

Now You See it Now You Don't: Addressing the Issue of Websites which are "Lost in Space"

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PREFACE

*"Scholarly citations in cyberspace are like atoms in various states of decay."*¹

While finishing the final edits of my most recent law journal article, I was met, on more than one occasion with those four little dreadful words; "website no longer available." In the time span of eleven months, from completing the article to performing the final edits, the world had shifted. Those websites were like Keyser Soze, "poof and just like that—gone."² After a major panic-attack, I realized that others who rely upon information from websites for their writings were faced with the same problem as I. Having recovered from that shock, I decided that there should be some rules and guidelines for dealing with those ever-elusive websites that have been cited as authority in scholarly writings. That experience is the inspiration for this article.

I. INTRODUCTION

The availability and accessibility³ of technology, coupled with the trend of Americans to become more computer savvy,⁴ has spawned a dependency on the Internet that can be best described as a phenomenon. We have come to rely on information from the Internet to supply us with information that affects our lives from the cradle⁵ to the grave.⁶ If there is an "urban legend" that has arrived at your desktop via email, you can attest to its veracity, before

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1. Scott Carlson, *Here Today, Gone Tomorrow; Studying How Online Footnotes Vanish*, CHRON. OF HIGHER EDUC., Apr. 30, 2004, available at <http://chronicle.com/weekly/v50/i34/34a03301.htm>.

2. THE USUAL SUSPECTS, (Polygram Filmed Entertainment 1995), available at <http://www.imdb.com/title/tt0114814> (last visited Sept. 21, 2008).

3. PEW INTERNET & AM. LIFE PROJECT SURVEYS (Mar. 2000 - Dec. 2007), http://www.pewinternet.org/trends/Internet_Adoption_3.18.08.pdf.

4. *A U.S. Snapshot: More Diverse, Computer-Savvy*, CNN.COM, Mar. 30, 2001, <http://edition.cnn.com/2001/US/03/30/census.snapshot/index.html> (last visited Nov. 6, 2008).

5. See Susan E. Davis & Laura Jana, *Cradles and Bassinets*, DRSPOCK.COM, June 14, 2001, <http://www.drspock.com/article/0,11510,6137,00.html>.

6. See Find Grave-Netexplore Search, <http://www.findgrave.com> (last visited Sept. 21, 2008).

sending it on by checking “Hoaxbusters.”⁷ If you need to order Christmas gifts for your extended family of forty, but are low on cash, Overstock.com⁸ can solve your problem. If the faucet leaks and you are confident that this is a job that you can handle alone, with a few detailed instructions from the “Do It Yourself Network,”⁹ do you log on? If the chicken parmesan recipe flopped, you may be able to salvage it with a little help from The Food Network.¹⁰ Likewise, if you do not know what it is that you do not know, you can always Ask Jeeves.¹¹ There are websites to meet every need of our daily lives, and all indications are that Americans are using them at record numbers.¹²

Moreover, America’s dependency on information from the Internet transcends the mundane problems associated with “faux” wall painting gone array, and extends to the very heart and soul of who we are as Americans. Political websites,¹³ political blogs,¹⁴ campaign fundraising, and political commentaries¹⁵ have become the mainstays of the Internet. We have come to rely upon the Internet to form opinions on who and what to vote for and why. Political campaigns for elections have raised millions of dollars for candidates via the Internet.¹⁶ And while many such websites are legitimate news sources,¹⁷ many are also “Joe Blow”¹⁸ pages which allow individuals to share their views of politics with the world,¹⁹ but probably are not reliable for research purposes.

Because there is wide-spread use of the Internet in our daily lives, can academia—and more importantly the crowned jewel of academia, scholarship—be far behind in relying more fully upon the Internet to support the theories and data supplied therein? We already take advantage of some aspects of the Internet by “Googling”²⁰ prospective colleagues to get a “fuller” picture of

7. Hoaxbusters, <http://hoaxbusters.ciac.org> (last visited Sept. 21, 2008); *See also* Dirty Pretty Things, <http://www.imdb.com/title/tt030119> (last visited Sept. 21, 2008).

8. Overstock.com, <http://www.overstock.com> (last visited Sept. 21, 2008).

9. Do It Yourself Network, <http://www.diynetwork.com> (last visited Sept. 21, 2008).

10. Food Network: Health Recipe Collections, <http://www.foodnetwork.com> (last visited Sept. 21, 2008).

11. Ask Jeeves, <http://www.ask.com> (last visited Sept. 21, 2008).

12. Internet World Stats, INTERNET WORLD STATS, 2008, <http://www.internetworldstats.com/stats2.htm>.

13. John Hawkins, *100 of the Most Popular Political Websites on the Net*, <http://www.rightwingnews.com/special/rank.php> (last visited Sept. 21, 2008).

