorney.blogspot.com/2005_12_01_archive.html. A few additional blogs were in existence in 2007. See Amir Efrati, *Hard Case: Job Market Wanes for U.S. Lawyers*, WALL ST. J., Sept. 24, 2007, at A1, http://online.wsj.com/public/article_print/SB119040786780835602.html (quoting Scott Bullock, the author of Big Debt, Small Law, and mentioning the Loyola 2L blog). It seems that the movement began to coalesce into a true community in 2009, with blogs like THIRD TIER REALITY (which has received over 120,000 visitors), SHILLING ME SOFTLY (over 40,000 visitors), and BUT I DID EVERYTHING RIGHT! (over 80,000 visitors), ESQ. NEVER (40,000 visitors), and FLUSTER CUCKED (11,000 visitors). See THIRD TIER REALITY, <http://thirdtierreality.blogspot.com> (last visited Nov. 10, 2010); SHILLING ME SOFTLY, <http://shillingmesoftly.blogspot.com> (last visited Nov. 10, 2010); BUT I DID EVERYTHING RIGHT!, <http://butidideverythingrightorsoithought.blogspot.com> (last visited Nov. 10, 2010); FLUSTER CUCKED, <http://flustercucked.blogspot.com> (last visited Oct. 25, 2010); ESQ. NEVER, <http://esqnever.blogspot.com> (last visited Oct. 25, 2010).

158. K. Guldberg & R. Pilkington, *A Community of Practice Approach to the Development of Non-Traditional Learners Through Networked Learning*, 22 J.

origin is unknown, “Toilet” refers to a low-tier (as ranked in the U.S. News and World Report) law school that provides a poor investment value for its graduates; “TTT” refers to third-tier law schools (as ranked in the U.S. News and World Report); and “TTTT” refers to fourth-tier law schools¹⁵⁹

Regarding those toilets, the Scam Blog movement has whole-heartedly embraced several aspects of Internet culture, including a penchant for norm enforcement through griping, public shaming, and the use of crude and vulgar rhetoric. In the context of norm enforcement through public shaming, the norm the Scam Bloggers have in mind is that law graduates should be able to enjoy a dignified career and maintain a comfortable standard of living while paying off law school student loans. Thus, the Scam Bloggers seek to publicly shame both institutions (law schools) and certain individuals affiliated with those institutions who are perceived to have breached this norm. For instance, Nando from Third Tier Reality routinely publishes “profiles” of law schools with high tuition costs and a low U.S. News and World Report ranking.¹⁶⁰ Full of scatological imagery of overflowing toilets, disgusting sewage drains, and fecal matter, this author does not mince words or images as he holds out these institutions for public shame.¹⁶¹ With respect to individuals who are perceived to have participated in the law school fraud, there’s Temporary Attorney’s annual “Beastly Behavior Award,” given out to law school administrators and contract firm supervisors who bear, in the blogger’s view, direct responsibility for inaccurate job placement and salary statistics

OF COMPUTER ASSISTED LEARNING 159, 161 (2006).

159. See, e.g., Email from Nando, Author of Third Tier Reality, to author (Oct. 26, 2010 09:26 AM) (on file with the author) (“I use toilet imagery because of the term ‘third tier toilet’ [or, ‘TTT’].”); Helpme123, *Toilet Law Schools Popping Up Everywhere*, TEMPORARY ATT’Y (June 12, 2008, 3:34 PM), <http://temporaryattorney.blogspot.com/2008/06/toilet-law-schools-popping-up.html>; *TTT A Dangerous Misnomer*, ESQ. NEVER (Nov. 27, 2009, 4:52 AM), <http://esqnever.blogspot.com/2009/11/ttt-dangerous-misnomer.html>; *A TTTT Summer 2L has Seen the Light!*, SUBPRIME J.D. (June 10, 2010 3:58 PM), <http://subprimejd.blogspot.com/2010/06/tttt-summer-2l-has-seen-light.html>.

