

REPRODUCING GENDER AND RACE INEQUALITY IN THE BLAWGOSPHERE

JANE MURPHY*
SOLANGEL MALDONADO**

TABLE OF CONTENTS

<i>Introduction</i>	239
I. <i>The Emergence of Blogging as Legal Scholarship</i>	240
II. <i>Gender Disparities in Legal Blawgs</i>	246
III. <i>Racial Disparities in Blawgs</i>	254
IV. <i>Why Do Gender and Racial Disparities Matter?</i>	262
V. <i>Creating an Inclusive Blogosphere</i>	264
<i>Conclusion</i>	265

INTRODUCTION

Shortly after President Trump nominated then Judge Neil Gorsuch to the United States Supreme Court, popular legal academic blogs discussed the confirmation hearings and analyzed Judge Gorsuch's likely position on a variety of pressing legal issues. While these posts were enlightening, almost all of the bloggers discussing some of the most important issues of our time—who will sit on our highest court and whose decisions may impact various communities—were white males.¹ Given that many of the issues discussed at the confirmation hearing—abortion, voting rights, affirmative ac-

* Laurence J. Katz Professor of Law, University of Baltimore School of Law. I am grateful to the organizers and participants of *The Fate of Scholarship in American Law Schools* conference held at the University of Baltimore at which Professor Maldonado and I presented some of the ideas contained in this Essay. Thank you to the staff at the University of Baltimore School of Law library and Anna Clark for excellent research assistance.

** Eleanor Bontecou Professor of Law, Seton Hall University School of Law. I am grateful to the organizers and participants of *The Fate of Scholarship in American Law Schools* conference. Adriana Estor and Newton Portorreal provided excellent research assistance.

¹ See, e.g., Richard Primus, *The Gorsuch Nomination: Diversions From, and Opportunities For, Defending the Republic*, BALKINIZATION (Feb. 1, 2017), <https://balkin.blogspot.com/2017/02/the-gorsuch-nomination-diversions-from.html> [<https://perma.cc/KEZ7-76V4>]; Gerard Magliocca, *Some Thoughts on the Gorsuch Hearings*, CONCURRING OPINIONS (Mar. 16, 2017), <https://concurringopinions.com/archives/2017/03/some-thoughts-on-the-gorsuch-hearings.html> [<https://perma.cc/3XJR-8R9X>]; Seth Davis, *Judging Judge Gorsuch On the Separation of Powers*, PRAWFSBLAWG (Mar. 22, 2017), <http://prawfsblawg.blogs.com/prawfsblawg/2017/03/judging-judge-gorsuch-on-the-separation-of-powers.html> [<https://perma.cc/43W5-P7CE>].

tion—are issues that particularly impact women and people of color,² their lack of voice on those blogs was striking.

This was the case despite the fact that the use of the Internet and other digital media to disseminate scholarship has great potential for expanding the range of voices in legal scholarship and discourse. Legal blogging in particular, with its shorter and more informal form compared to traditional law review articles, seems ideal for encouraging commentary from a diverse group of scholars who are not well represented in traditional legal scholarship. This Essay explores the role of blogging in legal scholarship and the level of participation by women and scholars of color on the most visible academic legal blogs to test the idea that blogging is a form ripe for diverse scholarship. This Essay begins with an overview of blawging and its benefits to traditional legal scholarship. It then discusses the predominance of white male scholars as regular contributors on legal blogs and analyzes the relative lack of diversity in blogging as an emerging form of scholarship. Finally, this Essay offers suggestions for reversing these trends to create a more inclusive blogosphere and to increase its potential for lively, informed scholarship.

I. THE EMERGENCE OF BLOGGING AS LEGAL SCHOLARSHIP

Over the last fifteen years, academic legal blogs have become a major forum for law-related discourse³ and are proven to offer significant benefits to individual legal scholars and their respective institutions. The influence of legal blogs—known as “blawgs”⁴—is measured by blawg traffic, citations in court decisions and law review articles, and a variety of other rating sys-

² See, e.g., Ashley Killough & Ariane de Vogue, *Gorsuch Grilled on Trump: ‘No Man Is Above the Law,’* CNN POLITICS (Mar. 21, 2017), <http://www.cnn.com/2017/03/21/politics/gorsuch-senate-hearing-supreme-court/index.html> [<https://perma.cc/STR3-Y4XB>] (describing discussions at the confirmation hearings about, among other things, abortion and maternity benefits); Matt Flegenheimer et al., *Six Highlights from the Gorsuch Confirmation Hearing*, N.Y. TIMES (Mar. 20, 2017), https://www.nytimes.com/2017/03/20/us/politics/judge-gorsuch-supreme-court-confirmation-hearings.html?_r=0 [<https://perma.cc/39QU-TWAW>] (noting one Senator’s comments about then Judge Gorsuch’s record on voting rights cases); Nina Totenberg, *Judge Gorsuch’s Writings Signal He Would Be a Conservative on Social Issues*, NPR (Mar. 16, 2017), <http://www.npr.org/2017/03/16/519501771/judge-gorsuchs-writings-signal-he-would-be-a-conservative-on-social-issues> [<https://perma.cc/T98X-MSEV>] (analyzing then Judge Gorsuch’s record on affirmative action and predicting confirmation hearing questions).

³ See Paul Caron, *Are Scholars Better Bloggers? Bloggership: How Blogs are Transforming Legal Scholarship*, 84 WASH. U. L. REV. 1025, 1030 (2006) (explaining that a study in 2006 estimated the number of such blogs at 600). In 2016, the *ABA Journal* reported that “[t]he tally of law blogs in [its] directory has topped 4,000.” Sarah Mui & Lee Rawles, *10th Annual Blawg 100*, ABA J. (Dec. 1, 2016), http://www.abajournal.com/magazine/article/10th_annual_blawg_100 [<https://perma.cc/QJ3Q-XS7F>].

⁴ See *Blawg Legal Definition*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/legal/blawg> [<https://perma.cc/V357-CM7N>]. We refer to the academic legal blogs as blawgs or collectively as the “blawgoshpere” throughout this Essay but retain the terms blog or blogging for the act of writing a post.

tems.⁵ Different legal entities and contributors use blawgs to serve a variety of purposes in the legal profession generally.⁶ This Essay, however, focuses on a specific type of law-related “academic” blogging whose contributors may include practitioners but are primarily legal academics.⁷ Many of these academic blawgs provide legal analysis and scholarly commentary, as well as a place for scholars to review or promote new legal scholarship⁸ and to try out new ideas in reaction to a court opinion, new statute, or policy trend.⁹ We focus on these blawgs because, unlike many law firm-sponsored blogs that are focused on marketing or advocacy, these blogs are devoted to advancing scholarly ideas. These blogs are particularly important to scholars because they provide enhanced visibility to other scholars who can facilitate the advancement of bloggers’ careers by providing invitations to conferences, commenting favorably on blog posts in their own scholarship, or even voting on the blogger’s appointment, tenure, or promotion.

Unlike law review articles, which usually run about 25,000 words with hundreds of footnotes,¹⁰ blawg posts are shorter, less formal and rarely in-

⁵ For a full list of highly ranked blogs on the basis of numbers of citation, see J. Robert Brown, Jr., *Law Faculty Blogs and Disruptive Innovation: The Data*, at Appendixes A and B. UNIV. DENVER STRUM COLLEGE OF L., L. RES. PAPER SERIES (Aug. 28, 2012), <https://ssrn.com/abstract=2115587> [<https://perma.cc/AEX2-25BE>]. A number of other rankings exist for both academic and non-academic legal blogs, including the American Bar Association’s Annual 100 Best Blawgs. See Mui & Rawles, *supra* note 3. For a ranking of blogs based upon page views and visits based upon data in 2014, see Paul L. Caron, *Law Prof Blog Traffic Rankings*, L. PROFESSOR BLOGS NETWORK: TAX-PROF BLOG (Oct. 25, 2011), http://taxprof.typepad.com/taxprof_blog/2011/10/law-prof-blog.html [<https://perma.cc/QW3P-DDAW>] (top blog had over 18 million page views in one 12-month period).

⁶ For example, law firms use blogs to announce developments in the law and law practice for successful litigation, often with the goal of attracting clients. See *News and Commentary*, MINN. LITIGATOR, <http://www.leventhalpllc.com/news-commentary> [<https://perma.cc/EC4Z-HDTW>]. Blogs are also a place for the latest news about legal education: admissions, faculty hiring, and just plain gossip. See, e.g., ABOVE THE L., <http://abovethelaw.com> [<https://perma.cc/329U-RK64>]; L. PROFESSOR BLOGS NETWORK: BRIAN LEITER’S L. SCH. REPORTS, <http://leiterlawschool.typepad.com> [<https://perma.cc/73CA-ZN78>]; Deborah Merritt & Kyle McEntee, L. SCH. CAFE, <http://www.lawschoolcafe.org> [<https://perma.cc/FJ7E-BQPT>]; FACULTY LOUNGE, <http://www.thefacultylounge.org> [<https://perma.cc/9FVZ-X4S8>].

⁷ A 2012 study placed the total number of law faculty who blog at 302. See J. Brown, Jr., *Essay: Law Faculty Blogs and Disruptive Innovation* (Aug. 13, 2012), 2 J.L. (1 J. LEGAL METRICS) (U. DENVER L. STUDIES RES. Paper No. 12–27) 525, 554.

⁸ Jotwell, *The Journal of Things We Like (Lots)*, describes its mission as “filling a telling gap in legal scholarship by creating a space where legal academics can go to identify, celebrate, and discuss the best new scholarship relevant to the law.” *Mission Statement*, JOTWELL, J. OF THINGS WE LIKE (LOTS), <http://jotwell.com/mission-statement> [<https://perma.cc/Q795-T7YP>].

⁹ See, e.g., SCOTUSBLOG, <http://www.scotusblog.com> [<https://perma.cc/337F-ZTKF>] (a blog that responds to new opinions by the United States Supreme Court).

¹⁰ For example, the *Harvard Law Review* prefers articles that are under 25,000 words in length. *Submissions*, HARV. L. REV., <http://harvardlawreview.org/submissions> [<https://perma.cc/CJ5A-TM7L>]. Some law reviews have responded to the potential displacement of blog posts for legal analysis and commentary by publishing online versions. See *MLR Online*, MICH. L. REV., <http://michiganlawreview.org/mlr-online> [<https://perma.cc/USD2-FL4T>] (noting that *MLR Online* publishes “short articles and op-ed style pieces,”

clude citations to authority.¹¹ Most blog posts are 500–1000 words.¹² Some blawgs may permit longer posts, particularly when organized around a theme like a book or a recent Supreme Court decision. For example, the *Concurring Opinions* blawg regularly holds book symposia where a regular contributor invites three to five guest contributors to read and comment on a book by a legal scholar.¹³

Academic blawgs may have single contributors or, more commonly, a group of regular contributors and occasional guest contributors. These blawgs may be “independent”—neither directly attached to nor supported by a law school—or sponsored by law schools.¹⁴ Others are sponsored by advertisements and organized as limited liability corporations owned or co-owned by one or a few law professors.¹⁵ Increasingly, academic blogs have joined networks, or what Professor Robert Brown calls “Empires.”¹⁶ A primary example of this kind of blog is the Law Professor Blogs Network, organized by legal subjects like Tax, Constitutional Law, and Family Law. It now includes approximately 60 blawgs edited by more than 100 law profes-

as well as “timely responses to articles in the print journal of the *Michigan Law Review*.”) Yet online law review submissions tend to be longer than blog posts and, while some online law reviews invite essays and blog-length pieces, most pieces are longer than blog posts and replicate the format of law review articles, including footnotes. *See, e.g., Online Essay Submissions*, STAN. L. REV., <https://www.stanfordlawreview.org/%20submissions/online-article> [<https://perma.cc/U9MY-MFQF>] (3,000 words inclusive of footnotes); *Submissions Instructions*, COLUM. L. REV., <http://columbialawreview.org/submissions-instructions> [<https://perma.cc/2MZC-RYFU>] (3,000–6,000 words including footnotes); *MLR Online*, MICH. L. REV., <http://michiganlawreview.org/mlr-online> (last visited Nov. 11, 2017) [<https://perma.cc/USD2-FL4T>] (4,000–6,000 words including footnotes).

