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For Bashman, influential blog and appellate work still appealing

Appellate practitioner Howard Bashman was largely unknown outside Philadelphia when he decided to take the plunge into law blogging in May 2002. Twenty million page views and 10 years later, his blog *How Appealing* has made Bashman something of a nationwide rock star in the usually staid field of appellate law.

Tony Mauro
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Appellate practitioner Howard Bashman was largely unknown outside Philadelphia when he decided to take the plunge into law blogging in May 2002.

Twenty million page views and 10 years later, his blog *How Appealing* has made Bashman something of a nationwide rock star in the usually staid field of appellate law. And he has reached this status without resorting to gossip, name-calling, Twitter feeds, podcasts or anything close to eye-catching graphics.

Bashman offers mainly straightforward links to appellate opinions and to media coverage thereof – though his dry sense of humor, his enthusiasm for all things appellate, and his love of minor league baseball often peek through. Two other major law blogs, Volokh Conspiracy and SCOTUSblog, were launched the same year, but of the three, only *How Appealing* remains the handiwork of a single practicing lawyer.

Supreme Court justices – most recently [Elena Kagan](#) – routinely cite Bashman's blog as a must-read, and visitors to the chambers of Chief Justice John Roberts Jr. have spied *How Appealing* displayed on his computer screen. A federal appeals judge once chided a prosecutor in open court for not following the blog and not knowing about a case Bashman had cited.

Bashman has been quoted on page one of *The New York Times*, gets invited to speak at judicial conferences, and is a recognized expert on appellate courts well beyond the environs of Philadelphia. Solitary appeals judges around the country who toil outside the limelight feel validated when Bashman points to their opinions and well-turned phrases.

More importantly, judges applaud Bashman for spreading the word about appellate law, and even making it seem fun. "*How Appealing* is one-stop shopping for anyone seeking to learn about the workings and work product of the courts of appeals," said Judge Robert Katzmann of the U.S. Court of Appeals for the 2nd Circuit. "By making it easy to learn about the appellate courts, Bashman has increased public awareness and public understanding of judicial decision-making in appellate courts, a substantial public service." Katzmann chairs the Judicial Conference's judicial branch committee, which is tasked with promoting public understanding of the judiciary.

For many journalists who cover the Supreme Court and other courts, Bashman's blog has been an important conduit to readers, colleagues and rivals, especially during the traumatic transition of media from print to a variety of digital platforms.

Huffington Post Supreme Court reporter Mike Sacks credits Bashman with helping him gain a foothold as a student blogger at Georgetown University Law Center. "Howard's megaphone among the legal community lent me instant credibility the moment he first linked to my blog, back when I was just some law student sleeping on the Supreme Court sidewalk a couple years ago," Sacks said. "I wouldn't be where I am now without him."

Though Bashman started the blog while at the Philadelphia firm of Buchanan Ingersoll, Bashman went solo in 2004 and now has an appellate boutique practice in Willow Grove, Pa. Last week Bashman, 47, spoke with Supreme Court Insider about his blog and practice. (Disclosure: Since 2006, *How Appealing* has been an affiliate of the law.com

network which, like The National Law Journal and Supreme Court Insider, is part of ALM.)

Question: Why did you launch *How Appealing* in the first place? Did it have a business purpose, or was it a labor of love?

Bashman: In 2000, I began writing a monthly column on appellate issues for Philadelphia's daily newspaper for lawyers, *The Legal Intelligencer*. Frequently, I would come across issues or new rulings that were not deserving of full-length column treatment yet would likely nevertheless be of interest to appellate-minded practitioners.

In early 2002, a law firm colleague of mine kept sending me links to the Instapundit and Volokh Conspiracy blogs, both of which were written by law professors. Eventually, I decided to run an Internet search to see if any blogs with an appellate law focus existed. Finding none, I decided to launch *How Appealing* – a title that I had proposed for my monthly newspaper column, but that was rejected in favor of that column's current title, "Upon Further Review."

In high school I was editor in chief of my [William Penn Charter School] student newspaper – a successor to the first student newspaper ever published in the United States, something that's possible when you attend a school founded in 1689. I remained very interested in pursuing a career in journalism in college. Ultimately, due to family circumstances (in particular, a need to be financially self-sufficient from the outset), I decided to pursue a career in the law, using my writing skills to succeed as an appellate attorney. The blog allowed me to combine my interest in writing and reporting with a subject matter that also was of particular interest to me, appellate law.

Question: Why have you kept the blog going for this long? It would seem to occupy a lot of your time and energy that you could be devoting to clients (and family and baseball.) Does it help your practice, and if so how?

Bashman: I certainly spend several hours on an average workday on the blog, but often that time is in the morning or at night when I wouldn't be doing client work. Of course, client work always comes first, as it must.

Keeping current with newly issued appellate court rulings was something that I always did, even before launching *How Appealing*. The blog does help my practice by allowing me to keep in contact with a large number of like-minded appellate practitioners. And I am sure that the blog does result in some new clients coming my way.

However, the main reason that I have kept the blog going for ten years now is that I really enjoy maintaining it, and I also really enjoy the reader feedback and input that I constantly receive from my blog's very devoted readership.

Question: When you started, you were at a larger firm. Did the blog cause problems for you at the firm, and did you go solo because of that?