160. For a sanitized viewing of these profiles, see *Nando’s Law School Profiles*, DOWN BY LAW, <http://www.downbylaw.org/nandos-law-school-profiles.html> (last visited Oct. 26, 2010). For a less sanitary view, see the *Third Tier Reality* blog, <http://thirdtierreality.blogspot.com> (last accessed Oct. 26, 2010).

161. See generally, THIRD TIER REALITY, <http://thirdtierreality.blogspot.com> (last visited Oct. 26, 2010).

in law school marketing materials; and undignified legal work environments.¹⁶² Another populist-style Scam Blog shaming method is for the bloggers to conduct online research on legal institutions through websites such as *Guidestar*,¹⁶³ which publish the tax returns for some nonprofit private law schools. Armed with these public documents, the Scam Bloggers then paint certain law school administrators as villainous robber barons comfortably making exorbitant six-figure salaries, while graduates of their institutions sweat and toil to make a living.¹⁶⁴

In analyzing the cultural value, if any, that the Scam Blogging movement brings to the legal profession, we should not discount the movement's community-building function. The Internet provides an alternative space for some lawyers, those who don't quite fit into the profession's traditional social gathering places (bar committees and conference rooms), to exchange information, share stories, and circulate ideas. For instance, through the posting and comment functions on *Temporary Attorney*, anonymous commentators trade war stories about their experiences at various temporary document review "sweatshops." For anyone who associates the practice of law with dignity and respect, the reports are eye-opening. There are frequent descriptions of harsh, humiliating, and sometimes violent work spaces that hold more of a resemblance to a *Lochner*-era factory floor than a lawyer's office. For instance, there are stories of attorneys reviewing documents on computer screens for 12 hours a day in poorly ventilated basements filled with dead cockroaches.¹⁶⁵ On some projects, workers must obtain permission to use the bathroom and are not allowed to leave the premises to walk outside to get a cup of coffee unless it is during the 45-minute lunch-time allocation.¹⁶⁶ On other temporary projects, cell phones and

162. See, TEMPORARY ATT'Y, <http://temporaryattorney.blogspot.com> (last visited Oct. 26, 2010).

163. GUIDESTAR, <http://www.guidestar.org> (last visited Nov. 10, 2010).

164. See e.g., Helpme123, *Joan Wexler of Crooklyn Law School*, TEMPORARY ATT'Y (July 28, 2010 9:52 AM), <http://temporaryattorney.blogspot.com/2010/07/joan-wexler-of-crooklyn-law-school.html>; Nando, comment to *I'm a Loser (Soy un Perderdor): Charter Members of the ShitLaw Hall of Fame*, EXPOSING THE L. SCH. SCAM (July 28, 2010 2:41AM), <http://lawschoolscam.blogspot.com/2010/07/charter-members-of-shitlaw-hall-of-fame.html>.

165. Julie Triedman, *Slaves of New York*, THE AM. LAW., Mar. 2006, at 19.

166. *Id.*; see also Helpme123, *The "Update Legal" Shearman & Sterling*

personal belongings are not permitted in the workroom.¹⁶⁷ Female attorney workers report being assaulted by other workers yet express hesitation to report the assault for fear of losing the job.¹⁶⁸

Similar to the race-to-the-bottom mentality that appeared on the *AutoAdmit* forum,¹⁶⁹ the posts and comments on *Temporary Attorney* are often ugly and sometimes contain negative racial stereotypes about the perceived behavioral traits of various staff attorneys.¹⁷⁰ The anonymous blog forum also makes it difficult to fact-check and determine the truth of the posts.¹⁷¹ Nonetheless, there are some instances of the blog's comments function, which allows users to question the accuracy of a particular post, serving as a type of peer-review that maintains the integrity of the forum.¹⁷² Despite the hostile and often corrosive nature of the forum, *Temporary Attorney* gives attorneys, working in this realm, a place to warn other attorneys about harsh work conditions, build connections, and share experiences of alienation and isolation. Thus, these new websites have opened up spaces that did not

Project, TEMPORARY ATT'Y (Jan. 28, 2008, 12:16 AM), <http://temporaryattorney.blogspot.com/2008/01/update-legal-shearman-sterling-project.html> (describing the work requirements for a document review job at New York law firm Shearman and Sterling).

