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Misattribution in Legal Scholarship: Plagiarism, Ghostwriting, and Authorship

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MISATTRIBUTION IN LEGAL SCHOLARSHIP: PLAGIARISM, GHOSTWRITING, AND AUTHORSHIP

LISA G. LERMAN*

I. INTRODUCTION	467
II. AUTHORSHIP	472
III. PLAGIARISM	474
A. <i>Ghostwriting</i>	476
B. <i>The Harmful Effects of Plagiarism in Legal Scholarship</i>	476
C. <i>How Often Do Law Professors Engage in Plagiarism</i>	479
IV. WHAT TO DO ABOUT DISHONEST LAW PROFESSORS	483
V. PERPETUATING THE DOUBLE STANDARD	488
VI. STANDARDS FOR AUTHORSHIP OF LEGAL SCHOLARSHIP	489
VII. CONCLUSION	491

Plagiarize, let no one else's work evade your eyes,
Remember why the good Lord made your eyes,
So don't shade your eyes,
But plagiarize, plagiarize, plagiarize—
Only be sure always to call it please "research."¹

I. INTRODUCTION

Plagiarism is a capital offense for law students. A law student who uses the words or ideas of someone else without proper attribution may be suspended or expelled from law school.² This

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1. Tom Lehrer, *Lobachevsky*.

2. *E.g.*, *Easley v. Univ. of Mich. Bd. of Regents*, 906 F. 2d 1143, 1143-46 (6th Cir. 1990) (affirming the court's prior decision upholding the decision of a law school to withhold a student's degree as punishment for plagiarism); *In re Lamberis*, 443 N.E.2d 549, 552-53 (Ill. 1982) (censuring a lawyer who had been expelled from LL.M. program at Northwestern University after he was found to have plagiarized about forty-six pages of his thesis from two other works without attribution; dissent recommended a three-month suspension).

guillotine may fall even if the plagiarism was not an intentional passing off but was the product of ineptitude or of an educational deficit.³ A law student plagiarist who is allowed to graduate may be denied admission to the bar on the basis of the offense committed during law school, especially if there are other allegations of unethical behavior.⁴ A lawyer who has been admitted to the bar, on the other hand, may plagiarize to his heart's content without fear of negative consequences.⁵ It is as if admission to the bar is like walking through a looking-glass. On one side, plagiarism is considered to be the most egregious variety of dishonesty. On the other side, the use of the words and ideas of others without attribution is not regarded as raising any ethical concern.

Many inexperienced lawyers spend several years allowing more senior lawyers to pass off the junior lawyers' work as that of the senior lawyers. Eventually the junior lawyers attain enough status in their firms or government agencies that they are able to stop doing writing that is attributed to others and to begin publishing work written by others under their own names. Let me elaborate.

A law school graduate who becomes a judicial clerk probably will spend a year or two ghostwriting for a judge. Some judges write their

3. See discussion *infra* Part V.

4. Helen Tyne Mayfield, for example, was denied admission to the bars of Texas, Michigan, and Illinois because of several allegations of misconduct, including that she had been "suspended from . . . law school for violating its honor code by committing attempted plagiarism and solicitation by improperly arranging for two individuals to translate legal materials for her class project." Aaron Chambers, *Third Time No Charm for Would Be Lawyer*, CH. DAILY L. BULL., June 11, 1999, at 3 (June 11, 1999) (discussing other allegations of various misrepresentations and financial improprieties, including failure to disclose two arrests on her application to the bar). *But see In re Zbiegien*, 443 N.W.2d 871, 875, 877 (Minn. 1988) (deciding that "a single incident of plagiarism while in law school is [not] necessarily sufficient evidence" of lack of moral character; ordering admission of applicant despite the fact that he plagiarized most of the first twelve pages of a paper prepared while a student at William Mitchell Law School).

5. In *Fed. Intermediate Credit Bank of Louisville v. Kentucky Bar Ass'n*, 540 S.W.2d 14, 16 n.24 (Ky. 1976), the Supreme Court of Kentucky stated a commonly held view that "[l]egal 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."

While most lawyers who misappropriate the work of others suffer no adverse consequences, there are a few cases in which lawyers have been censured for plagiarism. See Jaime S. Dursht, *Judicial Plagiarism: It May Be Fair Use but Is It Ethical?*, 18 CARDOZO L. REV. 1253, 1254 n.10 (1996) (citing *In re Hinden*, 654 A.2d 864, 865-66 (D.C. 1995) (censuring lawyer publically for plagiarizing forty-three paragraphs of a chapter of a treatise); *In re Steinberg*, 620 N.Y.S.2d 345, 346 (N.Y. App. Div. 1994) (censuring lawyer for submitting a writing sample under his own name which had been written by another person)).

own opinions,⁶ but many delegate part or all of the drafting work to the clerks.⁷ Some judges supervise and edit their clerks' work on the draft opinions; some judges do not. There are judges who delegate to the clerks the decisions as to what results should be reached in particular cases, others who direct the result but delegate the research and analysis of the legal grounds for the decisions, and still others delegate only the drafting of the opinions.⁸ Some judges sign off on their clerks' opinions with little or no supervisory or editorial input.⁹ Regardless of the extent of the clerks' responsibility for drafting opinions, judges publish opinions under their own names. The work of law clerks is almost never acknowledged.¹⁰ Law clerks generally feel privileged to have the opportunity to work for judges and accept the ghostwriting role without question. Many clerks regard it as unethical even to identify which opinions they drafted.

After completing a clerkship, a new lawyer may become an associate at a law firm where he may write memos, briefs, and articles, many of which will be filed, circulated, or published without his name on them or with his name listed after the names of more senior lawyers in the firm.¹¹ A brief may be written by four or five lawyers,

6. Judge Posner reports:

There are a great many judges who would like nothing better than to do their own research and writing—who *did* their own research and writing before the workload pressures became overwhelming. The problem is that . . . the caseload per federal judge has risen to the point where very few judges, however able and dedicated, can keep up with the flow without heavy reliance on law clerks, staff attorneys, and sometimes externs too.

RICHARD A. POSNER, *THE FEDERAL COURTS: CRISIS AND REFORM* 103 (1985).

7. Dursht, *supra* note 5, at 1253 n.2 ("Ghostwriting in the context of courts is law clerks writing the opinions, and not the judges.")

8. I have heard from former students accounts of each of these variations among the judges for whom they clerked.

9. I interviewed one prominent lawyer, for example, who reported how shocked he was when he found that the judge for whom he had clerked did not even read his draft opinions before issuing them.

