



Making Mischief in the Blogosphere

It was while working as an assistant U.S. Attorney that David Lat fell in love with blogging. For *Underneath Their Robes*, his first blog, Lat poked fun at the federal judiciary. Then in 2006 he founded *Above the Law*, which has since become one of the country's most widely read legal blogs. Lat graduated from Harvard College and Yale Law School, and he clerked for Judge Diarmuid O'Scannlain of the Ninth Circuit. In October, UC Hastings law professor Evan Lee spoke with Lat in San Francisco. Here are edited excerpts from that videotaped discussion.



David Lat



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Legally Speaking is a series of in-depth interviews with prominent lawyers, judges, and academics, coproduced by *California Lawyer* and UC Hastings College of the Law.

Q: Would you characterize *Above the Law* as sort of the *TMZ* of the legal profession?

I think some of the things we do are somewhat *TMZ*ish. But then we do a lot of things that you wouldn't see on *TMZ*. We cover careers, we offer career advice, we cover news. For example, we track the lateral movement of partners at law firms. And we are expanding our coverage into the in-house world, as well.

You have said that you are particularly proud of your blog's coverage of Dewey & LeBoeuf's meltdown. Is it true that associates and staff at Dewey were actually looking to *Above the Law* to find out what was happening almost on an hourly basis?

Absolutely. That was a situation where the management was not being extremely transparent. And so associates were coming to us and saying that we were the only ones who were actually telling them what was going on.

How were you getting your information?

It's the Silicon Valley cliché: Information wants to be free.

But if I'm a partner at Dewey, I'd be pretty upset about the firm's confidential plans being leaked to the world before they're announced to employees, and I would take measures to be even more secretive. Did you see that happen?

Oh, sure. But the problem for them is that anything that can be seen by the human eye can be leaked. So, for example, people would use their personal iPhones to take pictures of the memos that they had up on their computer screens and then send the memos to us that way.

Before *Above the Law* you achieved prominence with *Underneath Their Robes*, which was an irreverent blog about Article III federal judges. Yet at the same time you started this blog, you were also an assistant U.S. Attorney arguing in front of federal judges. Wasn't that taking a risk?

I blogged as a young woman who called herself Article III Groupie. She was obsessed with fashion, shoes, and fabulous federal judges. I initially created this identity just to cover my tracks. But as time went on I kind of found myself getting more and more into the character. At one point I even

asked Richard Posner [of the Seventh Circuit] out on a date.

Did he say yes?

No, he actually turned me down. But I think he regrets that.

You even had a contest to determine the hottest federal judge on the bench.

Yes, "Super Hotties of the Federal Judiciary." Judge Alex Kozinski [of the Ninth Circuit] actually nominated himself for that title, campaigned for it, and won.

How did people find out that you were the person behind all this?

It was an indiscretion on my part. What happened was, early on I didn't know very much about technology and I had emailed both from my blog account and my personal account during the same computing sessions. So people could compare the IP addresses for David Lat and Article III Groupie and see that they were one and the same. Now about a year and a half later I started using a software program to mask my IP address, but by then my earlier indiscretion had compromised

my cover. This brings me to Jeffrey Toobin at *The New Yorker*. Over a lunch that I had with him one day, I told him on an off-the-record basis that I was Article III Groupie. He then said, “Well, if you ever want to reveal yourself to the world, let me know.” And I said thanks, but no thanks. Shortly afterward, though, I started getting emails that clearly indicated to me that it was only a matter of time before my cover would be blown. And so I decided at that point it would be better for me to control the narrative and reveal myself in the pages of *The New Yorker* rather than have some blogger prove that I, David Lat, Assistant U.S. Attorney, was behind this irreverent blog.

As a federal prosecutor, your boss at the time was Chris Christie, who’s now the governor of New Jersey and perhaps a candidate for president in 2016. How did he react when he found out?

Well, first of all, I realized by then that what I had done was wrong. I mean even if you’re not blogging about your cases or disclosing confidences, it is a little weird to be arguing before, say, Judge [Marjorie] Rendell, then rating her as a judicial Super Hottie. And so I said to Chris, “Look, I understand that I’ve put you in a bad spot and have created embarrassment for the office. If you want me to resign, I will go totally quietly, no problem.” But what he actually said to me was, “David, you’re doing great work here. And it’s my call what I do with you. So let’s just go back to the way things were.” And that’s essentially what happened—minus the blogging, of course.

Yet when you had to choose between being a federal prosecutor and being a blogger, you ultimately chose blogging.

That’s exactly right. In fact, just a few weeks after that [exchange with Christie], I found out about this opening at a political blog called *Wonkette*. And I decided to take it because I didn’t want to end up being a 50- or 60-year-old lawyer without giving this a real shot. 📍

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