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Wikipedia and the Future of Legal Education

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Law students are footnoting the publicly authored, online resource known as Wikipedia in their term papers.[1] Courts have cited to Wikipedia in authoritative judicial opinions.[2] Law professors are doing so in their journal articles.[3] Yet some members of the legal and academic communities are up in arms, decrying the use of an encyclopedia that anyone can write and edit. To allow students to rely on an online resource that might contain mistakes encourages laziness and risks undermining the legitimacy of legal authority and professionalism.

Originally, I had intended to allow members of the scholarly community to contribute to and comment on this article—sharing experiences and know-how about the use of wikis in teaching law via a wiki. I submitted the draft with the link to a wiki and the invitation to participate via the Social Science Research Network (SSRN), which has become the de facto means of communication with colleagues in the field. But SSRN forbids the posting of links in abstracts, thereby discouraging this kind of collaborative exchange of ideas. That might be possible via a wiki. SSRN's failure to appreciate the important role that such Web-based wikis can play in fostering legal scholarship is part and parcel of

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1.   Scott Jaschik, A Stand Against Wikipedia, Inside Higher Ed, Jan. 26, 2007, available at <http://www.insidehighered.com/news/2007/01/26/wiki> (last visited July 18, 2007); Noam Cohen, A History Department Bans Citing Wikipedia as a Research Source, N.Y. Times, Feb. 21, 2007, at B8.

2.   See Noam Cohen, Courts Turn to Wikipedia, But Selectively, N.Y. Times, Jan. 29, 2007, at C3 (more than 100 published opinions since 2004 cite to Wikipedia). See also Cass Sunstein, A Brave New Wikiworld, Wash. Post, Feb. 24, 2007, at A19; Kenneth Ryesky, Letter to the Editor, Downside of Citing Wikipedia, N.Y.L.J, Jan 18, 2007, at 2.

3.   Posting of Paul L. Caron to TaxProfBlog, 545 Law Review Articles Cite Wikipedia, available at <http://taxprof.typepad.com/taxprof_blog/2007/02/545_law_review_.html> (545 law review articles cite Wikipedia; another 125 mention Wikipedia but do not cite as an authority) (May 19, 2007, 11:15 EST) (last visited July 18, 2007).

the large brouhaha over Wikipedia in legal education generally. This distrust is misplaced: it misunderstands the technology and assumes incorrectly that legal professionals are the only legal experts and that legal teaching and learning must be an individual effort. In fact, to deprive students of the opportunity to work not just with Wikipedia but also with the wide array of available wikis is to miss an important opportunity. Wikis enable students to *deliberate* with others and engage in the public exchange of reasoned ideaas and arguments. Working together fosters greater individual learning by making students—and their teachers—active producers of expertise rather than passive consumers of information.

Understanding Wikis

Wikipedia is just one example of a tool commonly known as a wiki.[4] Wiki is a Hawaiian word meaning quickly. Wikis come in different forms, not just MediaWiki, the software developed by the Wikimedia Foundation, parent organization of Wikipedia. A Wiki allows a group to edit text together. Wikis might be open, meaning that anyone can elect to write. Others require permission and a password. Still others allow some people to post and others only to edit. They are all species of the genus known as collaborative editing software.

These tools are designed around the assumption that in certain circumstances the judgment of many is better than the judgment of few and that the quality of information will improve with more contributors. A well-built home is designed and constructed by an expert joiner, welder, engineer, and architect. Working together, people with the know-how and the right tools, governed by the rules needed to manage their collaboration, can improve the resulting work product. A defining characteristic of wikis is their high degree of interconnection. Unlike Google, which presents a hit list of search results without context, Wikipedia includes hyperlinks to other materials and reintroduces the serendipity of browsing and discovering new sources. At the very least, this is an excellent way for students and legal professionals to begin their research.

While Wikipedia is full of entries on popular subjects from rock music to historic battles, there are many specialty wikis, including those on legal and political subjects. The CIA created a wiki called Intellipedia to share

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4. The Wikipedia entry on wikis provides a great deal of useful background information on the term and examples of the technology. See Wikipedia, Wiki, available at <http://en.wikipedia. org/wiki/Wiki> ("A wiki (IPA: [⊠ w⊠.ki⊠] or [⊠wi⊠.ki⊠]) is a website that allows the visitors to add, remove, and edit content. A collaborative technology for organizing information on Web sites, the first wiki (WikiWikiWeb) was developed by Ward Cunningham in the mid-1990s. Wikis allow for linking among any number of pages. This ease of interaction and operation makes a wiki an effective tool for mass collaborative authoring. Wikipedia, an online encyclopedia, is one of the best known wikis. Open-source wikis (such as Wikipedia) have been criticized for their reliability: certain individuals may maliciously introduce false or misleading content. Proponents rely on their community of users who can catch malicious content and correct it. Wikis in general make a basic assumption of the goodness of people.") (citations omitted) (May 19, 2007 11:15 EST) (last visited July 18, 2007).

