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PLAGIARISM IN LAW SCHOOL: CLOSE RESEMBLANCE OF THE WORST KIND?

Robert D. Bills*

I. INTRODUCTION

Educators despise plagiarism.¹ No subject can turn an academic's heart to stone quite so fast. The mere suggestion that a student has infected a law school with plagiarism's virus often brings a call for an immediate quarantine, or worse.² Such righteous indignation is not always an inappropriate response; some law students have no respect for the originality in scholarship that cements the foundation of academe's ivory towers. However, many students found guilty of plagiarism do not share this malice, are not inherently evil individuals, and can become examples of everything that is right with education. This article is dedicated to those students willing to endure what William Faulkner called the "agony and sweat" of original writing,³ and to those with the potential to recover from plagiarism's grasp.

There is no shortage of literature on plagiarism in the education journals.⁴ Scores of articles extol the virtues of creative writing assignments,⁵ teaching the research process,⁶

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1. See, e.g., *Napolitano v. Princeton Univ. Trustees*, 186 N.J. Super. 548, 453 A.2d 263 (1982); Keerdota, *Accused Plagiarist Gives up the Law*, NEWSWEEK, Oct. 4, 1982, at 17 (undergraduate with 3.7 grade average and otherwise impeccable credentials found guilty of plagiarism, and subsequently denied admission by every law school to which she had applied).

2. See generally *In re Lamberis*, 93 Ill. 2d 222, 443 N.E.2d 549 (1982) (law school dean, dissatisfied with mere expulsion, initiated legal action to have practicing attorney disbarred for plagiarizing LL.M. thesis).

3. Carroll, *Plagiarism: The Unfun Game*, ENG. J., Sept. 1982, at 92, 93; see also Speech by William Faulkner upon receiving the Nobel Prize (Dec. 10, 1950).

4. See Appendix C, Selected Bibliography.

5. Carroll, *supra* note 3, at 93-94.

6. Esch & Gladstein, *Teaching the Research Process*, 12 ENG. Q. 57 (1979).

and encouraging critical thinking.⁷ Many others preach close scrutiny of all student work,⁸ strict discipline,⁹ and the use of honor codes.¹⁰ Some simply throw up their hands at the perceived moral laxity of today's students.¹¹ Only a few postulate that instances of plagiarism can be reduced by a direct and honest approach.¹² Unfortunately, these articles fail to reach those most in need. One survey found that in eleven writing texts generally available to high school students, nine fail to mention plagiarism at all, one devotes a single sentence to the topic, and one hides a short paragraph in an appendix.¹³ It is not surprising that less than half of the students finishing their high school education have heard or understood the warnings.¹⁴

Plagiarism's sordid traditions continue in college. One commentator tells the story of a history professor who, while a student at Cornell University, wrote a class paper that earned an "A." Dutifully, he had turned the paper over to the files of his fraternity. Years later, as a professor, he had the opportunity to grade his own paper, turned in by a student who happened to be a member of the fraternity.¹⁵ The same commentator surveyed 425 college students and found that although seventy-five percent believed plagiarism to be wrong, thirty-eight percent would engage in the practice regardless.¹⁶ The most disturbing statistic, however, is that twenty-five percent find plagiarism to be acceptable behav-

7. Saalbach, *Critical Thinking and the Problem of Plagiarism*, 21 C. COMPOSITION & COMM. 45 (1970).

8. Glatt & Haertel, *Use of Cloze Testing Procedure for Detecting Plagiarism*, 50 J. EXPER. EDUC. 127 (1982).

9. *Enhancing Campus Judicial Systems (symposium)*, 39 NEW DIR. STUD. SERV. 1 (1987).

10. Fass, *By Honor Bound: Encouraging Academic Honesty*, EDUC. REC., Fall 1986, at 32.

11. Dant, *Plagiarism in High School: A Survey*, ENG. J., Feb. 1986 at 81; Nuss, *Academic Integrity: Comparing Faculty and Student Attitudes*, 32 IMPROVING C. U. TEACHING 140 (1984); Budig, *Prevalence of Cheating in College*, 60 PHI DELTA KAPPAN 754 (1979).

12. See, e.g., Canuteson, *We Can Help Eliminate Plagiarism By Teaching Students What It Is*, CHRON. HIGHER EDUC., Mar. 16, 1983, at 30.

13. Martin, *Plagiarism and Originality: Some Remedies*, 60 ENG. J. 621 (1971)

14. Dant, *supra* note 11, at 83.

15. Hawley, *The Thieves of Academe: Plagiarism in the University System*, 32 IMPROVING C. U. TEACHING 35 (1984).

16. *Id.* at 36-38.

ior.¹⁷ If the figures are correct, six of every ten undergraduates are admitted and unrepentant plagiarists. It seems obvious that most colleges simply inherit the problem from the high schools, but do little if anything to prevent it.¹⁸

Legal literature has devoted relatively few pages to plagiarism in law school. In recent years the law reviews have published only two articles on the subject.¹⁹ If, as some legal scholars fear, no one reads the law reviews,²⁰ these articles have done little to reduce the problem.

Law school plagiarism can never be completely eliminated. There will always be students without the requisite scholarship and ethical resolve who intend to defraud unsuspecting professors and classmates alike. These students should be purged from the ranks. For the others, open dialogue and constructive advice may be a more effective preventative than the strictest admonitions.

This article discusses the difficulty created by the lack of a universally accepted definition for plagiarism and the role of a student's "intent" in disciplinary actions. Results are presented from a survey of law school deans conducted to determine how institutions of legal education currently cope with a plagiarist. However, the most valuable discussion may be the law student's guide for avoiding plagiarism. Legal educators are encouraged to reproduce this guide for their students and use it with enthusiasm.²¹

17. *Id.* at 38.