14. Etalkinghead, <http://directory.etalkinghead.com> (last visited Sept. 21, 2008).

15. Real Clear Politics, <http://www.realeclearpolitics.com> (last visited Sept. 21, 2008).

16. Joshua Green, *How Silicon Valley Made Barack Obama This Year's Hottest Start-Up*, ATLANTIC, June 2008, <http://www.theatlantic.com/doc/200806/obama-finance>.

17. *See* The N.Y. Times, <http://www.nytimes.com> (last visited Sept. 21, 2008).

18. *See* MSNBC.com, <http://www.msnbc.com> (last visited Sept. 21, 2008).

19. John Q. Public, http://en.wikipedia.org/wiki/John_Q_Public (last visited Sept. 21, 2008).

20. Google, <http://www.google.com> (last visited Sept. 21, 2008).

their accomplishments. In addition, many scholars generally include in their articles a footnote or two which include pertinent information from websites, but generally speaking, that information can be found in another medium usually considered more reliable. The website address is viewed as more of a back up for the "real" cite. One question that comes to mind is, how many websites can a scholar cite in one article before her tenure is revoked?²¹ Moreover, because Internet websites now have a place in scholarship, how does one prevent an article from going up in smoke because of shifting websites?

This article is not about online law reviews,²² wherein a scholar publishes for a reputable and established organization, nor is it about self-publishing online.²³ Most journals and periodicals are available online and publishing companies are starting to make their presence felt. Hein Online²⁴ and Find Law²⁵ are acceptable mediums for scholarly articles because they are just that, mediums. They are not the sources for the articles published on their websites, but rather the hosts of presumably thoroughly researched articles.

I acknowledge that this article, which proposes to outline some general standards for the use of multiple websites, does not take into account research and scholarship that would, for example, involve the carbon dating of the Shroud of Turin,²⁶ or articles in which the data is original and thus generated by the scholar. But rather, it asks the following question: should the average law professor, who works mightily to churn out a large journal article every two years or so,²⁷ be penalized for relying heavily on Internet citations provided full and accurate credit is given to all sources? I believe that in order to attempt to answer this question, it is important to first examine the roots of scholarship in academia and revisit its original purpose and second, to discuss the rise of technology and the impact it has had on the academy. This article will eventually²⁸ set out some guidelines for the use the Internet in scholarly

21. Dominique G. Homberger & A. Ravi P. Rau, *Two Paths to Tenure, Both In and Out*, LSU.EDU, Dec. 20, 2004, <http://www.aaup.lsu.edu/TenurePaths-HR.pdf>.

22. Bernard J. Hibbits, *Last Writes? Re-Assessing the Law Review in the Age of Cyberspace*, PTTT.EDU, Mar. 10, 1997, <http://www.faculty.law.edu/hibbits/lastrev.htm>.

23. *Id.*

24. Hein Online, <http://www.heinonline.org> (last visited Sept. 21, 2008).

25. Findlaw, <http://www.findlaw.com> (last visited Sept. 21, 2008).

26. The Shroud of Turin is a centuries old linen cloth that bears the image of a crucified man. A man that millions believe to be Jesus of Nazareth. Is it really the cloth that wrapped his crucified body, or is it simply a medieval forgery, a hoax perpetrated by some clever artist? Modern science has completed hundreds of thousands of hours of detailed study and intense research on the Shroud.

The Shroud of Turin, <http://www.shroud.com> (last visited Sept. 21, 2008).

27. Mary Whisner & Ann Hemmens, *Writing for & Publishing in Law Reviews*, LAW. WASHINGTON.EDU, Aug. 1, 2008, <http://lib.law.washington.edu/ref/lawrev.html>.

28. See Workplace Prof Blog, "You Talk Too Much; Oh Boy You Never Shut Up!", http://lawprofessors.typepad.com/laborprof_blog/2006/05/you_talk_too_mu.html (last visited Sept. 23, 2008).

articles in order to avoid having a mightily toiled-over, URL-laden article used as bird cage liner.²⁹

II. THE HISTORY OF SCHOLARSHIP IN THE LEGAL ACADEMY

“Paper, paper, everywhere; what to do, what to do?”