and collect Intelligence (with a capital I).[5] In 2003, dKosopedia assisted the ACLU with the review of documents relating to the internment of detainees at Guantánamo Bay. That site has sprouted into an encyclopedia of political knowledge.[6] The Seventh Circuit Court of Appeals launched a wiki to post its court rules and enable practitioners to comment and ask questions.[7]

The United States Patent Office deployed wiki-like software that the Institute for Information Law & Policy at New York Law School designed, which allows the scientific and legal public to collaborate on finding prior art relevant to the examination of pending patent applications.[8] The Institute has also sponsored the design of a "3-D Wiki," a graphical space inside the virtual world of Second Life, where citizens from Queens, New York, collaborate on the design and planning of a local park. The 3D Wiki lets them move simulated benches and trees around to test out different designs and participate in planning the "real world" layout.[9] Cornell Law School's Legal Information Institute launched Wex, a legal dictionary in the form of a wiki that can be added to by the community.[10] Only participants approved by the publisher can post. As a result, Wex has been slow to build content. The gating of contributions poses the additional cost of failing to allow those with relevant expertise, such as law students, to self-select into the project.

The New Treatise

To prohibit Wikipedia because our fifth grade teachers didn't let us write book reports using the World Book overlooks the fact that human knowledge is organized differently today. Encyclopedias attempt to draw knowledge together between two covers. In the book world, we are disdainful of such one-stop shopping when it substitutes for methodical research. But the web and, for that matter, Lexis and Westlaw, are "encyclopedias." They bring knowledge together in one place and make it easily searchable. In a manner of speaking, everything on the Internet is an encyclopedia; we just rely on Google to make sense of it.

The demand for primary sources is not inconsistent with the use of Wikipedia. Like Lexis, Westlaw, and other databases, Wikipedia is a

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5. Clive Thomson, Open Source Spying, N.Y.Times, Dec. 3, 2006, at 54.

6. dKosopedia, available at <http://www.dkosopedia.com/wiki/Main_Page> (May 19, 2007, 11:15 EST) (last visited Mar. 7, 2007).

7. The Wiki of the United States Court of Appeals for the Seventh Circuit, available at <http://www.ca7.uscourts.gov/wiki/index.php?title=Main_Page> (last visited July 7, 2007).

8. Peer to Patent: Community Patent Review, available at <http://www.peertopatent.org> (last visited July 23, 2007). See also The Peer to Patent Project: Community Patent Review, <http://dotank.nyls.edu/communitypatent> (last visited July 23, 2007).

9. John Freeman Gill, Playing Games in the Park, N.Y. Times, June 18, 2006, at N6.

10. Cornell University Law School, Legal Information Institute, Wex, <http://www.law.cornell.edu/wex/index.php/Main_Page> (last visited, July 23, 2007).

database of human knowledge and research about a subject, including a vast array of primary sources.

While Wikipedia might sound like the World Book, it is more like a multi-author treatise with the work product available online. Like such a treatise, a wiki recognizes the value of collective human knowledge. But it improves on the traditional treatise. Unlike offline sources, wikis can link to audio and video sources, including recorded discussions and debates. This presents new modalities for people to contribute to and learn from.

Wikis also enable experts who did not know each other beforehand to collaborate. They need not be selected only on the basis of their other jobs in offline institutions, such as law firms or universities. Instead, participants are accredited by members of the wiki community, who have a vested interest in preserving the quality of the work product, on the basis of their ongoing participation. The quality and abundance of information and the ability of everyone to participate in correcting mistakes make many wikis as reliable as a single authored source.[11] Wikis use the power of many eyes to check for accuracy. Because they are easily searched via search engines (and some browsers provide a Wikipedia search engine), their content often receives a great deal more scrutiny than a single editor can give a book.

Wikipedia's standards, while not always enforced, require that postings be referenced and cite to mainstream publications. Perhaps ironically, this online resource of open and collective community expertise deems something relevant, not because it crops up on a blog, but because it is written about in an edited newspaper or magazine. On controversial topics, the administrators of Wikipedia require posters to be logged in and identified. While they encourage everyone to edit, whether anonymously or not, Wikipedia leverages an active participant base of volunteers to monitor the progress of pages and to vote on the addition of questionable content that is further researched by the community.

Unlike a treatise, Wikipedia can easily and quickly be updated and changed. Despite common misconceptions, this variability does not pose a challenge to the authenticity and legitimacy of legal knowledge. Every change to a wiki page is recorded as a version. Unlike a web page, which can change, a citation to a Wikipedia page is a pin-cite to a particular version that is always preserved. The reader is free to check how the pages have changed over time, and doing so provides important context on the reliability of the content. Wikipedia even has a discussion page attached to each entry to encourage the community to debate, discuss, and argue about those changes. It creates a deliberative and evolving bibliography of resources on a topic.

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11. Jim Giles, Internet Encyclopedias Go Head to Head, 438 Nature 900 (2005) (Wikipedia no less accurate than Encyclopedia Britannica).