¹¹ In October 2017, the *Harvard Law Review* launched its blog, *Harvard Law Review Blog*, which is expressly distinct from the law review itself and its online counterpart, *Forum*. Keeping with the shorter and more informal character of blawgs, the *Harvard Law Review Blog*, unlike the law review’s traditional print publication and *Forum*, has “abbreviated the traditional editing process used for [its] print and *Forum* content” in order to “provide content that is accessible to a broader audience” and “publish content from a variety of points of view.” HARV. L. REV. BLOG, <https://blog.harvardlawreview.org/about/> [<https://perma.cc/BX32-WK2G>].

¹² *See* Joe Bunting, *How Long Should Your Blog Post Be? A Writer’s Guide*, WRITE PRACTICE, <http://thewritepractice.com/blog-post-length> [<https://perma.cc/XM7M-RJLM>].

¹³ *See, e.g.,* Solangel Maldonado, *Upcoming Online Symposium on Merle Weiner’s “A Parent-Partner Status for American Family Law,”* CONCURRING OPINIONS (Oct. 11, 2015), <https://concurringopinions.com/archives/2015/10/upcoming-online-symposium-on-merle-weiners-a-parent-partner-status-for-american-family-law.html> [<https://perma.cc/Z43B-HSJM>].

¹⁴ These may include blawgs with regular faculty contributors from a number of law schools. *See, e.g.,* JOTWELL, J. OF THINGS WE LIKE (LOTS), <http://jotwell.com> [<https://perma.cc/V8ZN-8PGX>] (Jotwell is sponsored by the University of Miami. The Sections and Editors sidebar lists all the different editors of Jotwell). Sometimes blogs are limited to posts by the sponsoring law school’s faculty or students. *See, e.g.,* U. CHI. L. SCH. FACULTY BLOG, uchicagolaw.typepad.com [<https://perma.cc/AGX8-GPSN>].

¹⁵ *See, e.g.,* L. PROFESSOR BLOGS NETWORK, <http://www.lawprofessorblogs.com> [<https://perma.cc/9UC9-RGVE>].

¹⁶ Brown, *supra* note 7, at 528.

sors, law librarians, and law practitioners.¹⁷ In 2014, the *Volokh Conspiracy* migrated behind the pay wall of the online edition of the *Washington Post* in what may be a larger trend in the blogging world.¹⁸ According to University of California–Los Angeles law professor and *Volokh Conspiracy* blog co-founder Eugene Volokh, the move was made to gain wider readership. While the blog will maintain editorial independence, Volokh recognizes that the tone and content of the blog may change with the broader audience that the *Washington Post* affiliation may bring.¹⁹

Blogging as a form of legal scholarship has been the subject of much debate.²⁰ The number of blawgs and their wide range of contributors make it hard to meaningfully judge quality,²¹ but many agree that “[a] class of

¹⁷ See L. PROFESSOR BLOGS NETWORK, *supra* note 15.

¹⁸ Justin Berrier, *The Volokh Conspiracy and Washington Post’s Move to the Right*, MEDIA MATTERS FOR AM. (Jan. 22, 2014), <https://mediamatters.org/blog/2014/01/22/the-volokh-conspiracy-and-washington-posts-move/197694> [<https://perma.cc/73QC-D7YX>]. For a discussion of the growing popularity of paywalls for a wide range of written material, including blogs, see *Paywalls Are on the Rise with Many Success Stories*, MEDIUM (Nov. 6, 2016), <https://medium.com/@getdrizzle/paywalls-are-on-the-rise-with-many-success-stories-3a7101f55bea#mabo23e47> [<https://perma.cc/9LFT-6DJ8>].

¹⁹ Eugene Volokh, *In Brazil, You Can Always Find the Amazon—In America, the Amazon Finds You*, WASH. POST: VOLOKH CONSPIRACY (Jan. 21, 2014), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/01/21/in-brazil-you-can-always-find-the-amazon-in-america-the-amazon-finds-you-2/?utm_term=.94e1e36314ec [<https://perma.cc/564B-6YNC>] (“[W]e recognize that a few things will change, not because of [the *Washington Post*’s] demands but because our attitudes to blogging will change in some measure. When someone else’s brand is at stake in what you write, you think about that before writing.”).

Other indications of the increasing visibility of legal academic blogs can be seen in the recent appearance of the publisher of *SCOTUSblog* on *The Daily Show*. See Staci Zaretsky, *Quote of the Day: Strip Searches Are Funny on Cable TV*, ABOVE THE L. (Apr. 4, 2012), <http://abovethelaw.com/2012/04/quote-of-the-day-strip-searches-are-funny-on-cable-tv> [<https://perma.cc/T9S5-VG75>].

²⁰ See, e.g., *Bloggership Symposium*, BERKMAN KLEIN CTR. FOR INTERNET & SOC’Y AT HARV. UNIV., <https://cyber.harvard.edu/node/97654#> [<https://perma.cc/X949-E9Q8>] (surveying the impact of blogs on “the delivery of legal education, the production and dissemination of legal scholarship, and the practice of law”); *The Fate of Scholarship in American Law Schools – Baltimore, MD*, LEGAL SCHOLARSHIP BLOG (Feb. 23, 2016), <http://www.legalscholarshipblog.com/2016/02/23/the-fate-of-scholarship-in-american-law-schools-baltimore-md> [<https://perma.cc/36T4-SCPZ>] (examining “emerging scholarly forms and technologies and the relationship among legal scholarship”); Brown, *supra* note 7, at 526–27 (discussing the “burgeoning influence of law faculty blogs” and their role in “supplanting some of the traditional functions of law reviews”). At least one commentator, however, finds the debate “a bit silly”: “A general debate concerning whether law blogs are or can be legal scholarship makes little more sense than a general debate concerning whether law articles or law books are or can be legal scholarship. [Put simply, b]logs—like articles and books—are just a medium of communication. [And, l]ike other media of communication, blogs surely can be used to advance a scholarly mission or a range of other missions.” Douglas Berman, *Scholarship in Action: The Power, Possibilities, and Pitfalls for Law Professor Blogs*, 84 WASH. U. L. REV. 1043, 1043 (2006).

²¹ Of course, the increase in the number of law reviews over the last two decades and the role of student editors in those journals have made traditional legal scholarship subject to the same critique. See Richard A. Posner, *Against The Law Reviews*, LEGAL AFFAIRS (Nov./Dec. 2004) <http://www.legalaffairs.org/issues/November-December-2004/>

widely recognized and often cited law faculty blogs has emerged.”²² There is consensus now that blog posts make significant contributions to the development and dissemination of legal scholarship. Examples of blawgs topping the lists of most cited blawgs in court opinions and law reviews include *Balkinization*, the *Volokh Conspiracy*, *Concurring Opinions*, and *PrawfsBlawg*.²³ As one commentator noted about *Volokh Conspiracy*:

But even if it is unusually well-known, *Volokh* has the characteristics of most successful academic blogs: Its contributors are scholars and experts in a given field, and they use that expertise to provide on-the-spot analysis and running commentary on issues that matter. They interact with readers who comment on posts and build on (or push against) each other’s insights. Not unlike peer review . . . except on a potentially wider scale, and in public.²⁴

There are a few dissenting voices who believe that blogging may have negative consequences for legal scholarship and scholars who blog. Brian Leiter suggests that blogging’s public dissemination of opinions without vetting or critique “make[s] possible the repeated and systematic broadcast of non-expert opinion.”²⁵ Douglas Berman, the creator and sole contributor to the widely-cited blog *Sentencing Law and Policy*, has described the mixed impact of legal blogging on his scholarly production.²⁶ He describes blogging as “a time suck and addiction” taking scholars away from, among other things, more substantial writing.²⁷ He also suggests that academic blogging might distort one’s scholarly agenda by encouraging scholars to write about topics that result in the most “hits.”²⁸ Others have pointed out that in addition to the time taken away from “traditional” scholarly activity, blogging

review_posner_novdec04.msp [<https://perma.cc/WJ9E-BLQD>]. *But see* Alfred L. Brophy, *Mrs. Lincoln’s Lawyer’s Cat: The Future of Legal Scholarship*, 39 CONTEMPORATIONS 11, 26 (2007) (extolling the virtues of law reviews and noting that he “share[s] others’ great skepticism of blogs as scholarship and most assuredly do not believe that those of us who spend our free time blogging deserve credit for it”).

²² Brown, *supra* note 7, at 531.

²³ *See* Brown, *supra* note 5 and accompanying text.

²⁴ Andy Guess, *Blogs and Wikis and 3D, Oh My!*, INSIDE HIGHER ED (May 9, 2008), <https://www.insidehighered.com/news/2008/05/09/blogs/> [<https://perma.cc/523P-UKVM>]; *see also* Brown, *supra* note 7, at 536 (“[R]ankings reveal a cluster of law faculty blogs that are generally seen as trusted sources of legal analysis.”).

²⁵ Brian Leiter, *Why Blogs Are Bad for Legal Scholarship*, 116 YALE L.J. POCKET PART 53, 53 (2006), <https://www.yalelawjournal.org/forum/why-blogs-are-bad-for-legal-scholarship> [<https://perma.cc/CR2G-MXQU>]; *see also* Adrienne E. Carter, *Blogger Beware: Ethical Considerations for Legal Blogs*, 14 RICH. J.L. & TECH. 1, 7 (2007) (“Legal blogs lack the peer review of scholarly and legal journals, making them vulnerable to both error and credibility problems.”).

²⁶ *See* Berman, *supra* note 20, at 1049–54.

²⁷ *Id.* at 1054.

²⁸ *Id.*

may generate negative comments that can be emotionally draining, particularly for junior faculty.²⁹

Despite these concerns, there is a growing consensus among scholars that contributing to these influential blogs is beneficial to law faculty for various reasons.³⁰ First, blog posts encourage larger audiences for scholars' traditional legal scholarship. A post on a widely-read blog discussing scholarship, a law review article, or a book can increase attention to longer form scholarship.³¹ Some commentators have attempted to measure the "bounce" scholars get from attention on popular blawgs.³² Paul Caron, an early and leading blogger, demonstrated a positive correlation between a scholar's popularity as a blogger and the number of citations to and downloads of the blogger's traditional scholarship.³³ Another commentator tried to quantify the impact of blogging on a specific article by looking at the author's downloads on Social Science Research Network ("SSRN"), a website that facilitates the free posting and sharing of research material in the social sciences.³⁴ The commentator reported that the number of SSRN downloads substantially increased forty-eight hours after the post.³⁵

Blogging also permits scholars to reach audiences they may not otherwise reach through traditional scholarship. Despite the academic orientation of the blawgs discussed in this Essay, blawg comments reveal that blogs are read by law students, practicing lawyers, experts in other fields, and non-lawyers.³⁶ Short, more informal, and footnote-free posts are likely more interesting alternatives for these audiences.³⁷ Shorter forms of blog posts and their exposure to a wider readership also provide the opportunity to test new

²⁹ See B. Jessie Hill, *The Associate Dean for Research in the Age of the Internet*, 31 *TOURO L. REV.* 33, 37 (2014); see also Christine Hurt & Tung Yin, *Blogging While Untenured and Other Extreme Sports*, 87 *WASH. U. L. REV.* 1235, 1249 (2006).

³⁰ See Brown, *supra* note 7, at 525–27, 548–51 (arguing that having faculty who blog can also bring institutional benefits to bloggers' home schools); Caron, *supra* note 3, at 1025, 1037–39.

³¹ See Brown, *supra* note 7, at 549–50.

³² See Caron, *supra* note 3, at 1031–32. Paul Caron is the founder of the Law Professor Network Blogs, discussed *supra* note 15 and in accompanying text.

³³ See *id.*

³⁴ See Gregg Gordon, *SSRN—The Leading Social Science and Humanities Repository and Online Community—Joins Elsevier*, ELSEVIER (May 17, 2016), <https://www.elsevier.com/connect/ssrn-the-leading-social-science-and-humanities-repository-and-online-community-joins-elsevier> [<https://perma.cc/59A9-LD7C>].