10. I conducted a Lexis search of federal court opinions and turned up eight opinions in which the judge, in a footnote, acknowledged the assistance of a law clerk in drafting the opinion. The search, conducted July 5, 1993, was in the Courts file of the Genfed library, which then included most reported federal court opinions, including United State Supreme Court decisions from 1790, decisions of the Courts of Appeals from 1789, and decisions from the District Courts from 1789. A typical example of the eight is *Masayesva v. Zah*, 794 F. Supp. 899, 900 (D. Ariz. 1992), in which Judge Carroll states in a note, "I would like to acknowledge the substantial assistance of Kristen Rosati, my second year law clerk, in research and preparation of this order."

11. Several law student research assistants and I interviewed approximately thirty lawyers for another project on the attribution of written work in the legal profession. In this essay, I offer the comments of one particularly articulate subject from the previous study. The subjects were promised confidentiality, so this subject has been assigned the

with the lion's share of the research and writing done by the most junior lawyer in the group. The senior lawyers may decide that the judge or the client would be displeased by the appearance of so many names on the brief. Often the first name to be dropped from the list is that of the most junior lawyer.¹² If the unacknowledged author of the brief has done a particularly good job, a judge (or the judge's clerk) may incorporate a section of the brief into an opinion on the case—without acknowledgment, of course. This is considered the highest form of intellectual flattery.

An associate in a law firm may be enlisted by a partner to write or to co-author a law review article on a topic of interest to the firm's clients. The article may be published under the partner's name alone, even if the associate wrote the entire piece.¹³ The "author" may write a footnote gratefully acknowledging the assistance of the associate in preparing the article.¹⁴ These footnotes seldom include any information about what were the respective roles of the partner and the associate in writing the article. The partner might explain this practice as a marketing strategy. The partner might justify his failure to list the associate as an author on the basis of the partner's intellectual guidance of the work. He might urge that the associate was just putting the partner's ideas on paper. The partner might urge that no credit is due because the associate got paid for the work, so therefore it is a "work for hire" and the property of the partner or the

fictional name of "Steven Heller." He was interviewed by then research assistant Christine Stevenson on May 30, 1992.

Mr. Heller described several examples of variance between who did the work on a document in private practice and who was listed as an author. He said:

There are times when [other] people have done the work and I listed my name above theirs And the associate junior to me did most of the work, I edited and I researched a few things . . . not more than ten percent. I think the understanding . . . is . . . the first name is the most senior person who bears the most responsibility for the product, the second name is there to indicate in fact who did the work.

Id.

12. This practice occurs in government agencies as well as in private law firms, according to several government lawyers I have interviewed.

13. "Steve Heller" explained:

I provided enormous assistance on the preparation of a legal text and I wouldn't say that I deserved to be an author . . . [laughter] because there was the basic text and then there was the supplement, but verbatim the first thirty or forty percent of the supplement I wrote, with almost no changes [made by anyone else] . . . I'm mentioned in the forward and it says "thank you for this help." I don't think that is uncommon. . . . But the fact is a substantial portion of the supplement was written by me.

Heller interview, *supra* note 11.

14. *Id.*

firm.

Outright misappropriation of the words and ideas of others is somewhat less common in legal academe than in the practice of law. Many people who become law professors actually like to do their own writing. Also, many law professors are scrupulous about proper attribution when we draw from the words and ideas of others, whether those others are other scholars or law student research assistants. Our positions in law schools allow us—especially after tenure—to write on topics that interest us at whatever pace suits us. We experience little of the time pressure or economic pressure that burdens lawyers in practice.

Although many professors have high standards of academic integrity, there is a wide spectrum of views among law professors about whether and when one may use the work of another without attribution. Some law professors use lengthy tracts written by their research assistants in their own books or articles, representing that they wrote the work themselves.¹⁵ Some acknowledge the “able assistance” of research assistants in footnotes.¹⁶ Very few explain that “sections II and III of this article were drafted by X.” Even fewer make the research assistant a co-author or put quotation marks around the section written by the student.

Law professors—who, like practicing lawyers, are experts in rationalization—offer many justifications for the use of the written work of research assistants without attribution. They might say:

- ◆ The research assistant is “just a law student;” he was just doing the drudge work. All the ideas in the piece were mine.
- ◆ All law professors use the written work of research assistants without listing them as co-authors. Everyone understands that my work may include some writing by a research assistant.
- ◆ The research assistant is getting paid. His work is a “work for hire.” It belongs to me.

All of these explanations sidestep the moral questions. One moral question is whether the professor is or is not being *truthful* in representing that he or she is the author of the work. Another moral question is whether the appropriation of the work of a research assistant is an abuse of power, whether it is wrong because it is

15. See *infra* text accompanying notes 30–35 for examples of this practice.

16. In offering tongue-in-cheek guidance to law professors on the acknowledgment of student work on law review articles, Arthur D. Austin says, “[a]cknowledgment of student research aid should be brief—if at all—lest suspicion be aroused that student participation was more extensive than represented.” Arthur D. Austin, *Footnotes as Product Differentiation*, 40 VAND. L. REV. 1131, 1146 (1987).

disrespectful or exploitative of the research assistant.

II. AUTHORSHIP

What does it mean to be an “author”? Black’s Law Dictionary offers this explanation:

Author. One who produces, by his own intellectual labor applied to the materials of his composition, an arrangement or compilation new in itself. A beginner or mover of anything; hence efficient cause of a thing; creator; originator; a composer, as distinguished from an editor, translator or compiler.¹⁷

In law practice, the person listed as the “author” of a brief might be said to be truthful in signing a brief written by someone else, because the signature does not represent that he wrote it, but only that he is taking legal responsibility for its contents.¹⁸ But with respect to scholarly writing in law or in any other field, “authorship” is more like authorship of a novel, a poem, or an essay. To say this article is “by” me is to say, “I wrote this.” Our professional codes prohibit all dishonesty and misrepresentation¹⁹ but include no specific requirement of accuracy in attribution of words and ideas in written work. However, definitions of authorship have been developed in some other disciplines. One definition, published by the International Committee of Medical Journal Editors, and published as policy by the New England Journal of Medicine, states:

Each author should have participated sufficiently in the work to take public responsibility for the content. Authorship credit should be based only on substantial contributions to (a) conception and design, or analysis and interpretation of data; and to (b) drafting the article or revising it critically for important intellectual content; and on (c) final approval of the version to be published. Conditions (a), (b) and (c) must all be met.²⁰

The editors developed these guidelines because senior researchers were being listed as authors of studies done by their

17. BLACK’S LAW DICTIONARY 121 (5th ed. 1979).

18. This rationale was urged on me by several lawyers I have interviewed.

19. Model Rule 8.4(c), whose language appears in the ethical rules for lawyers in all or nearly all states, says: “It is professional misconduct for a lawyer to: . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation.” MODEL CODE OF PROF’L CONDUCT R. 8.4(c) (2000).