18. Statistics demonstrate a preference by some institutions for reaction rather than prevention. For example, the Princeton University disciplinary committee hears 12 plagiarism cases each year; the University of Texas hears 100. Selwall, Drake & Lee, *An Epidemic of Cheating*, NEWSWEEK, May 26, 1980, at 63; cited in Hawley, *supra* note 15, at 38.

19. Mawdsley, *Legal Aspects of Plagiarism*, 13 J. C. & U. L. 65 (1986) [hereinafter Mawdsley (Journal)]; Comment, *Plagiarism in Legal Scholarship*, 15 U. TOL. L. REV. 233 (1983) (authored by Debbie Papay-Carder).

20. Nowak, *Woe Unto You*, *Law Reviews*, 27 ARIZ. L. REV. 317, 322 (1985).

21. With proper permission and citation, of course! The chapter, "Avoiding Plagiarism in Law School: A Student Guide to Sources and Their Acknowledgment," is adapted with permission from Dartmouth College, *SOURCES: THEIR USE AND ACKNOWLEDGMENT* (1987). The Dartmouth booklet has enjoyed great popularity since its first printing in 1962, and is currently in use at a number of prestigious colleges and universities.

II. DEFINING PLAGIARISM

A. *Etymology*

"Plagiarism" derives from the Latin *plagium*, loosely translating to the theft of a slave or the kidnapping of a freeman with the intent to keep him or sell him into slavery.²² The term was first applied to the theft of thoughts and words ("servants of the imagination") by the Roman poet Martial, who was offended by the appropriation of his verse by the poet Fidentinus.²³ Martial ridiculed the "weaker" poet for attempting to enslave thoughts that could only serve the mind of their master,²⁴ and challenged Fidentinus to "allow them to be called mine" or "pray buy them, that they may be mine no longer."²⁵

Martial's metaphor reveals the dual nature of plagiarism. The first aspect is the appropriation of another's literary effort without attribution; the second is the concept of a "property right" in the fruits of one's mind. Martial's tongue-in-cheek demand for compensation was ignored; the Romans considered a translation or adaptation from the original to be a new work.²⁶ Early Roman authors considered innovation hazardous; imitation was preferred so long as the imitation was of a "superior" model and the imitator could demonstrate some contribution of his own.²⁷ Virgil patterned much of his work after Theocritus;²⁸ Terence vigorously translated Menander;²⁹ Horace derived unique inspiration from Aristotle.³⁰ Although an author was expected to disclose his source, it was a convention usually ignored.³¹

The Romans were not the first to copy. Plagiarism had

22. Kolich, *Plagiarism: The Worm of Reason*, 45 C. ENG. 141, 143 (1983).

23. *Id.*

24. *Id.*

25. A. LINDEY, *Plagiarism and Originality*, 95 (1952), (quoting Martial, EPIGRAM, I, 56, (1985-86)).

26. Martial, *supra* note 25, at 65.

27. *Id.* at 66.

28. *Id.* at 65.

29. *Id.* at 65.

30. *Id.* at 66. Aristotle was also charged with plagiarism. *Id.* at 65.

31. *Id.* at 65-67 (Lindey quoting Pliny the Elder in *Historia Naturalis*, "In comparing various works with one another I have discovered that some of the most eminent writers have transcribed, word for word, from other works, without acknowledgment.").

been prevalent among ancient Greek authors³² but was seldom punished.³³ The ancients seemed more concerned with the status derived from authorship than illusory profits from the sale of manuscripts.³⁴ Borrowing from the rich heritage of myth and legend was encouraged, as was the use of earlier thought.³⁵ However, the "theft" of status, evidenced by a later author's intent to deceive the reader, characterized a form of plagiarism denounced by the Hellenics.³⁶

Conscious imitation continued throughout the dark ages. Early ecclesiastics borrowed freely;³⁷ historians copied entire passages.³⁸ The distinction between "borrowing" and "copying" remained muddled until the advent of the printing press and the realization that an author's work had commercial value. In England, the new cry for originality came most loudly from members of the Stationer's Company, printers granted by the Crown the exclusive right to distribute copies of original manuscripts.³⁹ An author was still primarily interested with status and reputation, having relinquished all rights to future revenue as a condition of the sale of the manuscript to the Company.⁴⁰

Although an author's status directly affected his ability to attract publishers, a distinction began to develop between "piracy" and "plagiarism." The new copyright laws that protected the commercial interests of the publishers did little to benefit the literati. The holder of a copyright could collect damages; an author, having sold his rights, held no interest recognized by the courts. Scholars were left to develop ethical prescriptions against unattributed copying, the roots of

32. H. PAULL, LITERARY ETHICS: A STUDY IN THE GROWTH OF THE LITERARY CONSCIENCE 103 (1928). Paull lists instances by Isocrates, Aeschines, Demosthenes, Plutarch, Sophocles and Menander.

33. The single reported punishment involved competitors in a literary contest, convicted of "gross plagiarism" and expelled from Alexandria. *Id.*

34. Lindey, *supra* note 25, at 96 (noting that early authors were unable to earn a living from the sale of their work and relied instead on patronage from wealthy benefactors).

35. Lindey, *supra* note 25, at 64-65 (noting the borrowings of Homer, Plato, Aristophanes, and Aesop).

36. Comment, *Plagiarism in Legal Scholarship*, *supra* note 19, at 242 (citing Paull, *supra* note 32).

37. Paull, *supra* note 32, at 104.

38. Paull, *supra* note 32, at 104.

39. Paull, *supra* note 32, at 46.

40. Paull, *supra* note 32, at 46.

modern "plagiarism."

