Law Student Plagiarism: Contemporary Challenges and Responses

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I. Introduction

The Oxford English Dictionary defines plagiarism as "The action or practice of taking someone else's work, idea, etc., and passing it off as one's own."[1] Though plagiarism is hardly a new topic,[2] contemporary conditions in higher education pose fresh challenges to law schools seeking to apply anti-plagiarism rules. Rules against plagiarism nonetheless serve important law school goals, relating to student learning, university values and preparation for legal practice. Responsive strategies for addressing law student plagiarism are thus required.

This introduction section reviews current challenges to meaningful rules against plagiarism. Part II explores law student plagiarism in particular and the sometimes blurred line between conduct standards of legal education and those of legal practice.[3] Part III discusses strategies for addressing law student plagiarism and Part IV presents a brief conclusion.

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1. Oxford University Press, *sub verbo* "*plagiarism, n.*", Oxford English Dictionary, *available at* http://www.oed.com/view/Entry/144939?redirectedFrom=plagiarism& (last visited May 5, 2014).

2. *See. e.g.*, Henry Goudy, *Plagiarism – A Fine Art*, 20 Jurid. Rev. 302, 302-15 (1908). *See also* Leon R. Yankwich, *Intent and Related Problems in Plagiarism*, 33 S. Cal. L. Rev. 233, 233 (1960). *See also* Debbie Papay-Carder, *Plagiarism in Legal Scholarship*, 15 U. Tol. L. Rev. 233, 236-42 (1983) (on plagiarism and legal education); Carol M. Bast & Linda B. Samuels, *Plagiarism and Legal Scholarship in the Age of Information Sharing: The Need for Intellectual Honesty*, 57 Cath. U. L. Rev. 777, 777 (2008).

3. Terri Leclercq, *Confusion and Conflict about Plagiarism in Law Schools and Law Practice*, in Perspectives on Plagiarism and Intellectual Property in a Postmodern World 195, 195 (Lise Buranen & Alice M. Roy eds., 1999); Deborah Gerhardt, *Plagiarism in Cyberspace: Learning the Rules of Recycling Content with a View Towards Nurturing Academic Trust in an Electronic World*, 12 Rich. J. L. & Tech. 1, 8 (2006).

A. Low Plagiarism Apprehension Rates

Many Canadian university students admit to plagiarizing. In a 2002-2003 survey of 14,913 Canadian undergraduates, 37 percent of students admitted to "copying a few sentences of material from a written source without footnoting."[4] Moreover, likely only a small percentage of plagiarizing students ever face a formal university discipline process for their conduct. In data reported for 2011-2012, only about 1 percent of students at 42 participating Canadian universities were subject to academic misconduct proceedings, and about 50 percent of these proceedings related to plagiarism offenses.[5] While data specific to law students are not available, law student behavior is unlikely to diverge dramatically from that of university students overall.[6]

The low rates of university apprehension of plagiarizers, as compared with the rates of students who admit to plagiarizing, suggest that many students disregard rules against plagiarism and that professors and universities inadequately enforce such rules. Low apprehension rates contrast with widespread university rules[7] against plagiarism, the core of which relates to inadequate attribution of sources.[8]

B. Plagiarism-Related E-Commerce

Students also plagiarize by submitting others' work as their own, including papers purchased over the Internet.[9] The paper purchase industry is now global;[10] companies operate multiple websites, including fraudulent schemes.[11] Sites include Other People's Papers ("www.oppapers.com"), now called

4. Julia M. Christensen & Donald L. McCabe, *Academic Misconduct within Higher Education in Canada*, 36 Can. J. Higher Educ. 1, 5, 10 (2006).

5. Holly Moore, *Cheating students punished by the 1000s, but many more go undetected*, Cbc News, (Feb. 25, 2014), available at http://www.cbc.ca/news/canada/manitoba/cheating-students-punished-by-the-1000s-but-many-more-go-undetected-1.2549621.

6. Neal Hall, *UBC law school grad rejected by law society for cheating, plagiarism*, Metro News, (Mar. 9, 2013), available at http://metronews.ca/news/vancouver/589035/ubc-law-school-grad-rejected-by-law-society-for-cheating-plagiarism.

7. *See, e.g.*, University of Toronto, *Code of Behaviour on Academic Matters*, (June 1, 1995), http://www.governingcouncil.utoronto.ca/Assets/Governing+Council+Digital+Assets/Policies/PDF/ppjun011995.pdf.

8. University of Saskatchewan University Secretary, *Regulations on Student Academic Misconduct*, s II(v) (last updated June 2013), http://www.usask.ca/secretariat/student-conduct-appeals/StudentAcademicMisconduct.pdf.

