Inside Legal Blogs
[By Jeff]
It’s time once again to take a peek at what attorneys are blogging about. This week, we learned less about Samuel Alito than we previously believed possible, deleted the cookies in our cache before the Attorney General could get his hands on them, and held onto our Blackberries for dear life.

As I begin the second installment of my weekly column, I’m stuck on a question of semantics. Should I call them blawgs or law blogs? Should I use them interchangeably, as they mean the same thing, like affect and effect? [Editor’s note: Affect and effect do not mean the same thing.] I’m stymied.

The editor of f/k/a..., Harvard Law School’s premier poetry and punditry blog, finds the use of blawg to be not only improper but downright offensive. For f/k/a?, blawg is excessively cutesy, needlessly confusing to non-bloggers, and fundamentally unsound from an etymological standpoint. They point out that we don’t say lawgic or lawnguage, and they are right. The next thing you know, attorneys will be finding flaws in each others arguments or going to a restaurant and ordering cole slaw. [Editor’s note: People already order cole slaw.] The argument spilled over to Blawg Review, which supports the use of blawg, presumably because the official Blawg Review t-shirts had already been printed and shipped.

I’m still conflicted. Someone pointed out on the Judged message boards that blawg is the sound one makes when vomiting. From my experience, this is true. Proponents of blawg seem to rely on a “Hey, why not?” defense. The detractors want us to go back to the Stone Age and use the phrase law Web log. I’m a busy man, and I haven’t the time for superfluous syllables. So for now, I’ll compromise with law blog. I’m prone to irrational mood swings, however, so I may change my mind at a later date.

These days, there are more substantial arguments afoot than linguistics. I tried my best to get into the recently completed Alito hearings, but the boredom factor weighed too heavily upon me. The great thing about the blogosphere is that you no longer need any knowledge of such events to have an opinion on them. The bloggers will tell you what to think. Matt Barr of the New World Man blog noted that the important issue of the role of the judiciary was mostly eschewed by the Senate. Barr examined the purpose of the judicial branch, determining that the courts uphold democracy, but not necessarily justice. The elected branches, not the courts, pass or vote down laws based on rightness or wrongness. Perhaps this argument wouldn’t have grabbed as many headlines as the “fraudulent polemicizing and low-grade political theater” of the Alito hearings.

Todd Zywicki of the Volokh Conspiracy presented the argument that we learned just what we were supposed to from the Alito hearings. While many complain that Alito stonewalled Democrats who attempted to gain insight into the nominee’s political perspective, Zywicki held that the purpose of the hearings is only to determine the nominee’s character, independence, and qualifications. Maybe it’s not supposed to make for compelling TV. Someone on the Judged message boards wrote a little piece contrasting the Supreme Court nomination hearings with the Super Bowl. Both are highly publicized television events, yet the one that has almost no real effect on any of our lives is the one that captures everyone’s imagination. I’m starting to think that is a good thing. Let’s keep the balance of power boring. When these crucial questions of governance get interesting, it usually means someone is getting screwed, e.g., the American people.

Speaking of such, the blogiverse is abuzz with opinions on the right-to-privacy news stories, namely the NSA wiretaps and the Google subpoena. The history of the Attorney General’s struggle to force Google to surrender its search engine data is carefully laid out at the SearchEngineWatch blog. SearchEngineWatch blogger (not 1985 Indy 500 winner) Danny Sullivan offers an easier solution for the government. He proposes that if the federal government wants to know how much offensive material pops up in the average Web search, the simplest solution would be to actually run a Google search themselves. While the government has subpoenaed this information in defense of the constitutionality of the Child Online Protection Act, it has not requested any specific user data. The Tech Law Prof Blog, however, raised an interesting problem with this. The data requested from Google, and the data already handed over by Yahoo!, may contain “personally identifiable information,” such as cookies. Uh oh.

The NSA’s unwarranted wiretapping activity has been another hot-button right-to-privacy issue across the Blognited States of Blogerica. David Barron of the LawCulture blog dissected the issue. Discouraging Al Gore’s idea to appoint a Special Counsel to investigate the legitimacy of the NSA wiretapping program, he supports turning the question over to the courts. Barron sees danger in treating the issue as merely a criminal matter, as this would do little to establish a precedent to prevent future abuses of power. Marty Lederman, blogger on Yale Law School Constitutional Law Professor Jack Balkin’s Balkinization blog, cites the improbability of
the Attorney General’s appointing a Special Counsel to investigate the activities of the Attorney General himself. Lederman instead proposes a statute to confer standing to file a federal class-action suit against the NSA.

I’d be remiss if I didn’t mention the bitter Blackberry battle, not to be confused with Dr. Seuss’s Bitter Butter Battle. Canadian Blackberry manufacturer Research in Motion (RIM) is engaged in tense litigation over patent infringement. The company may be forced to shut down or pay stiff royalties to American company NTP, Inc. While many of Blackberry’s 4.3 million users fear a shutdown, I am sure many law firm associates will be relieved if the primary method of giving them work on the weekends is eliminated. The blog BlackberryCool covers all topics related to RIM’s legal woes. The end for RIM might spell a major boost for Microsoft, which could fill the void left by Blackberry’s departure. Corporate schadenfreude aside, RIM has also been dealt a refusal from the U.S. Supreme Court to hear its case. The bloggers at May It Please the Court predict if this isn’t the end for RIM, the high cost of a settlement with NTP will soon precipitate its downfall.

Of course, the real victims in all this are the blackberry farmers of America, who have suffered the inadvertent consequences of all the negative Blackberry press. We must support our nation’s berry farmers. I’m going to go do so right now by enjoying a new Diet Black Cherry Vanilla Coke. [Editor’s note: Diet Black Cherry Vanilla Coke contains no vanilla or black cherries.]

Jeff is a writer from Los Angeles, CA. Currently, he is the moderator of the message boards at Judged.com, the largest insider source of law firm information.