20. Jerome P. Kassirer & Marcia Angell, *On Authorship and Acknowledgments*, 325 NEW ENG. J. MED. 1510, 1511 (1991). These criteria, adopted by the International Committee of Medical Journal Editors, are published in the Uniform Requirements for Manuscripts submitted to Biomedical Journals. *Id.*

subordinates even when they had had little or no involvement in the work. The editors also were concerned because some studies listed as authors assistants whose role had been purely technical or ministerial.²¹ While these guidelines are written for articles reporting medical research and reflect a somewhat different set of problems from those that afflict legal scholarship, they offer useful guidance in that they urge that designation as an author should be a statement that the person has had significant involvement in the production of the work. The listing of a non-involved person as an author or the non-listing of an involved person fails to accurately identify who was responsible for the creation of the work.

Another helpful guideline is offered by the *Ethical Principles of Psychologists*. Principle 7(f) explains:

Publication credit is assigned to those who have contributed to a publication in proportion to their professional contributions. Major contributions of a professional character made by several persons to a common project are recognized by joint authorship, with the individual who made the principal contribution listed first. Minor contributions of a professional character and extensive clerical or similar nonprofessional assistance may be acknowledged in footnotes or in an introductory statement²²

Another useful standard was adopted by the American Association of University Professors (“AAUP”) in 1990:

1. In his or her own work, the professor must scrupulously acknowledge every intellectual debt—for ideas, methods, and expressions—by means appropriate to the form of communication.

* * * *

4. Scholars must make clear the respective contributions of colleagues on a collaborative project, and professors who have the guidance of students as their responsibility must exercise the greatest care not to appropriate a student’s ideas, research, or presentation to the professor’s benefit; to do so is to abuse power and trust.

5. In dealing with graduate students, professors must demonstrate by precept and example the necessity of rigorous honesty in the use of sources and of utter respect for the work of

21. *Id.*

22. Monroe H. Freedman, *The Professional Responsibility of the Law Professor: Three Neglected Questions*, 39 VAND. L. REV. 275, 280 (1986) (quoting *Ethical Principles of Psychologists*, 36 AM. PSYCHOLOGIST 633, 637 (1981)).

others²³

In one respect, the problem of authorship of legal scholarship is more troubling than in other fields. Most academic disciplines publish scholarship almost exclusively through peer-reviewed journals, in which every article is subjected to critical evaluation by other scholars who have expertise in the topic addressed. Legal scholarship is published almost exclusively in student-edited law reviews, where articles are selected and edited by second and third year students who may have no prior exposure to the topics of the articles they edit. Misappropriation of student writing and other plagiarism might be more likely to be caught by an expert reader than by a novice. An expert might notice if the work of a novice (a research assistant) was presented as that of an expert (the professor). If this is the case, it may be easier to get away with plagiarism of student work in law than in any other academic discipline.

When should a law student research assistant become a co-author? Where is the line between research support and collaboration? The New England Journal of Medicine guidelines quoted above suggest that one is not an "author" unless all three of the listed criteria are met.²⁴ This standard is too exacting for legal scholarship, since many articles are book-length and produced over an extended period of time. A research assistant could have a very significant role in research and writing and still not be involved in the "final approval of the version to be published." Nevertheless, the standards quoted illustrate the possibility of an articulated consensus on authorship, which, if implemented, would make the claim of authorship a more meaningful one. I will return to the question of what should be the standards of authorship for law professors after some further exploration of the problem.

III. PLAGIARISM

The flip side of the question of "who is an author?" is "what is plagiarism?" To claim authorship of work that was in fact authored by another is plagiarism. One respected definition of plagiarism was articulated by Alexander Lindey:

Plagiarism is literary—or artistic or musical—theft. It is the *false assumption of authorship—the wrongful act of taking the product*

23. Bill L. Williamson, *(Ab)Using Students: [T]he Ethics of Faculty Use of a Student's Work Product*, 26 ARIZ. ST. L.J. 1029, 1043-44 n.38 (1994) (quoting AAUP POLICY DOCUMENTS AND REPORTS, *Statement on Plagiarism* 79-80 (1990)).

24. See *supra* text accompanying note 20.

of another's mind, and presenting it as one's own. Copying someone else's story or play or song intact or with inconsequential changes, and adding one's name to the result constitute a simple illustration of plagiarism.²⁵

This definition suggests that one could plagiarize only a creative artistic work and that plagiarism refers only to the "taking" of the whole of someone else's work. But more recent authorities define plagiarism more broadly, both in the kinds of work that may be plagiarized and in the possibility of an offense that involves only a small portion of the work of another. The Modern Languages Association offers a four-part definition of plagiarism:

I. Plagiarism is the use of another person's ideas or expressions in your writing without acknowledging the source.

II. Simply put, plagiarism is using another person's words or ideas without appropriate acknowledgment.

III. In short, to plagiarize is to give the impression that you have written or thought something that you have in fact borrowed from someone else.

IV. [P]lagiarism is:

a. reproducing someone else's sentences more or less verbatim, and presenting them as your own;

b. repeating another's particularly apt phrase;

c. paraphrasing someone else's argument;

d. introducing another's line of thinking.²⁶

The Modern Languages Association standards demand "that every thought, sentence, idea, and expression, whether verbatim or paraphrased from an 'outside source,' be acknowledged."²⁷

The definitions of plagiarism do *not* link the obligation to acknowledge the use of the words or ideas of another to the status of the other person. The duty of attribution applies whether the words or ideas taken are those of a lowly law student or those of Justice Cardozo. Also, the obligation to attribute attaches whether the work of another was published. If one plagiarizes unpublished writing, the odds of getting caught are much lower, but the offense is the same. Measured against these standards, a professor who uses a substantial

25. K. R. ST. ONGE, *THE MELANCHOLY ANATOMY OF PLAGIARISM* 52 (1988) (quoting ALEXANDER LINDEY, *PLAGIARISM AND ORIGINALITY* 2 (1952)) (emphasis added).

26. Dursht, *supra* note 5, at 1260 (citing ONGE, *supra* note 25, at 54 ("citing the Modern Language Association's 1975 definition of plagiarism")).

