Ex Ante

Correction: An R.A. by Any Other Name

Jon B. Gould's research assistant for *Look Who's (Not) Talking*, 8 Green Bag 2d 367 (2005), was Doug Brayley, not Doug Bailey.

Economics of Law & Latin

These days, the main functions of law Latin are to puzzle and annoy the uninitiated. Why else, for example, would so many judges continue to issue orders "nunc pro tunc," when issuing the same orders "retroactively" would mean the same thing and be generally comprehensible as well? This obscurantism has a long pedigree, dating back to a time when Latin was not only the lingua franca (oops – shared language) but also the babel of Europe, as Francoise Waquet of the Centre National de la Recherche Scientifique in Paris explains:

> The power that accrued to those possessing some knowledge – even a very limited one – of the old language can also be seen at work in the legal world, in the relations between magistrates and accused,

Giambattista Gelli, hater of law-latinizers.
Warburg Institute, University of London.

between notaries and lawyers and their clients. If we are to believe the artisan Giambattista Gelli, the notaries and lawyers of sixteenth-century Florence were pretty mediocre Latinists. They nevertheless wrote their notes and documents in the classical tongue, the instrument – all the more real for being manifest in economic terms – of their dominance over the ignorant populace. "And the reason why human laws are not stated," Gelli complained, "is also because of the dishonesty of the many doctors and advocates who want to sell us the most ordinary things; and to be better able to do it, they have found this fine trick that contracts cannot be written in the vulgar tongue, but only in that wonderful Latin that they themselves have difficulty in understanding and others understand not at all."

The Florentine artisan's complaint was echoed in the next century, in the juridical summary published in 1673 by Giovanni Battista De Luca under the eloquent title Il Dottor volgare. De Luca who, before becoming a cardinal of the Catholic Church, was one of the most celebrated lawyers in the Italian peninsula, had collected all the jurisprudence related to civil, canon, feudal and municipal law in nine quarto volumes, and published it not in Latin but Italian. As if to justify this, at the beginning of the first volume he placed a ten-page reflection on whether it was appropriate to deal with juridical matters in the vulgar tongue; he laid out the reasons for the maintenance of Latin, then those for the adoption of the vernacular, before coming down in favour of the language ordinary mortals could understand. In discussing the issue, he described Latin as a formidable instrument for exerting

> 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