³⁵ Brown, *supra* note 7, at 549.

³⁶ Jennifer J. Rose, *The Blog Spot*, 11 *NO. 10 INTERNET L. RESEARCHER* 9, 9 (2006) (reporting that "57% of lawyers read at least one blog a day").

³⁷ For one of the earliest critiques of the inaccessibility of law review articles, see Fred Rodell, *Goodbye to Law Reviews*, 23 *VA. L. REV.* 38 (1936). See also Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 *MICH. L. REV.* 34 (1992) (noting that law reviews have been "unsuccessful" with their efforts to "counter the impact" of law faculty blogs "through the development of online companions"); Posner, *supra* note 21 (comparing law reviews to other scholarly journals, which are "edited by seasoned specialists, usually professors," Posner points out that law reviews are "edited by law students" who are "inexperienced both in law and in editing"); Michael J. Madison, *The Idea of the Law Review: Scholarship, Prestige*

ideas and get feedback from a broader audience to better inform scholars about which ideas are worth pursuing in a longer form. These new audiences who read the blawg post might be drawn to the author's longer scholarship, including judges who might cite to this scholarship (or even the blawg post) in their decisions.³⁸ Blogging for broader audiences may also lead to interdisciplinary or practitioner collaborations as well as media appearances. Such exposures may also lead to greater name recognition.

Blawg posts also allow for the expression of scholarly ideas in a timely manner without "the worst excesses and most confining aspects of traditional forms of legal scholarship."³⁹ Writing a full-length law review article can take scholars months. Once submitted and accepted—often a long process in itself—the typical law review takes another six months to a year to publish.⁴⁰ A blawg post critiquing a legal development—an important Supreme Court decision, for example—can be out in the blawgosphere minutes after an opinion is issued. This allows scholars to disseminate their ideas much more quickly and with less effort than usually required in traditional scholarship.

Participating in highly visible blawgs is increasingly important to establish a strong scholarly reputation. More and more, blogging is viewed as a legitimate part of legal scholarship, particularly when posts are in the highly visible blawgs discussed below. Such blogging enhances faculty reputation by providing scholars with larger and more diverse audiences, as well as the ability to test ideas quickly and thereby strengthen them as they are more fully developed in traditional legal scholarship.⁴¹

II. GENDER DISPARITIES IN LEGAL BLAWGS

Despite the benefits of academic legal blogging, highly visible blawgs lack adequate representation of women authors. This holds true even though women are more active participants than men in social media generally⁴² and

and *Open Access*, 10 LEWIS & CLARK L. REV. 901, 904 (2006) ("[L]aw professors know that few people outside of law schools actually read the law reviews.").

³⁸ See Brown, *supra* note 7, at 533–35.

³⁹ Berman, *supra* note 20, at 1048.

⁴⁰ See Matthew Salzwedel, *Don't Waste Your Time Writing Law-Review Articles*, LAWYERIST.COM (Oct. 3, 2012), <https://lawyerist.com/48777/dont-waste-your-time-writing-law-review-articles> [<https://perma.cc/6KUR-7KN4>] (estimating that it is at least one year from the start of writing a law review article to publication).

⁴¹ A junior scholar who has not yet had the opportunity to present her work at many conferences and "be noticed" can advertise her expertise and forthcoming scholarship by blogging. See Hurt & Yin, *supra* note 29, at 1248 ("Professors who traditionally would be overlooked for conference panels and presentations because of their geographical location, junior status, or institution can now disseminate their ideas to senior colleagues they may have never met.").

⁴² See Megan Garber, *The Digital (Gender) Divide: Women Are More Likely than Men to Have a Blog (and a Facebook Profile)*, ATLANTIC (Apr. 27, 2012), <https://www.theatlantic.com/technology/archive/2012/04/the-digital-gender-divide-women-are->

on some blawgs.⁴³ The gender breakdown of regular contributors to four popular⁴⁴ academic-oriented blawgs demonstrates this point.⁴⁵

Name of Blog	# of Regular Contributors	Men	Women
<i>Balkinization</i>	35	29	6
<i>Concurring Opinions</i>	14	9	5
<i>Prawfsblawg</i>	13	9	4
<i>Volokh Conspiracy</i>	23	22	1

Studies document a similar gender disparity in law review publication.⁴⁶ Although there are some variations by rank, seniority, and home school of female faculty, highly-ranked journals publish male scholarship more often than female scholarship.⁴⁷ In one leading study, Minna Kotkin analyzed authorship by gender and “home school privilege” in fifteen law reviews (the “top ten”) over a three-year period.⁴⁸ She found that just over twenty percent of articles in those law reviews were written by women even though women make up thirty-one percent of the tenured/tenure-track faculty

more-likely-than-men-to-have-a-blog-and-a-facebook-profile/256466 [https://perma.cc/PB9U-DTD2].

⁴³ See, e.g., L. PROFESSOR BLOGS NETWORK: FAM. L. PROF BLOG, http://lawprofessors.typepad.com/family_law [https://perma.cc/5B5T-M4NM] (the only editor of the blog is a female law professor); FEMINIST L. PROFESSORS, <https://www.feministlawprofessors.com> [https://perma.cc/C7KG-CHD9]. The underrepresentation of women is not as pronounced in non-academic oriented legal blogs. See Alison I. Stein, *Women Lawyers Blog for Workplace Equality: Blogging as a Feminist Legal Method*, 20 YALE J.L. & FEMINISM 357, 370 (2009) (describing the widespread use of blogs by women lawyers as a “larger movement” that “focus[es] on legal profession, women’s issues, and work-life balance more generally”).

⁴⁴ The *Volokh Conspiracy* and *Prawfsblawg* were both named to the ABA Blawg 100 Hall of Fame, which includes blogs that have “consistently been outstanding throughout multiple Blawg 100 lists.” Mui & Rawles, *supra* note 3.

⁴⁵ The information on this chart was obtained from home page of each blog on October 1, 2017. BALKINIZATION, <https://balkin.blogspot.com/> [https://perma.cc/7JF3-KTF2]; CONCURRING OPINIONS, <https://concurringopinions.com/> [https://perma.cc/56BT-XYC3]; PRAWFSBLAWG, <http://prawfsblawg.blogs.com/> [https://perma.cc/8AXG-RBE9]; Eugene Volokh, *Who Are We?*, WASH. POST: VOLOKH CONSPIRACY (Jan. 16, 2014), https://www.washingtonpost.com/news/volokh-conspiracy/who-are-we/?utm_term=.E991b1df7ab9 [https://perma.cc/J6Y2-65AP]. The *Volokh Conspiracy* has not updated its list of bloggers since 2014.

⁴⁶ See Minna J. Kotkin, *Of Authorship and Audacity: An Empirical Study of Gender Disparity and Privilege in the “Top Ten” Law Reviews*, 31 WOMEN’S RTS. L. REP. 385 (2010) (finding substantial gender disparities in publication at all of the fifteen “top ten” law reviews).

⁴⁷ *Id.*

⁴⁸ *Id.* at 385–86. The term “home school privilege” refers to the advantage of those seeking publication on journals published by law schools where the author is a member of the faculty. Prof. Kotkin found that in “top ten” law schools the home advantage was the strongest and tended to disadvantage women. *Id.* at 404–05.

nationally.⁴⁹ The relative lack of female voices in the upper echelons of the legal blogosphere parallels gender patterns in traditional legal scholarship.

Why Aren't More Female Faculty Blogging?

Commentators have suggested a number of explanations for the underrepresentation of women in legal scholarship. Women have been teaching in law schools for fewer years than men; they appear in fewer numbers in highly ranked schools; and they tend to be underrepresented in subjects like Constitutional Law that appear more frequently in prestigious law journals.⁵⁰ Just like traditional scholarship, the subjects most often discussed in the blawgs are Constitutional Law,⁵¹ Civil Procedure, and Criminal Law,⁵² all of which are taught more often by men.⁵³ While there are blogs focusing on Family Law, Trusts and Estates, Feminist Jurisprudence, and other areas in which female scholars blog in greater numbers,⁵⁴ these blawgs do not have the visibility of the highly rated blawgs.⁵⁵ At least one commentator concluded that “the online world of legal scholarship may ultimately replicate many of the hierarchical and gendered structures found in the offline world of legal scholarship.”⁵⁶ The reasons underlying this prediction echo those that explain women’s inability to keep pace with men in the world of traditional scholarship.

One reason for this prediction may have to do with the time required to blog. Even with the shorter, more informal style of blogging, being a regular contributor to a blog takes time. Douglas Berman noted this when he described the excessive time he spent blogging because he felt “the need to feed the beast” whenever there was a new legal development in his field.⁵⁷ Since bloggers *can* react immediately to a legal development, those who own or contribute to them feel they *must* react immediately.⁵⁸

⁴⁹ *Id.* at 398, 418.

⁵⁰ *Id.* at 429.

⁵¹ SCOTUSBLOG, *supra* note 9.

⁵² *See, e.g.*, SENTENCING L. AND POL’Y, <http://sentencing.typepad.com/> [<https://perma.cc/57VV-X2NN>].

⁵³ *See* Ann C. McGinley, *Reproducing Gender on Law School Faculties*, 2009 BYU L. REV. 99, 136 (2009) (citing study demonstrating that course assignments are gendered in many law schools as men are likely to teach high status courses like Constitutional Law and women are more likely to teach low status courses like skills courses and Trusts and Estates).

⁵⁴ *See* FEMINIST L. PROFESSORS, *supra* note 43; L. PROFESSOR BLOGS NETWORK: FAM. L. PROF BLOG, *supra* note 43; L. PROFESSOR BLOGS NETWORK: WILLS, TRUSTS & ESTATES PROF BLOG, http://lawprofessors.typepad.com/trusts_estates_prof/ [<https://perma.cc/U6AU-BNBB>].

⁵⁵ *See supra* note 5 and accompanying text.

⁵⁶ Brooks, *supra* note 34, at 50.

⁵⁷ Berman, *supra* note 20, at 1054. Douglas is the co-owner of the Sentencing Law and Policy blog, an affiliate of the Law Professors Blog Network. SENTENCING L. AND POL’Y, *supra* note 52.

⁵⁸ *See* Jayson DeMers, *How Often Should You Update Your Blog?* FORBES (May 10, 2017), <https://www.forbes.com/sites/jaysondemers/2017/05/10/how-often-should-you->

Female faculty, however, may have less time than male faculty to meet the demands of academic legal blogging, the same way their limited time restricts their ability to participate wholly in traditional scholarship. Despite advances in gender equality in recent years, women faculty are still likely to take on a greater share of family responsibilities than their male counterparts at home.⁵⁹ Even in the workplace, women faculty take on a “disproportionate share” of activities that can be seen as “housework,” including committee work in law schools and student contact.⁶⁰ Some scholars have argued that women’s unequal progress in scholarship and other areas is the result of choices women have made about how to spend their time,⁶¹ but most who have studied the inequalities women face in the academy do not attribute women’s caregiving roles in the workplace and at home to individual choice. Some of the additional student contact time is the result of the kind of teaching in which women are disproportionately represented like Legal Writing

update-your-blog/#37383d6d15c9 [https://perma.cc/EHC5-646M] (advising that a blogger should publish a “new post at least once or twice a week” if blogging is a core part of her strategy, “but more often if [her] industry, competition, or goals pressure [her] to do so”).

⁵⁹ The fact that men do not equitably share child and elderly care and housekeeping management with their spouses despite other late 20th century advances in women’s equality was documented over a decade ago by Arlie Russel Hochschild. *ARLIE RUSSELL HOCHSCHILD, THE SECOND SHIFT* 8 (2d ed. 2003) (observing that only “twenty percent of the men in [her] study shared housework equally” and that “[e]ven when couples share more equitably in the work at home, women do two-thirds of the *daily* jobs at home, like cooking and cleaning up—jobs that fix them into a rigid routine”). There has not been much change in the last ten years. *See, e.g., American Time Use Survey—2011 Results*, BUREAU LAB. STAT., U.S. DEPT’ LAB.: NEWS RELEASE (June 22, 2012), https://www.bls.gov/news.release/archives/atus_06222012.pdf/ [https://perma.cc/7PFB-EP6S] (describing survey results showing that women do a disproportionate share of housework and child care).