27. *Id.*

chunk of writing by a research assistant is engaged in plagiarism. He is impliedly stating, "I wrote this," when he did not.

A. *Ghostwriting*

When, if ever, is it proper to use the work of another without proper attribution? Most people do not regard "ghostwriting" as raising serious ethical concerns. Ghostwriting is different from plagiarism in that the "ghost" is voluntarily writing for another, rather than having his written work taken by another. The "ghost" consents to the use of his work by another and allows the other to represent the work as his own.

Perhaps the ethical problems relating to the law professor who uses the writing of a research assistant can be resolved by an explicit ghostwriting arrangement: the professor explains upon hiring the research assistant that part of his work is to act as a ghostwriter for the professor. The student will get paid, will get to see his words in print, and will get a good recommendation for his next job.

Although explicit consent to the appropriation of one's work is less ethically troubling than nonconsensual use, several problems still remain (discussed below). Perhaps there are some circumstances, such as the use of speech writers by politicians, when the use of ghostwriters raises fewer ethical problems. The consent of the "ghost" is not burdened by the same disparity of bargaining power that exists between teacher and student. If the public knows that politicians use ghost-writers to produce speeches, then most hearers are not deceived. Between a law professor and a research assistant, however, the ethical problems are only slightly ameliorated by an explicit agreement of the research assistant to act as a ghostwriter.

B. *The Harmful Effects of Plagiarism in Legal Scholarship*

Assume that some law professors plagiarize the work of their student research assistants.²⁸ So what? Is this more than a trivial problem?

There are several different harms that may result from the misappropriation by teachers of the work of research assistants.²⁹

- ◆ *Delegation of thinking.* A scholar who delegates research or writing to another person is delegating part of the thinking that

28. See *infra* Part III.C for exploration of this question.

29. See also Williamson, *supra* note 23, at 1038–39 (offering a somewhat different list of harms that come from faculty misappropriation of student work.)

should go into the production of scholarship. In doing research, there is much to consider about what to look for, where to look, what to collect, what to identify as important about the information collected, and how to interpret that information. Writing is a way of thinking.³⁰ Many writers discover their thoughts about a topic by writing about the topic. If this work is delegated, the student research assistant certainly thinks about the research and the writing, but he may do very different thinking and research than the professor would do. The work is not informed by whatever judgment the professor has acquired through years of research and writing. Some professors would take a student's work and then redo the research and the writing themselves—but some would not. Even if the work is redone by the professor in some fashion, the delegation might result in a significant diminution in the quality of the product.

- ◆ *Deception of the reader.* Another harm from misappropriation of student work (alluded to above) is the deception of the reader. The reader of an article by a recognized scholar may accord undeserved authority to ideas and conclusions reached in fact by a second year law student.³¹ If the identity of the true author of a passage were known, the reader might read more critically, might rely on the work with less confidence. To the extent that a novice is more likely to make mistakes in research or analysis than a more experienced writer, these errors may then be further disseminated by readers who rely on the published work.
- ◆ *Devaluation of the work of true scholars.* If some professors claim the work of others as their own, the work of scholars who do their own work is devalued.³² Ideas, research, and writing are the

30. See generally Elizabeth Fajans & Mary R. Falk, *Against the Tyranny of Paraphrase: Talking Back to Texts*, 78 CORNELL L. REV. 163, 166 (1993) (“chart[ing] . . . the nexus between reading and writing”).

31. If an experienced researcher claims authorship of a paper when he was not ‘directly involved’ in the research, readers may accord greater authority to the work than it merits because of the readers’ respect for the senior author. See Douglas W. Cooper, *Unethical Scholarship Today: A Preliminary Typology*, Address Before the Humanities Science and Technology Conference (March 11–12, 1988) (citing *The Integrity of the Scientific Literature*, 325 NATURE 207 (February 28, 1987)).

32. In censuring a lawyer for resume fraud in securing a law teaching position, the D.C. Board on Professional Responsibility stated:

It cannot be argued that injury was minimal [C]ompetition for academic positions assumes that preference will be given to the most qualified persons, as determined largely by their credentials. When information is false, there is direct injury to other qualified persons whose accomplishments are unfairly subordinated.

currency of academe. Originality of written work is essential to the integrity of the academic system. A professor who claims the work of another as his own—even if it is only part of an article—is engaged in academic fraud. If this professor gets away with this fraud, perhaps receiving undeserved tenure, then the tenure system is subverted—the validity of the review process is eroded.

- ◆ *Hobbling the professional development of the research assistant.* Every law student research assistant is an aspiring professional. The professional development of every new lawyer depends on her being able to show prospective employers what she can do. Quality writing samples often open doors to good jobs. A research assistant whose work is misappropriated by a professor who publishes the work under the professor's name is cheated out of the opportunity to advance by identifying or distributing that product as a writing sample. If, for example, the student has drafted a chapter of a book that is published under the professor's name alone, the student can't list that work on his or her resume.
- ◆ *Requiring collusion in deception by the student.* If a student tries to claim credit for work that has been published under the name of the professor, the student may be accused of dishonesty or insubordination, simply for giving an accurate account of who did the work. The student is tacitly required to collude in the professor's misrepresentation as to the authorship of the work. This may be her first clinical lesson in professional dishonesty.
- ◆ *Erosion of the integrity of the professor.* The professor, by misappropriating student work, has taken a step down a slippery slope.³³ If she succeeds in passing off the student's work as her own, what will she rationalize next? Perhaps she will ask the law school to reimburse her for a trip whose purpose was personal, not professional. Perhaps she will take home books or office

In re Hadzi-Antich, 497 A.2d 1062, 1065 (D.C. 1985).

33. See Lisa G. Lerman, *Lying to Clients*, 139 U. PA. L. REV. 659, 684–87 (1990) (discussing the slippery slope of deceptive behavior). Moral philosopher Sissela Bok explains:

Deceit by lawyers presents special dangers to trust Deceit is tempting . . . since it comes so easily at first. One word is spoken instead of another, a document backdated so as to deflect inquiry, a false claim made in the process of negotiation, some figures altered in a tax document This ease makes lies not only tempting but also peculiarly corrupting, especially as more and more concealment and deception may seem needed to keep up a false front But there is nothing about being a lawyer which adds legitimacy to such choices.

Sissela Bok, *Can Lawyers Be Trusted?*, 139 U. PA. L. REV. 913, 923 (1990).

supplies that belong to the law school. Perhaps next time she will ask the research assistant to write the whole article, not just Part II.