Black's Law Dictionary defines plagiarism as "[t]he act of appropriating the literary composition of another, or parts or passages of his writings, or the ideas and language of the same, and *passing them off* as the product of one's own mind."⁴¹ The key element, derived from the Greek and Roman understanding of the term, is the "passing off" of another's work as one's own. Borrowing from another's work with attribution does not constitute an act of plagiarism because there is no pretense of originality. The status of the attributed author remains intact; he has been given credit for his work.

Black's, however, mixes Martial's metaphor with further explanation rooted in modern copyright law, "[t]o be liable for plagiarism it is not necessary to exactly duplicate another's literary work, it being sufficient if *unfair use* of such work is made"⁴² The term "unfair use" may not be sufficiently elastic to clearly communicate that the paraphrase of another's idea without citation is indeed plagiarism. The doctrine of "fair use" exists only in a commercial copyright context.⁴³ Copyright law does not protect ideas, concepts or principles; it protects a different, purely economic interest in expression.⁴⁴

Plagiarized work may, or may not, violate copyright laws. Plagiarism that cannot be shown to damage an economic interest by exceeding fair use will not constitute copyright infringement;⁴⁵ the plagiarized author may not even own an economic interest.⁴⁶ Attributed work, though not plagiarism, may exceed fair use and result in an award of damages to the copyright holder, who may not be the author. Non-copyrighted material can also be plagiarized.⁴⁷ Thus, the frequent use of "plagiarism" as a synonym for "copyright

41. BLACK'S LAW DICTIONARY 1035 (5th ed. 1979) (emphasis added).

42. *Id.* (emphasis added).

43. See generally Patterson, *Free Speech, Copyright, and Fair Use*, 40 VAND. L. REV. 1 (1987).

44. 17 U.S.C. §§ 102(a), 102(b) (1982).

45. 17 U.S.C. § 107 (1982); see also *Harper & Row Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539 (1985).

46. See generally Rodell, *Goodbye to Law Reviews-Revisited*, 48 VA. L. REV. 279, 288 (1962).

47. Mawdsley, *Legal Aspects of Plagiarism*, 3 NOLPE MONOGRAPH 39 (1985) [hereinafter Mawdsley (Monograph)].

infringement" is technically incorrect.⁴⁸ Although the words are related, they are of different species: one legal, one ethical.

Academe's ethical condemnation of plagiarism protects the unique interests of scholarly institutions.⁴⁹ On the student level, it protects the originality in scholarship essential to the evaluation process. Course grades are normally based on the comparison of a student's work with that of his or her classmates, and to a standard of excellence maintained by the faculty member and the institution. By cheating the process, a plagiarist devalues every grade and every degree conferred, and damages an institution's credibility.

To a law school faculty, unchecked literary pilferage lessens the value of each professor's own scholarship and unique contribution to the general body of legal knowledge, and diminishes the inherent value of the publications so essential for promotion to a full professorship.⁵⁰ Plagiarism also smacks of disrespect, adding insult to the wound. When the disrespect comes from one's own student, it is almost too much to bear.⁵¹ As with the ancients, the law school plagiarist primarily steals some form of status. Even though status in the educational world may ultimately mean money in the form of grants and salary increases, the outrage vented at a plagiarist is usually moral rather than financial.

B. *Communicating the Definition*

Many students do not understand plagiarism,⁵² most

48. Comment, *Plagiarism in Legal Scholarship*, *supra* note 19, at 239-42.

49. Comment, *Plagiarism in Legal Scholarship*, *supra* note 19, at 241.

50. See generally Nowak, *supra* note 20, at 319-320.

51. Kolich, *supra* note 22 at 141-42. Professor Kolich observes that plagiarists bring out the worst in educators, "transform[ing] [them] from caring, sympathetic teachers into single-minded guardians of honor and truth—roles that saints and presidents seem better suited to play." *Id.* at 141-42. See also MALAMUD, *A NEW LIFE* 174 (1961), quoted by Professor Kolich:

[The teacher] read with murderous intent, to ensnare and expunge Albert O. Birdless. [Professor] Levin saw himself as a man-eating shark cleaving with the speed of a locomotive through a thick sea of words, Albert, a tricky fat eel hidden among them, only his boiling blue eyes visible through the alphabet soup.

52. See, e.g., BOND, SEYMOUR & STEWART, *SOURCES: THEIR USE AND ACKNOWLEDGMENT* 4 (1982):

Students occasionally reach college without ever having been required to make *any* acknowledgment of indebtedness to outside sources.

law schools think that they do.⁵³ Reliance by a law school on such an unwarranted assumption can have disastrous consequences for its students. Even if a school is unwilling to accept responsibility for teaching what should have been learned long before, a school must acknowledge that its entering students do not share a common understanding.

Only half of the ABA-accredited law schools utilize a specific definition for plagiarism.⁵⁴ None report that *Black's* dictionary definition is required reading. Although this omission may not be a legal impediment to a disciplinary proceeding,⁵⁵ it is a failure to mark one of the largest potholes along the road to a law degree. Students lucky enough to discover the virtues of originality are exposed to conflicting definitions, if any.⁵⁶ Some require intent, some do not. Others specifically address the requisite citation for a paraphrase but fail to distinguish "matters of general and common knowledge."⁵⁷ There may be as many definitions as there are schools. Law professors, themselves former law students, have been exposed to the same definitional disparity. There-

They may have been permitted as a consequence of indifference or inadequate supervision on the part of their teachers to copy passages from encyclopedias or other sources without even bothering to place the material in quotation marks, let alone indicating where it came from. Or, if not going quite that far, they may have gotten by with paraphrases in which most of their significant phrases have been taken over from their sources with no more acknowledgment than an incomplete and slovenly bibliographical note at the end of the paper.