167. Helpme123, *The Hudson Legal "Environmental Law" Project*, TEMPORARY ATTORNEY (Sept. 22, 2010 10:46 AM), <http://temporaryattorney.blogspot.com/2010/09/hudson-legal-environmental-law-project.html>.

168. Helpme123, *Another Assault at Labaton?*, TEMPORARY ATTORNEY (Mar. 24, 2010, 10:39 PM), <http://temporaryattorney.blogspot.com/2010/03/another-assault-at-labatoilet.html> ("I quit labaton [sic] several weeks ago after I too was assaulted in front of several witnesses in the eating area and no one confronted/reported the asshole who hit me to anyone, including me because we were all afraid of losing our jobs, just as happened to other people recently.").

169. See *supra* notes 125–135 and accompanying text.

170. See Helpme123, *supra* note 168.

171. *Id.*

172. For instance, the comments within the posting about the woman being assaulted at a document review project were questioned in several comments. See comments to Helpme123, *Another Assault at Labaton?*, TEMPORARY ATT'Y (Mar. 24, 2010, 10:39 PM), <http://temporaryattorney.blogspot.com/2010/03/another-assault-at-labatoilet.html>. Yochai Benkler refers to this process of accuracy questioning, played out within the comments section of a blog, as peer production of accreditation. BENKLER, *supra* note 34, at 75–77.

previously exist within the profession's traditional confines: a public forum for attorney criticism and a community gathering place. In looking at these sites, one sees lawyers participating in a vibrant law subculture that would not have been possible before Internet technology. In this author's view, this is a good thing.

Although the harsh public shaming techniques and crude argument style will cause some to turn away in disgust and view the movement as nothing more than the desperate flaming of a few failed law graduates, the Scam Blogger argument is not frivolous. Arguably, a certain level of hypocrisy is present as legal education professionals benefit from marketing campaigns that sell the idea of a law degree as a solid investment that will lead to a stable and comfortable career-path, when the actual numbers¹⁷³ show that the sales pitch is just that—a pitch. Moreover, even if one disagrees with the underlying merits of their argument, as detailed below, the Scam Bloggers have shown an impressive ability to get their message to a mass audience.

B. THE SCAM BLOGGER'S IMPACT

Looking beyond the questionable ways that the Scam Bloggers have harnessed public shaming techniques and bathroom-wall rhetoric to advance their mission, the ideas of the Scam Bloggers have had an appreciable impact on the public and the legal profession. In terms of how this community was able to disseminate their message *en masse*, there are two Internet technology concepts at work here. First, generative Internet technology enabled the Scam Bloggers to air their ideas, form communities with other individuals sharing their views, and give their ideas further momentum by interlinking and connecting up with other networks.¹⁷⁴ Second, the Scam Bloggers exploited the Internet's open network structure to transmit an Internet meme, which connected to hubs in the network, eventually "infecting" an audience of over 600,000 people.¹⁷⁵ This Article will next look at how the Scam Blogger

173. Brian Tamanaha, *The Irresponsibility of Law Schools*, BALKINIZATION (Oct. 18, 2010), <http://balkin.blogspot.com/2010/10/irresponsibility-of-law-schools.html> ("Law schools . . . responded to the worst recession in the legal market in at least two decades by letting in *more* law students.").

174. See *supra* notes 493–554 and accompanying text (explaining how ideas spread through blog networks).

175. See *infra* notes 193–200 and accompanying text.

community, as a collective, was able to raise public awareness for their argument. Then, the Article will look at the Scam Blogger's effective use of a viral Internet meme to infect the public's consciousness.

1. The Scam Blogger Community Network as Information Diffusion Tool

First, given the power-laws at work in the Internet,¹⁷⁶ a connected network of bloggers will have an easier time distributing their message than individual bloggers. This is so because a blogging community can harness the power of all of their network links, in contrast to just one individual's blog and links.¹⁷⁷ Thus, the Scam Bloggers, being an interlinked community, benefit from a wider range of network links than an individual blog.