⁶⁰ Paula A. Monopoli, *Gender and the Crisis in Legal Education: Remaking the Academy in Our Image*, 2012 MICH. ST. L. REV. 1745, 1762 (2012) (“[W]omen . . . do the disproportionate share of the ‘housework’ in the workplace itself, including within the faculty governance structure of the university.”); *See also* McGinley, *supra* note 53, at 102–03, 150–51; Brian Leiter, *Law School Faculty Quality: Who is Up and Who is Down Since 2003*, L. PROFESSOR BLOGS NETWORK: BRIAN LEITER’S L. SCH. REP. (Aug. 29, 2006), http://leiterlawschool.typepad.com/leiter/2006/08/law_school_facu.html/ [https://perma.cc/2T8Z-RDXG]; Cassandra Guarino, *Why Higher Ed Needs to Get Rid of the Gender Gap for ‘Academic Housekeeping,’* THE CONVERSATION (Sept. 27, 2008), https://theconversation.com/why-higher-ed-needs-to-get-rid-of-the-gender-gap-for-academic-housekeeping-82135 [https://perma.cc/9WAZ-XQJS].

⁶¹ *See, e.g.,* Dan Subotnik, *Bah, Humbug to the Bleak Story of Women Law Faculty: A Response to Professor Neumann*, 51 J. LEGAL EDUC. 141, 146 (2001) (suggesting that women law faculty’s unequal status may be a result of “rational and free . . . choice”). *But see* Richard K. Neumann Jr., *Comments in Reply*, 51 J. LEGAL EDUC. 151, 154 (2001) (responding to Subotnik’s claims by clarifying that women drop out of work due to subtle forms of discrimination in the workplace, not due to “a lack of willpower” on the part of women). A similar view of women’s lack of progress has been expressed in another academic field. *See* Stephen J. Ceci & Wendy M. Williams, *Understanding Current Causes of Women’s Underrepresentation in Science*, 108, 108 PROC. NAT’L ACAD. SCI. 3157 (2011) (concluding that “differential gendered outcomes in the real world result from differences in resources attributable to choices, whether free or constrained”).

and Clinical teaching.⁶² Other “caregiving” work in law schools is the result of committee assignments that are a matter of decanal appointment rather than faculty choice.⁶³ Historically, women have been appointed to committees like “admissions, academic standards, and honors . . . that involve intense work that relates to students’ needs but do not ordinarily make policy for the law school.”⁶⁴

These “housekeeping” commitments likely take away not just time from writing but also time from participating in activities like attending and speaking at conferences, accepting visits at higher ranked schools and other efforts that improve visibility and demonstrate scholarly talent and interest.⁶⁵ Likewise, faculty members could meet the demands of blogging if their time was not largely consumed by teaching, student contact hours, service to the law school, and home and caretaking tasks.

A more speculative and less quantifiable reason why women may lag behind men in both traditional scholarship and blogging is what has become known as the “confidence gap.”⁶⁶ This term refers to the research findings that conclude a “vast confidence gap that separates the sexes. Compared with men, women do not consider themselves as ready for promotions, they predict they will do worse on tests, and they generally underestimate their abilities.”⁶⁷ Although commentators have sharply debated the reasons for this gap, research shows that women are generally less self-assured than men.⁶⁸ Another commentator described cultural contributors to the confi-

⁶² Robert Steinbuch, *Finding Female Faculty: Empirically Assessing the Current State of Women in the Legal Academy*, 36 WOMEN’S RTS. L. REP. 375, 386 (2015) (citing statistics from studies analyzed in McGinley, *supra* note 53, at 128–31). Steinbuch compares historical data from the early 2000’s to data collected in 2015 and finds that “the trends [in status and number of women law faculty] are overwhelmingly positive” but “the comparisons [by gender] remain unequal.” *Id.* at 423.

⁶³ Nancy Levit, *Keeping Feminism in Its Place: Sex Segregation and the Domestication of Female Academics*, 49 U. KAN. L. REV. 775, 793 (2001).

⁶⁴ McGinley, *supra* note 53, at 150.

⁶⁵ See B. Jessie Hill, *Perspectives from an Associate Dean: Scholarship and School Visibility*, 31 Touro L. Rev. 33, 34 (2014) (“Faculty visibility can be increased by publishing in high-profile law reviews, speaking at conferences, speaking to media, and promoting faculty scholarship to other law faculties, lawyers, judges, and the general public.”); see also Monopoli, *supra* note 60, at 1770 (arguing for a separate track for primary care givers in law schools to “provide women time to develop as scholars which is essential in solving the seniority gap since scholarship is the primary criteria for moving up the ranks to tenured, full professorship positions”).

⁶⁶ Katty Kay & Claire Shipman, *The Confidence Gap*, THE ATLANTIC (May 2014), <https://www.theatlantic.com/magazine/archive/2014/05/the-confidence-gap/359815/> [<https://perma.cc/6TGB-4LGV>] (discussing their book, *The Confidence Code*, which documents and explains this gap through analysis of both cultural trends and neuroscience and psychology studies).

⁶⁷ *Id.*

⁶⁸ *Id.* (describing the reasons for the disparity in confidence as “stem[ming] from factors ranging from upbringing to biology”). Others argue that the “‘confidence gap’ is not a personal defect as much as it is a reflection of a culture that gives women no reason to feel self-assured.” Jessica Valenti, *The Female ‘Confidence Gap’ is a Sham*, GUARDIAN (Apr. 23, 2014), <https://www.theguardian.com/commentisfree/2014/apr/23/female-confidence-gap-katty-kay-claire-shipman> [<https://perma.cc/HF4K-DBTE>].

dence gap that seem particularly apt in the context of legal scholarship: “Improving individual female confidence will not address the fact that when boys and men speak we think what they have to say is more important. Boys and men know this because we teach them, and everyone else, that what they do and say is more important.”⁶⁹

The confidence gap affects many aspects of women’s working lives, including their production of traditional scholarship.⁷⁰ However, it may play an even greater role in diminishing women’s motivation to write on highly visible blawgs. For female graduate and law school students, the confidence gap affects their approach to scholarship, making women less likely to believe their ideas are original or worthy of publication.⁷¹ These uncertainties may be mitigated by the traditional editing process for law review articles, which investigates the sufficiency of supporting authority, entails numerous editing and rewriting of drafts, and includes peer review and further vetting by editors before publication. Blawg posts, on the other hand, are meant to be written relatively quickly and posted without substantial vetting.⁷² This rapid dissemination of ideas to a broad audience of scholars, including faculty peers at one’s home school and potential evaluators⁷³ and employers

⁶⁹ Soraya Chemaly, *10 Ways Society Can Close the Confidence Gap*, HUFFINGTON POST (Apr. 23, 2014) https://www.huffingtonpost.com/soraya-chemaly/10-ways-society-can-close-the-confidence-gap_b_5200419.html/ [<https://perma.cc/PV3G-H8W3>].

⁷⁰ Lack of confidence in one’s ability to produce scholarship can begin in college for women. See LINDA J. SAX, *THE GENDER GAP IN COLLEGE* 25 (2008) (noting that women consistently rate themselves lower than men “on nearly every self-rating related to academic or intellectual confidence”). Law school further erodes many women’s self-confidence. See, e.g., Dara E. Purvis, *Female Law Students, Gendered Self-Evaluation, and the Promise of Positive Psychology*, 2012 MICH. ST. L. REV. 1693, 1700, 1709–10 (2012) (explaining that the lower rate of publication and submission of student notes to law reviews by female law students results from those students’ “low self-assessment” and noting that women often underestimate their legal abilities). This is consistent with findings about female graduate students in other academic disciplines. See Theresa MacPhail, *The Confidence Gap in Academic Writing*, CHRONICLEVITAE (Oct. 16, 2014), <https://chroniclevitae.com/news/760-the-confidence-gap-in-academic-writing/> [<https://perma.cc/TU5K-C9ZB>].

⁷¹ See, e.g., MacPhail, *supra* note 70 (describing how female graduate students “[worry] about their capacity not only to become scholars but even to finish their dissertations”); Purvis, *supra* note 70, at 1700 (noting that female law students “self-select out of opportunities such as publishing a student note,” in large part due to women’s “failure to submit the same piece . . . for a second or third time as frequently as male students do”).

⁷² Of course, one could ignore the norms of blogging and seek feedback and vetting before posting, as some bloggers, particularly women, do. See discussion *supra* note 20 and accompanying text.

⁷³ Most law school Promotion and Tenure policies require some form of outside peer review of the candidate’s scholarship. This often happens in the form of tenure letters. See Eric Goldman, *Writing Tenure Letters*, 19 SANTA CLARA U. LEGAL STUD. RES. PAPER SERIES (No. 12-16) 357, 357 (2016) (“Letters from peers evaluating the work of a tenure candidate are an important . . . part of most tenure approval processes.”). For an interesting perspective on how blog posts can provide a review of a tenure candidate’s scholarship in promotion and tenure letters, see generally Ellen S. Podgor, *Blogs and the Promotion and Tenure Letter*, 84 Wash. U. L. Rev. 1109–10. (2006) (observing that “in writing the promotion and tenure letter, the focus needs to be on the content as opposed

from other law schools, may not appeal to more cautious, less self-assured scholars. While women may feel safe on blogs whose contributors and readers are primarily women, they may feel less protected, and the stakes may be higher, when blogging on highly visible blawgs run by male faculty who generally hold more power at their law schools.⁷⁴ Women thus cede space to their more confident—some might say overconfident⁷⁵—male counterparts to avoid negative judgments about their scholarly abilities.

Gender-based harassment online may also deter female scholars from blogging. When women do assert themselves and express strong points of view, they expose themselves to negative, gender-based comments. This is especially true online. An increasingly well-documented body of research indicates that women face a disproportionate amount of gender-based “cyber harassment” in social media.⁷⁶ “Cyber harassment” has been defined as “the intentional infliction of substantial emotional distress accomplished by on-line speech that is persistent enough to amount to a ‘course of conduct’ rather than an isolated incident.”⁷⁷ Researchers have found that 60 to 72 percent of “cyber harassment” victims are women.⁷⁸ The numbers may go up for lesbian, transgender, or bisexual women and women of color.⁷⁹ Gender-based harassment may take the form of threats of violence, false claims of sexual activity or disease, nude photos or gender-oriented slurs.⁸⁰ Such acts may not only negatively affect the victim’s academic career, job, and general reputation,⁸¹ but may also cause other women to withdraw from on-

to the medium being used to disseminate” the tenure candidate’s scholarship and that “new thoughtful material that is well written and important to the field . . . should be considered in the mix of a candidate’s scholarship for promotion and tenure purposes”).

⁷⁴ See MicGinley, *supra*, note 53, at 99 (“While women have represented nearly 50% of law school graduation classes for the past twenty-five years, men continue to dominate the more powerful law school faculty and dean positions.”).

⁷⁵ See Kay & Shipman, *supra* note 66 (discussing studies that indicate men’s “tilt toward overconfidence”).

⁷⁶ See RACHEL N. SIMONS, ADDRESSING GENDER-BASED HARASSMENT IN SOCIAL MEDIA: A CALL TO ACTION, iCONFERENCE 2015 PROCEEDINGS (2015) (citing numerous studies and research on gender-based harassment online); DANIELLE KEATS CITRON, HATE CRIME IN CYBERSPACE 13 (2014) (“Cyber harassment disproportionately impacts women.”).

⁷⁷ CITRON, *supra* note 76, at 3.

⁷⁸ See Molly M. Ginty, *Cyberstalking Turns Web Technologies into Weapons*, WE NEWS (May 1, 2011), <http://womensenews.org/2011/05/cyberstalking-turns-web-technologies-weapons/> [<https://perma.cc/79Y7-EUNQ>] (citing U.S. National Violence Against Women Survey results, which indicate that sixty percent of cyberstalking victims are women); *Comparison Statistics 2001–2013*, WORKING TO HALT ONLINE ABUSE (WHOA), <http://www.haltabuse.org/resources/stats/Cumulative2000-2013.pdf/> [<https://perma.cc/3BW7-5WDJ>] (finding, based upon those who contact WHOA through their website, that seventy percent of cyberstalking victims are women).

