> power over "idiot" – meaning "ignorant" – persons: the old language delivered them, bound so to speak hand and foot, to the arbitrary acts of lawyers and the courts. Latin was already "full of ambiguities" in itself, which meant that documents written in that language were all sources of further legal proceedings; lawyers made use of this prerogative for their own exclusive profit. The move into the vernacular was essential: in this way "will be largely avoided," De Luca wrote, "the abuses and tricks of these lawyers – rightly known as street barkers and babblers – who oppress the uneducated people who come to them for help, or give them bad advice for their own advantage, causing them to launch and maintain unjustified legal proceedings by persuading them that black is white". At the same time there would be an end to the fraudulent court practices in which judges "by prolonging the proceedings, made themselves masters not only of the matter under litigation but of the will and even the liberty of the litigants".

Oh well, plus ca change, plus c'est la meme chose.

Francoise Waquet, Latin: or the Empire of a Sign 236–37 (Verso 2002) (footnotes omitted).

The Great Disappearing Act

Documents on the internet are infamously ephemeral and revisable. This is a serious problem for judges who cite to web sites. As Coleen Barger of the University of Arkansas pointed out last July during the annual meeting of the American Association of Law Libraries (AALL), "While many web site citations are included in a judicial opinion merely as part of the case's factual setting, a large number of them are cited in support of factual and legal assertions related to the case's analysis and resolution. When the latter sources can no longer be located using the citation information relied upon by the authoring court, the utility – and perhaps even the precedential value

– of the opinion is diminished."

Moreover, Barger reported, the problem is larger than mere modified or missing content. She identified five categories of potential trouble:

1. Evolving content – "Even when material appears to be [the] same as that which was cited, there are few guarantees on the Internet." As one district judge observed, with respect to the judicial notice standards of Federal Rule of Evidence 201(e):

> [M]erely citing to a web site and inviting others to visit the site does not satisfy the rule's requirement that the fact be "capable of accurate and ready determination" – at least where the *pro se* prisoner is denied any access to the web site, much less "ready" access. Putting to one side the problem of access, I doubt that a web site can be said to provide an "accurate" reference, at least in normal circumstances where the information can be modified at will by the web master and, perhaps, others. There is, in other words, the question of whether the defendants, the magistrate judge, and any reviewing court are literally on the same page when they visit the site on different dates.

2. Migrating content – "With Migrating Content, the information is still there, but it has been moved to a different location within the web site. I can think of few things more frustrating to encounter. If you are lucky, the site will automatically redirect you to the new location. If you are patient and lucky, you might try using the site's internal search function to hunt your prey. If you are creative, have plenty of time on your hands, and lucky, you might find the information by devising variations on the original URL. Or you might just give up."

3. Vanished content – "In many instances, the content has been completely removed from the web site. Occasionally, the web master will let you in on this secret by explicitly telling you it has been removed; other times, you will get a blunt message to the effect that the source you are seeking does not exist,

with no acknowledgment that it ever existed."

4. Restricted access – "Not everything on the Internet is free or generally available to the public. A number of citations in judicial opinions are unavailable to those who do not have subscriptions or registered accounts with the web site providers. For example, data from Gallup polls and definitions from the Oxford English Dictionary are not accessible to non-subscribers."

5. Mis-cited URLs – "Sloppy citation practice – or failure to proofread? – accounts for a large chunk of the inaccessible sites."

Barger's counts for citations in opinions out of the federal appellate courts suggest that judges are engaging in an ever-expanding spree of URL-citation, even if they should be proceeding with the caution of Judge Nottingham:

Federal Appellate Citations to URLs (1996–2004)

Year	*Cases*	*Citations*
1996	1	2
1997	11	13
1998	22	32
1999	34	47
2000	61	80
2001	115	166
2002	180	235
2003	230	324
2004	322	496
Total	*976*	*1395*

Just to be safe, the *Green Bag* will be keeping hard copies of the documents cited here.

Coleen Barger & Randi Madisen, The Great Disappearing Act: Preserving URLs Cited in Judicial Opinions, *available at least for now at http://programmaterials.allnet.org/download_step2.asp;* Fenner v. Suthers, *194 F. Supp. 2d 1146, 1148–49 (D. Colo. 2002) (Nottingham, J.); see also Pauline Afuso,* San Antonio Citings, *MALL Newsletter, July/Aug. 2005, at 15, 16–17, at www.aallnet.org/chapter/mall/news321.pdf.*