

# Young Lawyer's Corner

## Blogging 101: An Interview with Mark Herrmann and James Beck of the "Drug and Device Blog"

*Eric Hudson and Harley Ratliff*

For this issue we decided to interview two of our favorite legal bloggers—Mark Herrmann and James Beck, who churn out the "Drug and Device Law" blog. We admit it, we're regular readers, and we've even saved some of the lengthier postings in our research folders. These guys are good. If you haven't checked out the blog and your practice involves any aspect of drug and device work, give it a look at [www.druganddevicelaw.blogspot.com](http://www.druganddevicelaw.blogspot.com). In case you're not a drug and device lawyer, don't worry. Although the blog's focus is drug and device law, the topics Beck and Herrmann cover impact a wide variety of products liability and mass torts topics. The blog is an invaluable resource on both substantive law and "hot" topics, and we highly recommend it. Here is the text of our interview with Jim and Mark.

**Question:** We understand the blog recently celebrated its one year anniversary. Tell us how it all got started.

**Answer:** When we started this, we both had a bunch of things we wanted to say publicly but hadn't yet gotten around to. It was too much time and effort to gussy everything up for formal articles. Blogging was just right. We've known each other for years, and one day we got to talking about blogging. Turns out both of us had been thinking about it, but the time commitment to doing it right had deterred us. So we thought we'd join forces. That was a good thing, too, because it took us only about six weeks (and 18 or 20 posts) to pretty much use up all those things we'd been thinking about.

**Question:** How much work do you put into the blog?

**Answer:** Much more than we ever thought—hours and hours and hours. Blogging is hard. Hard. Talk about the law being a jealous mistress. Blogging is too. Combine the two and blogging about the law is a tremendous commitment—at least to do right. We've each written books, and law review articles, and supreme court briefs. This is harder. Much, much harder, because the beast has to be fed constantly.

To attract and maintain a real readership, we must regularly post fresh content about interesting issues, written in a readable style.

"Regularly" is the bear. That means we constantly have to come up with new content several times each week.

Saying "interesting" things in a "readable" style is also harder than it looks. To keep it interesting, we have to give it our personal attention. A lot of lawyers are uncomfortable writing breezily, even us sometimes. First, it takes an experienced eye to identify issues worth discussing—especially in an area so esoteric as drug and medical device product liability litigation. To make it "interesting," we can't just report—"A case came down. The case held 'X.' Therefore, a case came down." We have to analyze the case in the broader context. That's not always easy. You have to know and follow the area. Finally, a "readable" style again means that it has to be one of us who's doing the writing. Random pinch-hitters won't do—our audience will know. That means that we're mostly condemned to writing the blog ourselves. We can't assign writing projects to associates, and we don't get much help.

**Question:** From the technological side of things, how did you set up the blog?

**Answer:** On the cheap, mostly. We run the site on "Blogger." The price is right—it's free. We track visitors on "Google Analytics." It's also free. And we collect pdfs to which we link in our posts on "FileDen." FileDen, you'll be startled to hear, is free. By far the largest cost is the blood, sweat and tears we shed trying to generate interesting content.

Those free services do have some limitations, but we weren't sure how long we'd keep this up. We weren't interested getting our firms to put up serious dough for an experiment that might fail. We're told that one limitation of the free services is Blogger's "Next Blog" icon. Since so many blogs contain pornography, apparently there's a fair chance that, if you click on the "Next Blog" icon, you'll find something like that. We've never bothered with that icon, and we figured that our readers are intelligent enough to understand that we're responsible only for this blog; some other clown writes the next one. (We do, however, have an image in our mind of the people reading this column—half saying, "Egad! Porn? Blech!" and the other half going on-line to our blog and madly searching for the "Next Blog" icon.)

**Question:** The two of you work for different firms. Has that affected your ability to use the site as a means of promoting your individual firms?

**Answer:** Not as much as you might think. If either of our firms had put up serious money to get this started, it might have been different. What it means is we can't use the blog for law firm promotion. But that's actually a good thing. It gives us more credibility with our audience. The most difficult thing about having two firms collaborate on something like this is it multiplies the conflicts. Between our two firms (Jones Day and Dechert) we're in a pretty fair portion of the litigation we're discussing. That results in one or the other of us being muzzled in what we can say. But again, because it's two firms, that also means the other of us can talk about something that, if there was only one of us, we'd never be able to discuss.

So we're happy with this unaffiliated (and occasionally competitive) arrangement. We're pretty good about sharing with each other opportunities that the blog creates. And our law firms appear to be happy with our efforts. That may be "happy" as in "blissfully ignorant." But either way we'll take it. Perhaps other bloggers will learn from our experience and make better choices in the future.

Another factor that's important in keeping the blog "independent" is that, if we write enough words, we'll surely say something that could come back to haunt one of our colleagues or clients; better to blame us, not the institutions. In fact, we sign all posts "Beck/Herrmann" in part to conceal who's to blame for any particular rant that may come back to haunt us.

**Question:** Despite all the hard work in keepin the blog current, informative and interesting, what have been the biggest benefits to each of you?