- ◆ *Modeling deceptive conduct as a method of achieving professional success.* Deceptive behavior corrupts the integrity of the deceiver and of others who know about it. The professor is modeling deceptive behavior for the research assistant. The message is that professional advancement may be achieved by dishonest and opportunistic behavior. The student might infer that she also may do whatever she can get away with if it will advance her professional position.
- ◆ *Harm to the legal profession.* If law professors become cynical about whether it matters to be truthful in representation of who authored a piece of work, those same professors may take that attitude toward truthfulness into classrooms where they teach the law of evidence, professional responsibility, or other courses. The erosion of the integrity of the legal academy could further erode the ethical sensibility of the profession as a whole.

This inventory of possible harms from misappropriation of student writing suggests that this type of conduct is not ethically ambiguous or trivially unethical. Where one person takes the work of another as his own, both writers, many readers, and the academic community are harmed.

C. *How Often Do Law Professors Engage in Plagiarism?*

One question that I can't answer is whether the problem of plagiarism by law professors (of writing by research assistants or by others) is a big problem or a small problem. We know that the problem exists—many of us know of examples. There are very few cases in which allegations of plagiarism by law professors have become public, because when such allegations are made, they usually occur behind closed doors and never see the light of day. I have not done a systematic collection of confidential stories about plagiarism by law professors, but I have found a few stories in published articles and decisions and have seen or heard other stories in the course of my own teaching career.

One story was recounted by Professor Monroe Freedman in his seminal 1986 article on ethical issues that confront law professors.

A senior professor at a prestigious law school published a book under his own name. He had been Assistant Legal Advisor to the Department of State and chairman of a federal agency.

After publication of the book, the author of an article previously published in a scholarly journal complained that extensive portions of the book had been taken verbatim and without attribution from his article. The professor, however, was unfazed: *he* hadn't committed the plagiarism, he explained; it had all been done by his student research assistant, who was too young and inexperienced to know any better. To the best of my knowledge, the explanation was accepted. The professor today has emeritus status at the same law school.³⁴

Another story is reported by Professor Bill Williamson of the law school at Lewis and Clark College:

[O]ne professor begins each research assistantship by asking students whether they desire "money or credit" for their endeavors. After assigning students huge projects with little regard for their other academic responsibilities, this professor routinely gives incompletes at the end of [the] semester. At the same time, he enrolls the same students for an additional term of independent-study research, while the remaining incomplete is still outstanding.³⁵

Williamson implies that the student is pursuing research assigned by the professor to assist the professor with his own work, rather than allowing the students to choose topics for research based on *their* own interests. By giving the students incompletes, then, the professor maintains a stable of unpaid research assistants who must continue to toil at his research.

Another public case involved John T. Baker, who was Dean of Albany Law School.³⁶ Baker was forced to resign in 1993 because of a long list of complaints, including an allegation of plagiarism.³⁷ Baker was alleged to have written a memorandum to his board of directors discussing questions about his educational philosophy.³⁸ The memo apparently included, without attribution, portions of an article that had been published in the *Montana Law Review* by Dean John Sexton of New York University Law School.³⁹

34. Freedman, *supra* note 22, at 281.

35. Williamson, *supra* note 23, at 1029 (quoting Matthew P. Bergman, *Faculty Exploitation of Students: The Need for Reform* 1-2 (1989) (unpublished manuscript on file with Professor Douglas K. Newell, Northwestern School of Law of Lewis and Clark College)).

36. Gary Spencer, *Albany Dean Takes Leave Under Fire: Faculty, Board Criticism of Performance Mounts*, N.Y. L.J., May 11, 1993, at 1.

37. *Id.*

38. *Id.*

39. *Id.* Dean Sexton apparently didn't mind that his work had been misappropriated. *Id.* The Albany Law School Board of Directors, on the other hand, might have objected to

Another public case involved not plagiarism, but its close cousin, resume fraud.⁴⁰ An assistant professor was forced to resign from Southern Methodist University Law School after the school discovered that he had submitted a resume inflating his credentials when he was being considered for appointment at SMU.⁴¹ He had falsely stated that he was first in his class at Oklahoma College of Law (his class rank was twenty-six) and had falsely stated that he was Editor-in-Chief of the law review (he had been a member of the editorial board, but not the Editor-in-Chief).⁴² After his resignation from the law school, he was disciplined for this dishonest conduct by the D.C. Court of Appeals.⁴³

There are some examples of plagiarism of student work from outside of the legal academy. One involved a Canadian professor in an MBA program who took a paper written by a student for a course with that professor and presented it at a professional meeting as having been co-authored by himself and another professor.⁴⁴ The professor had made editorial suggestions on the paper but was not a co-author.⁴⁵ An Ontario court decided that the professor and the University of Ottawa were liable for "infringing the copyright interests and moral rights of the student"⁴⁶

In another case, a professor at the University of Utah was discharged by the university based on his having represented as his own work two papers, nine-tenths of which had been written by two students of the professor.⁴⁷ Also, he was charged with improperly failing to give co-authorship to a colleague on a research project. The tenth circuit upheld the university's dismissal of the professor.⁴⁸

I have encountered several situations in which law teachers have taken drafts by research assistants and incorporated them into books and articles. Also, I have seen instances in which professors have intentionally or inadvertently lifted passages from other sources into

Dean Baker passing off Dean Sexton's ideas as his own.

40. *In re Hadzi-Antich*, 497 A.2d 1062, 1063 (D.C. 1985).

41. *Id.*

42. *Id.*

43. *Id.*

44. *Student Wins Plagiarism Suit Against Professor and University*, 10 J. PROPRIETARY RIGHTS 24 (1998).

45. *Id.*

46. *Id.*

47. *Yu v. Peterson*, 13 F.3d 1413, 1414 (10th Cir. 1993), *discussed in* Ralph D. Mawdsley, *Faculty Plagiarism in Higher Education*, 91 WEST'S EDUCATION LAW REPORTER 1, 4-5 (1994).

48. *Id.* at 1417.

their own writing.

As a law student, I was cite-checking a journal article by a law professor. The article was discussing a series of decisions by the United States Supreme Court. As I checked the references, I discovered that a significant portion of the text of the article was drawn verbatim from the opinions that were the subject of the article, but without quotation marks or citation of those passages to the opinions from which they had been taken. I marked the lifted passages and turned my section in to the editor who was in charge of this article. I don't know how the editor handled the problem, except that the article eventually was published and that there was no public allegation of plagiarism.