However, perhaps more importantly, the Scam Bloggers succeeded in reaching out and connecting to other networks. On June 13, 2010, Professor Brian Tamanaha of Washington University Law School posted a blog post referencing the Scam Blog movement on *Balkinization*, a widely-read¹⁷⁸ blog maintained by Professor Jack Balkin at Yale Law School:

It's grim reading. The observations are raw, bitter, and filled with despair. It is easier to avert our eyes and carry on with our pursuits. But please, take a few moments and force yourself to look at Third Tier Reality, Esq. Never, Exposing the Law School Scam, Jobless Juris Doctor, Temporary Attorney: The Sweatshop Edition, and linked sites. Read the posts and the comments. These sites are proliferating, with thousands of hits. Look past the occasional vulgarity and disgusting pictures. Don't dismiss the posters as whiners. To a person they accept responsibility for their poor decisions. But they make a strong case that something is deeply wrong with law schools.¹⁷⁹

Tamanaha's post shows how the Scam Blogger message travelled outside the bounds of its own community and touched

176. See BARABASI, *supra* note 28, at 66 (arguing that only a small minority of the messages will actually reach a mass audience).

177. Ito, *supra* note 32, at 28–30.

178. With roughly 1.1 million page views, *TaxProf Blog* author Paul Caron ranks *Balkinization* as the fourteenth most popular blog maintained by a law professor. See Paul Caron, *Law Prof Blog Rankings*, TAXPROF BLOG (July 7, 2010), http://taxprof.typepad.com/taxprof_blog/2010/07/law-prof.html.

179. Brian Tamanaha, *Wake Up, Fellow Law Professors, to the Casualties of our Enterprise*, BALKINIZATION (June 13, 2010, 6:48 PM), <http://balkin.blogspot.com/2010/06/wake-up-fellow-law-professors-to.html>.

on another community, a community of well-regarded law professors at prestigious law schools. This type of interconnectivity would have been difficult pre-Internet. In this way, the Scam Blogging community linked up with another network, thereby increasing the exposure of their ideas.¹⁸⁰

Throughout the summer and fall of 2010, the Scam Blogger movement continued to gain steam, with several mass media outlets and specialty legal news sources covering the story. The following list shows the chronology of Scam Blog stories in major news outlets:

- August 15, 2010 - *New Jersey Star Ledger*¹⁸¹
- August 24, 2010 - *USA Today*¹⁸²
- August 27, 2010 - *New York Times*¹⁸³
- September 15, 2010 - *Connecticut Law Tribune*¹⁸⁴
- October, 2010 - *National Jurist Magazine*¹⁸⁵
- *October 27, 2010 – Slate Magazine*¹⁸⁶

On October 19, 2010, Stephen Zack, the President of the ABA, was quoted as saying that prospective law students lack awareness about law jobs and salaries, and indicated that the ABA would start looking into ways to correct the problem.¹⁸⁷ The ABA recognized what the Scam Bloggers (and others) have been saying—that law schools, in playing the U.S. News &

180. See, e.g., *supra* notes 177 and 179 and accompanying text.

181. Kwoh, *supra* note 149.

182. Mary Beth Marklein, *Grads Taking Law Schools to Task for Poor Job Market*, USA TODAY (Aug. 24, 2010, 1:28 PM), http://www.usatoday.com/news/education/2010-08-24-1Alawschool24_ST_N.htm?loc=interstitialskip.

183. John Eligon, *Jobs Data More Vital to Her Than Food*, THE N.Y. TIMES CITY ROOM BLOG (Aug. 27, 2010, 5:43 PM), <http://cityroom.blogs.nytimes.com/2010/08/27/jobs-data-more-vital-to-her-than-food/>.