⁷⁹ Lisa Stone, *Hating Hate Speech: Safety for Kathy Sierra and All Women Online*, BLOGHER (Mar. 27, 2007, 2:58 AM), http://surfette.typepad.com/surfette/2007/03/hating_hate_spe.html#more/ [<https://perma.cc/2UZN-C3JK>].

⁸⁰ See, e.g., Danielle Keats Citron, *Law’s Expressive Value in Combating Cyber Gender Harassment*, 108 MICH. L. REV. 373, 380–84 (2009) (providing statistics demonstrating the frequency of gender-based harassment and examples of such harassment).

⁸¹ See Citron, *supra* note 76, at 384–90.

line activities that have the potential of adverse professional and social consequences.

Most harassment activity appears to take place on message boards, Facebook, and blogs maintained and populated by students, including law students.⁸² However, as one commentator warns, female scholars may perceive a risk of gender harassment even on the scholarly blawgs:

And while many legal blogs are professional and straightforward, quite a few—including several popular blogs maintained by law professors—share a certain testosterone-driven quality, with bloggers posting multiple times each day, seeking to attract readers by being tendentious and combative as much as by being thoughtful and substantive. Posts and comments on some of the generalist legal blogs can be decidedly nasty, often in gendered ways. As more and more scholarly discussion migrates from the (relatively) civilized realm of the conference hall and the faculty lounge to the blogosphere, where no-holds-barred anonymous speech is permitted and often valued, will blogs be safe spaces for women? . . . On several occasions, I've seen comment threads on scholarly legal blogs degenerate so much that female participants might have had viable hostile environment sexual harassment claims if the same exchanges had occurred in a discussion forum maintained by their employers.⁸³

An example of this kind of harassment was directed at Professor Nancy Leong, a female legal scholar who has written a series of posts analyzing gender- and race-based cyber harassment. Professor Leong provided extensive examples of the kind of harassment she has been subjected to as a woman of color who uses blogging to share and test scholarly ideas.⁸⁴ Comments about her scholarship speculated about her attractiveness, referred to female body parts, and used crude language.⁸⁵ One commenter's online harassment was so egregious that she requested an ethics probe of the anonymous commenter whose identity she was able to determine.⁸⁶

⁸² See Catherine Buni & Soraya Chemaly, *The Unsafety Net: How Social Media Turned Against Women*, THE ATLANTIC (Oct. 9, 2014) <https://www.theatlantic.com/technology/archive/2014/10/the-unsafety-net-how-social-media-turned-against-women/381261/> [<https://perma.cc/ZT7J-5JPS>] (“Across websites and social media platforms, everyday sexist comments exist along a spectrum that also includes illicit sexual surveillance, ‘creepshots,’ extortion, doxxing, stalking, malicious impersonation, threats, and rape videos and photographs.”).

⁸³ Brooks, *supra* note 34, at 51.

⁸⁴ See Nancy Leong, *Identity and Ideas*, FEMINIST L. PROFESSORS (Nov. 12, 2013), <http://www.feministlawprofessors.com/2013/11/identity-ideas/> [<https://perma.cc/4LWE-SK3E>].

⁸⁵ See *id.*

⁸⁶ See Nancy Leong, *Consequences and Conclusions*, FEMINIST L. PROFESSORS (Dec. 17, 2013), <http://www.feministlawprofessors.com/2013/12/consequences-conclusions/> [<https://perma.cc/9CGW-UYPJ>]; see also *From Attorney to Troll—Lawyers’ Civility in*

The risk that female scholars will be subject to cyber harassment or even negative personal comments by posting on scholarly blawgs may not be substantial. Yet women understandably approach any online exposure with great caution. Given the stakes—harm to scholarly and professional reputation—even a modest perceived risk of such harassment may be enough to deter some women from regularly contributing to these widely-read blawgs.

III. RACIAL DISPARITIES IN BLAWGS

Female scholars are not the only group underrepresented in the blawgsphere. Law faculty of color⁸⁷ are nearly invisible in many academic law-related blogs. The racial/ethnic background of bloggers on the popular blawgs discussed above illustrates this point.

Gender and Race Breakdown of Editors/Regular Contributors of 4 Leading Legal Academic Blogs

<i>Name of Blog</i>	<i># of Regular Contributors</i>	<i>Men</i>	<i>Women</i>	<i>Racial/Ethnic Minorities</i>
<i>Balkinization</i>	35	29	6	3
<i>Concurring Opinions</i>	14	9	5	5
<i>Prawfsblawg</i>	13	9	4	1
<i>Volokh Conspiracy</i>	23	22	1	1

As with gender, the lack of racial and ethnic diversity in the legal blogosphere mirrors patterns in traditional legal scholarship. In 1996, James Lindgren and Daniel Seltzer published a list of the most prolific law professors in the most-cited law reviews.⁸⁸ Although male professors of

Cyber Civil Rights, C.A. GOLDBERG PLLC BLOG (Mar. 23, 2014), <http://www.cagoldberglaw.com/from-attorney-to-troll-lawyers-civility-in-cyber-civil-rights/> [<https://perma.cc/MZ6W-R64U>] (describing and critiquing the nature of comments directed at these scholars). As a result of their research for this Essay and from their own reading of blawgs, the authors are aware of many other instances of online harassment, including on the highly visible blawgs we have discussed. To avoid further empowering the harassers and creating a risk of further harassment of the female scholars involved, we choose not to republish the gendered and hostile comments here.

⁸⁷ We are defining “persons of color” or “racial/ethnic minorities” to include all of the non-White categories in the U.S. Census—Black or African American, American Indian or Alaska Native, Asian, and Native Hawaiian or Other Pacific Islander—and persons of Latino/Hispanic or Middle Eastern descent. *Race: About*, U.S. CENSUS BUREAU, <https://www.census.gov/topics/population/race/about.html> (last updated January 12, 2017) [<https://perma.cc/6ENU-5A6G>]. Although the U.S. Census Bureau does not include a category for persons of Middle Eastern descent, it is considering adding such a category in the 2020 Census. FED. INTERAGENCY WORKING GRP. FOR RESEARCH ON RACE & ETHNICITY, INTERIM REPORT TO THE OFFICE OF MANAGEMENT & BUDGET: REVIEW OF STANDARDS FOR MAINTAINING, COLLECTING, AND PRESENTING FEDERAL DATA ON RACE AND ETHNICITY 2–4, 21–26 (2017).

⁸⁸ James Lindgren & Daniel Seltzer, *The Most Prolific Law Professors and Faculties*, 71 CHI. KENT L. REV. 781, 801–04 (1996).

color were well represented in the top twenty-five, there were no women of color on the list, and minorities were underrepresented in the next one hundred.⁸⁹ Recent studies demonstrate that racial minorities are less likely to be cited and, based on downloads on SSRN, their work is less likely to be read.⁹⁰ For example, only one out of the ten most-cited law professors in the U.S. from 2010 to 2014 is a racial minority.⁹¹ That same professor, Akhil Amar, is the only racial minority on the list of the twenty most-cited constitutional law and public law faculty.⁹² Law professors of color are similarly underrepresented in studies of scholarly influence in other subject areas.⁹³

As illustrated by the chart above, racial disparities are also present in the most popular blawgs. Successful blawgs, measured by citations in court opinions, law review articles,⁹⁴ and the *ABA Journal*,⁹⁵ are mostly written by white male professors. Only one of the twenty-three bloggers on the *Volokh Conspiracy* is a racial minority.⁹⁶ Similarly, not one of the more than thirty regular contributors listed on *Balkinization*'s website are African-American

⁸⁹ *Id.* at 804. Three of the top twenty-five were men of color, including two of the top five. There was only one woman (a white woman) in the top twenty-five. *Id.* Four years later, another study found that “white men averaged significantly more citations than did women or minorities” but the differences were “modest” and “associated with differences in educational background, prestige of the institution at which a professor teaches, teaching assignments, and similar factors.” Deborah Jones Merritt, *Scholarly Influence in a Diverse Legal Academy: Race, Sex, and Citation Counts*, 29 J. LEGAL STUD. 345, 345 (2000).

⁹⁰ For example, only nine of the top one hundred law authors on SSRN teaching at U.S. law schools are racial or ethnic minorities. All nine are male. See *SSRN Top 3,000 Law Authors*, https://hq.ssrn.com/rankings/Ranking_Display.cfm?page=1&RequestTimeout=5000&TMY_gID=2&TRN_gID=6&runid=65313 (last updated Mar. 1, 2017) [<https://perma.cc/Y57M-CPAW>].

⁹¹ Brian Leiter, *Ten Most-Cited Law Faculty in the United States, 2010–2014*, L. PROFESSOR BLOGS NETWORK: BRIAN LEITER'S L. SCH. REP. (May 18, 2016), <http://leiterlawschool.typepad.com/leiter/2016/05/ten-most-cited-law-faculty-in-the-united-states-2010-2014.html> [<https://perma.cc/HA4D-JGYJ>]. The top ten law authors on the SSRN are all white men. See SSRN, *supra* note 90. Of course, there are faculty of color who are frequently cited, such as Mitu Gulati, Devon Carbado, Kimberlé Crenshaw, Jerry Kang, E. Peñalver, Dorothy Roberts, Bennett Capers, Jennifer Chacón, and Sheila Foster. See Brian Leiter, *Top 40 Law Faculties in Scholarly Impact, 2015*, L. PROFESSOR BLOGS NETWORK (Sept. 16, 2015), <http://leiterlawschool.typepad.com/leiter/2015/09/top-40-law-faculties-in-scholarly-impact-2015.html> [<https://perma.cc/6J43-6AXC>].

⁹² See Brian Leiter, *Twenty Most-Cited Constitutional & Public Law Faculty in the United States, 2010–2014 (inclusive) (corrected as of May 31)*, L. PROFESSOR BLOGS NETWORK, <http://leiterlawschool.typepad.com/leiter/2016/05/twenty-most-cited-constitutional-public-law-faculty-in-the-united-states-2010-2014-inclusive.html> [<https://perma.cc/57UU-STE5>]. A study of the most-cited faculty from 2010–2014 similarly included only one male of color and no women. *Id.*

⁹³ See Brian Leiter, *Top Ten Law Faculty (by area) in Scholarly Impact, 2009–2013*, L. PROFESSOR BLOGS NETWORK, http://www.leiterrankings.com/faculty/2014_scholarly_impact.shtml [<https://perma.cc/KHL6-8TE2>]. There are exceptions. For example, faculty of Latino or Asian descent are influential in the international law area. *Id.*

⁹⁴ See *supra* note 5 and accompanying text.

⁹⁵ See Mui & Rawles, *supra* note 3.

⁹⁶ See *supra* note 87 and accompanying text.

or Latino.⁹⁷ Of the thirteen regular contributors on *Prawfsblawg*, one is Latino⁹⁸ and the rest are non-Latino white.⁹⁹ The exception might be *Concurring Opinions*, of which more than one-third of the regular contributors, including one of the authors of this Essay, are racial or ethnic minorities.¹⁰⁰

Fifteen percent of the Law Professors Blog Network bloggers, a network of almost sixty legal blogs, are racial or ethnic minorities.¹⁰¹ One of the newer blogs in this network, the *Race & the Law Prof Blog*, founded in 2015,¹⁰² focuses on race and is comprised entirely of professors of color.¹⁰³ However, if we exclude the *Race & the Law Prof Blog* and the *Immigration Prof Blog* (which has four bloggers, three of whom are racial or ethnic minorities),¹⁰⁴ only nine percent of bloggers on the Law Professors Blog Network are racial or ethnic minorities, and only three percent are African American.

Why Aren't Faculty of Color Blogging?

Some of the challenges that faculty of color face when writing and disseminating traditional scholarship may also hinder their ability to establish and maintain a presence on blawgs. These challenges include risks associated with publishing Critical Race Theory (“CRT”) scholarship, greater institutional commitments imposed on or assumed by faculty of color, the impact of “impostor syndrome” on female faculty of color’s interest and availability to blawg, and limited interactions between faculty of color and white faculty with greater visibility.

Faculty of color may be more likely than their white counterparts to want to write about race and CRT.¹⁰⁵ However, the risks associated with writing about race may deter some scholars of color from producing scholar-

⁹⁷ *Id.*

⁹⁸ Daniel Rodriguez, the Dean at Northwestern Pritzker School of Law, is Latino.

⁹⁹ PRAWFSBLAWG, *supra* note 45.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Ruthann Ronson, *Welcome Race and the Law Prof Blog*, L. PROFESSOR BLOGS NETWORK (Mar. 19, 2015), <http://lawprofessors.typepad.com/conlaw/2015/03/race-and-the-law-prof-blog.html> [<https://perma.cc/3T7Z-7QMS>] (post by Ruthann Robson welcoming the Race & the Law Prof Blog).

¹⁰³ See L. PROFESSOR BLOGS NETWORK, <http://lawprofessors.typepad.com/racelawprof/#footer> [<https://perma.cc/HS5L-7FL5>].

¹⁰⁴ L. PROFESSOR BLOGS NETWORK, <http://lawprofessors.typepad.com/immigration/#footer> [<https://perma.cc/7P3U-PHXJ>].

¹⁰⁵ For a summary of the tenets of critical race scholars, see Adrien K. Wing, *Is There a Future for Critical Race Theory*, 66 J. LEGAL EDUC. 44, 47–49 (2016); Bennett Capers, *Critical Race Theory and Criminal Justice*, 12 OHIO ST. J. CRIM. L. 1, 1–7 (2014); see also Francisco Valdes et al., *Battles Waged, Won, and Lost: Critical Race Theory at the Turn of the Millennium*, in CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY 1 (Francisco Valdes et al. eds., 2002) (“[C]ritical race theorists assert that both the procedures and the substances of American law, including American antidiscrimination law, are structured to maintain white privilege.”).

ship in both traditional and online spaces.¹⁰⁶ First, CRT scholarship has been the subject of particularly harsh critique at times.¹⁰⁷ For example, Judge Richard Posner has described CRT scholarship as a “lunatic fringe,”¹⁰⁸ while others have criticized its use of narrative and argued that it stereotypes minorities and is plagued by “significant deficiencies” and “empirical weaknesses.”¹⁰⁹ Second, some critics dismiss scholarship addressing issues of race as lacking intellectual rigor, especially when the author is a racial minority and is thus presumed to lack objectivity when writing about these issues.¹¹⁰ Relatedly, faculty of color, and women of color in particular, “frequently encounter skepticism about their abilities as scholars.”¹¹¹ This perception is likely to be exacerbated when the faculty of color writes about issues that are already judged as less rigorous. Third, while some CRT articles have been published in leading law reviews, most CRT scholarship is published in specialty journals focused on race. These journals are generally deemed less prestigious than primary law reviews and are significantly less likely to be cited.¹¹²

Due to the risks associated with CRT scholarship, pre-tenured faculty are often advised not to write about issues on race until after tenure is conferred, because such work may not be counted as “scholarship” by their institutions or might alienate at least a few of their colleagues who will be

¹⁰⁶ In a recent interview, Judge Harry T. Edwards explained why he did not write more about race and the law:

So why did I not opt to write even more than I did on “race and the law?” Part of the answer is that, when I first joined the legal academy, African American scholars faced the great risk of being marginalized and discredited if we focused on subjects having to do with race and the law. There were very few minority law professors in those days, and many were hired only grudgingly. So it mattered—to us, to the students who saw us as role models, and to the institutional integrity of the schools at which we taught—that we succeed in the legal academy. At least in those early days, I and other African American legal scholars had the clear sense that we should teach and write about mainstream subjects in order to be taken seriously.

Ronald K. L. Collins, *On Legal Scholarship: Questions for Judge Harry T. Edwards*, 65 J. LEGAL EDUC. 637, 641 (2016).

¹⁰⁷ See Capers, *supra* note 105, at 1, 3 & nn.13–16 and accompanying text.

¹⁰⁸ Richard A. Posner, *The Skin Trade*, NEW REPUBLIC, Oct. 13, 1997, at 40.

¹⁰⁹ Capers, *supra* note 105, at 4–5 (quoting another source).

¹¹⁰ See Carmen Gonzalez, *Women of Color in Legal Education: Challenging the Presumption of Incompetence*, 61 FED. LAW. 48, 52 (2014).

¹¹¹ *Id.*

¹¹² See *Law Journals: Submissions and Rankings, 2009–2016*, WASH. & LEE U. SCH. L. L. LIBR., <http://lawlib.wlu.edu/LJ/index.aspx> (Nov. 11, 2017) [<https://perma.cc/HJ3K-3YJ9>]. Faculty deliberating on which offer of publication to accept often look at the Washington & Lee database and determine whether a candidate’s article placed “well” based on the ranking of the journal in this database. Faculty members also recognize that the main law review is generally more prestigious than specialty journals and that its membership requires writing competition and/or grades (although there are exceptions). We often base our assessment on the journal’s ranking in Washington & Lee and the frequency of citation.

voting to grant or deny tenure.¹¹³ Likewise, these risks may also deter tenured faculty of color from blogging. Even individuals who may be willing to write about race in traditional forums where they have ample time and space to make nuanced arguments and to support them with infinite citations, alongside the opportunity to obtain feedback before publishing their ideas, may find it risky to tackle these topics on blawgs where posts tend to be “shorter . . . less certain and more opinionated.”¹¹⁴ In addition, individuals who blog about race are subject to vicious online comments similar to those experienced by women who blog about gender.¹¹⁵

Faculty of color, especially women of color, also find it challenging to be as prolific as white male faculty because they have greater institutional commitments. With the exception of law schools that are part of historically black colleges and universities (“HBCUs”), the majority of law schools employ few faculty of color and even fewer in tenure-track positions.¹¹⁶ As a result, faculty of color often have significantly heavier teaching and administrative burdens than white men.¹¹⁷ For example, faculty of color are likely to serve on more law school and university committees because the institution would prefer to have diverse representation on important committees such as Admissions, Appointments, Budget, Curriculum, Rank & Tenure, or Dean’s Search.¹¹⁸ Faculty of color are expected to serve as advisors to the diverse

¹¹³ See, e.g., Cynthia Lee, (*E*)*Racing Trayvon Martin*, 12 OHIO ST. J. CRIM. L. 91, 91 & n.3 (2014) (“Many junior law professors of color were warned by more senior professors of color not to write about race before acquiring tenure as doing so might negatively affect their chances of getting tenure.”).

¹¹⁴ See Paul Butler, *Blogging at BlackProf*, 84 WASH. U. L. REV. 1101, 1103 (2006) (noting that when the *BlackProf* blawg first started, African-American bloggers published longer pieces rather than shorter blog posts because they perceived “more of a risk for [themselves]” than “white academics who were dominating the legal blogosphere”).

¹¹⁵ See Jessie Daniels, “*Your Comment Here*”: *Racism in Online Comments*, RACISM REV. (Oct. 25, 2009), <http://www.racismreview.com/blog/2009/10/25/your-comment-here-racism-in-online-comments/> [<https://perma.cc/2JB6-F8W8>]; cf. CITRON, *supra* note 76, at 14 (noting that women of color experienced the highest rates of cyber harassment and white men experienced the lowest rates).

¹¹⁶ Meera E. Deo, *Trajectory of A Law Professor*, 20 MICH. J. RACE & L. 441, 446–47 (2015).

¹¹⁷ Gonzalez, *supra* note 110, at 51.

¹¹⁸ See Kellye Y. Testy, *Best Practices for Hiring and Retaining a Diverse Law Faculty*, 96 IOWA L. REV. 1707, 1715 (2011) (noting that often a minority “faculty member bears a disproportionate responsibility for student advising and mentoring and is often stretched thin due to the school’s otherwise worthy goal of having diverse faculty well represented on committees and other important institutional assignments”); see also Richard Delgado & Derrick Bell, *Minority Law Professors’ Lives: The Bell-Delgado Survey*, 24 HARV. C.R.-C.L. L. REV. 349, 355, 363–64 (1989) (noting that faculty of color feel they have more committee assignments and more student mentoring responsibility than fellow faculty); Meera E. Deo, *The Ugly Truth About Legal Academia*, 80 BROOK. L. REV. 943, 982 (2015) (recounting the story of Carla, a Latina law professor, whose research leave was cancelled because the school needed her to chair a particular committee); Linda K. Johnsrud & Kathleen C. Sadao, *The Common Experience of “Otherness”*: *Ethnic and Racial Minority Faculty*, 21 REV. HIGHER EDUC. 315, 335 (1998) (describing how faculty of color are “showcased on committees, panels, or commissions” and sense

student organizations and to mentor students of color.¹¹⁹ They are also expected to attend most law school and alumni functions and to represent the law school at bar association events and serve on task forces.¹²⁰ Faculty of color may also find themselves with heavier teaching loads because the school wants students to be exposed to a diverse group of faculty in their required courses.¹²¹ In addition, faculty of color generally teach courses on race topics that no one else wants to teach or is deemed qualified to teach.¹²² All of this teaching and service to the law school and broader legal and academic community leave little time for scholarship, including blogging.¹²³

For female faculty of color, “impostor syndrome” may impact their interest and availability to blawg. Studies suggest that high achieving minorities are particularly susceptible to “impostor syndrome,”¹²⁴ which is similar

that they are “being called upon to represent their ethnicity, not their professional competence”).

¹¹⁹ See Delgado & Bell, *supra* note 118, at 355 (noting that “[s]tories circulate of [minority] professors shouldering inordinate burdens of committee responsibility and student counseling”); Deo, *The Ugly Truth*, *supra* note 118, at 988–89 (“[M]any female faculty of color spend a great deal of time mentoring students, especially students of color, women students, and other underrepresented or marginalized students who seek them out. Students are sometimes so dependent on particular faculty that it becomes challenging for the professors to meet their other personal and professional obligations.”); *id.* at 1000 (noting the experience of Stuart, a Native American law professor, who is “‘constantly asked to advise on papers and for groups and to go to events,’ especially by students of color”).

¹²⁰ See Deo, *The Ugly Truth*, *supra* note 118, at 993 (“[T]he research in this area has consistently shown both that faculty of color and female faculty take on enormous service responsibilities, especially those related to students, and that these undertakings are rarely rewarded or even acknowledged when the larger faculty and administration evaluate faculty for tenure or promotion.”); see also generally Devon W. Carbado & Mitu Gulati, *Tenure*, 53 J. LEGAL EDUC. 157, 170 (2003) (“[U]ntenured minority faculty likely end up doing more service work than their white male competitors for tenure, and that, in turn, means that they have relatively less time for scholarship and teaching preparation.”); see also LAWPROFBLOWG, *Racism in Academia (Not a Breaking Story)*, ABOVE THE L. (Feb. 21, 2017) <http://abovethelaw.com/2017/02/racism-in-academia-not-a-breaking-story/> [<https://perma.cc/CT9P-XQ83>] (telling a story which is an “amalgam of true experiences” that demonstrates the disproportionate burdens placed on faculty of color).

¹²¹ See, e.g., Deo, *The Ugly Truth*, *supra* note 118, at 1010 (recounting the story of Laila, a Middle Eastern woman, whose attempt to deal with a difficult student in class was frustrated in part by being assigned two large sections of Torts her first semester of teaching); cf. Meera E. Deo et al., *Paint by Number? How the Race and Gender of Law School Faculty Affect the First-Year Curriculum*, 29 CHICANA/O-LATINA/O L. REV. 1, 2, 7 (2010) (noting that white male faculty are significantly less likely than female faculty and faculty of color to engage in discussions of race and gender in the first year curriculum and concluding that faculty of color and female faculty provide a much needed perspective in legal pedagogy).

¹²² Cf. Delgado & Bell, *supra* note 118, at 367 (reporting that minority professors “are expected to be instant experts when consulted about minority affairs”).