A. A Brief Overview

The unacknowledged grandfather of scholarship has to be T’sai Lun, the inventor of paper.³⁰ Lun is credited with having done so in approximately 105 A.D.³¹ Without this invention, both law and scholarship would be all talk and no reading, rather like rap music without the bling.³² Then, in 650 A.D., the Chinese invented paper money.³³ Not to be outdone, eight hundred years later, Gutenberg invented the printing press.³⁴ With that, the stars were aligned and notwithstanding the thirteen hundred-year interval between the invention of paper and the moveable printing press, the stage was set for legal scholarship. “Some historians speculate that paper was the key element in global cultural advancement.”³⁵ If this is true, then scholarship certainly has its place in this advancement.

More propitiously, in the late nineteenth century, a paper-making process was developed which allowed large quantities of paper to be manufactured at

29. See Carol Highfill, *Cage Liners: The Good, The Bad and The Ugly*, WINGED WISDOM, June 1997, <http://birdswnways.com/wisdom/ww12eiii.htm> (last visited Sept. 23, 2008).

30. Author unknown. Paper as we know it today comes from another source—China. Excavations of tombs of the former Han Dynasty (207 B.C.-9 A.D.) have revealed silk cloth bearing the texts of Lao Tzu—the father of Taoism (born in 604 B.C.). In 105 A.D., Han Emperor Ho-Ti’s chief eunuch T’sai Lun experimented with a wide variety of materials and refined the process of macerating the fiber of plants until each filament was completely separate. HQ Papermaker, *All About Paper*, <http://www.hqpapermaker.com/paper-history/> (last visited Sept. 25, 2008).

31. *Id.*

32. Jamaican slang that has been adopted by some African-American rappers and inserted into popular culture. The term “Bling Bling” refers to the imaginary “sound” that is produced from light reflected by a diamond. See <http://www.urbandictionary.com/define.php?term=bling> (last visited October 1, 2008). In this instance, it is meant to mean, “a little dull.”

33. And, of course, money is crucial to creating scholarship. See *The Chinese make light Payment: The Invention of Paper Money*, http://www.gi-de.com/portal/page?_pageid=42,54468&_dad=portal&_schema=PORTAL (last visited Sept. 28, 2008).

34. Bruce Jones, *The Development of Print Technologies in MANUSCRIPTS, BOOKS, AND MAPS: THE PRINTING PRESS AND A CHANGING WORLD*, <http://communication.ucsd.edu/bjones/Books/printech.html> (last visited Sept. 28, 2008).

35. *Papermaking*, <http://en.wikipedia.org/wiki/Papermaking> (last visited Sept. 22, 2008). This footnote exemplifies the exact problem that this article addresses. Why should anyone believe a footnote from Wikipedia? It is basically a cyberspace community bulletin board where individuals can post on subjects about which they may have very little information on.

one time.³⁶ This phenomenon, coupled with a premonition that the Socratic Method would be a large success and that the casebook method would replace the apprentice tradition of legal education, inspired two Harvard students, Herman Aspen and Fred West-Thomson³⁷ to conceive the idea of law reviews. The idea of these law reviews was to help distinguish Harvard Law School from other law schools.³⁸ In addition, they would strengthen Harvard’s ties to the local bar.³⁹ Moreover, it would give professors, who regularly exceeded the time which had been allocated for their respective interpretation of the relevant material, additional opportunities to insure that students received the full depth and breadth of their wisdom.⁴⁰ Having convinced the faculty that a law review was a worthwhile endeavor, on April 15, 1887 the first issue of the Harvard Law Review was published.⁴¹

Not surprisingly, in 1891, the editors of the Yale Law Journal launched their new journal.⁴² The editors spoke these words at the journal’s launching:

[T]he graduates of the Yale Law School . . . have lacked the spirit de corps, which is necessary for effective unity. The formation of the Alumni Association was a step in the right direction. The Law Journal is intended to be another. It provides a common means of communication between graduates and students, and its success should be a mark of vitality of the school.⁴³

School-sponsored law journals spread⁴⁴ across the country; for they too were privy to large supplies of paper.⁴⁵ Law journals became a method for law schools to distinguish themselves from each other.⁴⁶ They also provided a forum for faculty to contribute to the discourse of the era.⁴⁷ In addition, and

36. HQ Papermaker, *supra* note 30.

37. Not really, but you get the point.

38. Bernard Hibbits, *Law Reviews: Origin and Early History*, http://www.law.pitt.edu/hibbits/lw_p1.htm (last visited Sept. 28, 2008).

39. *See id.* No, not *Cheers*, but the practicing bar.

40. *See* Workplace Prof Blog, *supra* note 28.

41. Harvard Law Review, http://en.wikipedia.org/wiki/Harvard_Law_Review (last visited Sept. 28, 2008).

42. Hibbits, *supra* note 38.

43. Translated: You sent money to that Alumni Association when you could have sent it to the new law journal; you will regret that someday!