184. Douglas L. Malan, *Law Schools Flamed in Growing Number of Graduates' 'Scam Blogs'*, CONN. L. TRIB. (Sept. 15, 2010), http://www.law.com/jsp/law/article.jsp?id=1202472036425&Law_Schools_Flam ed_in_Growing_Number_of_Graduates_Scam_Blogs.

185. Crittenden, *supra* note 12.

186. Annie Lowrey, *A Case of Supply and Demand*, SLATE MAGAZINE (October 27, 2010), <http://www.slate.com/id/2272621/>.

187. See Karen Sloan, *ABA May Join Push for Law School Transparency*, THE NAT'L L. J. (Oct. 19, 2010), <http://www.law.com/jsp/article.jsp?id=1202473544557>; Debra Cassens Weiss, *ABA Weighs Required Disclosure of Law School Job Stats, More Rigorous Reporting*, ABA J. (Oct. 19, 2010 10:30 AM), http://www.abajournal.com/news/article/aba_weighs_required_disclosure_of_la w_school_job_stats_more_rigorous_report/.

World Report rankings game—have an incentive to cook the numbers to present their employment data in the best light possible.¹⁸⁸ Possible reform solutions could include changing the type of information that law schools are required to disclose to their students, and requiring schools to send “Truth in Law School Education” information to students, covering cost and employment information with a school’s acceptance letter.¹⁸⁹

The big question is what effect, if any, did the Scam Blogging community have in convincing the ABA to seriously look at the law school employment data issue? To be sure, other advocates for greater transparency in law school employment data have made their arguments in a more traditional, and less controversial, way. For instance, in 2008 Professor Andrew Morriss and William Henderson authored a law review article arguing that law schools are incentivized to publish skewed employment numbers as part of an effort to increase their U.S. News & World Report ranking.¹⁹⁰ Moreover, in 2009 Patrick Lynch and Kyle McEntee, two students at Vanderbilt University School of Law, took up the issue, inviting law schools to submit information to their Law School Transparency project, an alternative post-J.D. employment database and website.¹⁹¹ In conjunction with the database and website, these students also authored a lengthy white paper, explaining the reasons and benefits of participating in their project.¹⁹² While the efforts of Professors Morriss and Henderson and law students Lynch and McEntee assuredly played a role in raising awareness of the issue, the Scam Bloggers presented a compelling narrative approach to the problem, which may have generated more media interest in the

188. Sloan, *supra* note 187.

189. *Id.*

190. Andrew P. Morriss & William D. Henderson, *Measuring Outcomes: Post-Graduation Measures of Success in the U.S. News & World Report Law School Rankings*, 83 IND. L.J. 791, 795 (2008) (critiquing generally the “gaming” strategies that law schools engage in to maximize post-graduate employment data, which in turn affects the school’s U.S. News & World Report rankings).

191. *LST’s Origins*, L. SCH. TRANSPARENCY (Aug. 24, 2010), <http://www.lawschooltransparency.com/2010/08/lst-origins> (last visited Oct. 26, 2010).

192. Kyle P. McEntee & Patrick J. Lynch, *A Way Forward: Improving Transparency in Employment Reporting at American Law Schools* (Apr. 10, 2010) (unpublished manuscript) available at <http://ssrn.com/abstract=1528862>.

story than a law review article and white paper would have. While it is not possible to quantify with certainty the effect that the Scam Blogging community had in prompting the ABA to look into reform, based on the chronology of media coverage of the blogs, a strong inference can be drawn that the Scam Bloggers played a substantial role.

2. SCAM BLOG INTERNET MEMES

In addition to spreading an idea through their blogging community network of links, the Scam Bloggers have also had success with mass Internet memes. The first anti-law school Internet meme reached a large audience in December of 2009, after blogger Esq. Never released a series of animated shorts produced using a free animation software program. Entitled “A Law School Carol,” the cartoon showed a prospective law student being visited by the ghosts of his past, sent to show him what his life could have been like had he not gone to law school.¹⁹³ Emphasizing problems of excessive law school debt and limited employment options, the series makes the case, using both dry humor and snarky satire, for why prospective students should think twice before attending law school. The short received much attention, prompting coverage in the *National Law Journal*.¹⁹⁴ Twenty-five thousand people have viewed these shorts to date. Over the course of 2010, more than thirty other anti-law school cartoons emerged from other users.¹⁹⁵ The latest anti-law school cartoon meme, “So You Want to Go to Law School,”¹⁹⁶ was posted to widely read hubs like the *Volokh Conspiracy*,¹⁹⁷ *TaxProf*,¹⁹⁸ and the hugely