Bashman: I had always been interested in opening up my own solo appellate practice in the Philadelphia area. I was fortunate to have a reputation as a leading appellate attorney in Pennsylvania state courts and in the 3rd U.S. Circuit Court of Appeals even before my blog became well-known. My blog did not cause any difficulties for me at my former law firm. When it became apparent to me that I could earn the same income (or more) as a solo practitioner as I had earned at my law firm, while working fewer hours and having much more freedom to accept cases of interest to me, I decided to take the leap into solo practice. My daily commute to work decreased from over an hour round-trip to approximately 15 minutes round-trip. And I have had much more freedom to participate in family activities and to serve as an assistant coach on my son's baseball teams throughout the years.

Question: How do you search for material for the blog, and has it gotten easier as more and more courts develop a user-friendly online presence?

Bashman: I have learned when the U.S. Supreme Court and the various federal courts of appeals post new rulings online, and thus I visit those courts' web sites when new rulings are likely to appear. I tend to learn of state appellate court rulings either via The Associated Press or from local news coverage that I access over the internet.

Over the past ten years it has certainly become easier to access appellate court rulings online, although some appellate courts have far better online presences than others. For example, the Supreme Court of Alabama does not offer free online access to its rulings, although a blog focusing on Alabama appellate law issues has begun to post those rulings online free of charge. Also during the past ten years, both the 7th and 9th Circuits have changed the way those courts link to their opinions, causing my blog's earlier links to those courts' rulings to be rendered useless.

Question: In a typical day or week, how many "pitches" do you get from judges, lawyers, law firms and, ahem, journalists, asking you to highlight their work?

Bashman: On a typical day I probably receive anywhere from a half-dozen to a dozen "pitches," but I usually find them

to be very, very helpful, especially on days when I am otherwise busy with client matters, other work, or life in general.

My blog's readership stretches far and wide, so that if the blog is mentioned in open court (as it sometimes is), I often receive an email alerting me of that relatively soon. In addition, when an important or otherwise newsworthy appellate court ruling has issued that I haven't yet posted about, readers will frequently email me to make sure I was aware that the ruling has issued.

Question: What impact do you think you have had on increasing the awareness of the public and the legal world about appellate courts and jurisprudence?

Bashman: It is difficult for me to assess *How Appealing's* impact, although the site's hit counter now reflects over 20 million page views. But here are two quick anecdotes that may give you some measure.

First, when I started the blog, the number one response for a Google search of the words "How Appealing" was a web site selling lingerie. Now the top response is my appellate law blog. Whether this represents progress is for others to decide.

Second, on one day when my blog was still in its relative infancy, I posted about a 6th Circuit ruling that had rejected a pro se litigant's claim that the Constitution should entitle him to use the public library in bare feet, because he disliked shoes. I titled my post "No shirt, no shoes, no literature." I refrained, however, from disparaging what many might characterize as a frivolous lawsuit. Within an hour or two, I received an email from the pro se litigant in that case sending me a link to his web site, where readers of my blog could access the briefs filed in the case. That experience confirmed that there's no way to know who is reading the site, and therefore I should continue to refrain from any gratuitous, mean-spirited comments about litigants, courts, or court rulings.

Question: What feedback do you get from appellate judges, including Supreme Court justices? Are you surprised that when you point out an error or typo in a ruling, it gets fixed almost instantly?

Bashman: Once I was attending a Supreme Court-related book launch party in Washington, D.C., when I literally bumped into Chief Justice John G. Roberts, Jr. He promptly asked me who would be updating my blog if I was away attending this event. I have received a great deal of favorable feedback from appellate judges, who usually begin by asking me how I manage to keep the blog going while maintaining a busy appellate practice. Although I rarely respond this way, my thoughts usually go back to the saying that if you want to get something done, give it to someone who is busy.

Occasionally readers will draw humorous typos to my attention in judicial decisions, and sometimes I will post about them on my blog. Lately, courts have become so quick to remove those mistakes that I must now save a copy of the original ruling so that I can post the original online myself once the mistake is fixed in the online version of the official ruling. One of my [favorite typos](#) involved attorney Carter Phillips being identified as counsel for "petitioner~~nd~~" by the U.S. Supreme Court in a hearing list that included a case that he was arguing on behalf of eBay. I am sure that using the word "nerd" in a case involving both Carter Phillips and online technology was entirely accidental! But it was rather funny nonetheless.

Question: From your experience viewing the sites of dozens of appellate courts, what would you say they need to do to improve their delivery of information to the public and to the legal community?

Bashman: My favorite appellate court web sites are those that make their rulings readily and freely available, and that also provide easy, free access to oral argument recordings. It is also a plus when the courts provide a brief summary of their rulings. At one point in the not too distant past, the 7th Circuit's web site provided free online access to appellate court docket entries and to the briefs and appendices filed on appeal. Eventually, however, those materials ended up behind a PACER pay wall. The place where most attention needs to be focused, however, is at the federal district court (trial court) level, where the statutorily mandated free access to federal district court rulings tends to remain an unfulfilled aspiration for those members of the public who do not maintain a PACER account. My point is that access to federal district court opinions should not require a PACER account, the same way that access to federal intermediate appellate court opinions does not require a PACER account.

Online access to appellate oral argument calendars, disclosing which judges are assigned to hear which cases, is also useful, as are lists of the cases that are pending before federal appellate courts en banc, together with descriptions of the issues and the en banc-related briefing.

In my opinion, at present, the most useful federal intermediate appellate court web site belongs to the [9th Circuit](#), although the [7th](#) and [8th](#) Circuits are not very far behind. At the state court level, my favorite web site belongs to the [Supreme Court of Ohio](#), which does a fine job of making a vast amount of information readily available.

Tony Mauro can be contacted at tmauro@alm.com.

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