44. Actually there were seven in 1900. *See* Hibbits, *supra* note 38.

45. Especially in Minnesota where there was a great abundance of trees, causing the Minnesota Law Review to release its first law review issue in 1917. *See id.*, *supra* note 38.

46. *Id.*

47. *Id.*

probably most importantly, law journal articles were used to educate, elucidate, encourage, and enhance⁴⁸ the bench.

Notwithstanding the increased popularity of law journals,⁴⁹ there have been periods over the last century where academicians, as well as practitioners, have questioned their *raison de' etre*.⁵⁰ From 1905 to 1940, journals faced criticism.⁵¹ Critics were overwhelmed by the number of books and said that, “[r]estraint, re-orientation, and specialization were . . . in order.”⁵²

There was also a concern that these journals were not peer-reviewed, but rather, student-controlled.⁵³ Even today, there is a bit of controversy over student-run journals. Law journals with student editors, many of whom are still in their early twenties, have the power to decide the fate of an ascending, untenured faculty member.⁵⁴

In addition, “classical” legal thought came under attack by the rise of legal realism.⁵⁵ Critics maintained that “law reviews had . . . confined themselves to the concerns of courts and lawyers without reference to the social context of legal problems.”⁵⁶

The next attack against law journals occurred in the late 1950s and early 1960s. This time the criticism was against the elitism of the law journal boards.⁵⁷ Judge Stanley Fuld found it “a pity that many more students cannot share in [the law review], [and] that some rotating system has not been devised to allow for a broader participation in review work.”⁵⁸ Changes were made to the format of

48. A wonderful example of assonance. See *Assonance*, Dictionary.com., <http://dictionary.reference.com/browse/assonance> (last visited Sept. 28, 2008).

49. Bernard Hibbitts writes,

[M]aking law school graduates more attractive to law firms by virtue of the formers' experience on school-sponsored law journals offered a way to strengthen the connection between law schools and the bar. Not only could a student-edited law review provide the bar with a pool of specially-trained recruits, but—assuming it were staffed by the law students with the highest grades—it could also provide a convenient criterion by which hiring attorneys could identify the best and the brightest law graduates.

Hibbitts, *supra* note 38.

50. A scholarly way of saying why do we need them. See THE NEW DICTIONARY OF CULTURAL LITERACY (3d ed. 2002), available at <http://www.bartleby.com/59/4/raisondetre.html> (last visited Sept. 28, 2008).

51. Hibbitts, *supra* note 38.

52. *Id.*

53. *Id.*

54. Regardless of which side you take in this debate, you must ask yourself if you want people who don't know who Wilson Pickett and Otis Redding were deciding a professor's career path.

55. Hibbitts, *supra* note 38.

56. *Id.*

57. *Id.*

58. *Id.*

journals and different methods of student participation were devised, but for the most part, the law journal "system" remained the same.⁵⁹

*B. Publish or Perish*⁶⁰

Thus far the focus of the rise of law journals has been on the needs of the students and of their benefits to law schools. However, it at this juncture that it is important to mention the folks who are at the center of the universe of academia, law professors, without whom, all is naught.⁶¹ The invention of the law review article provided a forum for law professors to showcase their intellectual acumen and to participate in the creation of new and innovative legal theories. In addition it gave them various opportunities to ruminate on topics which were banned from traditional family gatherings. "Scholars" could rest assured that even if grandma could not appreciate their discourses on the intersection of faith, hope, and charity in a bi-nuclear, anti-establishment genre, other scholars could.

Since one of the unspoken reasons for establishing law journals was status, it soon became apparent that it would be necessary for law professors to continue writing law journal articles to maintain their hierarchical positions in the law arena. Thus, at some point in time, writing law journal articles became mandatory and central to retention and the grant of tenure. Thus, the phrase "publish or perish" became the mantra of the civilized world. Catchy little phrases sprung up to impress upon those who desired to enter the academy the importance of scholarship.⁶² Phrases such as "scholarship is the coin of the realm" and "maybe your talents could be best utilized elsewhere" became oft used in the academy.

To complicate matters even more, most law schools created secondary journals that needed to be filled. Dreading the thought that one of these new journals would go without articles, causing them to collapse and fold, most

59. *Id.*

60. No, this is not the name of a rock band. "**Publish or perish**" refers to the pressure to publish work constantly in order to further or sustain one's *career* in academia. The competition for tenure-track faculty positions in academia puts increasing pressure on scholars to publish new work frequently. *See Publish or perish*, http://en.wikipedia.org/wiki/Publish_or_perish (last visited Sept. 28, 2008).

61. *See* Nate Oman, "*Doing What We Do Best*" or "*Why Law Professors Should Feel Less Guilt*," <http://madisonian.net/2008/04/07/doing-what-we-do-best-or-why-law-professors-should-feel-less-guilt/> (last visited Sept. 28, 2008).

62. Writing for a law journal and the subsequent article is called scholarship, not to be confused with receiving a scholarship to law school wherein your fees are paid and you can concentrate on studying and Googling your professors to see how many articles he or she has churned out. Thus, reassuring oneself that if this "scholarship" stuff is any indication of the professor's abilities, law school will be a piece of cake.

law schools instituted mandatory minimum articles for untenured faculty to publish before even being considered for tenure.⁶³

C. The Ascent to the Throne of the Royal Footnote

At some point in time, the footnote quietly ascended to its rightful place on the throne of scholarship. Articles started to be judged by the number of footnotes they contained. If T'sai Lun is the grandfather of scholarship, then, Joe Bluebook, the inventor of *id.* and *supra* is a member of the royal court; for without him one-hundred footnotes are really only fifty. The elevation of the footnote to its place as royalty has added pressure to scholars to not only produce scholarship on a regular basis, but to actually perform research and prove to colleagues and friends alike how well researched the article is and well-versed one is in her choice of topic. This feat requires a large number of footnotes. *Id.* and *supra* are helpful, but they don't have the power to adequately demonstrate the underlying genius of the scholar. It was only a matter of time before technology rose to the occasion and provided scholars with the tools they needed to display their talents and to cite billions and billions of footnotes.

III. THE RISE OF TECHNOLOGY

A. The Personal Computer

*As we know,
There are known knowns.
There are things we know we know.
We also know
There are known unknowns.
That is to say
We know there are some things
We do not know.
But there are also unknown unknowns,
The ones we don't know
We don't know.⁶⁴*

63. See Brian Leiter's *Law School Reports: Rising Tenure Standards?*, http://leiterlawschool.typepad.com/leiter/2005/09/rising_tenure_s.html (last visited Sept. 28, 2008).

64. Hart Seely, *The Poetry of D.H. Rumsfeld*, SLATE, Apr. 2, 2003, <http://www.slate.com/id/2081042>.

Although the First World War required human computers,⁶⁵ Jeremy Meyers, in his article entitled, *A Short History of the Computer*,⁶⁶ writes that World War II spawned a need for greater computer capacity and thus, led to the development of a high-speed electronic computer to do the job.⁶⁷ This machine, the Electric Numerical Integrator and Calculator⁶⁸ (a.k.a. the one-millionth generator abacus), was the precursor to the modern day personal computer.

The subsequent development of the magnetic core memory and the Transistor-Circuit Element⁶⁹ led to new models of digital computers. Original computers were single-purposed, but subsequent advances enabled computers to perform a large range of tasks.⁷⁰ One of the major problems with this invention and subsequent model of computer was that it was huge, as in city blocks huge, and very expensive.⁷¹ Technological advances in the 1960s and 1970s allowed computers to shrink in size and become more affordable for the average consumer.⁷² These advances in the availability of using the computer as a "better" typewriter allowed scholars to produce works with more facility. Eventually, Apple Computer and Radio Shack introduced the personal computer, which allowed scholarships to be produced at record numbers.⁷³

And then, Al Gore invented the Internet.⁷⁴

B. The Birth of the Internet

The Internet has revolutionized the computer and communications world like nothing before. The invention of the telegraph, telephone, radio, and computer set the stage for this unprecedented integration of capabilities. The Internet is at once a world-wide broadcasting capability, a mechanism for information dissemination, and a medium for collaboration and interaction

65. See David Alan Grier, Dir. Univ. Honors Program and Assoc. Professor at The George Washington Univ., *The Human Computer and the Birth of the Information Age*, (Mar. 11, 2001), <http://www.philsoc.org/2001Spring/2132transcript.html>.

66. Jeremy Meyers, *A Short History of the Computer*, <http://www.softlord.com/comp> (last visited Oct. 5, 2008).

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. Meyers, *supra* note 66.

72. *Id.*

73. *Id.*

74. Actually, Gore did not really claim to have invented the Internet. It appears that he was trying to say that he took some credit in promoting technology and making it available to the masses. See *Transcript: Vice President Gore on CNN's "Late Edition,"* CNN.COM, Mar. 9, 1999, <http://www.cnn.com/ALLPOLITICS/stories/1999/03/09/president.2000/transcript.gore>.

between individuals and their computers without regard for geographic location.⁷⁵

The Internet has allowed information to be available in electronic form and literally at the fingertips of users throughout cyberspace. This has allowed for the expansion of information to the extent that it has led to new sources of information not found in hard-copy. An example of this is Wikipedia⁷⁶ and other such sites which have been created especially for the Internet. In other words, in addition to finding books and articles that exists in the “physical” world, as opposed to cyberspace, there is now information created especially for the Internet medium. That information, and its reliability is the source of potential problems for scholars who desire to use the Internet to prove (or at the very least support) the thesis therein.

Thus, the question posed at the start of this article is repeated: how much reliance on electronic forms of information is too much? And more importantly, are there universal parameters that should guide scholars in citing to Internet sources?

Peter Roberts said it best: “The Internet is a ‘sea of information,’ subject to the ebb and flow of various forces, creating an ever-shifting shoreline.”⁷⁷ It is that shifting shoreline that scholars must negotiate in order to create scholarship that will stand the test of time.

IV. SOLUTIONS, SUGGESTIONS, AND RECOMMENDATIONS

So how does one go about solving the problem of vanishing websites? Or if one solution is not possible, how should the problem be minimized to insure integrity of the research and scholarly credibility? Below are suggestions aimed at keeping scholars sane while maximizing the use of this wonderful tool, the Internet.

A. Use the “Waybackmachine”

The scholar’s first stop should be the “Waybackmachine.”⁷⁸ This suggestion is not a joke. The Waybackmachine is an archival Internet tool which allows one to “browse” the net to find a site that existed on the Internet between 1996 and the present.⁷⁹ Of course sifting through 85 billion web

75. Barry M. Leiner et al., *A Brief History of the Internet*, INTERNET SOC’Y, Dec. 10, 2003, <http://isoc.org/internet/history/brief.shtml>.

76. See Wikipedia, <http://www.Wikipedia.com>. Remember, Wikipedia is unreliable since an eight-year-old can alter the information on this site.

77. Peter Roberts, *Scholarly Publishing, Peer Review and the Internet*, PEER-REVIEWED J. ON THE INTERNET, 1999, http://firstmonday.org/issues/issue4_4proberts/index.html.

78. See <http://www.archive.org/web/web.php>

79. The site advises the following:

pages might be a cumbersome task, but nonetheless, scholars can rest easier knowing that someone's time and energy is being spent on harvesting, cataloging, and archiving billions upon billions of websites.

B. Establish a Hierarchy of Websites

Just as there is a hierarchy of authority in the law generally, there should be a hierarchy of websites that scholars should be able to rely upon. Like primary and secondary authority, there could be categories of "dependable" and "sort-of dependable" websites. For starters, any website that has a physical building attendant to its existence, an archive, and a "dot-gov" extension would fall into the category of "dependable," and thus, would qualify as "dependable" authority. This moniker would not be used to substantiate the theory espoused in an article or in the website, but, rather, to "prove" that the information was actually available on the website.⁸⁰ For example, one could recommend "whitehouse.gov," but definitely not "whitehouse.com."

Second, there are many reliable organizations⁸¹ that exist solely in cyberspace, but are nonetheless well-established and dependable. Certainly, for example, many on-line publications,⁸² which exist only in that medium, have achieved recognition and are deemed reliable. Establishing a list of reliable websites for scholars would go a long way in assisting in the disappearing website problem because it would steer writers in the right direction, similar to a Craig's List.⁸³

Likewise, only websites which are reputable and well-known should be utilized. This is more difficult than it appears. When you need a site for a quotation or a definition, it is very easy to "Google"⁸⁴ it and use the first website that provides you with the information which you seek. However, the danger in this approach is that there could be a thirteen-year-old whiz kid with time on her hands operating the website that you inadvertently landed on who is now your source for the meaning of what are the indicia for determining what qualifies a country as a "developing nation."

"Browse through 85 billion web pages archived from 1996 to a few months ago. To start surfing the Wayback, type in the web address of a site where you would like to start, and press enter. Then select from the archived dates at as close a date as possible." *Id.*

80. And that the scholar did not make up the material or the website.

81. For example: <http://www.Slate.com>; <http://www.MediaMatters.org>; <http://www.Salon.com>.

82. *Id.*

83. "Craigslist is a central network of online communities, featuring free classified advertisements[.]" See Craig's List, <http://www.craigslist.com>.

84. Google is currently the dominant search engine. See The History of Google, http://en.wikipedia.org/wiki/History_of_Google (last visited Oct. 5, 2008).

Robert Harris has a checklist for evaluating the reliability of Internet research which he identifies by the acronym CARS.⁸⁵ He states that it is important to perform a pre-evaluation to determine what you are looking for: “Do you want facts, opinions (authoritative or just anyone’s), reasoned arguments, statistics, narratives, eyewitness reports, [or] descriptions?”⁸⁶ He posits that this first step will assist one in assessing the validity of a website, and this validation may provide some assurance that the website will still exist the day after tomorrow.⁸⁷

Notwithstanding the fact that determining the reliability of a site is sometimes a difficult task, there are some clear indications of whether a website is reputable. Websites such as Save the Northwest Tree Octopus⁸⁸ and Free Online Pregnancy Test⁸⁹ are clearly fake sites (right?) and would not lure a scholar by their fine graphics and compelling “facts” into citing statistics from them. A certain modicum of common sense and judgment must be employed in deciding if a website is legitimate.⁹⁰

Last, the most reliable websites are probably those you pay to view, or at the very least those you have to fill out online registration to access them. The rationale behind this conclusion that payment insures reliability is that one should be able to rely on the information supplied on a website that she has paid value to use, or what would be the point? In addition, implicit in the act of charging for information is the understanding that the information is valuable, reliable, and not for viewing by the general uninformed public (of course this does not include paying \$25 per month for a twenty-four hour feed

85. Robert Harris, *Evaluating Internet Research Sources*, VIRTUAL SALT, June 15, 2007, <http://virtualsalt.com/evalu8it.htm>. Harris writes that there are four general factors to look for to determine if a site is reliable. *Id.* His acronym is CARS and it stands for Credibility, Accuracy, Reasonableness, and Support. *Id.* He states that with respect to credibility, one should ask, what about this source makes it believable or not? *Id.* How does this source know this information? *Id.* And, why should I believe this source over another? Harris, *supra*. Likewise, in terms of accuracy, he warns that one must make sure that the information is up to date and that the information is the full story and not a one-sided version of the truth. *Id.* He says, “[t]he test for reasonableness involves examining the information for fairness, objectivity, moderateness, and consistency[,]” while the factor of support deals with the source and with corroboration. *Id.*

86. *Id.*

87. *Id.*

88. See Save the Northwest Tree Octopus, <http://zapatopi.net/treeoctopus> (last visited Oct. 5, 2008).

89. See The Online pregnancy test, <http://www.thepregnancytester.com> (last visited Oct. 5, 2008).

90. If neither of these traits is available for use at the time that the article is being drafted, there are actual websites that make your search easier for you by “outing” false sites. See Fake Websites or Spoof Websites, <http://www.philb.com/fakesites.htm> (last visited Oct. 5, 2008). In addition the author acknowledges that common sense is not as common as it used to be.

into the Big Brother house to see if Mattie has hooked up with George).⁹¹ One can assume that since the website desires to continue collecting revenues for its use, then it will continue to exist on the Internet.⁹² Likewise, if one has to register and select a password to visit a site, some reliability should be assumed.

C. Whenever Possible, Use a Source That Exists in an Alternate Medium

Many materials on the Internet also exist in other media. In those instances, using the Internet is a matter of convenience because the writer knows that the book entitled, *The Color Purple*,⁹³ which he wishes to cite, can also be found in other media. It could be the actual book, a book on tape, and in some instances even a movie. If the website hosting the novel vanishes, the novel itself still exists. Thus, it works to the advantage of the scholar to use websites that present materials that can be found in other media.

Here again, all is not lost, because the Internet can be used to discover if the material exist in another media, thereby, freeing the scholar to use the Internet website for convenience, but with the knowledge that the material can be found elsewhere. When one discovers that the website with the Nelson Mandela quote, which added such a nice ring to his article, has ceased to exist, he can rest assured that if, need be, it can be found and substantiated.

When the Internet is used in this manner it is a supplement to the actual material and not a substitute for the actual documents. It will probably take more time to perform research to determine in what other media the source can be found, but it still has value in the convenience factor of working in one's pajamas.

D. Use Websites that Have Supports and Archives

When using the Internet there are key factors that offer support and tend to guarantee that even if the website disappears, the material can be located in a fairly simple manner. First, does the material on the website have a named

91. Contestants vie to "outsmart" each other and win \$500,000 by humiliating themselves in an isolated house for 12 weeks with 12 strangers. See Big Brother, CBS.com, 2008, <http://www.cbs.com/primetime/bigbrother8>.

92. Caveat: Who has not been implored by the once wealthy, now widowed, Nigerian to send his bank account number to her so that she can safely send her deceased husband's millions to the United States for safe-keeping. And since you have been so kind, she will "give" you a 10% cut. She even supplies a website for the bank that she will be wiring the funds from. See Lawyer Allegedly Stole Inheritance, Lost It In Scam, NBC6.net, July 17, 2006, <http://www.nbc6.net/news/9531508/detail.html>.

93. Alice Walker, *The Color Purple*, http://en.wikipedia.org/wiki/The_Color_Purple (last visited Oct. 7, 2008).

author(s)? If so, does the author have a title?⁹⁴ Does the author have an email address and a telephone number, or does she provide some manner that she can be contacted? If there is no single author, is there an entity that operates as a formal organization? Does that organization have a “contact us” spot on the website? All of the above supports indicate that the website may remain viable for some period of time, and in the event that it does not, one still has the ability to contact the author or the organization to determine where the posted material can be found.

In addition, the existence of an archive on a website is a good indication that the material can be found on a long-term basis. Most on-line publications have archives. For example, one can search the *Washington Post* for back issues for several years. Many times one has to pay to access the archives of certain publications, which gives me an opportunity to reiterate the point made in subsection B: You get what you pay for. Here again, more often than not, many websites will not have archives and the decision to cite the website is a roll of the dice. An archive usually indicates that there will be a hard copy of microfiche.

E. Always Make and Save a Hard Copy of the Materials

This solution may not appear to be very helpful, but it does have some value. Although the website may have vanished, if one has kept a hard copy of the information, one will at least remember her train of thought and what the object of the footnote was. This makes it a bit easier to resubmit the query into Google Scholar⁹⁵ and find a comparable site that hopefully has a longer shelf-life than the one which is now deceased. This will require a great deal of paper and printer ink, but will be well worth the investment to keep a long-term file of all websites used.

F. Shake a Hand, Make a Friend

One obvious solution to verifying websites is to talk with colleagues who write in the same or a similar area of the law. Many times websites are used to fill in background or historical information. If someone you know has published an article using specific websites, they may be able to vouch for their longevity. In addition, law librarians are an excellent source for finding

94. This is also tricky because some titles are more credible than others. For example, professor or doctor may inspire more confidence than “the Dark Prince.”

95. See Google Scholar, <http://www.scholar.google.com> (last visited Oct. 5, 2008).

reliable websites.⁹⁶ These same librarians could possibly also find the original material for the writer, if asked.

G. Cite More Than One Website

If the material can be found on more than one website, it may be wise to do the equivalent of a parallel cite. In the event that one of them vanishes, there remains a 50% chance that the other will remain.

H. Re-Source the Article

In the final analysis, if you have followed all of the suggestions herein and the various websites that you have used still have vanished from the planet, you must re-source the footnotes and hope that the new websites will last at least until the article is printed, or tenure has been granted, whichever comes first.

V. HOW MANY WEBSITE CITES ARE TOO MANY?

Assuming that the writer is dealing with fixed, reliable websites, how many website footnotes are too many? That is a matter of personal judgment. If the article is well-researched and fully analyzed, the number of websites may not be an issue. This author suggests that the context of the article be considered and the availability of other sources. Certainly a law professor, who is serving time for embezzlement in a prison that does not have a law library, but does have a fully loaded computer room, can be forgiven an excess of footnotes that utilize Internet websites.⁹⁷

It is the belief of this author that the upcoming trend will be that scholars will increase their use of websites in the future. The lure and ease of the Internet is such that one can be more productive. Again, this assertion does not take certain types of research into consideration. There is certain and particular information that cannot be adequately explored and explained in a website.

VI. CONCLUSION

It is important to note that the study of law can be impacted by various forces. Just as the United States Supreme Court impacts the shape of the law,

96. Howard University Law School librarians presented a paper titled, "60 Websites in 60 Minutes," which has proven to be an excellent resource for websites for federal and state governments, court systems, libraries, etc. 60 Sites in 60 Minutes, ABA TECHSHOW, 2006, <http://www.abanet.org/techshow/60sites/HOF/60sites2006.html>.

97. See John Lyman, *Who is Scooter Libby?*, CENTER FOR AM. PROGRESS, Oct. 28, 2005, <http://www.americanprogress.org/issues/2005/10/b109719.html>.

the lowly www.something can impact the delivery of the analysis of the law. Scholars must remain creative, open to new venues, and willing to ride the bull in order to produce great scholarship. One must also maintain her sense of humor. Last, it is the author's sincerest hope that the footnotes in this article will not vanish into thin air before it is widely disseminated and read by all.