193. esqnever, *A Law School Carol Part I*, YOUTUBE (Nov. 19, 2009), <http://www.youtube.com/watch?v=g-wDwmOQ1U> (last visited Oct. 25, 2010).

194. Karen Sloan, *Going to Law School? Proceed with Caution*, THE NAT'L L. J. (Dec. 14, 2009), <http://www.law.com/jsp/article.jsp?id=1202436311250>.

195. See, e.g., *Cartoons Satirizing the Value of Having a Law Degree*, LAW SCHOOL SCAMBUSTING RESOURCES, <http://jdsam.blogspot.com/2010/04/before-you-go-to-law-school-research.html> (last visited Oct. 25, 2010).

196. dwKazzie, *So You Want to Go to Law School*, YOUTUBE (Oct. 14, 2010), <http://www.youtube.com/watch?v=nMvARy0IBLE>. The author of *So You Want to Go to Law School* appears to be linked to, but not a direct participant in, the Scam Blogger community. See Comment of RBSHoo, *YouTube Video Parodying the Value of Going to Law School Goes Viral*, FLUSTER CUCKED (Oct. 25, 2010), <http://flustercucked.blogspot.com/2010/10/youtube-video-parodying-value-of-going.html>.

197. David Bernstein, *So You Want to Go to Law School?*, THE VOLOKH CONSPIRACY (Oct. 20, 2010), <http://volokh.com/2010/10/20/so-you-want-to-go-to-law-school>.

popular *Above the Law* blog,¹⁹⁹ resulting in over 600,000 views to date. These animations also exemplify the New Media concept of *transmedia* rhetoric, the deployment of a variety of mediums (blogs and animations, for instance) to make one's case.²⁰⁰

The Scam Bloggers have shown how an emergent community of lawyers can form, starting with one or two individuals and growing into a collective movement capable of yielding great cultural power through an expansive network of links. The Scam Bloggers have also shown how the Internet network allows one individual's idea to swell into an Internet meme, causing a mass information epidemic. The Scam Bloggers' wide reach indicates that technology really has revolutionized the dissemination of information in the legal profession. Like it or not, sticky Internet memes and in-your-face blogs are impacting the legal profession's culture.

C. PROFESSIONAL ISSUES—THE BATTLE OF THE NORMS

The Scam Bloggers are packing a powerful punch with their anti-law school message and, amidst the backdrop of the Great Recession, that message is resonating greatly with the public. However, the success the Scam Bloggers have had in bringing their message to the public highlights a conflict brewing between the Scam Bloggers' zealous approaches to norm enforcement and the traditional culture of restraint and civility that has long characterized the legal profession in America.

First, with respect to the Scam Bloggers' shaming techniques and norm enforcement arguments, the deep question is—who gets to decide what norms govern the profession? The Scam Bloggers' underlying norm, which they perceive has been breached, is that lawyers should be able to make a comfortable living in a dignified and autonomous way. While most would agree that this norm is not particularly controversial, aspects of the Scam Bloggers' narratives

198. Paul Caron, *So You Want to Go to Law School?*, TAXPROF BLOG (Oct. 20, 2010), http://taxprof.typepad.com/taxprof_blog/2010/10/so-you-.html.

199. Elie Mystal, *How Many Jaded Attorneys Does it Take to Discourage One Law Student?*, ABOVE THE LAW (Oct. 18, 2010 7:01PM), <http://abovethelaw.com/2010/10/how-many-jaded-cynical-attorneys-does-it-take-to-discourage-one-law-student>.

