

PLAGIARISM: A WORKSHOP FOR LAW STUDENTS

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You already know that plagiarism is claiming someone else's work as your own. This short publication gives you practical "do's", "don'ts" and examples specifically tailored to law school and law practice. We recommend that you work through the material in the order presented. Return for a refresher before your major writing assignments. The examples provided by the author will help you make the right choices in quoting material and attributing authorship.

WHAT IS PLAGIARISM?

Plagiarism is the use of another's words, works, thoughts, or ideas without giving proper attribution to the original author. One common English dictionary (1) has the following entry for "plagiary":

plagiary pla'ji--ri, n. (arch.) one who steals the thoughts or writings of others and gives them out as his own: the crime of plagiarism. – adj. (obs.) practicing or got by literary theft. – v.t.

pla'giarise, -ize to steal from the writings or ideas of another. – ns. pla'giarism the act or practice of plagiarising; pla'giarist a person who plagiarises. [L. plagiarius, a kidnapper, plagiary – plaga, a net.]

With an etymology going back to kidnapping, plagiarism must not be a very good thing. An author whose words or thoughts have been stolen without proper attribution might tell feel like the victim of a violent act. Black's Law Dictionary (2) defines "plagiarism" as:

[t]he act of appropriating the literary composition of another, or parts or passages of his writings, or the ideas or language of the same, and passing them off as the product of one's own mind. To be liable for plagiarism it is not necessary to exactly duplicate another's work, it being sufficient if unfair use of such work is made by lifting of substantial portion thereof . . .

Although these definitions help us understand what plagiarism is, it is harder to know exactly when we are or are not committing plagiarism. Because plagiarism involves claiming another's work as your own, giving proper citations to sources and authorities is perhaps the most important aspect of avoiding plagiarism in legal writing. Thus, much of the following discussion will focus on adequate quotation and citation of authorities and sources. Furthermore, because definitions are sometimes too abstract when it comes to questions of plagiarism, this workshop will offer some examples.

PLAGIARISM IN LAW SCHOOL

Because writing comprises much of what you do in law school, plagiarism should be a constant concern. Your writing assignments in law school may include office memoranda, trial memoranda and briefs, motions and pleadings, seminar papers and

theses, and exams. Furthermore, if you work for a student-edited journal, you may be faced with questions related to plagiarism, either in the preparation of your own case note or in the editing of submitted articles and book reviews. Journal writing is discussed briefly below in the section entitled "Academic Writing."

Plagiarism is an ethical violation in most law schools, and the standard practice for citing and attributing authorities in legal writing may differ from the ways you have gotten used to doing these things as an undergraduate or in the working world. One scholar writing about plagiarism (3) in law schools has stated, "On average, it seems a law school must respond to a charge of plagiarism at least once per year." Thus, taking a closer look at what plagiarism is in legal writing will improve your writing as a law student and lawyer, and perhaps save you from unexpected ethical problems in preparing writing assignments and seminar papers in law school.

For example, one student handbook (4) states:

In general a student is to "do his own work" through research, creative writing, thinking, and perhaps discussion. He is expected to follow the rules that are implicit in the specific project assigned to him. For example, if a paper is called for and it is to include creative work, the student is not authorized to plagiarize, or to use another's work as his own, even if that other's work is altered through paraphrase.(5)

Plagiarism under many codes or rules of student conduct in law schools may not require intent (6) to plagiarize or to use someone else's work as your own. Because there is no standard from law school to law school, one scholar has offered a sound model definition and policy for plagiarism adapted from a 1987 publication of Dartmouth College entitled "Sources: Their Use and Acknowledgement."

Example:

Suppose you take very poor notes and forget where a certain important piece of your argument came from. If you incorporate this argument into your work without going back to find out where it came from, you might be subject to an ethics inquiry at your law school, even if you unwittingly forgot to include a citation to the original source.

Keeping this aspect in mind, let us turn to various types of writing you may do in law school and the particular problems they may present concerning plagiarism.

Objective Writing: Office Memoranda

The office memorandum is often the first large writing assignment you have in law school; it is usually assigned in a legal reasoning, research, and writing class. This assignment often arrives during your first semester, just as you are beginning to develop your legal vocabulary. In some ways, learning the language of the law is similar in learning any new language; it starts with imitation. In imitation lies the danger of plagiarism. Your professors do not want you merely to imitate the cases you are given or find through your research. They want you to make the law your own, express it clearly, and guide the reader to an objective answer based on the facts and the law.

Nonetheless, the temptations to copy word-for-word, to paraphrase idea-by-idea, or, simply put, to plagiarize, are very strong.