53. See *infra* Table 6 and accompanying text. Two-thirds of the law school deans surveyed believe that entering students understand the nature and definition of plagiarism.

54. See *infra* Table 1 and accompanying text.

55. Mawdsley (Monograph), *supra* note 47, at 5.

56. Quoting three typical definitions:

Intentionally or knowingly representing the words or ideas of another as one's own in any academic exercise. - University of Maryland.

Expropriation of words, phrases or ideas of another without attribution for the benefit of one who engages in the act of expropriation. - Duke University.

Plagiarism . . . consists of offering as one's own work the words, ideas or arguments of another person without appropriate attribution by quotation, reference or footnote. Plagiarism occurs both when the words of another are reproduced without acknowledgment, and when the ideas or arguments of another are paraphrased in such a way as to lead the reader to believe that they originated with the writer. - University of Vermont.

57. Mawdsley (Monograph), *supra* note 47 at 3 (quoting A. WINKLER & J. MCCUEN, WRITING THE RESEARCH PAPER 40 (1985)).

fore, it is not unreasonable for every member of an academic community to expect the guidance of a published definition.

Although "fair warning,"⁵⁸ a published definition does not by itself achieve common understanding. The adequacy of a definition depends upon agreement in the minds of everyone who reads it.⁵⁹ Although seventy-five percent of all law schools explicitly prohibit plagiarism, even without a definition, only four in ten provide any explanation in their legal writing courses.⁶⁰ A law school handicaps its students by its failure to express its expectations in a positive manner prior to the necessity of a disciplinary action.

Although most law schools have failed to follow suit, many undergraduate institutions list their expectations and provide examples of student plagiarism in handbooks and writing guides.⁶¹ Students are forced to confront what they do not know about the subject. A similar approach by law schools not only clarifies, it demonstrates a school's willingness to do more than simply teach law.⁶² Both students and the school benefit; common understanding becomes possible; law school writing improves.

C. *The Role of Intent*

The role of "intent" may be the central issue to a student charged with plagiarism.⁶³ Although some law school definitions specifically dismiss this element,⁶⁴ most imply its existence.⁶⁵ Of the few schools that do require that plagiarism be done "knowingly," an often used synonym for "inten-

58. *Tinker v. Des Moines School Dist.*, 393 U.S. 503 (1969).

59. Mawdsley (Monograph), *supra* note 47, at 4.

60. See *infra* Table 1 and accompanying text.

61. See, e.g., SOURCES: THEIR USE AND ACKNOWLEDGEMENT, *supra* note 21.

62. Mawdsley (Monograph), *supra* note 47, at 4.

63. See *Napolitano v. Princeton Univ. Trustees*, 186 N.J. Super. 548, 453 A.2d 263 (1982); Mawdsley (Journal), *supra* note 19, at 66.

64. See, e.g., Univ. of Missouri-Columbia, School of Law, LAW SCHOOL HONOR CODE, § 3.020(2), "It is not a defense to a charge of plagiarism that there was not intent to deceive, [or] to misrepresent"

65. See, e.g., Arizona State Univ., College of Law, STATEMENT OF POLICIES 28 (1987-1988), "Misrepresenting the work of another as one's own." Misrepresentation includes in its definition the colloquial understanding "a statement made to deceive" and "an intentional false statement respecting a matter of fact." BLACK'S LAW DICTIONARY 903 (5th ed. 1979).

tionally,⁶⁶ one institution has added to the confusion with a faculty resolution that the term be interpreted as an absence of "mistake, accident, or other *innocent* reason,"⁶⁷ inviting a debate whether a "subjective" intent to deceive must be proved. There is no consistency between schools, and sometimes even within the same school. Pity the students not given a definition at all.

When a law school relies upon a dictionary definition, the natural reaction of an accused student may be to imply the element of intent in *Black's* "passing off," a phrase in lay terms meaning "to cause to be accepted or received under false identity,"⁶⁸ a form of misrepresentation which itself contains an element of intent. However, the basis of academic plagiarism is simply the unattributed borrowing or copying that destroys the originality required in all student work. Plagiarism occurs when work containing unattributed sources is submitted regardless of the student's motivation, mistake or carelessness. The reader wrongly assumes that the student's words and ideas are his own, and bases his evaluation on an originality that does not exist. "Pass off" should be replaced by "publish," or even "convey,"⁶⁹ words that better describe the offense.

An intent to deceive the evaluation process may characterize the worst form of plagiarism, but it is not essential for the wrong to exist. Because nearly eighty percent of the schools consider lack of intent to be a mitigating factor in determining sanctions,⁷⁰ the practical reality is simply that a defense of "no intent to deceive" may keep a student from the scholastic firing squad, but it does not affect the determination of guilt itself. It is interesting to note, however, that nearly two-thirds of law school deans believe that it should.⁷¹

Understanding the proper role of intent is critical to the

66. BLACK'S LAW DICTIONARY 784 (5th ed. 1979).

67. See *infra* Law School Survey, App. A respondent number 33.

68. RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1417 (2d ed. 1987).

69. A visit to our trusty *Black's* reveals that "pass" can mean "to move from one person to another" and "transfer." BLACK'S LAW DICTIONARY 1012 (5th ed. 1979).