200. Jenkins et al., *supra* note 33, at 46.

(struggling to find a job,²⁰¹ moving back in with one's parents,²⁰² working as a janitor to make ends meet²⁰³) run up against another implicit norm of the profession—that clients (and income) come to good lawyers in a passive way, and good lawyers should not have to hustle for income.²⁰⁴ This conflict should be resolved in favor of a more pluralistic view of what it means to be a good lawyer. That the Scam Blog authors have not set upon an elite law career trajectory (such as a big law firm or reputable public interest job) does not make them any less qualified to speak as members of the profession.

With respect to the Scam Blogging movement, the great irony is that it is a collective of mostly non-elite lawyers arguing against an educational system that was originally put in place to limit the number of lower-class attorneys entering the profession from part-time night law schools.²⁰⁵ Moreover, the legal community has an unspoken view, first formulated during the progressive era, that only lawyers with prestigious credentials and training have the expertise to be able to reform the law.²⁰⁶ Fast-forwarding to today, some argue that the ABA has given us, in top-down fashion, a very expensive, outdated, and overly-rigid legal education model.²⁰⁷ Unlike the more limited opportunities for legal education when the ABA regulations were first imposed,²⁰⁸ there is fairly broad access to legal education today, through easily obtainable student loans. The problem now, however, is the spiraling cost of legal education and a potential oversupply of lawyers.²⁰⁹ Given the

201. *I Love It When They Call Me a Quitter*, SUBPRIME JD (Sept. 24, 2010, 7:01 PM), <http://subprimejd.blogspot.com/2010/09/i-love-it-when-they-call-me-quitter.html>.

202. Angel, *supra* note 154.

203. Alice Lingo, *Meet the Maid*, ALICE OVERTIME, <http://www.alicevertime.com/p/who-does-she-think-she-is.html> (last visited Oct. 26, 2010) (The blog's author is Alice Lingo, a "Lawyer turned Cleaning Lady.").

204. *See supra* notes 66–68 and accompanying text.

205. *See AUERBACH, supra* note 62, at 109; *see generally supra* notes 62–65 and accompanying text.

206. *See Mashburn, supra* note 68.

207. *See, e.g., Shepherd & Shepherd, supra* note 71, at 2133–34 (commenting on the expense of complying with the ABA's accreditation requirements).

208. States began adopting the ABA regulations in the early years of the depression, a time when student enrollment was falling due to the economic conditions. *See STEVENS, supra* note 686, at 177.

209. Mark Greenbaum, Op-ed., *No More Room at the Bench*, L.A. TIMES

historical context in which the ABA came to regulate legal education in the United States, the Scam Bloggers, as the victims of the ABA's top down regulatory process, have a unique and important voice, one that should be listened to. In the longstanding debate about legal education reform, there should be space for emergent and alternative opinions.

There is also a normative conflict in terms of rhetorical choices. By juxtaposing overflowing toilets with law schools and using photographs of pigs to represent the ABA or law school administrators, Scam Bloggers are not highly concerned with hurting feelings or making a formal text-based argument.²¹⁰ As one Scam Blogger states:

I am covering a dishonest industry. I am not obligated to use genteel language to describe the situation. Tons of students are in a dark place, with constant feelings of worthlessness, hopelessness, self-doubt, anger, anxiety, disillusionment, and suicidal thoughts. As such, I need to bring attention to this reality . . . However, this is not an academic discussion about the mating habits of South American fruit-flies. We are not here to debate the benefits and costs of spending X amount of dollars on project Y. *We are talking about people's lives!*²¹¹

The ideas articulated by the Scam Bloggers have certainly been expressed before in more traditional formats, such as law review articles and papers,²¹² but because law professors are speaking to each other²¹³ primarily in logo-centric and formal fashion, an academic idea often fails to resonate with many members of the profession or public. The Scam Bloggers' rhetoric, with its in-your-face vulgarity and its narrative approach, is what gives the movement so much of its cultural power. If we look beyond the distasteful and harsh rhetoric,

Jan. 8, 2010, at A27, available at <http://articles.latimes.com/2010/jan/08/opinion/la-oe-greenbaum8-2010jan08>.