Even without knowing the scope of the problem, I believe we should consider whether law schools should have policies or procedures to prevent or to respond to allegations of plagiarism by law professors. Most law schools have honor codes or rules of conduct for law students and most of them prohibit plagiarism. Nearly half of the honor codes don't bother defining plagiarism.⁴⁹ Perhaps they reflect a belief that, by the time she gets to law school, a student should know what constitutes plagiarism. Most law schools have *no* corresponding rules of conduct for law teachers. Some universities have rules of conduct that govern all faculty, but because many law schools are functionally more independent from the universities than are most other departments, law professors may not even know of the existence of these rules.

Even at a school at which no professor had ever passed off the written work of another as his own, a problem could arise. Consider the following hypothetical:

A partner in a law firm often publishes articles on issues related to his work. These give the firm visibility in his practice area and attract new clients. Some of the articles are written by associates in the law firm. The lawyer has read and made some comments on these articles, but ninety percent of the work was done by associates. Because the lawyer is the senior person in his practice area, the articles are published under his name alone. The lawyer eventually decides to leave the firm and go into academia. He circulates his resume to the appointments committees of several law schools. All of the articles that he has published under his name are listed on his resume. On the strength of his extensive list of publications, the lawyer is hired

49. Robert D. Ellis, *Plagiarism in Law School: Close Resemblance of the Worst Kind*, 31 SANTA CLARA L. REV. 103, 110, 117 (1990).

as a professor. The law school that hires this lawyer onto its faculty counts toward tenure articles published before a professor was hired, so these same publications are evaluated by external reviewers when this professor comes up for tenure. The professor is granted tenure.

Should a law school care if the prominent lawyer it hires has written his own articles? Some contemporary law school deans, preoccupied with the U.S. News ratings, spend thousands of dollars every year to bring in prominent speakers and more thousands to brag about it in glossy brochures mailed to thousands of lawyers and law professors.

These deans might not care who wrote which articles. We teach in an era in which marketing plays a larger and larger role in law school administration. If the prominent lawyer hired by the law school is highly visible and regarded as “a catch,” a dean might say, “Why should we care if some minions in his firm wrote some of his articles?”

Why, indeed? One reason we should care is that the integrity of our hiring, tenure, and promotion system depends on being able to know that the work evaluated in that process was produced by the person being evaluated. If a law school hires this prominent lawyer and tenures him based on a body of ghost-written work, the message to any aspiring professor of law is that one route into the academy is to enlist others to write articles and find a way to claim them as one’s own. The message to any untenured faculty is to hire talented research assistants and then claim authorship of their work. And the message to those who do their own writing is that the school does not care about scholarship, only about the appearance of scholarship.

IV. WHAT TO DO ABOUT DISHONEST LAW PROFESSORS

Let’s assume that it matters to most academics whether the scholarship evaluated in hiring, promoting, and tenuring law professors is actually written by those law professors. We may care about it, but the general practice on this topic is “don’t ask, don’t tell.” I don’t know of any schools that ever ask applicants or candidates for tenure whether any of their work was ghostwritten by research assistants or other underlings. To ask the question might seem unseemly, like an accusation of unethical behavior. And if the question were to be asked, query whether the plagiarists would answer the question honestly. Likewise, most such misattribution could not be identified by any review of the work itself. A hiring committee that sought to authenticate the authorship of written work

claimed by a faculty candidate might inquire of references whether any of the candidate's work had been ghostwritten. This type of inquiry would be worthwhile not for all faculty candidates, but for those coming from environments in which ghostwriting is common.

Most law professors have a sense of integrity that would require them to write their own articles and not to take the work of others and represent it to be their own. Some professors make extensive use of work done by others. Given the general lack of articulated standards requiring that one write one's own articles, some may not realize that they are engaged in plagiarism. They may believe that what they are doing is no different from anyone else. Consider this example:⁵⁰

A student was working as a paid research assistant for a teacher. The teacher had asked the student to write a memo on a legal issue. The student carefully researched and wrote a fifty page memo. The teacher was very appreciative of the work, read it, and edited it, making perhaps ten or fifteen stylistic changes. The teacher then reformatted the memo and published it under his own name as a chapter of a treatise. The professor acknowledged the "able assistance" of the research assistant in a footnote.

The student was troubled by the teacher's appropriation of his work. He came to ask me, in confidence, whether I thought the teacher's conduct was proper. He showed me the lightly edited memo. I concurred in the student's judgment that his work was being plagiarized. The student didn't want to make a fuss. He needed a good reference from the professor to get a job for the following year. At the same time, he was upset and wanted to know if I thought he was overreacting.

The work became part of the teacher's body of scholarship that was considered when he came up for tenure shortly after this episode. I did not report the appropriation of the student's work. The story had been shared with me in confidence. If I had reported it, the student who wrote the memo would have been identifiable as the source of the story. I did consult a couple of colleagues in confidence about this issue; neither of them thought the situation presented a serious question.⁵¹

50. I have taught at six American law schools. These events occurred at one of them.

51. One participant in the symposium suggested that I had "wimped out" (or words to that effect) by not confronting or reporting my then colleague. He has a point, of course. On the other hand, I think my reaction reflects the complexity of these situations and the difficulty of becoming a "whistle blower." Factors that contributed to my inaction were the confidentiality of the communication; my not being tenured at the school where this occurred; the fact that I liked this professor and had no desire to do him harm; and my fear

What should happen to this professor? Leaving aside the particular constraints, it would be terribly awkward to bring up this kind of problem when a candidate is being considered for tenure. The stakes are too high; the issue is too volatile. To raise such a question might lead to an inquisition about whether the professor had himself written his other articles. On the other hand, to let the issue go is to abandon the institutional standard of integrity in scholarship. It makes no sense to grant tenure to a professor because he was able to hire and supervise clever research assistants. Even if the ideas for the writing were the professor's, the research, the writing, and the analytic ideas were the student's.

Another student had written a paper for a seminar.⁵² She thought the paper was pretty good and wanted to publish it as an article. She had approached the tenured professor who had taught the seminar to discuss possible publication. The teacher tried to persuade the student that she should not publish her paper. Why? The teacher was writing a book and wanted to develop the ideas in the paper in a chapter of his book. The teacher was convinced that the student had gotten the main idea for the paper from the teacher, so, in his opinion, the paper was not really the student's work. The student disagreed—she felt that the idea for the paper had been her own. Later the student saw a draft of the relevant chapter of the teacher's book. The teacher had used portions of the paper without acknowledging the student's work.