70. See *infra*, Table 1 and accompanying text.

71. See *infra*, Table 1 and accompanying text.

disciplinary process; it was the central issue in the well-known case of *Napolitano v. Princeton Univ. Trustees*.⁷² Gail Napolitano, an English major with a 3.7 grade average and a Rhodes-scholarship nominee, had taken an elective entitled "The Spanish American Novel" "merely to become more familiar with Spanish literature."⁷³ Several passages of her required term paper were found to have been "lifted" without specific attribution. The Princeton Committee on Discipline unanimously found her guilty of plagiarism and voted to withhold her diploma for one year.⁷⁴ As a result of notification by Princeton, she received rejection notices from every law school to which she had applied.⁷⁵

Ms. Napolitano filed suit against the university. The key issue litigated at trial was whether the intent to deceive was a necessary element of a plagiarism offense, and whether the Princeton disciplinary committee had made such a finding,⁷⁶ a question raised by a revision in the university's academic code that had replaced the term "absence of intent" with "deliberate" on its list of non-defenses.⁷⁷ On remand, the school found intent necessary, and that Ms. Napolitano had so intended.⁷⁸

The case was still not over. The second trial court judgment against Ms. Napolitano was appealed, in part on the basis that the university had presented no evidence that she possessed the "subjective" intent to deceive. She argued that the plagiarized source had been provided by the instructor, and that she had in fact cited that source on six occasions.⁷⁹ In rejecting her appeal, the court appeared to rely instead on an objective standard in its finding that she had intentionally attempted to submit the language and ideas from the source as her own.⁸⁰ According to the New Jersey

72. 186 N.J. Super. 548, 453 A.2d 263 (1982); Mawdsley (Monograph), *supra* note 47, at 6.

73. 453 A.2d at 280; Mawdsley (Monograph), *supra* note 47, at 6.

74. Mawdsley (Monograph), *supra* note 47, at 6.

75. Comment, *Plagiarism in Legal Scholarship*, *supra* note 19, at 254; Keerdota, *supra* note 1.

76. Mawdsley (Monograph), *supra* note 47, at 6.

77. Mawdsley (Monograph), *supra* note 47, at 6 (noting that following the lawsuit Princeton removed the word "deliberate" from its definition for plagiarism.)

78. 453 A.2d at 270; Mawdsley (Monograph), *supra* note 47, at 7.

79. Mawdsley (Monograph), *supra* note 47, at 7.

80. Mawdsley (Monograph), *supra* note 47, at 7-8 (quoting *Napolitano*, 453

courts, a college need not peer into the minds of its students.⁸¹

It should be apparent that even when intent is specifically addressed in a plagiarism definition, more questions may be presented than are answered. The safer course is to expressly delete "intent" from the requisite elements of the charge, and expressly transfer the issue to the aggravation/mitigation side of the disciplinary equation. By considering intent in determining culpability, a disciplinary body gives the wrong message. Instead of condemning all plagiarism, a school signals that some transgressions are acceptable, and that sloppy or careless work could be claimed as an "accident" that provides a defense. Strict accountability regardless of intent gives a clear warning: "Accidental plagiarism is plagiarism nevertheless, but may not warrant an academic execution. Other sanctions will still be imposed." Students may still

A.2d at 276).

While plaintiff persists in her argument that she did not intend to plagiarize and that there is nothing in the proofs to show that she did so intend, the mosaic itself is the loudest argument against her.

(1) A few statements from the source had been put in quotation marks but not the rest . . .

(2) The use, in the paper, of phrases such as 'it is evident that,' 'it is important to note that,' 'one can assume that,' etc. suggest that what follows is Ms. Napolitano's own thoughts and words, when in fact, in virtually all instances, what follows is words borrowed from one source without attributions.

(3) In several instances, there are quotes from the novel which is the subject of the paper. These quotes were used by the secondary source . . . to illustrate various points. In making these same points (usually using the words of the secondary source), Ms. Napolitano used the same quotes but changed the page numbers of the quotes to correspond to the edition of the novel used in the course. This gives the appearance that Ms. Napolitano had found the quotes herself in the novel, which, in fact, she did not.

(4) The verb tenses in the material borrowed from the source were all changed to the present tense for the sake of consistency in the paper.

(5) Small words and phrases from the borrowed source were deleted in cases where these words may have seemed too technical or awkward.

81. Ralph Mawdsley's monograph warns that the issue of intent in plagiarism is not as much a judicial doctrine as it is a judicial interpretation of a college's own rules. Educators concerned with the legal relationship between an institution and its students may find his article profitable reading. See Mawdsley, *Legal Aspects of Plagiarism*, NOLPE MONOGRAPH (1985); abridged version reprinted in Mawdsley, *Plagiarism Problems in Higher Education*, 13 J.C. & U.L. 65 (1986).

argue that they "didn't mean it," but they will know that they were wrong. If, of course, they are provided with something more than a dusty dictionary.

D. *A Call for a Universal Definition*

There is no universally accepted definition for plagiarism. Some law schools have devoted countless hours of faculty meetings to the task; others have devoted none. The first group should be applauded. Appendix B contains a proposed model definition for law school use that expressly negates intent. It represents a plagiarism policy easily understood by law students.

The definition may be included in an honor code or statement of academic responsibilities, and is designed to be used in conjunction with *Avoiding Plagiarism in Law School: A Law Student's Guide to Sources and Their Acknowledgment*, contained in this article. These materials are offered with the anticipation that their use will reduce the instances of plagiarism in law school by addressing the problem before students begin their first law school writing assignment. Most plagiarism is easily prevented when students understand that effective and accurate citation protects both the originality and impact of their work. More drastic remedies will still be available for the few with cheating hearts.