210. Email from Nando, Author of *Third Tier Reality*, to Lucille Jewel (October 26, 2010 9:36AM) (on file with author).

211. *Id.* (emphasis in original).

212. See generally Shepherd & Shepherd, *supra* note 71, at 2096 (arguing that the ABA and law professors are a rent-seeking cartel, seeking to drive up the cost of legal education in their own self-interest); Herwig Schlunk, *Mamas Don't Let Your Babies Grow up To Be . . . Lawyers* 14 (Vanderbilt Law and Econ., Working Paper No. 09-29, 2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1497044 (arguing that law school may be a bad economic investment for students).

213. Even on law professor blogs, professors speak primarily to each other rather than to a wider audience of practitioners. See *Roundtable Weighs In on Legal Blogs*, *supra* note 83.

which certainly clashes with the traditional way that lawyers make and respond to arguments, the ideas do have merit and should be considered.

Due to these normative conflicts, there is the possibility that majority norms within the profession could operate to sanction and control the conduct of a Scam Blogger. One saw how the traditional norms of the profession operated, for good cause, to penalize Anthony Ciolli for the role he played in the *AutoAdmit* scandal.²¹⁴ These same norms could be used to sanction a Scam Blogger. For instance, there could be a negative career impact (should the blogger decide to seek a traditional law practice job) or normative forces could encourage a blogger to take his or her site down, creating a chilling effect of sorts.²¹⁵

Unlike the Ciolli situation, which involved abusive and tortious conduct impacting the privacy rights of two individuals, the Scam Bloggers are engaging in a gripe campaign against powerful institutions—law schools and the ABA. As Professor Solove aptly points out, shaming campaigns against large institutions raise less of a concern, because large institutions are in a better position to protect their reputations than a single individual.²¹⁶ Similarly, because the value of the Scam Blogger message and its community function outweighs any harm done to the legal institution, professional norms should not bear down against the Scam Bloggers.

V. CONCLUSION

With the Scam Blogging movement, a small set of underemployed or unemployed attorneys—not the type of lawyers who would normally be listened to with respect to ideas

214. See *supra* notes 125–139 and accompanying text.

215. While we do not know the cause, Scott Bullock, the formerly anonymous blogger behind *Big Debt, Small Law*, took down his blog after he identified himself in an interview with the *New Jersey Star Ledger*. See Kashmir Hill, *Morning Docket 08.16.10*, ABOVE THE LAW (Aug. 16, 2010, 9:02 AM), <http://abovethelaw.com/2010/08/morning-docket-08-16-10> (“Law is 4 Losers, the man behind the Big Debt, Small Law blog, is a Seton Hall law grad. And he appears to have erased his blog since the article came out.”).

216. SOLOVE, *supra* note 108, at 95. This same logic would apply to the individual law school administrators that have been singled out for shaming. In line with the logic of *New York Times v. Sullivan* defamation jurisprudence, public figures affiliated with large institutions have more control and power to protect their reputation than the average private individual. *N.Y. Times v. Sullivan*, 376 U.S. 254, 304–05 (1964) (Goldberg, J., concurring).

for reforming an aspect of the profession—harness the power of the Internet to argue for changes in the way that law schools market themselves. As the legal community has seen, the Scam Blogger movement has unleashed several Internet cultural phenomena into the legal profession: viral Internet memes, emergent communities, and the use of shaming and griping techniques, sometimes vulgar and insulting, as a norm enforcement mechanism. However, the legal profession should not dismiss alternative lawyer voices coming out of the blogosphere because, despite a subversive approach to rhetoric and argument, these lawyers are contributing valuable ideas about specific problems facing the profession. Moreover, there is an important community function at work: providing some attorneys, operating at the margins of the profession, a community space for fellowship and exchange. In the interest of enriching attorneys' professional identity, the legal profession should embrace the participatory culture of the Internet and the emergence of new legal communities and the alternative viewpoints they bring.