¹²³ See Gonzalez, *supra* note 110, at 51; Angela Mae Kupenda, *Academic War Strategies for Nonviolent Armies of One*, 4 CRITICAL STUD. J. 111, 116 (2011).

¹²⁴ See Kevin Cokley et al., *Impostor Feelings as a Moderator and Mediator of the Relationship Between Perceived Discrimination and Mental Health Among Racial/Ethnic Minority College Students*, 64 J. COUNSELING PSYCH. 141, 142 (2017).

in some ways to the gender confidence gap discussed earlier.¹²⁵ While both impostor syndrome and the confidence gap are primarily the result of structural forces and stereotypes that signal that women and minorities are not as competent as white men, recent studies show how these forces affect female professors of color. Female faculty of color may experience impostor syndrome because they recognize that, as women of color, they are presumed incompetent.¹²⁶ For example, they know that some colleagues and students presume that professors of color were hired because of their race and are not as qualified as white professors. They are also aware that colleagues and students subject the teaching, scholarship and service of female faculty of color to additional scrutiny.¹²⁷ As a result, “[t]o withstand this additional scrutiny, female professors of color often *overprepare* for classes.”¹²⁸ By spending significantly more time preparing for classes than their white male colleagues, female faculty of color end up having limited time for activities outside of classes, including blogging.

One might think that the shorter format of blawg posts would be particularly appealing to female faculty of color who often have less time for traditional scholarship than their white, male colleagues. However, this is not necessarily the case. Since their scholarship will be subjected to extra scrutiny, it would be risky (and possibly reckless) for female faculty of color to publish work that has not been pondered endlessly and edited a dozen times—the opposite of a quick blawg post. Some male bloggers report that the typical blawg post takes two hours or less to produce¹²⁹ and does not require much proofreading or polishing because readers will “forgive typos and other little lapses.”¹³⁰ However, in our experience, women and faculty of color spend anywhere from four hours to a full day or longer drafting, editing, and seeking feedback on a typical blawg post. For them, blogging requires a significant investment of time and effort, albeit significantly less than a law review article.

Lastly, limited interactions between white faculty and faculty of color may contribute to the racial disparities in academic blawgs. Invitations to guest blog for a brief stint may lead to an invitation to join the blawg as a regular contributor; but even if they do not, such invitations allow the blog-

¹²⁵ See T. Elon Dancy II & Gaetane Jean-Marie, *Faculty of Color in Higher Education: Exploring the Intersections of Identity, Impostorship, and Internalized Racism*, 22 MENTORING & TUTORING: PARTNERSHIP IN LEARNING 354, 358–59 (2014).

¹²⁶ See Gonzalez, *supra* note 110, at 50.

¹²⁷ SYLVIA LAZOS, PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA 164, 177 (Angela P. Harris et al. eds., 2012) (“[B]oth minorities and women are presumed to be incompetent as soon as they walk in the door.”).

¹²⁸ Gonzalez, *supra* note 110, at 51; see also Deo, *supra* note 118, at 1006.

¹²⁹ Stephen Rynkiewicz, *What Bloggers Told Us About the State of the Legal Blogosphere*, ABA J. (Dec. 2016), http://www.abajournal.com/magazine/article/what_bloggers_told_us_about_the_state_of_the_legal_blogosphere [<https://perma.cc/LCP5-2UJ4>].

¹³⁰ Eugene Volokh, *Scholarship, Blogging, and Tradeoffs: On Discovering, Disseminating, and Doing*, 84 WASH. U. L. REV. 1089, 1091 (2006).

ger to reap some of the benefits of blogging, like broadening one's audience. However, as with many invitations in academia, when bloggers are deciding whom to invite to guest blog, they tend to reach out to faculty in their networks—faculty whom they know personally or have observed at conferences and who are often of the same race or ethnicity as themselves.¹³¹ Given the lack of diversity in legal academia, white faculty may have limited interactions with faculty of color outside their institution. There are often few faculty of color on panels or in attendance at many subject matter conferences, which decreases the likelihood that they will meet bloggers who will invite them to blog. When faculty of color participate in conferences, they sometimes use their travel funds to participate in conferences that provide support to faculty of color and focus on race-related topics instead of the general interest and much more costly conferences organized by the American Association of Law Schools (“AALS”).¹³² For example, each geographic region hosts an annual People of Color Legal Scholarship Conference,¹³³ Latina and Latino Critical Legal Theory, Inc. hosts a biannual conference,¹³⁴ and the Conference of Asian Pacific American Law Faculty (CAPALF) hosts an annual conference.¹³⁵ Female faculty of color also participate in the annual Lutie Lytle Black Women Law Faculty Writing Workshop.¹³⁶ While some white faculty members attend these conferences, most do not.

Arguably, law professors of color who want to blog need not wait for invitations to join an existing blawg. They can simply create their own, ei-

¹³¹ Academia resembles other industries in which employers tend to hire people their employees know and recommend. *See generally* Nelson D. Schwartz, *In Hiring, A Friend in Need is a Prospect, Indeed*, N.Y. TIMES (Jan. 27, 2013) https://mobile.nytimes.com/2013/01/28/business/employers-increasingly-rely-on-internal-referrals-in-hiring.html?_r=3 [<https://perma.cc/KGJ2-TKQL>] (reporting that “[p]eople tend to recommend people much like themselves . . . a phenomenon known as assortative matching” and noting that one study found that “63.5 percent of employees recommended candidates of the same sex, while 71.5 percent favored the same race or ethnicity”).

¹³² *Cf.* Linda S. Greene, *From Tokenism to Emancipatory Politics: The Conferences and Meetings of Law Professors of Color*, 5 MICH. J. RACE & L. 161 (1999) (describing the growth of conferences developed by and for faculty of color to combat their tokenism and racial isolation in legal academia).

¹³³ *See, e.g., 22nd Mid-Atlantic People of Color Legal Scholarship Conference*, GEO. WASH. L., <https://www.law.gwu.edu/22nd-mid-atlantic-people-color-legal-scholarship-conference> [<https://perma.cc/6M6E-8H4F>] *Southeast Southwest People of Color Legal Scholarship Conference*, SESWPOCC, <https://www.seswpocc.org/> [<https://perma.cc/9Y8S-RXQ2>]; *The Conference of Asian Pacific American Law Faculty & The Northeast People of Color Legal Scholarship Conference*, CAPALF, <https://capalf.org/> [<https://perma.cc/YDR4-2ZP8>]; *2017 CAPALF/NEPOC Conference*, BROOK. L. SCH., <https://www.brooklaw.edu/newsandevents/events/2017/06-02-2017> [<https://perma.cc/X4F9-ZAUB>].

¹³⁴ *LatCrit Conferences*, LATINA & LATINO CRITICAL LEGAL THEORY, INC., <http://latcrit.org/content/conferences/> [<https://perma.cc/347Y-RC2R>].

¹³⁵ *About Us*, CONFERENCE ASIAN PAC. AM. L. FAC., <https://capalf.org/> [<https://perma.cc/L43G-AVY7>].

¹³⁶ *See, e.g., Tenth Annual Lutie Lytle Black Women Law Faculty Writing Workshop*, U. IOWA C. L., <https://law.uiowa.edu/tenth-annual-lutie-lytle-black-women-law-faculty-writing-workshop> [<https://perma.cc/7UKQ-LFWZ>].

ther alone or with other professors. However, there is no guarantee that a new blawg will be successful. Although the *Race & the Law Prof Blog* made the ABA Annual Blawg 100 in its first year,¹³⁷ only time will determine its success. As of yet, it has not been cited in any judicial opinions or law review articles,¹³⁸ and a blawg focused on race is unlikely to attain the broad readership of a general interest well-established blawg.

The blawg as a medium itself faces challenges that other legal scholarship might not, such as limited time available for sustaining the blawg. In 2005, nine law professors of color created *BlackProf*, the first blawg of minority law professors.¹³⁹ Although *BlackProf* “provided a sharp analysis on race, law and culture,”¹⁴⁰ and was quite popular for a few of years,¹⁴¹ it slowly became less active as its contributors struggled to find the time to frequently add new content. It was hacked shortly thereafter, making its content completely inaccessible.¹⁴²

IV. WHY DO GENDER AND RACIAL DISPARITIES MATTER?

We have discussed the many benefits of blogging to the individual faculty member and his or her respective institution and the gender and racial disparities in popular blawgs. There are, however, important benefits that are lost due to the absence of women and racial minorities in these blawgs. Many law professors, including faculty of color and women, believe that scholars have a social responsibility to reach a broader segment of society than just lawyers and academics. Blogging facilitates this need. There are also benefits to blawg readers who are exposed to a broad range of ideas and expert analysis on a variety of legal and social issues. White men are not a monolithic group; thus, blawg readers are already exposed to diverse perspectives even if most bloggers are white men. However, women and racial minorities may have perspectives that differ from those of white men.¹⁴³

¹³⁷ See Mui & Rawles, *supra* note 3.

¹³⁸ A Westlaw search conducted on March 15, 2017 found no citations.

¹³⁹ Butler, *supra* 114, at 1103.

¹⁴⁰ Jessie Daniels, *RIP Blackprof.com*, RACISM REV. (June 24, 2009), <http://www.racismreview.com/blog/2009/06/24/rip-blackprof-com/> [<https://perma.cc/YP8S-WSY2>].

¹⁴¹ See Daniel Solove, *BlackProf Blog*, CONCURRING OPINIONS (Oct. 19, 2005), <https://concurringopinions.com/archives/2005/10/blackprof.html> [<https://perma.cc/5R2Y-GCLB>] (noting that shortly after its launching, the blawg “quickly [became] a must-read in the blogosphere”).

¹⁴² Lee Rawles, *We Honor the Fallen: Past Blawg 100 Entries Which Have Departed*, ABA J. (Dec. 1, 2011), http://www.abajournal.com/magazine/article/we_honor_the_fall_en_past_blawg_100_entries_which_have_departed/ [<https://perma.cc/6EK5-K5TP>] (noting that Blackprof was the only law professor blog on the ABA Blawg 100 to have disappeared entirely).

¹⁴³ Cf. Sonia Sotomayor, *Lecture: A Latina Judge's Voice*, N.Y. TIMES (May 14, 2009), <http://www.nytimes.com/2009/05/15/us/politics/15judge.text.html> [<https://perma.cc/5DSC-LGKF>] (stating that she “would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn’t lived that life”).

Without the perspectives of women and scholars of color whose views (like those of all of us) are shaped by their unique experiences, readers are deprived of an array of viewpoints on important policy subjects with widespread impact. A discussion of discrimination in the workplace, reproductive rights, criminal justice, fair housing reform, sexual consent policies in universities, tax policies, tort reform, health care, and almost any constitutional law question, to name a few, would be incomplete without the contributions of women and scholars of color, including sexual minorities.¹⁴⁴ As such, the breadth and reach of discourse is limited if the voices of women and racial and ethnic minorities are underrepresented in blawgs.¹⁴⁵ In the same way that the U.S. Supreme Court has recognized that “classroom discussion is livelier, more spirited, and simply more enlightening and interesting”¹⁴⁶ when law schools admit a diverse student body, the blawgosphere is richer when all voices are represented.

Admittedly, the voices of faculty of color are represented on blawgs that focus on race or gender such as the *Race & the Law Prof Blog* or the *Feminist Law Professors Blog*. Nevertheless, while blawgs that focus primarily on race and gender are necessary, these topics should also be discussed in general interest blawgs. Otherwise, general interest blawgs will contribute to the devaluation of race and gender in the same way that traditional scholarship focused on these topics has historically been devalued in the academy.

While diversity in traditional legal scholarship is necessary for the reasons discussed above, it is arguably even more important in the blawgosphere. Traditional legal scholarship has limited reach. Most traditional legal scholarship is read by other academics as judges and practitioners often do not have time to read lengthy law review articles,¹⁴⁷ and lay persons may find these articles physically and intellectually inaccessible. In contrast, blawgs are accessible to anyone with a computer or smartphone and a few minutes to spare. In addition, most blawgs provide opportunities for readers to comment on blawg posts, thereby allowing and encouraging readers, not just academics, to contribute to the exchange of ideas.