III. PLAGIARISM IN LAW SCHOOL: A SURVEY OF AMERICAN INSTITUTIONS OF LEGAL EDUCATION

A. *Summary of the Research Procedure*

A questionnaire was mailed to every law school accredited by the American Bar Association (ABA), and separately to each law school accredited by the California Committee of Bar Examiners.⁸² One of the reasons for surveying both groups was to gather information from schools of varying sizes and characteristics. Unfortunately, only two of eighteen California-accredited schools chose to respond. Although this represents eleven percent of the smaller sample, no valid conclusions may be drawn from the California data and these responses have been removed from the tabulated results.

82. See *infra* Appendix A.

Several demographic indicators were examined to determine whether there were statistically significant differences between members of the American Association of Law Schools (AALS) and non-member ABA schools. The variables considered included the number of students, their median entering grade point averages and LSAT scores, and whether the school was state or privately operated.

There were no significant differences between the two groups other than a higher response rate from AALS institutions. The responses discussed in this report are based on thirty-nine usable returns received from a possible pool of 166 eligible schools. The overall response rate was twenty-three percent, twenty-four percent for AALS members, and fourteen percent for non-members. Reported percentages are calculated on all thirty-nine responses unless otherwise indicated. A copy of the questionnaire appears in Appendix A.

B. *Profile of the Respondents*

Sixty-three percent of the individuals who completed the survey held the title of associate or assistant dean. Twenty-eight percent were deans, five percent were professors, and four percent were registrars or administrators.

Seventy-two percent of the respondents were state schools. Ninety-two percent were AALS members. The median grade point averages and LSAT scores of entering students were 3.22 and 34, with an average age of 25, in an entering class of 101-200.

C. *Policies Regarding Plagiarism*

Only slightly more than half of the schools utilize a specific definition for plagiarism even though seventy-seven percent reported the use of an honor code or administrative rule that specifically prohibits plagiarism. Most make a distinction between "serious" incidents and instances involving small amounts of copying or ineffective paraphrasing in determining whether disciplinary action should be initiated at all. Regardless of the existence of a published definition, sixty-four percent require that "intent" be proved before sanctions may be imposed. Seventy-seven percent consider intent to be a mitigating factor in the eventuality that sanctions are warranted. It is interesting, however, that only two

of the definitions provided by the schools that required intent included the words "knowingly," "wilfully," or any other synonym.

There is no consistent means of communicating the policy against plagiarism. Some leave the matter entirely in the hands of individual professors. Others claim to address the subject in legal writing courses, but admit that it is usually nothing more than an admonition in passing. Most publish the prohibition in an honor code or other set of rules but provide no definition or further discussion. To their credit, a minority do publish a comprehensive explanation.

Table 1
Plagiarism Policies

	N=	%=
Specific Definition	22	56.41%
Honor Code or Administrative Rule	30	76.92
Distinction between "serious" and "Less serious" incidents	20	51.28
"Intent" Required	25	64.10
"Intent" Mitigating Factor	30	76.92
Policy Communicated Via*:		
Honor Code or Rules	23	58.97
First-Year Writing Course	16	41.03
Individual Professors	12	30.77
*(More than one method of communication reported).		

D. *Disciplinary Procedures*

Most schools reported that once it is determined that probable cause exists to proceed with disciplinary action, a panel comprised of both faculty and students hears evidence, pronounces guilt or innocence, and recommends punishment to the dean of the law school. Every school reported that due process is afforded the accused, including notice of the charges, the right to cross-examine witnesses, right to counsel, and procedures for appeal. Twenty-one percent conduct

disciplinary proceedings without representation by the student body, only eight percent allow the procedure to be conducted entirely by students.

Table 2
Disciplinary Procedures

	N=	%=
"Due Process" Afforded Accused	39	100.00%
Joint Student/Faculty Panel	27	69.23
No Student Representation	8	20.51
No Faculty/Administration Representation	3	7.69

E. *Sanctions*

The sanctions for plagiarism range from a private reprimand to permanent expulsion. Most schools reported that all of the possible sanctions listed in Table 3 could be imposed upon a finding of guilt. A failing grade is the most frequently imposed penalty, although numerous respondents commented that only the faculty member involved had the authority to enter an "F." Expulsion and denial of certification of moral fitness to practice law were the least favored. The majority indicated that many of the sanctions would be imposed concurrently, i.e., failing grade, notation on student record, and probation or suspension. Depending on the circumstances, seventy-four percent would notify the state bar examiners of the incident.

Table 3
Possible Sanctions

	N=	%=	Rank
Reprimand			
Private	31	79.49%	2
Public	22	56.41	3
Failing Grade	37	94.87	1
Removal from Honors Program	21	53.85	6
Notation on Student Record			
Temporary	17	43.59	9
Permanent	33	84.62	5
Probation	29	74.36	8
Suspension	36	92.31	7
Expulsion	36	92.31	9
Notice to Bar Examiners	29	74.36	4
Denial of Certification of Moral Fitness	14	35.90	10

F. *Reported Cases of Plagiarism*

Responding schools reported 203 known cases of plagiarism since 1980. However, many schools indicated that records are not kept of the number of cases, and some schools declined to answer the question at all. On average, it seems a law school must respond to a charge of plagiarism at least once per year. More than one in four cases officially reported were not pursued in a disciplinary action. Of the 148 students disciplined, only 12 failed to complete law school. Of those remaining, only four were eventually denied admission to the bar.⁸³ With great relief, the schools reported only two instances where discipline resulted in further legal action by the student involved.