Wikis: The Public Exchange of Reason

Every new medium of communication has met with distrust about its reliability. It is never the technology of the book or the Internet or the wiki that determines quality but the norms that evolve to govern its use. It's true that having no single, identified author might result in inaccuracies on Wikipedia pages. There are persistent problems with inaccuracies on Wikipedia. Since not all pages receive large-scale public attention, these mistakes can become reified and persist over time. But the concern over accuracy is no less true for offline or online sources of any kind—with or without a single author. Authors make mistakes, judges misconstrue the facts, hornbooks go out of date. None of this justifies forcing students to use paper-based instead of online sources.

As teachers we must impart standards for students to use in evaluating the quality of these sources, which will become ever more prevalent in their professional lives. These dynamically and collaboratively produced works are going to become a permanent fixture of our media landscape. Wikis are only the beginning. In Korea, for example, the Naver search engine is far more popular than Google because it allows Korean speakers to collaborate in answering user search queries, applying their "collective intelligence" to produce a smarter search engine.[12] Wikipedia founder, Jimmy Wales, is developing the Wikia collaborative search engine for the English language and other markets. NYU Professor Jay Rosen has organized the New Assignment project (newassignment.net) to enable amateur or professional writers, editors, and researchers to collaborate at a distance to produce news stories.

If we are training law students to become not only smart lawyers but also informed citizens of a democracy, we should teach them the democratic value of deliberation. Through the public exchange of reason, we learn to air our differences in peaceful, rational ways that force us to think as members of a community, rather than only as individuals. Wikis are ideally suited to the deliberative and collaborative development of knowledge. WikiLeaks (wikileaks.org), for example, provides an important public service that furthers the goals of social justice. It is a whistle-blowing forum for groups to post untraceable documents for the public to examine for credibility. To date it claims to have anonymously posted over 1.2 million documents from dissident sources. It is imperative to teach law students that they, too, can use the tools available to them to participate in building collaborative storehouses of knowledge.

The pedagogic literature is unambiguous in its recommendation of activist and engaged modes of learning. We ought to teach students, not only how to read wikis critically and check facts, but how to *write* them. Instead of forbidding access to Wikipedia, why not require students to edit or write an entry? Let them be producers, not just consumers of knowledge! Instead of complaining

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12.　Choe Sang-Hun, To Outdo Google, Naver Taps into Korea's Collective Wisdom, Int'l. Herald Tribune, July 4, 2007, available at <http://www.iht.com/articles/2007/07/04/technology/naver.php> (last visited July 18, 2007).

about mistakes, why not fix them? Especially on complex legal topics—those under-visited pages where mistakes might be prone to persist—students are ideally suited to contribute their newly developed expertise. Let them demonstrate their knowledge and put it to the test of public scrutiny by having them post to a wiki. By posting to substantive wikis (or blogs, for that matter) and putting their own reputation on the line—much as they do during a Socratic dialogue—they may come to recognize the importance of reputation and integrity. More importantly, teach them the social responsibility of giving back, sharing knowledge, and deliberating with others.

Given the difficulty of access to legal resources, such as treatises and textbooks, in developing world countries, wikis also present an important opportunity to share with others and to engage people across institutions, across cultures, and across borders in the deliberative development of knowledge. Colleagues have boasted about the ability, in turn, to find obscure resources, including firsthand sources, from other countries on Wikipedia and on specialist wikis that they could not find easily in the law library.

Professors need not mandate posting to Wikipedia or a specific public blog per se. Instead, a course can set up its own wiki. Software, including MediaWiki, is free. PBWiki (as in peanut butter) advertises itself as being "as easy to make as a peanut butter and jelly sandwich" and is simple to set up. Jot Wiki is another example of an attractive and user-friendly product. Wikimatrix.org offers a comparison of all the generally available wiki tools and, of course, Wikipedia has plenty of information about different wiki tools and how to use them.

By creating an internal, class-based wiki, students can teach and learn from each other. Have them take turns writing and posting class notes to a wiki, working together to create a shared understanding or analysis of course subject matter. They can articulate what they have learned and, by explaining material in writing through collaborative authoring and editing, they can teach themselves. Having students write a wiki together not only teaches the substantive material of the course but also teaches the skills of collaboration and project management. In addition, it can reduce the workload for the faculty member, who only needs to read one, rather than a dozen individual contributions. "Best of" postings from the class wiki could be exported to a public source as a reward for work well done.

In his award-winning book, *On Expert Political Judgment*, Philip Tetlock empirically demonstrates that professional pundits often lack a high-degree of accuracy at predicting or analyzing complex political situations Professionalism does not always correlate with improved performance. Rather, the willingness to test and change one's thinking is what produces successful judgments, according to Tetlock. The new wikis make it possible for people—professionals or not—to pool, share, and check each other's knowledge and, by working together, to build compilations of expertise from which all can benefit. Even if professionals are often highly knowledgeable, bringing non-

professional voices into a discussion can lead to more diversity of viewpoints and, ultimately, improve the level of deliberation.

This is not to say that wikis replace professional education. To the contrary, law schools communicate ethical standards, teach specialist knowledge, convey analytical tools with which to solve problems, teach collaboration, and—perhaps above all—impart a love of democracy and social justice. If we want to teach students both to be active learners and to engage with the world, we would do well to embrace wikis and incorporate them into the curriculum.