¹⁴⁴ Collins, *supra* note 106, at 641 (interview with Judge Harry T. Edwards, who stated that “Because of our life experiences, many African American scholars have *something* to say about ‘race and the law,’ even if our principal teaching and scholarly work is in other areas.”).

¹⁴⁵ See Butler, *supra* note 114, at 1104 (stating that blogging “helped nine African American legal scholars talk to, and learn from, the communities we serve”).

¹⁴⁶ Grutter v. Bollinger, 539 U.S. 306, 330 (2003).

¹⁴⁷ See Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 36 (1992).

V. CREATING AN INCLUSIVE BLOGOSPHERE

Law faculty who blawg may be unaware of the gender and race disparities in the blawgosphere.¹⁴⁸ Others may assume that these disparities are the result of individual choice. That may be true, but it is also quite possible that at least some women faculty and faculty of color would welcome the opportunity to blog, even if only for a test drive. Given the many benefits of blogging, individual bloggers, readers, and law schools should facilitate the reversal of these trends in which the voices of female and minority scholars of color are largely absent in the most visible academic blawgs. This Essay offers the following suggestions for reversing these trends and creating a more inclusive blawgosphere.

First, bloggers and readers of blawgs should all be alert to the racial and gender disparities in the blawgosphere and explore ways to address them. For example, bloggers on general interest blawgs can write about these disparities and explain why bloggers and their readers should all be concerned when the perspectives of women and minorities are absent. Blawg readers can nudge blawgs to include the voices of women and minorities by explicitly requesting them in their comments and by supporting blawgs with a diverse group of contributors.

Second, bloggers should look beyond their informal networks when inviting faculty to blawg and when selecting books to review for online symposia. Bloggers can subscribe to the Legal Scholarship Network (LSN) Subject Matter eJournals emails that provide abstracts of recent scholarship posted on SSRN¹⁴⁹ and extend invitations to guest blawg to women and minority scholars writing on a variety of topics, even if they are not in their networks. More established and confident bloggers can bring positive recognition to the posts of women and scholars of color. This can be done by posting a positive comment or bringing the blawg post to the attention of others through reposting on faculty listservs¹⁵⁰ and Twitter.¹⁵¹

¹⁴⁸ In a recent post on the popular blog, *Faculty Lounge: Conversations About Law, Culture and Academia*, Professor David Schraub's comments reflect this lack of awareness: "In my experience, the blawgosphere has served both as an incubator of good scholarly ideas and as a community that can help bring scholars of a variety of interests, backgrounds, and career-statuses together. In a world where people usually don't have to listen and so frequently will elect not to listen, the diversity and vibrancy of this community is something we should not take for granted, but can also be very proud to have sustained for so long." David Schraub, *The Virtues of Legal Academia*, FAC. LOUNGE (May 28, 2016), <http://www.thefacultyounge.org/2016/05/the-virtues-of-legal-academia.html> [<https://perma.cc/RR8J-XEWZ>].

¹⁴⁹ See *Subject Matter eJournals*, SSRN, <https://www.ssrn.com/en/index.cfm/lisn/lisn-ejournals/> [<https://perma.cc/NJ9F-63KG>].

¹⁵⁰ A listserv is an electronic mailing list. Faculty listservs allow faculty to share news articles that might be of interest to listserv members, post information about conferences or available positions, request sample syllabi, and pose questions about policies at different law schools, among other things. For a list of AALS Sections and listservs, see *Sections*, ASS'N AM. L. SChs., <http://www.aals.org/services/sections/#resources> [<https://perma.cc/96WP-DJDR>].

Third, law schools should recognize the contributions that bloggers make and support faculty who wish to blog by counting it as scholarship or service.¹⁵² Although such a policy could benefit all faculty who wish to blog, it would be particularly helpful to women and faculty of color who shoulder significant institutional burdens that make it difficult for them to blog and also produce traditional scholarship. It could also benefit the institution because strong faculty presence on influential blawgs can improve a law school's institutional reputation.¹⁵³ Whether it is treated as scholarship or service, blogging should count for purposes of promotion and merit compensation, and institutions should set clear criteria for assessing blawgs. For example, institutions should decide in advance how many blawg posts will equal one traditional law review article, book review, or service as the faculty advisor to a student organization. Institutions can also support "active bloggers" (as defined by the institution) by reducing their course load or number of committees on which they serve.

CONCLUSION

The leading blawgs cited in the tables above include posts addressing the most important issues of our time—statehood for Puerto Rico,¹⁵⁴ nuclear war with North Korea,¹⁵⁵ the First Amendment, including the free speech rights of athletes,¹⁵⁶ the consequences of the defeat of the attempt to repeal

¹⁵¹ This is similar to the practice of repeating another woman's idea to ensure that she is heard and receives credit for her idea. See Juliet Eilperin, *White House Women Want to be in the Room Where It Happens*, WASH. POST (Sept. 26, 2009), https://www.washingtonpost.com/news/powerpost/wp/2016/09/13/white-house-women-are-now-in-the-room-where-it-happens/?mc_cid=23f41632c6&mc_eid=4cd64fb794&postshare=6251473762897800&tid=ss_tw&utm_term=.b3c88e581c56&wpisrc=nl_daily202&wpm=1 [https://perma.cc/YQX2-9J7J].

¹⁵² See generally Ellen Podgor, *Blogs and the Promotion and Tenure Letter*, 84 WASH. U. L. REV. 1109 (2006) (arguing that blogs should at minimum count as service for purposes of tenure).

¹⁵³ Caron, *supra* note 3, at 1037.

¹⁵⁴ See Gerard N. Magliocca, *Puerto Rican Statehood*, BALKINIZATION (Sept. 25, 2017), <https://balkin.blogspot.com/2017/09/puerto-rican-statehood.html> [https://perma.cc/N32N-YUXY]; Ilya Somin, *The Jones Act and the Perils of Political Ignorance*, WASH. POST: VOLOKH CONSPIRACY (Sept. 29, 2017), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/09/29/the-jones-act-and-the-perils-of-political-ignorance/?utm_term=.3ef989984a26 [https://perma.cc/4FNP-AHLH].

¹⁵⁵ Mark Graber, *Top Ten Upsides of a Nuclear War with North Korea*, BALKINIZATION (Sept. 25, 2017), <https://balkin.blogspot.com/search?updated-max=2017-09-25T21:45:00-04:00> [https://perma.cc/GLT2-UAEG].

¹⁵⁶ See, e.g., Ronald K.L. Collins, *FAN 163 (First Amendment News) Sanford Ungar Heads New Free Speech Project at Georgetown University*, CONCURRING OPINIONS (Sept. 26, 2017), <https://concurringopinions.com/archives/2017/09/fan-163-first-amendment-news-sanford-ungar-heads-new-free-speech-project-at-georgetown-university.html#more-113084> [https://perma.cc/DC5R-BWC2]; Eugene Volokh, *Some Tentative Thoughts About the NFL National Anthem Controversy*, WASH. POST: VOLOKH CONSPIRACY (Sept. 28, 2017), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/09/28/some-tentative-thoughts-about-the-nfl-national-anthem-controversy/?utm_

and replace the Affordable Care Act,¹⁵⁷ gun control and the Second Amendment,¹⁵⁸ judicial nominations,¹⁵⁹ and President Trump's travel ban.¹⁶⁰ These blawgs also discussed *Gill v. Whitford*, the partisan gerrymandering case before the U.S. Supreme Court,¹⁶¹ and provided summaries of other cases the Court will address this term that will impact our nation and democratic values.¹⁶² Yet few of these posts were written by women or faculty of color. The blawgosphere has the potential to disrupt the gender and racial disparities that have long plagued traditional legal scholarship but only if bloggers and their readers commit to including the voices of women and racially diverse

term=.19aaff3a1ffb [https://perma.cc/Y43F-XLTF]; Jonathan H. Adler, *Why Political Protests During the National Anthem Are So Offensive to So Many*, WASH. POST: VOLOKH CONSPIRACY (Sept. 27, 2017), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/09/27/why-political-protests-during-the-national-anthem-are-so-offensive-to-so-many/?utm_term=.617928b626e1 [https://perma.cc/6LXA-ZESE]; Howard Wasserman, *Sports and Speech: From the Ridiculous to the Sublime*, PRAWFSBLAWG (Sept. 27, 2017), http://prawfsblawg.blogs.com/prawfsblawg/2017/09/sports-and-speech-from-the-ridiculous-to-the-sublime.html#comments [https://perma.cc/7UBL-TRBP].

¹⁵⁷ David Super, *The Enduring Significance of the Defeat of "Repeal and Replace,"* BALKINIZATION (Sept. 30, 2017), https://balkin.blogspot.com/2017/09/the-enduring-significance-of-defeat-of.html [https://perma.cc/VT8C-QQMD]; Liz McCuskey, *Health Reform: Sabotage Edition*, PRAWFSBLAWG (Sept. 29, 2017), http://prawfsblawg.blogs.com/prawfsblawg/2017/09/httpsyoutubez5rrzdiu1ue.html#more [https://perma.cc/3GNB-UC8C].

¹⁵⁸ Eugene Volokh, *D.C. Circuit Won't Rehear Second Amendment Right-to-Carry-Guns-in-Public Case; Likely Next Stop: Supreme Court*, WASH. POST: VOLOKH CONSPIRACY (Sept. 29, 2017), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/09/29/d-c-circuit-wont-rehear-second-amendment-right-to-carry-guns-in-public-case-likely-next-stop-supreme-court/?utm_term=.647fb8753472 [https://perma.cc/6AZG-E9JP].

¹⁵⁹ Jonathan H. Adler, *Four for the 5th Circuit (and Other New Judicial Nominations)*, WASH. POST: VOLOKH CONSPIRACY (Sept. 28, 2017), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/09/28/four-for-the-5th-circuit-and-other-new-judicial-nominations/?utm_term=.Fd4d97dfa263 [https://perma.cc/7UHK-PA4Q]; Eugene Volokh, *Two Excellent, Intellectual Nominations to the 5th Circuit (Jim Ho and Justice Don Willett)*, WASH. POST: VOLOKH CONSPIRACY (Sept. 28, 2017), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/09/28/two-excellent-intellectual-nominations-to-the-5th-circuit-jim-ho-and-justice-don-willett/?utm_term=.4cfb8834971b [https://perma.cc/7JFC-JHJ6]; Paul Horwitz, *An Absurdly Long Twitter Discussion of the Laurie Goodstein/NYT Story on Amy Barrett, and its Defensive Defenses*, PRAWFSBLAWG (Oct. 1, 2017), http://prawfsblawg.blogs.com/prawfsblawg/2017/10/an-absurdly-long-twitter-discussion-of-the-laurie-goodsteinnyt-story-on-amy-barrett-and-its-defensiv.html [https://perma.cc/KWT5-AVTP].

¹⁶⁰ Ilya Somin, *Trump's Newest Travel Ban Order Has Many of the Same Flaws as the Old*, WASH. POST: VOLOKH CONSPIRACY (Sept. 25, 2017), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/09/25/trumps-newest-travel-ban-order-has-many-of-the-same-flaws-as-the-old/?utm_term=.2b5033f7f21b [https://perma.cc/F6FQ-Z2LG].

¹⁶¹ Joseph Fishkin, *The Authority of the Court*, BALKINIZATION (Oct. 3, 2017), https://balkin.blogspot.com/2017/10/the-authority-of-court.html [https://perma.cc/65M3-3R96]; Sandy Levinson, *Why the Court Can't Really Solve the Problem of Fair Representation*, BALKINIZATION (Sept. 29, 2017), https://balkin.blogspot.com/2017/09/why-court-cant-really-solve-problem-of.html [https://perma.cc/DNB2-5UTS].

¹⁶² David Gans, *The Supreme Court's New Term*, BALKINIZATION (Sept. 29, 2017), https://balkin.blogspot.com/2017/09/the-supreme-courts-new-term.html [https://perma.cc/6C8L-M9AJ].

scholars in the discourse. The suggestions proposed in this Essay are merely a start; our hope is that they generate ideas for greater inclusivity in the blawgosphere and beyond.