**Answer:** Although it's hard, blogging offers both personal satisfaction and real benefits. One of the benefits is that blogging is a self-fulfilling prophecy. Since we started the blog, people have regularly been sending us e-mails containing unpublished decisions, creative ideas, heads ups, reprints of law review articles, links to interesting websites, and everything else having to do with drug and device law. As a result we've come to know a great deal about drug and device law.

Another benefit of blogging is that it dramatically raised our personal profile in the world. The two of us have never been press hounds. The press, however, searches on-line to find experts willing to comment on legal topics. If you're on-line, you get found. We've been interviewed this year, as a result of having blogged, by the Wall Street Journal, Forbes, National Public Radio, Bloomberg TV, American Lawyer, and others. It probably happens to one or the other of us once a week. We've had offers to publish—either on-line or back in the paper world—at least a half dozen of our posts. Blogging is an awfully tough route to achieve this relatively minor celebrity status, but, if that turns you on, go for it.

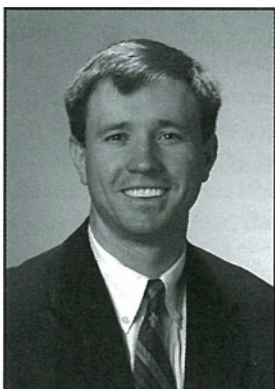
We're impressed by the blogosphere. Smart people say very intelligent things on-line very quickly after news breaks and judicial decisions are handed down. The web is intensely self-correcting; if people make mistakes, many others quickly identify the errors. And there's a weird sense of community with many people whom you've never met, but who you come to respect over time for their thoughts and style.

**Question:** This column is devoted to advice for more junior lawyers. Is legal blogging something that an associate could do to help his or her career?

**Answer:** Maybe, but it's not easy. First there has to be a legal area you know cold and are willing to stay current with. That means you have to specialize in something, which is hard for an associate to do. And if you say something dumb (not that we ever do), it's there for the whole world not just to see, but to comment about it. It's also probably a lot more difficult to get your firm—assuming you have a firm—to go along with blogging if you're an associate. A lot of firms want anything that could be attributed to them to come from partners.

But if you can get your firm to agree, or if you're solo and willing to commit the time and energy, make no mistake about it, it's an excellent way to get yourself noticed—to stand out from the crowd. But you have to (1) know how to write, and (2) be willing to invest the time to do blogging right.

**Question:** Just how popular is the blog—do you know how many people visit it per day?



*Eric Hudson is a member of Butler, Snow, O'Mara, Stevens & Cannada, PLLC. He bases his practice out of Butler Snow's Memphis, Tennessee office.*



*Harley Ratliff is an associate with Shook, Hardy & Bacon LLP, and practices out of the firm's Kansas City, Missouri office. Harley and Eric co-chair the Young Lawyer's Subcommittee of the Mass Torts Committee.*

**Answer:** We had about 50 pageviews on an average weekday in December, 2006—pretty anemic, but not hopeless. Adam Smith, Esq., then wished us a happy zero birthday on his widely read blog, sending a few more visitors our way. Howard Bashman, over at How Appealing, reads Adam Smith, Esq., so he took a look—and promptly ridiculed our “Disclaimer.” He was right, of course: The disclaimer’s an outrage. But, hey, we’re lawyers. Writing outrageous disclaimers just comes naturally.

More importantly, so many people read Howard that quite a few of them looked to see what he thought was so funny, and a bunch of those folks became regular visitors to our site. As of today, we’re dumbstruck by the traffic to our little experiment. In our first year on the web, we’ve drawn nearly 60,000 pageviews, from 98 countries, including every continent except Antarctica. And traffic is growing exponentially over time. In October we received over 12,000 pa-

geviews to the site. According to Justia Blawg Search, we’re now the most widely read product liability blog “of all time,” and Technorati ranks us near the top one-tenth of one percent of blogs of all kinds (which includes sports, politics, porn, and everything else; there’s some tough competition there). Maybe these stats aren’t the greatest—but, we gotta believe we’ve done something right.

**Question:** With the blog being so visible and heavily trafficked, have you considered advertising?

**Answer:** No. Since some of our blogging is on our firms’ time, it would be impossible to determine where the revenues from advertising should go. It just wouldn’t be worth it.

Well, thanks very much to both of you for your time, and keep up the great work. We’ll be reading—and learning. Thanks.

## Business and Commercial Litigation in Federal Courts

EDITED BY ROBERT L. HAIG



Covering the most common commercial litigation subjects, the new edition of *Business and Commercial Litigation in Federal Courts* takes readers through a step-by-step analysis of the entire litigation process. With 16 new chapters and more than 500 pages of forms and jury charges on CD-ROM, the set is an indispensable resource for the commercial litigator.

### SPECIAL SAVINGS FOR LITIGATION MEMBERS

The eight-volume set is now available at a 40% discount to Section of Litigation members.

[www.abanet.org/litigation/books](http://www.abanet.org/litigation/books)