This temptation to plagiarize comes from several related factors. They include:

1. a desire to be accurate and not to misstate the law;
2. not wanting to take or not having the time to analyze the law fully;
3. a false sense that the court expresses the law so much better than you can, that you should just use its words; and
4. a false sense that the rule from a case is so technical that if you change anything you will be getting the law wrong.

The first temptation is usually the result of taking things a bit too seriously; you do not want to make any mistakes and so your own thinking is somewhat paralyzed by the majesty, precision, and beauty of the court's language. Here, you should get over it and get on with it. Give it a shot on your own, without copying the words of the court. Perhaps your statement will not be as elegant as the court's, especially at first, but it will be yours, and it will not subject you to worries that you have plagiarized.

The second temptation is from not taking things seriously enough. Every law student, lawyer, and law professor will tell you how time consuming it is to work through carefully even the most straight-forward opinions. This temptation is the result of poor planning and much of what you do in law school needs good planning. Not only do you have to plan for expected things like classes, assignments, and extracurricular activities, but also for the unexpected personal crises and computer failures. In other words, the best advice is to set aside enough time so that you are not forced into a situation where you have not given yourself enough time to read, to analyze, and to synthesize the cases.

The last two temptations come from low self-esteem. You can express the law even more clearly than the court has. You must. If you just rely on the court's words you are plagiarizing. Also, with practice, you will learn to express the law in your own words without betraying the subtleties of the tests or rules the courts state.

Because the presentation of rules of law from cases is a common requirement of office memoranda, the following example may help to demonstrate some of the usual difficulties law students encounter in setting out a rule from a case.

Example:

Suppose you are interested in a seller's duty to inspect products before selling them and come across the language of Judge Cardozo in a famous New York case (7) which states the following:

We think the defendant was not absolved from a duty of inspection because it bought the wheels from a reputable manufacturer. It was not merely a dealer in automobiles. It was a manufacturer of automobiles. It was responsible for the finished product. It was not at liberty to put the finished product on the market without subjecting the component parts to ordinary and simple tests.

The first level of plagiarism might be to repeat the text word-for-word without enclosing it in quotation marks. The language is clear, concise, and not complicated. Perhaps you think, "I would have written this exactly the same way, there are no complicated words or sentence constructions." This does not matter. The words are the words of Judge Cardozo, they are not yours. If you repeat them exactly, they must go in quotation marks and be followed by a citation.

Nonetheless, suppose one writes:

A manufacturer is not released from the responsibility of inspecting just because it purchased the goods from a supplier of good repute. If it is a manufacturer and not just a dealer, it cannot sell its final good without testing the pieces that go into the final good.

Here, without a proper citation, one would, of course, be plagiarizing. Still, a proper cite may not be enough to avoid plagiarism. The sentences above are a rather simple paraphrase not only of Cardozo's language but also of the structure of his argument. In addition to providing a proper citation to authority, a careful writer would precede the text above with language indicating it is directly borrowed from the court's or Cardozo's opinion.

For example:

Following the court's argument . . .

As Cardozo reasoned for the court . . .

Tracking the logic of the court . . .

To paraphrase the court . . .

Coupled with a proper citation, phrases such as these indicate that you have not only borrowed Cardozo's conclusions, but also his ideas.

When, then, can a plain citation be used without such care?

Here are a few examples:

In New York, a manufacturer must inspect the pieces used to produce the final product for sale. MacPherson, 111 N.E. at 1055.

The New York Court of Appeals established a further requirement in 1916. Generally, a manufacturer must inspect the parts that make up its goods for sale. MacPherson, 111 N.E. at 1055.

Here, there is no need to give anything beyond a simple citation to the case, and with this alone, there is little danger of plagiarism.

Persuasive Writing: Pleadings, Trial memoranda, and Briefs

Documents submitted to courts also must be the original work of the attorney submitting them or give proper citations to authorities used in them. The general principles and

example given above apply to court documents as well. Thus, the same ways you might use a case to set out rules of law in an office memorandum should be used in court documents.

Most types of court documents share a common form. It is likely that a new pleading or brief will stem from a sample shown in class, the applicable court rules, a form book, or a form used in your law office. Nonetheless, care must be taken to ensure that the contents, rather than the shell holding the contents, are not plagiarized. Just as courts have reprimanded attorneys for plagiarizing substantive legal doctrine or arguments, so too will professors willingly bring charges against students for plagiarism in court documents, whether the documents be produced for fictional assignments in class or for real cases in a legal clinic.

Plagiarism has been noted by courts in many common documents including pleadings(08), memoranda of law(09), and appellate briefs(10). Three examples will be sufficient to demonstrate how seriously courts take plagiarism.

Example 1:

In 1994, the First Circuit Court of Appeals, heard a case in which one of the appellants, Charles George Trucking, sought to challenge a CERCLA consent decree. (11) Commenting on the appellants' pleadings the court stated:

. . . [A]ppellants do little more than plagiarize complaints from prior pleadings filed by other parties in opposition to plaintiffs' previous motions for partial summary judgment; they do not attempt to explain these points, fail to set forth supporting documents in a record appendix, and rely on rhetoric to the exclusion of either record citations or scientific fact.

We reject appellants' objection on two bases. First, it is presented to us in a slipshod fashion, without developed argumentation, and is, therefore, not entitled to substantive consideration.

Plagiarism undermined the court's ideas of adequate representation and was equated to poor lawyering.

Example 2

Another example is found from a Maine federal district court. (12) There, a plaintiff in a Title VII sex discrimination action appears to have been poorly represented. The court chastised the plaintiff's counsel:

An even more egregious example of bad practice on the part of Plaintiff's counsel is the late-filed memorandum of law in support of Plaintiff's response to the summary judgment motion. The memorandum plagiarizes Defendants' memorandum in significant part, copying the legal portion of it on all counts except for Count III virtually verbatim. On Count III Plaintiff's counsel has cited no legal authority. Throughout the brief, Plaintiff's counsel has inserted his own facts and conclusions, contrary to those written by defense counsel, but it is clear that he did no legal research and remained content to let defense counsel do all the work. Defense counsel has graciously or perhaps inadvertently failed

to call this major breach in Professional [sic] conduct to the court's attention. The court, however, cannot let it pass without condemnation.

Plagiarism is unacceptable in any grammar school, college, or law school, and even in politics. It is wholly intolerable in the practice of law. The court has obviously disregarded the memorandum submitted by Plaintiff's counsel, first for its untimely filing under Local Rule 19, and second, because it does not represent any additional contribution on the part of plaintiff's counsel to the court's understanding of the law.

Irrked, the court found that plagiarism served as a basis for awarding attorneys' fees to the defense counsel: (13)

Finally, the Court notes that this is a particularly fitting case for an award of attorney's fees charged against the Plaintiff's attorney. Since Plaintiff's counsel appropriated the work of defense counsel, submitting it as his own, he should, at the very least, pay for the services unwittingly rendered.

Example 3:

A final example, one of a plagiarized appellate brief (14), is from the First Circuit Court of Appeals. The court's cogent criticism of plagiarism warrants setting out a substantial portion of the per curiam opinion:

. . . [W]e affirm the judgment of the district court for essentially the same reasons stated therein.

We note to our considerable dismay that the government, rather than endeavoring to fulfill its responsibilities to this court, has eschewed both independent effort and reasonable candor. It has instead, thrown professionalism to the winds and brazenly plagiarized the district court's opinion, without attribution. . . . Of Judge Laffitte's 25-page opinion, only some five paragraphs have not been appropriated. Such dereliction of duty, particularly on the part of a United States Attorney's office, cannot be condoned.

Because the plagiarism, although deplorable, neither prejudiced nor adversely affected the appellant, we see no useful purpose to be served in ordering the case forfeit. Two wrongs do not make a right. We are confident, however, that the Justice Department, once apprised of the situation, will take suitable action.

These cases demonstrate that some attorneys have fallen into the plagiarism trap and have been caught by the court. No doubt their excuses included time deadlines, and perhaps the repetitive nature of the work involved. Nonetheless, such action was severely criticized by the courts.

Academic Writing: Seminar Papers, Theses, Student-Edited Journals

Not all of the writing you do as a law student will be centered on legal practice, whether in the office or in the courts. Some of your writing will involve the presentation of seminar papers or, for some of you, theses. Furthermore, many of you will work on a student-edited journal of one type or another. To join a journal, many students write a competition piece, and once members, students write case notes. Finally, students on journals edit articles and book reviews.

The material in this section applies to the same cautions that apply for writing about the law in practice apply for writing about the law as an academic. Although most texts on legal research and writing cover plagiarism sparsely if at all, a recent publication on scholarly writing (15) presents adequate discussion and some good examples. There, Professors Fajans and Falk set out the following suggestions for attribution of sources:

1. Provide a footnote for borrowed language, facts or ideas whether quoted or paraphrased in your text.
2. When you borrow seven consecutive words or more, use quotation marks; of course, where the wording is distinctive, it is appropriate to use quotation marks for fewer than seven words. . . .
3. Put borrowed language in quotation marks when the quotation contains fewer than 50 words.
4. Use block quotes – that is indent and single-space quotations – when they are 50 words or more. When you indent and single-space quotations, do not use quotation marks.
5. In addition to providing an attribution footnote for paraphrases, introduce the borrowed material with some reference to its source. For example, "One recent commentator points out that"
6. If you find a source through other sources, good research practice requires you to look up the cited source. Regardless of whether you do, however, citation convention requires you to footnote the citing source as well as the cited source if the citer's use of the cited source is original.
7. Finally, attribution footnotes should always be included in your very first draft: if you wait until the revision stage, paraphrased material may escape attribution altogether, causing inadvertent (but inexcusable) plagiarism. (16)

With these seven precautions, Professors Fajans and Falk have set out excellent suggestions which should be generally followed in all student academic writing. A careful adherence to these guidelines will ensure that your academic writing in law school is free from plagiarism.

Evaluative Writing: Exams

Plagiarism may arise in the context of either timed, essay exams, or take-home essay exams. First, let us briefly discuss timed, essay exams. It is safe to say that the expectations for citations to authority are greatly reduced for essay examinations during which students are not permitted to consult written notes, printed materials, or computer infobases. Nonetheless, the more you attribute the sources of your statements, even in such an exam, the better your grade on the exam is likely to be. Thus, depending on your professor, if you remember the court or the judge or the names of certain important cases, attribution to these sources is appropriate. Most of us do not have photographic memories, and so, in such exams, we must be content with presenting a majority view on a particular legal issue or with perhaps noting that there is a split in the way courts or judges treat a particular problem. Working and

writing without other sources to consult and under the pressures of a timed exam, you will not be expected to produce the same citations to authority you would be under more usual situations.

Where your professor permits you to consult materials during a timed essay exam, you should give appropriate citations to authority. Remember to make your citations appropriate to the activity: your attributions should be short and to the point. A timed essay exam is no place to consider the higher-levels of Bluebook (17) consciousness. Short, concise references worked into your prose seem best in such answers. For example:

In class you argued that . . .

A Missouri case in our casebook indicated that . . .

Cushman views the Court differently, arguing that . . .

According to the MacPherson case . . .

Wijffel's work on the corpus juris civilis demonstrates . . .

Such informal references to cases, discussions, authors, or works are adequate in the context of a timed essay exam.

Take-home exams require greater care; depending on the type of exam and the expectations of the professor, it is probably best to approach citations to sources for such exams as discussed in the section entitled "Academic Writing." Plagiarism on a take-home law school exam produced at least one case heard by a U.S. District Court.(18) In that case, a law student at Seton Hall University had a take-home exam in Administrative Law. "The Professor of that class determined that Plaintiff had plagiarized a Supreme Court brief that was filed in the real life case parallel to the exam project."* After this determination, the law school was unable to provide documentation required for the student to sit the bar examination.

Consequences of Plagiarism in Law School

Law schools take plagiarism extremely seriously. An investigation of student plagiarism is one of the few things that professors feel they are morally required to pursue, even though it means a lot of time, effort, and, if proven, sorrow. Depending on the particular law school and gravity of the conduct, plagiarism might lead to minor punishments, such as failure of the particular course, to severe castigation, such as expulsion or dismissal from law school.(19)

Investigations for plagiarism in law school often reappear when candidates seek bar admission. Cases illustrate that students who have committed plagiarism in law school have been prohibited from taking the bar exam and from practicing law. For example, a Delaware Supreme Court decision (20) stemmed from a petitioner's desire to avoid disclosure of the extraordinary facts surrounding his failed attempt to cover up a charge of plagiarism in law school. Trying to hide his plagiarism, the student apparently forged statements and fabricated testimony. His false materials included the signature of a District of Columbia notary public, several letters from nonexistent U.S. Army officers, and letters that forged the seal and name of the C.I.A. The court upheld the Board of

Examiners' determination that the petitioner failed to show that he was a person of good moral character and fit to practice law.

On one occasion, a single act of plagiarism was not sufficient to bar a candidate from admission forever. In 1988, a divided Minnesota Supreme Court (21) admitted a petitioner who confessed to plagiarizing substantial portions of a research paper on products liability. The Minnesota court was swayed by the petitioner's remorse and recounted a painful scrutiny of the petitioner's work this way:

At the hearing, counsel for the Board dissected the paper line by line and phrase by phrase. Again and again, petitioner admitted responsibility as he initialled each plagiarized passage. Petitioner also attempted to explain the incident to the Board at the hearing. He cited his wife's health, computer problems, stress in his family.(22)

Even though the petitioner was admitted to the bar, all would agree that it is best to avoid any possibility of plagiarism while in law school. Furthermore, problems associated with plagiarism do not disappear once you leave law school. As long as you are communicating with others in writing, something attorneys do all the time, you must be concerned with plagiarism. Thus, plagiarism after one passes the bar is also a possibility.

PLAGIARISM IN LEGAL PRACTICE (23)

Legal practice involves many instances of copying text. Lawyers whose practice centers on standardized business or legal transactions commonly incorporate their particular clients' needs into pre-existing forms drafted and approved by either a law firm as a whole or a committee at the firm which prepares such forms. Form books also supply numerous examples which are frequently and directly adopted by attorneys. When such copying is done in producing a firm work product, it appears that there is little problem of plagiarism. The associate who prepares an office memorandum knows that he or she is being compensated for legal research and analysis which may be incorporated into various other documents all under the same firm name.

Nonetheless, there are situations where plagiarism in practice goes beyond the internal generation of texts for the firm or office. We have already seen that plagiarism can arise in a lawyer's preparation of court documents and that courts are usually displeased with lawyers who commit plagiarism in their representation of clients before the courts. Although this workshop is aimed at the writings of law students, it is worth noting that plagiarism can have serious consequences outside law school. In certain instances, plagiarism can lead to copyright infringement.(24)

Courts have determined that plagiarism can be a violation of a lawyer's professional responsibility. In 1994, the Appellate Division of the Supreme Court of New York publicly censured an attorney (25) who submitted plagiarized writing samples to a program assigning attorneys to criminal defendants. The court noted that several sections of the Code of Professional Responsibility were brought into play, including:

. . . conduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of Code of Professional Responsibility DR 1-102(A)(4) . . .

conduct prejudicial to the administration of justice, in violation of DR 1-102(A)(5) . . . and conduct that adversely reflects on his fitness to practice law, in violation of what is now DR 1-102(A)(8). (26)

Likewise, in *In re Hinden*, 654 A.2d 864, 1995 D.C. App. LEXIS 31 a partner in a Chicago law firm was publicly censured by the Supreme Court of Illinois and the District of Columbia Court of Appeals Board on Professional Responsibility. In this case, the attorney had written a chapter entitled "Alternative Health Care Systems" in a health law treatise. Of the 56 pages in the chapter, "23 pages were copied verbatim or substantially verbatim from [an] article of another author" without citation to that author. *Id.* at 865, 866. Here too the sections of the Code of Professional Responsibility cited were the Illinois and District of Columbia versions of DR 1-102(A)(4).

The disciplinary rules of the ABA Model Code of Professional Responsibility which were used by the courts above in punishing plagiarism by attorneys are restated in the ABA Model Rules of Professional Conduct. Both sets of guidelines state that a lawyer engages in professional misconduct when he or she "engages in conduct involving dishonesty, fraud, deceit or misrepresentation." (27) Another Rule (28) possibly brought into play by plagiarism is Rule 3.3 requiring candor to the court. Thus, in the abstract requirements of the rules of professional behavior and in the concrete sanctions of the courts, plagiarism is an important consideration in the practice of law.

Common Mistakes

The court says it so much better than I can

A common error is to think that the court from which you extract language has the monopoly on good, clear, straight-forward expression. Much of these beliefs come from self-doubt or low self-esteem. The truth be known, with a little work, you can probably express the law just as well as, perhaps better than, the court. You may hesitate to put the court's ideas and presentation of the law into your own words because you fear that you will introduce error where there was none before. This is a valid concern; but a careful analysis and reworking of the court's reasoning and language is both educationally valuable and what most readers are looking for in good legal writing.

Nonetheless, law students often plagiarize the court not because they fear they will add imprecision, but because they did not understand what the court was trying to say. In other words, it appears that students sometimes think that it is not worth the bother to work through the complicated language of the court to get to the court's meaning. The result of these self-doubts concerning reading comprehension is often a poorly paraphrased, sometimes plagiarized, passage from the original opinion. It is as if a law student thought, "Oh no, I don't understand these words, therefore I'll put them in. By including these odd terms, no one will think that I didn't understand what was going on in the case."

Example:

Suppose we seek a statement to express the idea that a contractual relationship is required for an action against a manufacturer of defective goods and find the case of *Winterbottom v. Wright* (29) which in part states:

Thus, a carrier may be sued either in assumpsit or case; but there is no instance in which a party, who was not privy to the contract entered into with him, can maintain any such action.

Here, there are numerous words to work through and look up. The surrounding text must be read slowly and carefully to gain a full understanding of what the judge is trying to say. We are faced with problems of distance stemming from space (the decision is from England), time (the decision is from 1842), and language ("assumpsit," "case," "privy").

Without dealing with all these challenges, one might write:

An action might be brought against someone providing transportation by assumpsit or by case, however, one still needs contractual privy to bring these suits.

The passage above is plagiarism because it does not cite the case. Furthermore, because the author failed to determine the meanings of technical legal terms within their context, the passage provides little intelligible information. An improved version, from both standpoints might be:

In an English case from the 1840s, a judge asserted that contemporary forms of contractual or negligence actions could be brought against a carrier only when there was a contractual relationship between the parties as well. *Winterbottom v. Wright*, 152 Eng. Rep. 402, 405 (Exch. of Pleas 1842).

Here, the passage interprets the legal terms of art and provides a proper citation.

Furthermore, the temptation to paraphrase mindlessly has been avoided. Thus, when the legal terminology is difficult, plagiarism is a tempting short cut to filling up pages with legal looking text. Such devices do not go much further. What most readers truly desire is to have the law explained from the cases in clear, precise prose.

Academic pressures and job pressures

A related problem concerns time. It takes a long time to read carefully, to digest, and to present the reasoning or language of a court's decision. The intellectual patience and rigorous mulling required to understand the text of a decision are skills difficult to learn and seldom taught directly in law school. "Write a memo," says the professor. It is easier to paraphrase the court's reasoning and language than to rewrite it in an even clearer way. In legal practice, memoranda written under extreme time pressures usually contain many quotes, because their authors could not afford the time to digest the law themselves. It is so much easier to dictate passages from cases that are more or less on point and hope the reader will piece the law together from the quotes. Admittedly, there are times when it is appropriate to quote the court directly, but not as often as one might think when beginning legal study.

Law schools are not known for their leisurely pace. There are readings, case briefs, classes, writing assignments, practice exams, study groups, outlines, and exam reviewing all competing for your time. Let alone any other personal, professional, or emotional aspects you might fit into these years. Not to mention uncooperative hard drives, power outages, or printers which sometime seem to be in league with evil forces. This is all a way of saying that most plagiarism comes from poor time management, from feeling pushed against the wall and having nowhere to turn except to the quick solution – copy it from somewhere, anywhere! Thus, one important suggestion is that you start early on your writing projects and allocate enough time to do them properly. You will need time to research, actually read the materials you have found, outline, draft and redraft, check a few more authorities, figure out how to cite them properly, redraft again, proofread, print or type, proofread again. It is a long process, to avoid one common plagiarism trap, start early.

Law school citation practices

Although you already may have experienced this, it should be stated that law school is different from undergraduate study. This is not to say that undergraduate study lacks rigor or welcomes plagiarism. It does mean that for many students adjusting to the manner of studying, reasoning, researching, and writing required in law school is an unexpected challenge. This is particularly true for students who have not done a great deal of writing in their undergraduate days. For students who have done significant writing, or for students who are returning to law school after working, other types of adjustments to their written presentations are often needed.

One aspect of adjusting to law school is an increased expectation by professors and fellow students concerning your writing and your use of authorities. In the law, we have at least one frequently used book that addresses nothing but how to cite materials, The Bluebook. Therefore, you should expect your law school professors to have some significant demands concerning accuracy in citation to sources. These demands may be greater than you have been used to either in your undergraduate studies or in your work experiences.

The immutability of the Common Law

One aspect of the common law system that makes it harder for lawyers to determine if they are committing plagiarism is the idea that the Common Law sits out there as some sort of Platonic ideal. Under this view, each case is merely evidence of what that Common Law is. With this view of the Common Law as the basis from which a lawyer operates, plagiarism is practically impossible. The argument runs something like the following. The Common Law belongs to all of us; the language of the judge merely extracts a small piece of an inherited system that is common property. This view of the Common Law, a view stretching back at least to the famous English Justice Edward Coke, removes the qualities of uniqueness and originality from a judge's exposition of the law. (30) The scientific jurisprudence of Langdell, still an underlying assumption of many case books, does little to challenge this paradigm of the Common Law as something to be discovered rather than created. Only with legal realism and its children

do we see jurisprudential developments that return ideas of originality and authorship to the text of judicial decisions.

This is perhaps a complicated way of saying that if the Common Law is unchanging, it is something impossible to plagiarize. One judge's statement of the law is as good as another's, is as good as mine. We all extract our law from the same source and when I repeat a judge's words, with or without citation, I do nothing more than repeat his or her repetition. The Common Law, because of its common content, cannot be plagiarized; it is like one of many popular camp-fire songs, common to all, authored by none.

Although this justification might sit in your mind, perhaps even unconsciously after several classes in law school, it is, of course, wrong. Wrong jurisprudentially, and wrong when it comes to questions of plagiarism. Do not get caught by the trap of an intellectual paradigm founded on the unchangeable nature of the Common Law.

Judges write decisions in which they make the common law, and you, as a law student and lawyer, will have to cite their words and ideas.

The mutability of the text: whose words are they anyway?

If viewing the Common Law as unchanging is one trap for committing plagiarism, viewing texts as changing and mutable is another. Because you are reading this text on your computer screen, we have left the world of the printed page. You can write over, change, edit, highlight, add notes to, or delete my text. You can do any one of dozens of things that will change my original words, the file I have written.

The ease with which you do this makes it easier for my words to become yours, my thoughts to become your thoughts. Nonetheless, these are my words and my ideas, and even though you downloaded them to your disk and changed them in one way or another, they are, or were, mine, and if you copy them without proper attribution, you have committed plagiarism.

We have left the world of the printed page in legal research and writing today. (31) You and I download cases, we cut and paste without scissors and glue, we move blocks of text here and there, from the LEXIS®-NEXIS® online services, from e-mail, and from internet nodes. Thus for many purposes we have already moved from page text to screen text. It is this ease of moving and manipulating text that is another trap for plagiarism. There is no clear answer as to when someone else's text becomes your original creation; therefore, to avoid plagiarism, you must be overly cautious in these days of mutable texts.

COMMON-SENSE CAUTIONS

Planning

Plan ahead for whatever research and writing assignment you may have throughout law school. Your professors often give you adequate time to do the job; it is up to you to allocate that time adequately. Not only should you think about the expected time it will take you to research, draft, check your authorities, and proofread. But you should also consider possible time-consuming difficulties with computer hardware. Students frequently approach professors with excuses for late papers because of printer problems. Keep this in mind, now, before you start.

Failure to plan leads to time crunches which lead to temptations to plagiarize. It is seldom that someone turns to plagiarism because he or she is just a cheat who wishes to get by without doing the work, without thinking. Instead, it is usually a combination of circumstances that lead students to plagiarize and one of these circumstances is often an unexpected lack of time to write the memorandum, or to research adequately the seminar paper. The need to turn something in, anything in, on time, leads to plagiarism.

Note taking

"Many forms of inadvertent plagiarism are caused by poor research habits," writes a scholar (32) of plagiarism. When you research, take careful notes, notes that will follow your text wherever and however you move the text. Investigation of student plagiarism often begin because a student has kept poor notes in collecting research and has inadvertently not recorded a source, or deleted or lost a reference to a source along the way. Therefore, while researching take careful notes.

Citing authorities

Finally, in addition to the recommendations for citing sources listed above in the discussion of academic writing, a review of general principles for law schools is worthwhile. After a careful study of plagiarism in law school, Robert D. Bills suggests the following rules for citing sources. They are quoted directly from the guide set out in his recent article.(33) His straight-forward rules are:

1. Cite sources for all direct quotations.
2. Cite sources from which language, facts, or ideas have been paraphrased or summarized.
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.
4. Cite sources that add relevant information to the particular topic or argument propounded.
5. Cite sources from and for other kinds of specialized materials.(34)
6. Cite sources relied upon for authority to support any legal proposition or rule.

SUMMARY

Plagiarism is the use of someone else's work, thoughts, ideas, words or text without proper attribution. It can occur in any type of writing in law school: objective writing, persuasive writing, academic writing, and evaluative writing. Plagiarism in law school can have serious consequences including failing grades, suspension, or expulsion. Furthermore, plagiarism in law school can hinder or prohibit bar admission. Finally, plagiarism in legal practice can infuriate judges and be a ground for disciplinary action. To avoid plagiarism one must quote and cite sources accurately, precisely, and honestly in all forms of legal writing.

Appendix: Bills's Model Definition

The text of Robert D. Bills's Model Definition and Policy for Plagiarism follows: (35)

Plagiarism is the submission or presentation of any work in any form, that is not a student's own, without acknowledgment of the source. No student at [law school] shall appropriate facts, ideas, or language from the work of another without proper use of quotation marks, citation or other explanatory insert. Regardless of intent, the failure to provide proper acknowledgment of the use of another's work shall constitute plagiarism.

This law school considers plagiarism to be one of the most serious offenses that can be committed in an academic community, and a finding that a student has engaged in such activity raises serious questions as to that student's fitness to remain at an institution of legal education. A finding of plagiarism shall subject a student to disciplinary action which may include suspension or expulsion, and notification to state bar examiners. Regardless of any disciplinary action officially taken by this institution, a finding of plagiarism may also, at the sole option of the instructor involved, subject the student to a failing grade or loss of course credit.

Some students erroneously believe that plagiarism can occur only when there is 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. Students are responsible for the information concerning plagiarism found in *Avoiding Plagiarism in Law School: A Law Student's Guide to Sources and Their Acknowledgment* available in the Dean's office and the law library.

(1) Chambers English Dictionary 1112 (7th ed. 1988).

(2) Black's Law Dictionary 1035 (5th ed. 1979).

(3) Robert D. Bills, *Plagiarism in Law School: Close Resemblance of the Worst Kind*, 31 Santa Clara L. Rev. 119 (1990).

(4) Saint Louis University School of Law, *Student Handbook* 46 (1992).

(5) A "paraphrase" is an "expression of the same thing in other words." Chambers English Dictionary 1047 (7th ed. 1988).

(6) For an informative discussion of intent in questions of plagiarism see Ralph D. Mawdsley, *Plagiarism Problems in Higher Education*, 13 J.C. & U.L. 66-70 (1986). The question of intent to plagiarize is also discussed in Bills, *supra*, at 111-115.

(7) *MacPherson v. Buick Motor Co.*, 111 N.E. 1050, 1055 (N.Y. 1916), citing *Richmond & Danville R.R. v. Elliot*, 149 U.S. 266, 272.

(8) *United States v. Charles George Trucking, Inc.*, 34 F.3d 1080, 1994 U.S. App. LEXIS 24930 (1st Cir. 1994).

(9) *Dewilde v. Guy Gannett Publishing Co.*, 797 F. Supp. 55, 1992 U.S. Dist. LEXIS 10336 (D. Me. 1992).

- (10) Jackson v. Federal Aviation Admin., 1991 U.S. App. LEXIS 11857 (1st. Cir. 1991).
- (11) Charles George Trucking, 34 F.3d at 1085; 1994 U.S. App. LEXIS 24930, at *9.
- (12) Dewilde, 797 F. Supp. at 56; 1992 U.S. Dist. LEXIS 10336, at *2, n.1.
- (13) Dewilde, 797 F. Supp. at 66; 1992 U.S. Dist. LEXIS 10336, at *28.
- (14) Jackson, 1991 U.S. App. LEXIS 11857, at *1-*2.
- (15) Elizabeth Fajans & Mary R. Falk, Scholarly Writing for Law Students, Seminar Papers, Law Review Notes and Law Review Competition Papers 90-95 (1995).
- (16) Id. at 92-93.
- (17) The Bluebook: A Uniform System of Citation (16th ed. 1996).
- (18) In re Anonymous, 1995 U.S. Dist. LEXIS 15533 (S.D.N.Y. 1995).
- (19) McMillan v. Hunt, 1992 U.S. App. LEXIS 17475, at *1 (6th Cir.) (student dismissed from law school for plagiarism on a required writing assignment). See also Easley v. University Bd. of Regents, 853 F.2d 1351, 1988 U.S. App. LEXIS 11074 (6th Cir.).
- (20) In re Green, 553 A.2d 1192 (Del. 1989).
- (21) In re Zbiegien, 433 N.W.2d 871 (Minn. 1988).
- (22) In re Zbiegien, 433 N.W.2d at 876-77; 1988 Minn. LEXIS 298, at *16-*17.
- (23) I should like to thank Professors Carol Needham and Leland Ware both of Saint Louis University School of Law for their helpful comments concerning this section.
- (24) This workshop does not address the liability for copyright infringement that may arise from plagiarism. See generally Laurie Stearns, Copy Wrong: Plagiarism, Process, Property, and the Law, 80 Cal. L. Rev. 513 (1992).
- (25) In re Steinberg, 206 A.D.2d 232, 620 N.Y.S.2d 345, 1994 N.Y. App. Div. LEXIS 12971.
- (26) In re Steinberg, 206 A.D.2d at 232; 620 N.Y.S.2d at 345; 1994 N.Y. App. Div. LEXIS 12971, at *1.
- (27) Model Rules of Professional Conduct Rule 8.4(c); Model Code of Professional Responsibility DR 1-102(A)(4).
- (28) I thank Professor Carol Needham of Saint Louis University School of Law for this observation.
- (29) Winterbottom v. Wright, 10 M. & W. 109; 152 Eng. Rep. 402 (Exch. of Pleas 1842).
- (30) See generally J.G.A. Powcock, The Ancient Constitution and the Feudal Law 30-69 (1987).
- (31) A discussion of the shifts toward electronic texts in law school is found in Richard A. Matasar & Rosemary Shiels, Electronic Law Students: Repercussions on Legal Education, 29 Val. U. L. Rev. 909 (1995). The article does not, however, note that the

mutability of electronic texts should put authors and students on guard for plagiarism in their use of such texts. For a collection of texts placing this general issue in historical context see George S. Grossman, *Legal Research: Historical Foundations of the Electronic Age* (1994).

(32) Bills, *supra*, at 124.

(33) Robert D. Bills, "Avoiding Plagiarism in Law School: A Law Student's Guide to Sources and Their Acknowledgement" in Bills, *supra*, at 123-30.

(34) Here, Bills means things like "lectures, recordings, films, interviews, letters, unpublished manuscripts, graphs, charts, tables, etc." Bills, *supra*, at 129.

(35) Bills, *supra*, at 137-38.