Assume that the law school administration was apprised of this problem. What should they do? Call in the teacher and the student to mediate? Probably there never would be agreement as to who originated the ideas in the paper. The dean's office could compare the paper and the chapter to determine whether the student's work was appropriated by the teacher. But if it was, then what? Even to contemplate this process makes one's skin crawl—it would be a devastating humiliation for the teacher and would leave scars that might never heal. Some law professors would take the position that

that my raising this issue would cause retaliation against me or the student from friends of this professor. But for the student's concern for confidentiality, I would hope that I would at least have gone to the colleague to ask about the use of the student's work. Even this step, however, is fraught with difficulty.

52. The events described here also took place at one of the six law schools where I have taught. The student confided in me about this problem. I recount the story from the student's perspective, not having verified the facts. Of course I could not attempt to verify without breaching the student's confidence. I believe I can write about this and other stories without breaching a confidence because the stories are generic enough that there are similar examples at many other schools. Also, I have changed and omitted a few facts to protect anonymity.

the teacher had done nothing wrong. At most schools, there are no standards that would be violated, even if the teacher did appropriate the student's writing.

Part of the solution to these problems has to be prevention. Unless law schools adopt policies on appropriation of student work by professors, or on presentation of ghostwritten work as part of one's record, they are in a very poor position. In the absence of standards, professors with wobbly moral compasses are left to their own devices. And if one such professor does something that seems egregious to some faculty, others will line up in defense of the one, fearing that if this professor is scrutinized, their own judgment also might be questioned.

Prevention is cleaner than remediation. It would be a simple matter to inform candidates for faculty positions that any work that had been written in whole or in part by someone other than the candidate should not be presented as a credential for an academic position. New faculty could be informed of a policy that research assistants could be asked to do research for professors, but that contributions of research assistants must be fully and accurately described in the published work. The policy might make clear that professors would be expected to write their own articles unless they were working with acknowledged co-authors.

Policies of this sort would not prevent abuses. Some professors who pass off students' work as their own would not be deterred by a simple policy. But many lawyers entering academia would be much helped simply by having guidance as to what is permitted. Once a policy is in place, it is a point of reference that might be used in addressing misappropriation of student work.

A major obstacle in addressing this problem is that law professors, like everyone else in the legal profession, dislike adopting rules that constrain their own behavior. The Association of American Law Schools ("AALS") published *Standards of Good Practices by Law Professors in the Discharge of Their Ethical and Professional Responsibilities* in 1989.⁵³ The AALS guidelines address the question of appropriating the work of another:

When another's scholarship is used—whether that of another professor or that of a student—it should be fairly summarized and candidly acknowledged. Significant contributions require

53. ASSOCIATION OF AMERICAN LAW SCHOOLS, *Statement of Good Practices by Law Professors in the Discharge of Their Ethical and Professional Responsibilities*, in 1999 HANDBOOK 89, 94 (1989).

acknowledgment in every context in which ideas are exchanged. Publication permits at least three ways of doing this: shared authorship, attribution by footnote or endnote, and discussion of another's contribution within the main text. Which of these will suffice to acknowledge scholarly contributions by others will, of course, depend on the extent of the contribution.⁵⁴

While this statement is sort of vague and exhortatory, it at least flags the issue that when you use someone else's work you are supposed to say what is yours and what is theirs, even if the somebody else happens to be a law student. The AAUP standards quoted earlier are more specific.⁵⁵

If standards of authorship were presented to a faculty for adoption, the proposal would be unlikely to be approved. Many law professors would judge it to be a waste of time to adopt standards of authorship. Some would urge that there is no misappropriation of written work by law professors. Others would accede that law professors do use the written work of their research assistants, but that this is an acceptable practice and that the contributions of research assistants usually are marginal at best.⁵⁶ Still others would urge that the line-drawing needed to articulate standards would be too difficult. At some law schools, a barrier to the adoption of standards for authorship would be the widespread knowledge that certain individual colleagues are flagrant offenders. One or two of them might be respected and powerful colleagues. A faculty would not want to risk offending these productive people.

While the adoption of standards would be helpful, it would be unlikely except at a school where a strong dean made this issue a priority, or at a school where the faculty enjoyed a high degree of moral consensus. An alternative "fix" to this problem would be to increase consciousness of faculty plagiarism in the legal academy so that appointment committees reviewing resumes might be alert to the

54. *Id.* at 92.

55. See discussion *supra*, Part II.

56. Some law professors seem to believe that law students would be unlikely to be the source of significant ideas. One example is in a commentary by Professor Todd Rakoff on the famous article by Lon Fuller and William Perdue, titled *The Reliance Interest in Contract Damages*. Professor Rakoff notes that this article was co-authored by a famous Harvard law professor and his research assistant. He mentions that "[i]n addition to looking up cases, Perdue wrote the initial drafts of some of the case law analysis." Nevertheless, Rakoff says "I will treat Fuller as *the* author; for the range of conceptual and jurisprudential issues at the heart of my commentary, he surely was." Todd D. Rakoff, *Fuller and Perdue's The Reliance Interest as a Work of Legal Scholarship*, 1991 WISC. L. REV. 203, 203 n.3 (1991) (citing Fuller & Purdue, *The Reliance Interest in Contract Damages*, 46 YALE L.J. 52, 373 (1936-1937)).

possibility that some publications of a senior candidate might have been ghostwritten. Even without a policy in place, this question could be asked of candidates who had published extensively while in private practice or in government jobs, or of their references.

Another partial “fix” would be to convene a faculty discussion of proper and improper uses of the work of research assistants. Such a discussion would be less threatening than a proposed rule. Many professors might be more cautious about using the work of others and more scrupulous in acknowledging the assistance of others if these questions were called to their attention.

V. PERPETUATING THE DOUBLE STANDARD

Perhaps it is unrealistic to envision a law school doing more than vague exhortation to encourage truth in authorship. One problem with this conclusion is that it leaves us with an indefensible double standard for students and for teachers. A student who lifts any portion of the work of another in a paper, if caught, will become a respondent in a disciplinary proceeding and may be expelled or suspended. At many schools, one sees one or two or three honor code cases per year involving alleged plagiarism.

If we accept this status quo, we apply the guillotine to a sampling of inexperienced writers for incorporating the work of another into a paper and not using quotation marks or footnotes. The novices get the axe, but we turn a blind eye to the very same conduct by law professors, especially if the appropriated material was written by a student. This makes no sense. Most law professors are far more experienced writers than most law students. If one were to decide to punish one group for this variety of academic dishonesty and not the other, the fairer choice would be to try to educate the students and save the guillotine for dishonest or predatory professors.

Another solution to this dilemma is to reevaluate our standards for plagiarism by students and to avoid penalizing students for conduct for which we would not penalize teachers. Given the complete lack of standards for teachers, perhaps we should just omit the offense of plagiarism from our honor codes. We could throw in the towel, acknowledging that everyone else in the legal profession seems unconcerned about misattribution of written work, so why should the law schools be so prissy about it?

Most of us would be pretty uncomfortable about abandoning the standards of authorship of student work. The students' work is graded, and employers rely on the grades as a measure of student

competency. If we abandoned rules prohibiting plagiarism, even more students probably would turn in work done by others.

A step in the direction of reducing the breadth of the double standard would be to ensure that a student is not charged with plagiarism where the "passing off" reflected more a lack of education about proper attribution than a deliberate deception. One might prosecute a student who turned in as her own a paper that had been written by a previous student, but one might not prosecute a student who turned in a paper that ineptly paraphrased a series of articles on his topic, occasionally borrowing sentences without quotation marks. This would be a good move even if we were not confronted by an indefensible double standard. I am aware of several honor code proceedings against students for inadvertent or inept plagiarism.

One student who was prosecuted for plagiarism was one of the most truthful and conscientious students I have ever had. I was her clinical supervisor (not at my present school). Her notes in her case files on the steps taken on behalf of her clients were incredibly detailed and thorough. Her plagiarism was the result of a compulsive effort to state the law correctly in two term papers. She cited her sources, but the language of her papers was too close to that of her sources for comfort. She took extensive notes on the articles she read, not realizing that her notes were verbatim. Then she copied over the notes in the course of organizing the material to write the paper. By the time she began drafting, she had lost track of which words were hers and which were the words of her sources. Although she had attended a fine university, she never took a course in college for which she was required to write a paper. She arrived at law school clueless about how to write a research paper. This student was prosecuted under the law school's honor code and was suspended from law school for two years.

How can we justify the terrible penalty imposed on this conscientious student when we don't even have any rules governing attribution by teachers?

VI. STANDARDS FOR AUTHORSHIP OF LEGAL SCHOLARSHIP

My colleague Professor Leroy Clark suggests that a law professor or a lawyer should err on the side of including subordinates as co-authors. His personal standard for deciding who is a co-author is that "if the student is an actual drafter of a body of the article, co-authorship is warranted, even if the main ideas . . . were mine. A footnote mention is appropriate when the student merely does

background research, but no writing.”⁵⁷ Clark suggests that the senior author should take responsibility for offering co-authorship to assistants whose status in relation to the senior author is “such that they would not . . . [risk] raising the issue” with the senior person.⁵⁸ He reports that he applied this standard to give co-authorship to a third year student on an article that was published before he got tenure.⁵⁹

The distinction between drafting and research is a useful one but requires refinement. In addition, the senior author might assess the contribution of the research assistant in relation to her own work. For example, a student who drafted one page of a hundred-page article should not be listed as a co-author. A student who drafted parenthetical summaries of court decisions for footnotes to an article should not be listed as a co-author. But a student who drafts a significant portion of the text of an article should become a co-author.

Even if the contribution of a research assistant is too small to be worthy of co-authorship, a lawyer or a law professor might consider an intermediate form of credit. One option is a byline that reads “by X with the assistance of Y.” Another is a footnote acknowledgment that spells out what was the contribution of the research assistant. “X synthesized the literature and helped draft Section II”; or “X did the research for and produced a first draft of Section III.”

To draw the distinction between research and drafting may underrate the importance of research. Research involves the exercise of judgment and discretion about where to look, what to collect, how to organize it. Even when a research assistant has substantial guidance from a professor, the collection and assembly of materials is an essential and intellectually demanding part of the work of writing an article. The work is the collective product of the person who conceived the idea for the article, the person who does the research, the person who does the writing, and the person who does the editing.

All this points toward more frequent listing of co-authors in legal scholarship. For untenured professors, this may be problematic.⁶⁰ Some schools will not consider co-authored works as part of a portfolio of work considered for tenure. Other schools will consider

57. Memorandum from Leroy Clark to Lisa Lerman (Dec. 16, 1992) (on file with author).

58. *Id.*

59. *Id.*

60. A few professors, like Professor Clark, may be able to resist institutional pressure to claim sole authorship, but often professors who can do that are very secure in their prospects for tenure because of their credentials or positions in the law schools. Those whose entitlement to tenure is less clear are more vulnerable to institutional pressure.

co-authored works but will accord less weight to those. Standards like these discourage law professors from giving co-authorship even where it might be appropriate. Law schools should re-evaluate the weight attached to co-authored works. Co-authored works should spell out the respective roles of the authors, but where the division of labor is articulated, collaborative work should be valued no less than sole-authored work.

VII. CONCLUSION

The question of whether teachers should take the written work of students and represent it to be that of the teacher seems almost pathetically simple. The answer should be no. To represent the work of another as one's own is dishonest. But somehow in the rush to produce "major" scholarship in a field in which quality is often confused with length and number of footnotes, the impetus to enlist others to help with the writing is very strong. And perhaps some versions of that practice are entirely innocuous. But in some situations, students feel taken advantage of by teachers. Some uses of student work without attribution are deceptive to the reader. Even if no one is upset and no one is harmed by the deception, the misappropriation of written work is harmful to the integrity of those who do it and those who watch.

What should be the relation of professor to research assistant? At one end of the spectrum, the relationship might be collegial and mutually supportive. At the other end of the spectrum, it might be predatory and exploitative. One of the reasons why the question of authorship is worthy of attention is that the professional development of each aspiring lawyer depends on his learning writing skills and producing written work. Whether as a student or as an associate in a law firm, every writer should be entitled to claim her written work as her own. Much as the professors might need to publish to avoid the perilous consequences of not doing so, query whether they need to conceal the contributions of those who assist them. The professors are in secure professional niches compared to their students. If one needs credit for his own written work more than the other, it is surely the student, not the teacher. But more important, law professors offer professional models for their students, especially for those students with whom they work closely. If what we model is a hierarchical system in which the dominant party is entitled to take from the subordinate party, those values will continue to be replicated

throughout the legal profession.⁶¹ This examination of the question of authorship suggests that there is no justification for a professor to take the work of a research assistant and publish it as his own.

61. See Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591, 602-08 (1982) (discussing how this hierarchical system begins in law school and is carried with students as they enter the legal profession).