Plagiarism appears to be reported most often by faculty members, next by other students, and least often by law re-

83. The schools reporting these four students admitted that their records did not indicate whether any of the students had subsequently reapplied and been admitted.

view members. Plagiarism on law reviews is seldom reported, as one dean stated, "because most member submissions are considered 'drafts' and any appearances of impropriety are corrected before publication by the[m]selves or their[.] . . . editors."⁸⁴ Reported cases most frequently involve class papers, then moot court briefs, other law school related writing, and finally law review writing.

Table 4
Reported Cases of Plagiarism

	N=	%=
Plagiarism Cases Reported 1980-1987	203	100.00%
Disciplinary Actions 1980-1987	148	72.90
Disciplined Students Failing to Complete Law School	12	5.91
Disciplined Students Denied Admission to the Bar	4	1.97
Discipline Resulting in Legal Action by Student	1	.98

Table 5
Source of Plagiarism Charges

	Rank
Plagiarism Most Often Reported By:	
Professor	1
Student	2
Law Review Member	3

84. Respondent number 6. Respondents will be referred to by number only as each respondent was promised confidentiality as a condition of the survey. It is important to note that this was the only comment by a law school dean indicating that law review members may be judged only by themselves, and according to a different standard. Unfortunately, several of the law students and practicing attorneys who reviewed this article in its preliminary stages, many of whom were members of a law review, believe that a dual standard is the norm.

Plagiarism Most Often Involves:

Class Paper	1
Moot Court Brief	2
Other Law School Related	
Writing	3
Law Review	4

G. Understanding Plagiarism

Two-thirds of the respondents believe that entering law students already understand the nature of plagiarism and the elements that constitute the offense. However, only fifty-six percent believe that students know how to properly credit the sources they use. Almost half blame part of the problem on high schools and colleges that fail to adequately address either acknowledgment of sources or plagiarism. When this is compared to the large number of schools that fail to define plagiarism in their own institutions, it is hardly surprising that plagiarism is regularly practiced by law students. Seventy-seven percent of responding law schools believe that a significant number of plagiarism cases go totally undetected.

Very few of the schools find that plagiarists share traits in common, although those who did listed "ignorance," "last minute writing" and "laziness" rather than an evil intent. Not one of the deans found any correlation between academic plagiarism and the almost universal recycling of documents in legal practice. When asked to define the proper role of a law school in combating plagiarism, the most common response was "educate" followed by "punish." This is ironic in light of the fact that less than half provide any "education" other than a terse warning in an honor code or student handbook, many without definition. Apparently the education process has been ineffective as only one school believes that it has enjoyed success in eliminating plagiarism.

Table 6
Understanding Plagiarism

	N=	%=
Entering Students Understand the Nature and Definition of Plagiarism	26	66.67%
Entering Students Understand How to Properly Acknowledge Sources	22	56.41
Belief That High Schools and Colleges Fail to Properly Educate on Acknowledgment and Plagiarism	18	46.15
Belief That a Significant Number of Plagiarism Cases Go Undetected	30	76.92
Belief That Plagiarists Share Traits in Common	6	15.38
Belief That Correlation Exists Between Academic Plagiarism and the Frequent Recycling of Legal Documents in Law Practice	0	0.00
Belief That Respondent's School has Enjoyed Success Combating Plagiarism	1	2.56

H. *Summary*

Although the possibility exists that the failure of many schools to respond to the survey may have skewed the results, there were sufficient completed questionnaires to make

some general observations.

The law school community does not claim any success in dealing with plagiarism by law students. This may be attributed to a general failure to adequately define the offense or take affirmative action to ensure that entering students fully understand the ramifications of appropriating another's written work. The role of "intent" is a source of confusion; many schools consider intent even when they claim they do not. Although law schools may teach the mechanics of citing, many do not effectively teach when a citation is necessary, and most fail to address how a failure to cite may foreclose a career in the law. Discussion of plagiarism appears to be haphazard, often left to individual instructors who may not have a clear understanding themselves. The composite law school drawn from this survey assumes that students already know all that is necessary to know about plagiarism. The survey results demonstrate this to be a faulty assumption.

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.III, § 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)(9). *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. TALMO, *LEGAL RESEARCH AND WRITING, COURSE MATERIALS* 4 (1988).

96. *Id.*

97. See Samuelson, *Good Legal Writing: Of Orwell and Window Panes*, 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" plagiarism 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 our 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." Bowersock, *The Art of the Footnote*, 53 AM. SCHOLAR 54 (1984), cited in Austin, *Footnotes as Product Differentiation*, 40 VAND. L. REV. 1131, 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 plagiarism 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 plagiarism 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 246 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 plagiary 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 McCartney, Margaret Mitchell and Gail Sheehy. See Carroll, *Plagiarism, The Unfun Game*, ENG. 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. Ostling, *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 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: (1) 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.

APPENDIX A

The Survey Questionnaire

Part A: General Demographics

1. Which best describes your current position?
 - Dean _____
 - Chairman of Faculty Ethics Committee _____
 - Chairman of Disciplinary Committee _____
 - Professor _____
 - Other (describe:) _____
2. By which organizations is your school accredited?
 - American Bar Association _____
 - State Bar Examiners _____
 - Other Accrediting Body _____
3. Is your school a member of the American Association of Law Schools? Yes _____ No _____
4. Is your school in California? Yes _____ No _____
5. Which best describes your school?
 - Public school _____
 - Private institution _____
6. What is the approximate size of each entering class?
 - 0 - 50 _____
 - 51 - 75 _____
 - 76 - 100 _____
 - 101 - 200 _____
 - 201 - 300 _____
 - 301 - 400 _____
 - Over 400 _____
7. What is the average GPA of entering students? _____
 Average LSAT score? _____ Average age? _____