9. *See*, *e.g.*, *id*.

10. *See, e.g.*, Axact (Pvt) Ltd v. Student Network Resources, Inc., et al., No. 07-5491, 2008 WL 4754907 (D.N.J. Oct. 22, 2008) (Justia) (one Pakistan-based company controls more than 500 essay mill websites).

11. Thomas Bartlett, *Cheating Goes Global as Essay Mills Multiply*, 55 Chron. of Higher Educ., Mar. 20, 2009, at A1; *see also* Darby Dickerson, *Facilitated Plagiarism: The Saga of Term-Paper Mills and the Failure of Legislation and Litigation to Control Them*, 52 Vill. L. Rev. 21, 21 (2007).

Study Mode ("www.studymode.com"), as well as many others.[12] These sites often present themselves as providing student assistance only and contain denunciations of plagiarism.[13] Students' use of these Internet paper repository sites has spawned a related industry of plagiarism policing sites, including Turnitin ("www.turnitin.com").[14]

For a fee, instructors can require students to hand in their papers to Turnitin, which in turn matches the papers against Turnitin's Web database[15] to verify whether papers are original. Turnitin's database is ever growing because all submitted papers in turn become part of the database, raising privacy and ownership concerns.[16] Turnitin has a sister site called WriteCheck ("www.writecheck.com") that permits students to submit their papers to the Turnitin database before submitting papers to professors, in order to "avoid accidental plagiarism."[17] Papers submitted to WriteCheck do not become part of the Turnitin database.[18]

Together, Internet essay repositories, instructor verification sites and student verification sites represent an expansive Web-based industry. Some law school paper topics may be too obscure to have papers readily available for purchase. Broad topics common to several jurisdictions likely do have coverage in essay databases, however. Additionally, more specific assignments may be ordered written by professional ghostwriters.[19] With the ease of a credit card transaction, students today can buy an Internet paper, or commission a ghostwriter, and then check their paper against the top plagiarism verification services.

C. Students: Learners or Consumers?

The above e-commerce phenomenon highlights the tension between an idealistic or traditional view of higher education (as a principled process of learning and reward according to merit) and a cynical, instrumentalist view of higher education (as a process of buying a branded degree in order to access

12. *See, e.g.*, CustomEssayMeister, *An Honest Writing Service*, http://www.customessaymeister.com/custom-research-papers.htm (last visited May 5, 2014).

13. StudyMode, *About StudyMode,* http://www.studymode.com/about.php (last visited May 5, 2014).

14. Other fee-based sites include: Copyscape, http://copyscape.com (last visited May 5, 2014); Plagiarismdetect, http://www.plagiarism-detect.com (last visited May 5, 2014); Plagscan Plagiarism Checker, http://www.plagscan.com (last visited May 5, 2014); VeriGuide, http://veriguide1.cse.cuhk.edu.hk/portal/plagiarism_detection/index.jsp (last visited May 5, 2014).

15. Turnitin, *FAQs*, http://www.turnitin.com/en_us/features/faqs (last visited May 5, 2014).

16. A.V. v. iParadigms, Ltd. Liab. Co., 544 F. Supp. 2d 473 (E.D. Va. 2008).

17. iParadigms, *iParadigms,* http://www.iparadigms.com/home (last visited May 5, 2014).

18. Writecheck, *Features,* http://en.writecheck.com/features/overview (last visited May 5, 2014).

19. CustomEssayMeister, *supra* note 12.

the job market).[20] A post from the Unemployed Professors ghostwriters blog presents the latter cynical view:

> Most importantly, buying a custom term paper will free up your time.… [Y]ou'll spend the time that you've saved becoming a commodity, by building up that network, and getting your nose as brown as you possibly can. Because, let's face it, the same way that we're transforming education into a commodity, you need to become one if you're going to succeed outside of school. Given that you can only be in three places at a time, rather than six, you need to build that network, turn yourself into a commodity, and play the game that the commercial-university complex wants you to. Yeah, it's unethical, but so is the university system, built on corruption and false promises of employability, that you're working in today.[21]

Law school is an illustrative environment for the tensions between idealism and cynicism in education to be played out. On the one hand, legal study attracts idealists interested in the concept of justice. On the other hand, particularly since the rise of tuition rates in the 2000s, law school often leads to serious debt.[22] At $28,791 a year, law school tuition at the University of Toronto for 2013-2014 nearly equals the median Canadian income.[23]

One student view of law school, supported by high tuition fees, is that it is primarily a consumer experience.[24] By this view, students are predominantly purchasers, not learners; they buy degrees. According to this conception of law school, rules against plagiarism are unjustified. If students need only pay and wait in order to receive a degree, there is no rationale justifying that they work and learn by completing assignments; there is similarly no justification that honest intellectual performance be rewarded with merit designation in

20. Gomez-Jimenez v. New York Law School, 956 N.Y.S.2d 54 (N.Y. App. Div. Dec. 20, 2012) (Justia. N.Y.).

21. Unemployed Professors Blog, *Is Buying a Term Paper Unethical?,* (May 18, 2013), http://blog.unemployedprofessors.com/is-buying-a-term-paper-unethical.

22. Law Society of Upper Canada, *Average Law Student Debt Reported Among 1300 graduates in 2008 was $45,246*, January 2008, at 79, http://www.lsuc.on.ca/media/jul0208_career_choices_report.pdf.

23. University of Toronto Faculty of Law, J*D Program Fees*, (March 5, 2014) http://www.law.utoronto.ca/admissions/jd-admissions/financial-aid-office/fees; Government of Canada, *Individuals by total income level, by province and territory (Canada)*, (last updated February 10, 2013) http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/famil105a-eng.htm (latest data available is $30,180 for 2011).

24. *See, e.g.*, Susan Boyd, *Corporatism and Legal Education in Canada*, 14 Soc. & Legal Stud. 287, 291 (2005); Patty Kamvounias & Sally Varnham, *Getting What They Paid For: Consumer Rights of Students in Higher Education*, 15 Griffith L. Rev. 306, 306 (2006); Sue Saltmarch, *Graduating Tactics: Theorizing Plagiarism as Consumptive Practice*, 28 J. Further & Higher Educ. 445, 445 (2004).

the form of grades.[25] According to a consumer conception of law school, use of essay purchase sites is merely an expense related to the main purchase, that of the JD degree.

Conditions contributing to contemporary plagiarism thus include the decline of public funding for universities in Canada and significantly increased tuition fees for students.[26] This presents the danger of changing the perceived basic character of the university from a place of effort, learning and merit to a place for the purchase of intellectually meaningless credentials[27] In order for a prohibition against plagiarism to be justified by either learning or fairness objectives, law schools and universities generally must remain more committed to seeing students as learners than to as revenue sources.

II. Plagiarism in Law School

The relationship between law school practice and professional legal practice is a complex one, since law schools train lawyers but not exclusively so. In the academic environment of law school, there is no customary acceptance of non-attribution of sources in students' written assignments. In contrast, the Supreme Court of Canada recently acknowledged a customary acceptance of judges' non-attribution of sources:

> ...[J]udicial writing is highly derivative and copying a party's submissions without attribution is a widely accepted practice. The considerations that require attribution in academic, artistic and scientific spheres do not apply to reasons for judgment. The judge is not expected to be original.[28]

This case concerned an appeal of a trial judgment in which 321 of the total 368 paragraphs were copied, unattributed, from the plaintiffs' submissions.[29]

In addition to unattributed use of litigators' briefs in drafting judgments, many other elements of legal practice involve unattributed use of materials

25. Nate Kreuter, *Customer Mentality*, Inside Higher Education (Feb. 27, 2014), http://www.insidehighered.com/views/2014/02/27/essay-critiques-how-student-customer-idea-erodes-key-values-higher-education#sthash.HS7cDq2P.dpbs.

26. *University Finances*, 2007-2008, 11 Caut Educ. Rev. 1, (Sept. 2009), *available at* http://www.caut.ca/docs/education-review/university-finances-2007-2008-(sept-2009).pdf?sfvrsn=10. ("Public funding of universities and colleges has dropped sharply over the past two decades. In 1990, government operating grants made up 80% of total university operating revenues. By 2008, that had fallen to less than 58%.").

27. Thomas Frank, *A Matter of Degrees*, 325 Harper's Magazine 1947, 4 (Aug. 2012).

28. Cojocau v. B.C. Women's Hospital & Health Centre, 2013 SCC 30 at para. 65 (Can.).

29. *Id.* at para. 53.

rather than original writing.[30] Expediency is not just important for courts, but also for law firms, leading to shared documents within firms.[31] Standard forms are an intrinsic part of legal practice in many areas. Commercial providers are the source for many legal templates,[32] and are also in the business of selling legal analysis in the form of ready-made documents on a wealth of topics.[33]

Attribution expectations are thus different in legal practice from those in academia. In law practice, legal service outcomes are the commodities of value, whereas in academia original documents are valued in themselves.[34] There are at least three reasons for nonetheless maintaining plagiarism rules in law school. First, when law students plagiarize, this means that students are not learning by doing their law school assignments, undermining law school's pedagogical function. Second, it means that they are unfairly competing for grades among their peers, working against key university values such as honesty and merit. Third, it means that they are not fulfilling in good faith their responsibilities as university students, putting into question their ability to later serve the public in good faith as lawyers with professional responsibility. Each of these is discussed below.

First, the prohibition against plagiarism in law school seeks to ensure that students actually do the work that learning requires. This is for the benefit of the students, and for that of the public which has an interest in ensuring that law school graduates are actually well-versed in the law before becoming eligible to join the legal profession. Students who believe that they are mere purchasers of a law degree, rather than learners, may not mind that they are not themselves completing the work expected of them. But this view is not consistent with the role presumably expected of students by law schools. Students are obliged by law schools to learn through effort, and are thus responsible in large part for their own mastery of the subject of law.

30. *See, e.g.*, Lisa G. Lerman, *Misattribution in Legal Scholarship: Plagiarism, Plagiarism, Ghostwriting and Authorship*, 42 S. Tex. L. Rev. 467, 469 (2001).

31. Papay-Carder, *supra* note 2, at 246; Lillian Corbin & Justin Carter, *Is Plagiarism Indicative of Prospective Legal Practice?*, 17 Legal Educ. Rev. 53, 61 (2006).

32. LexisNexis Canada, *Litigator Forms & Precedents on LexisNexis Quicklaw*, http://www.lexisnexis.ca/en-ca/products/litigator-forms-and-precedents.page (last visited May 5, 2014).

33. Westlaw Canada, *Legal Memoranda*, http://www.westlawcanada.com/westlaw-products/legal-memoranda (last visited May 5, 2014). Such products are not without their controversy, however. Sack Goldblatt Mitchell, *Thomson Reuters Corporation Class Action for breach of* copyright, Oct. 5, 2013, http://www.sgmlaw.com/en/practiceareas/Thomson.cfm.

34. Corbin & Carter, *supra* note 31, at 61-64 (citing Jonathan Band & Matt Schruers, *Dastar, Attribution, and Plagiarism*, 33 Amer. Intell. Prop. L. Ass'n J. 1 (2005)). *See also* Peter A. Joy & Kevin C. McMunigal, *The Problems of Plagiarism as an Ethics Offense*, 26 Crim.Just. 56, 57 (2011).

Some plagiarizing students excuse their conduct by denying that they have the opportunity to act differently. Paper repository sites rely on this self-deception narrative, citing lack of time as a reason to plagiarize.[35] To combat this reasoning, law schools must send a clear message that cheating is not an acceptable option, regardless of circumstances.

A second key purpose of prohibiting plagiarism in law school is to ensure adherence to principles of fairness, honesty, and merit, essential values in a university environment.[36] Plagiarism is unfair to other students. If one student completes course requirements expending less time and effort than others, those who spend more time and effort are at a disadvantage because they experience more pressure from a higher workload. If assignment grades are curved, and a plagiarizing student's assignment is awarded a high grade, this can push another student's genuine work out of the high-grade portion of the curve. Plagiarizing is also unfair to the authors whose materials plagiarizers take credit for, since plagiarizers take away the author's moral right to attribution.[37] Plagiarism is a slight against honesty, since it pollutes records concerning the origination of ideas.[38]

Third, the prohibition against plagiarism serves the purpose of providing students with a conduct expectation that they are expected to fulfill in good faith, thereby developing their sense of responsibility, an attribute key to the practice of law. Both professors and students are bound by the specialized norms of academic honesty applicable in universities.[39] Plagiarism shows a lack of good-faith conduct on the part of the plagiarizing student, and calls into question a student's later ability to fulfill in good faith his or her professional obligations as a lawyer.[40] Lawyers must act "at all times *uberrimae fidei*, with utmost good faith to the court, to the client, to other lawyers, and to members of the public.[41]" As Worthen notes, plagiarism in law school can constitute a

35. S*ee, e.g.*, CustomEssayMeister, *Why Use Us*, http://www.customessaymeister.com/custom-research-papers.htm (last visited May 5, 2014).

36. Robert D. Bills, *Plagiarism in Law School: Close Resemblance of the Worst Kind*, 31 Santa Clara L. Rev. 103, 109 (1990).

37. *See, e.g.*, Richard A. Posner, The Little Book of Plagiarism 17 (2007); Ralph D. Mawdsley & J. