

Excerpted from Robert D. Bills, *Plagiarism in Law School: Close Resemblance of the Worst Kind*, 31 SANTA CLARA L. REV. 103, 123 (1990).

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IV. AVOIDING PLAGIARISM IN LAW SCHOOL: A LAW STUDENT'S GUIDE TO SOURCES AND THEIR ACKNOWLEDGMENT⁸⁵

Plagiarism is the submission or presentation of any work, in any form, that is not a student's own, without acknowledgment of the source.⁸⁶ A student must not appropriate ideas, facts or language from the work of another without proper use of quotation marks, citation or other explanatory insert.⁸⁷ *Regardless of intent*, the failure to properly acknowl-

85. Title and text adapted with permission from Dartmouth College. SOURCES: THEIR USE AND ACKNOWLEDGMENT (1987).

86. Although there is no universal definition for plagiarism utilized by every law school, the majority share common elements. See, e.g., *Notre Dame Law School Honor Code* § 3.01(b), "To submit as one's work the work of another;" University of South Carolina, School of Law, *Code of Academic Responsibility*, Art. II, § 1(d), "[T]he act of taking the idea, writing, or work of another and presenting it as the product of one's own activity, whether in whole or in part;" University of Oklahoma, College of Law, *Code of Academic Responsibility*, § 201(b)(vii), "[T]he incorporation of written work, either word for word or in substance from any work of another, unless the student writer credits the original author and identifies the original author's work with quotation marks, notes, or other appropriate written designation."

87. See Western State University Honor Code § 201(b)(5). See also Southern Methodist University, School of Law, *Code of Professional Responsibility*, Art. III, §

edge the use of another's work constitutes plagiarism.⁸⁸

Plagiarism is considered by many to be one of the most serious offenses that can be committed in an academic community⁸⁹ and may reflect upon an individual's moral fitness to practice law.⁹⁰ The failure to acknowledge sources violates the code of scholarly ethics, and ironically, may also indicate one's anxious and abject dependence upon them. Plagiarists, in effect, forfeit the opportunity to do their own original work.

A law student charged with plagiarism is subject to disciplinary action which may include a failing grade, loss of course credit, suspension or expulsion, and notification to the Committee of Bar Examiners in every state where the student intends to practice law.

Many entering law students erroneously believe that plagiarism can occur only in a class paper or law review article, and then only by an explicit intent to deceive. Plagiarism can occur *whenever* one makes use of the ideas or work product of another without including an appropriate citation, and applies to *every* type of work encountered in law school: essays, law review articles, case briefs,⁹¹ pleadings and legal memoranda for class credit, homework, and examinations. Plagiarism is possible with any formal work performed in any medium.

Many forms of inadvertent plagiarism are caused by poor research habits. Law students should cite sources not only in a final draft, but also in all preliminary notes for any project. The accurate use of quotation marks is essential to good notetaking, and will avoid the unfortunate consequences that result from mistakenly assuming that one's notes are in one's own words. A working knowledge of the rules contained in *A Uniform System of Citation*⁹² will facilitate this

A(2) (1982).

88. SOURCES: THEIR USE AND ACKNOWLEDGEMENT, *supra* note 85, at 7.

89. See Kolich, *Plagiarism: The Worm of Reason*, 45 C. ENG. 141 (1983); see also Mawdsley, *Plagiarism Problems in Higher Education*, 13 J.C. & U.L. 65 (1986).

90. See, e.g., *In re Lamberis*, 93 Ill. 2d 222, 443 N.E.2d 549 (1982); but see Rhode, *Moral Character as a Professional Credential*, 94 YALE L.J. 491, 518-37 (1985).

91. In some law schools the mere possession of "canned briefs" (e.g., *Legal Lines* or *Casenotes*) on campus subjects a student to suspension or dismissal. See, e.g., Western State Univ., Admin. Rule 7 (1989). Recitation of a canned brief as one's own synopsis of a case may also constitute plagiarism under a strict construction of the term.

92. HARVARD LAW REVIEW ASS'N, *A UNIFORM SYSTEM OF CITATION* (14th ed.

practice.

A. *Examples of Plagiarism*

Following these excerpts from the late Professor Fred Rodell's famous lampoon of legal literature⁹³ are typical examples of plagiarized work:

[T]he explosive touch of humor is considered just as bad taste as the hard sock of condemnation. I know no field of learning so vulnerable to burlesque, satire, or occasional pokes in the ribs as the bombastic pomposity of legal dialectic. Perhaps that is the very reason why there are no jesters or gag men in legal literature and why law review editors knit their brows overtime to purge their publications of every crack that might produce a real laugh. The law is a fat man walking down the street in a high hat. And far be it from the law reviews to be any party to the chucking of a snowball or the judicious placing of a banana peel.

Occasionally, very occasionally, a bit of heavy humor does get into print. But it must be the sort of humor that tends to produce, at best, a cracked smile rather than a guffaw. And most law review writers, trying to produce a cracked smile, come out with one of those pedantic wheezes that get an uncomfortably forced response when professors use them in a classroom. The best way to get a laugh out of a law review is to take a couple of drinks and then read an article, any article, aloud. That can be really funny.⁹⁴

1. *Example 1*

Plagiarism by unacknowledged direct quotation or word-for-word transcription from source:

In legal writing an *explosive touch of humor* is considered to be in *bad taste*, and is *perhaps the very reason why there are no gag men in legal literature*. Law review editors work overtime to purge their publications of humor, but occasionally a bit of heavy humor escapes their scrutiny.

Note that this paragraph duplicates Professor Rodell's pas-

1986).

93. Rodell, *Goodbye to Law Reviews Revisited*, 48 VA. L. REV. 279 (1962).

94. *Id.* at 281.

sage with only slight rearrangement and restatement, and without using appropriate quotation marks or citation at the end.

2. *Example 2*

Plagiarism by mosaic, or, mixing paraphrase and unacknowledged quotation from source:

Jokes in legal literature are *considered to be in bad taste*, perhaps due to the genre's extreme *vulnerability to satire*. The law reviews work *overtime* to remove obnoxious levity and the snippets of humor that remain are often little more than *pedantic wheezes*. Sometimes, the only way to get a laugh out of legal writing is to take a drink then read aloud.

Note how in this case the plagiarist intermingles his own original writing with unmarked excerpts and phrases drawn directly from Professor Rodell, adopts the ideas of the original author, and again fails to provide any citation.

3. *Example 3*

Plagiarism by paraphrase and/or use of ideas:

Drollery is unwelcome in legal literature. The few authors who gingerly attempt to elicit a smile, and escape their editor's overzealous attempts to preserve the sanctity of the publication, are generally rewarded with little more than a wry smile. Humorists need not apply as legal writers.

Note that although this excerpt does not make literal use of Professor Rodell's paragraphs, it nevertheless draws its ideas from them without any acknowledgment and thus constitutes an act of plagiarism of equal severity as the two preceding examples.

B. *When to Cite Sources*

Although scholars of various disciplines differ on when to cite and not cite sources, most follow the basic principle that a citation is required to any source of a direct quotation, paraphrase, fact or idea. Lawyers, finding the bare assertion of a legal theory without authority to be less than useless, reduce the principle to its elemental form, "*cite every-*

thing!"⁹⁵ Winning a case for one's client requires that a court be persuaded that statutory or case authority demands the requested ruling. A court will not take a lawyer's word for it, or give credence to his opinion that the law is what he says it is. A court must know which authority. Therefore, "[l]awyers cite the law."⁹⁶

The citation principle may be divided into six basic rules. The first two cover direct quotation, paraphrase and summary of language, facts and ideas. The third considers information that may be regarded as "common knowledge." The fourth, often considered a recommendation rather than a strict rule, asks for citations to sources that supply different or additional views on the same or related topic that the reader might find relevant or helpful.⁹⁷ The fifth rule specifies citations to sources that cannot be defined as written texts, including such materials as public lectures, recordings, films, graphs, statistical tables and computer data. An additional rule, addressed in legal writing courses, requires citation to all sources relied upon for authority to support any legal proposition or rule. The proper format for each required citation will be found in *A Uniform System of Citation*,⁹⁸ better known as the "Harvard Bluebook."

1. *Cite sources for all direct quotations.*

There is no exception for this rule since scholars, judges and other lawyers expect to know the original source of every quotation whether for the purpose of simply finding it there, checking for accuracy, or when appropriate, perhaps using it in their own work.⁹⁹

95. See P. MERKEL & R. TALNO, *LEGAL RESEARCH AND WRITING, COURSE MATERIALS* 4 (1988).

96. *Id.*

97. See Samuchon, *Good Legal Writing: Of Orwell and Windsor Pines*, 46 U. PITT. L. REV. 149, 161 (1984).

98. HARVARD LAW REVIEW ASS'N, *supra* note 92.

99. There is no consensus in legal academe whether the "lifting" of quotations from a secondary source without additional citation constitutes plagiarism. It is, however, bad research methodology. One should always read quoted material in the original source.

2. *Cite sources from which language, facts, or ideas have been paraphrased or summarized.*

A paraphrase requires the same citation as a quotation. This rule helps avoid a common form of plagiarism: not only paraphrasing an unacknowledged source's idea(s), but also literally adopting ("lifting") certain specific phrases or stylistic expressions without quotation marks and explicit acknowledgment of their original source. Students are cautioned to organize any summary or paraphrase in their own distinctive manner and style.¹⁰⁰ As a general rule, each paragraph containing paraphrased material should contain a cite to the source.

A persistent and potentially dangerous myth is that plagiarism is harmless if unattributed material consists of less than one page in a typical 20-page student paper. This is not so! Although an individual instructor or school may sometimes find that a small amount of "accidental" plagiary does not warrant formal disciplinary action, the student's work remains flawed. Not only is the non-plagiarized remainder suspect, any positive impact on the reader is lost. Such an incident of plagiarism, however "minor," may rate a failing grade from the professor and irreparably damage a student's reputation.

3. *Cite sources for idea(s) or information that could be regarded as common knowledge, but which a) was not known to the writer before encountering it in a particular source, or b) the reader might find unfamiliar.*

Less clear than the two previous rules, this third rule addresses situations where no definitive boundary exists between an idea that did not originate with the writer but seems generally well known (i.e., that the federal legislature is bicameral),¹⁰¹ and a generally well-known idea treated as a distinctive or seldom understood concept (i.e., Judge Bork's controversial theory on the limited scope of the first amend-

100. Note, however, that excessive paraphrasing tends to weaken the rhetorical effect of any work.

101. A term now in common usage, originally applied by Jeremy Bentham to the division of a legislative body into two chambers. BLACK'S LAW DICTIONARY 147 (5th ed. 1979).

ment).¹⁰² In the first case, some legal scholars omit a citation when the idea can be found in five or more independent sources. In the second case a formal citation is always required. When in doubt, *cite the source*.

4. *Cite sources that add relevant information to the particular topic or argument propounded.*

This "rule" allows the writer to supply related or parenthetical information without cluttering the body of the paper with extraneous details. Restraint should be exercised in the use of supplementary citations. Too many will distract the reader from the flow of the argument.¹⁰³

5. *Cite sources from and for other kinds of specialized materials.*

This fifth rule extends the application of the preceding four rules to other forms of work such as lectures, recordings, films, interviews, letters, unpublished manuscripts, graphs, charts, tables, etc.

6. *Cite sources relied upon for authority to support any legal proposition or rule.*

Because judicial action is governed by the principles of precedent and *stare decisis*,¹⁰⁴ adherence to this rule not only avoids plagiarism from judicial opinions, statutes or secondary authority, it also is essential to effective lawyering. Students might sometimes feel embarrassed by writing that relies on secondary sources, and try to paraphrase a hornbook, treatise or law review without providing citations to anything but the primary authority.¹⁰⁵ Not only is it obvious to an experienced reader that a student has relied on a

102. Bork, *Neutral Principles and Some First Amendment Problems*, 47 IND. L.J. 1, 26-28 (1971).

103. "Encountering [a footnote] is like going downstairs to answer the doorbell while making love. - Noel Coward." Bowerstock, *The Art of the Footnote*, 53 AM. SCHOLAR 54 (1984), cited in Austin, *Footnotes as Product Differentiation*, 40 VAND. L. REV. 1151, 1152 (1987).

104. C. KUNZ, D. SCHMEDEMANN, C. ERLINDER & M. DOWNS, *THE PROCESS OF LEGAL RESEARCH* 52-54 (1986).

105. W. STATSKY & R. WERNET JR., *CASE ANALYSIS AND FUNDAMENTALS OF LEGAL WRITING* 418 (2d ed. 1984).

secondary source (even without citations), the student risks a charge of plagiarism.¹⁰⁶ Although original analysis of a court decision is always preferred, there is no shame in using a secondary source so long as a proper foundation is laid and the complete citation is given.¹⁰⁷

Plagiarism is easily avoided by careful research methodology and adherence to simple rules of citation. The practice of law is based upon the craft of effective writing, and law students should write often. A fear of plagiary that manifests itself in the failure to take advantage of every writing opportunity in law school is a tragedy in itself. Don't be afraid of sources, interact with them. Although some of the rules seem fraught with ambiguity, particularly when a fact or idea appears to be common knowledge, proper attribution is an absolute prevention for plagiarism. So long as a student does not represent the work of another as his own, and credits his sources, he cannot be a plagiarist. The student who also understands that a legal rule without citation is like a pen without ink has taken an important step toward effective advocacy.

V. CONCLUSION

Despite some mixed signals by those outside academic towers, scholars' attitudes toward plagiarism are not likely to change. Plagiarism has always been, and will always be, academic misconduct worthy of the most serious concern.

Many students may complain that unattributed borrowing and copying is endemic in the legal profession, and is actually encouraged.¹⁰⁸ They may complain that they are being judged by a standard that does not exist in the "real" world. They are right, of course. The sin of plagiary may be minimized in many areas,¹⁰⁹ but it has never been mini-

106. *Id.*

107. *Id.*

108. "Legal instruments are widely plagiarized, of course. We see no impropriety in one lawyer's adopting another's work, thus becoming the 'drafter' in the sense that he accepts responsibility for it." Federal Intermediate Credit Bank of Louisville v. Kentucky Bar Ass'n, 540 S.W.2d 14, 16 n.2 (Ky. 1976) quoted in Comment, *Plagiarism in Legal Scholarship*, *supra* note 19, at 245 n.69.

109. In publishing, for example. Although copyright lawyers do a brisk business in infringement actions, the accused "plagiarist" (*see supra* notes 45-53 and accompanying text) may emerge with image unscathed, as did Maurice Barrymore,

mized in the scholastic community.¹¹⁰ Law students must realize that they are required to perform to the highest ethical standards not only as lawyers but also as law students. The standard in academe is originality in all work; it is the essence of education. The standard for lawyers is honesty in all endeavors; it is the essence of the profession. Plagiarized work is both unoriginal and dishonest.

Law students, however, must answer many masters. As law clerks, many students are called upon each day to prepare summaries of important cases and new developments in the law. Originality is not expected, there isn't time. The rest of the day may be spent preparing internal office memorandums, most of which may be updates of work done by previous clerks that had been carefully filed for future use. Student clerks prepare form interrogatories, pleadings and legal agreements. Points and authorities may be copied from an argument successfully used by opposing counsel in a previous case. Law firms do not stress originality; they want good law.

Law schools demand that their students forget the art of "cut and paste" practiced in some law offices, and insist instead that all work be totally original. The plagiarism approved by working lawyers with too little time to consider their obligations as mentors is condemned but seldom explained by law school faculties. Students struggling to learn the nuances of legal analysis, and "writing like lawyers," may become frustrated and confused by the dichotomy.

Students sometimes experience episodes that compound the dilemma and reinforce the notion that law schools operate under a different standard. A clerk in one law office, and a member of law review, had devoted months of research and writing to an article commissioned by his employer. He rejoiced when it was accepted for publication and eagerly awaited the book's arrival. It was more than a shock to open

Alex Haley, Norman Mailer, Paul McCarty, Margaret Mitchell and Gill Sheehy. See Carroll Plagiarism, *The Unfin Game*, ENCL. J., Sept. 1982, at 92. More recently, in unrelated actions, juries found in favor of Stevie Wonder, and against Eddie Murphy and Paramount studios. Both were trials for commercial "plagiarism."

110. Revelations that Dr. Martin Luther King may have plagiarized his doctoral dissertation have spawned an investigation by Boston University that may result in posthumous revocation of his doctorate. O'Sullivan, *A Hero's Footnotes of Clay*, TIME, Nov. 19, 1990, at 99. See also Turque, Joseph & Rogers, *Not in His Own Words*, NEWSWEEK, Nov. 19, 1990, at 61.

the envelope to find that although he had written nearly every word in the feature article, he had not even been acknowledged in a footnote.¹¹¹ It was a rude introduction to work-for-hire, a concept foreign to law school.¹¹²

Law school, however, is not legal practice. Regardless of the questionable propriety of the practices of some law offices, originality is the standard governing law students in school-related work. Students may have some fuzzy notion that the literary pilferage tolerated in future endeavors will be tolerated now. It is a notion that cannot be attacked too often.

A clear definition is the first step. Nearly all law students know that plagiarism is wrong, but many do not realize that the "paraplaging"¹¹³ regularly practiced in high school and college will no longer be tolerated in the study of law. Clear standards are required. Students must understand that the practice of law requires the highest ethical resolve, a resolve that may be found lacking in the aftermath of a plagiarism charge regardless of whether a student plagiarized through ignorance or by evil intent.

No definition will be effective if it is not communicated. A short proscription in the student handbook is not enough. Law students should be reminded what is expected of them before they begin their first writing assignment; the "when" of citation should be addressed as strongly as the "how." How each school chooses to deliver the message is an individual decision, but it is a decision that needs to be made and

111. This author was a law clerk in the same office, and witnessed this unfortunate incident.

112. Although not as foreign as it should be, as the following passage demonstrates:

[A] well-regarded [law school] professor whose publications were rather thin submitted to a tenure committee a memorandum of law that he had prepared for a public interest organization. In a footnote the professor acknowledged two high-ranking students for their research assistance. When a member of the committee asked the students what their contribution had been, they replied that the professor simply had passed the memorandum as they had written it, except for the addition of his own name at the top The professor . . . is now the Associate Dean of Students . . . (with supervisory authority over . . . student plagiarism and other forms of dishonesty).

Freedman, *The Professional Responsibility of the Law Professor: Three Neglected Questions*, 39 VAND. L. REV. 275, 281-82 (1986).

113. O'Neil, *Plagiarism: (I) Writing Responsibly*, 42 ABCA BULL. 34 (1980), cited by Comment, *Plagiarism in Legal Scholarship*, *supra* note 19, at 238.

a message that must be delivered. No student with the abilities required to gain entrance to law school should be permitted to waste that opportunity through ignorance. The malignant few who then choose to flaunt clearly articulated rules may still be dealt with by traditional harsh discipline or expulsion. Some people never learn. For them, plagiarism is close resemblance of the worst kind.