Part B: Disciplinary Procedures

8. Does your school utilize an honor code?
 - Yes _____ No _____
9. If "yes," is your honor code used for cases of plagiarism?
 - Yes _____ No _____
10. Are certain acts of academic misconduct subject to discipline by a student court or other student peer group?
 - Yes _____ No _____

11. Is an incident of plagiarism subject to discipline by a student court or other student peer group? Yes (please answer question 12.) No (please skip to question 13.)
12. What procedure is followed by such a student group when a case of plagiarism is reported? (please describe, including any right to counsel, cross-examination of witnesses, evidence of mitigating circumstances, etc. You may use a separate piece of plain paper if necessary.)
13. What procedure is followed by the school when a case of plagiarism is reported? (please describe, including whether the dean, faculty committee or other body is responsible for discipline, the right to counsel, cross-examination of witnesses, evidence of mitigating circumstances, etc. You may use a separate piece of plain paper if necessary.)
14. Is a distinction made between "serious" incidents of plagiarism (e.g., copying more than a page without crediting the source) and "less serious" incidents (e.g., copying of a sentence, paragraph, "paraphrasing," etc.).
Yes No
15. Which sanctions are available against a plagiarist?
- reprimand: private public
 - failing grade or loss of course credit
 - removal from student program (Law Review, Honors Seminar, etc.)
 - notation on student record: permanent
temporary
 - probation
 - suspension (one or more semesters)
 - dismissal or expulsion
 - notification to State Bar Examiners
 - denial of certification of moral fitness
16. Which sanctions are most frequently utilized? (Please rank by placing a number to the left of the sanctions checked in No. 15.)
17. Is plagiarism treated with more / less / the same severity (circle one) as other forms of academic misconduct or cheating?
18. Is "intent" a necessary element of a plagiarism charge at your school? Yes No
19. Is "intent" either a mitigating or condemning factor in

determining whether a particular sanction is imposed?

Yes ___ No ___ (If "yes," please explain:)

20. Are cases of plagiarism in Law Review articles treated differently than cases regarding class papers?

No ___ Yes ___ (Please explain:)

21. Cases of plagiarism are reported most often by (please rank):

- ___ other students
- ___ faculty members
- ___ law review members
- ___ other (please specify:)

22. Cases of plagiarism most often involve (please rank:)

- ___ class papers
- ___ moot court briefs
- ___ law review articles
- ___ student newspaper articles
- ___ other (please specify:)

23. How many cases of student plagiarism have been discovered at your school since 1980? ___

24. How many of the cases in Question 23 resulted in disciplinary action? ___

25. Have any of the disciplinary actions in Question 24 resulted in the involved student failing to complete law school?

Yes ___ No ___ How Many ___?

26. To the best of your knowledge, how many of the disciplinary actions in Question 24 prevented the student from admission to the Bar in any state? ___

27. Have any of the disciplinary actions in Question 24 resulted in legal action involving the student or your school? Yes ___ No ___ How Many ___? (further details are entirely optional:)

Part C: Preventing Plagiarism

28. Does your school utilize a particular definition of plagiarism? No ___ Yes ___ (If "yes", please specify:)

29. How does your school communicate the policy on plagiarism to your students?

30. Is plagiarism addressed in your school's first-year legal writing courses? No ___ Yes ___ (If "yes," to what extent?)

31. When an incident of plagiarism is reported, is it your

- experience that students do / do not (circle one) understand the nature of the offense?
32. Is it your experience that students do / do not (circle one) understand how to properly give credit for the use of ideas or language?
 33. Do you consider the prevalence of plagiarism and any misconceptions regarding the nature of the offense as due to a failure of high schools and colleges to properly educate? No ___ Yes ___ If "yes," please explain:
 34. Do you believe that many cases of plagiarism go undetected, unproven, or unpunished? No ___ Yes ___ (comments:)
 35. What are your theories as to why law students run the risk of plagiarizing?
 36. Is it your experience that students involved in episodes of plagiarism share traits in common? No ___ Yes ___ (If "yes," please explain:)
 37. What correlation, if any, do you find between law school plagiarism and the use of "previously authored" briefs and memoranda (also the excessive use of "forms") in legal practice?
 38. What is the proper role of a law school in combating plagiarism?
 39. Has your school had particular success combating plagiarism? (If "yes," please elaborate on a separate piece of plain paper.)

APPENDIX B

*Model Definition and Policy for Plagiarism*¹¹⁴

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.¹¹⁵

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 the 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. Plagia-

114. Adapted in part from Dartmouth College, SOURCES: THEIR USE AND ACKNOWLEDGMENT 7 (1987). This definition and policy includes elements common to many of the honor codes submitted in response to the questionnaire utilized in the March 1988 law school survey (Appendix A). See, e.g., NOTRE DAME LAW SCHOOL HONOR CODE, § 3.01(b), "to submit as one's work the work of another"; University of Oklahoma, College of Law, CODE OF ACADEMIC RESPONSIBILITY, § 201(b) (vii), "the 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"; University of South Carolina, School of Law, CODE OF ACADEMIC RESPONSIBILITY, Art. III, § 1(d), "the act of taking the idea, writing, or work of another and presenting as the product of one's own activity, whether in whole or in part"; Southern Methodist University, School of Law, CODE OF PROFESSIONAL RESPONSIBILITY, Art. III, § A(2), "no student shall appropriate ideas or language from the work of another without proper use of quotation marks, citation or other explanatory insert, in any work offered by the student."

115. This definition has been recently adopted by the students and faculty of Western State University, Fullerton, California. See WESTERN STATE UNIVERSITY HONOR CODE, § 201(b)(9).

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.

APPENDIX C

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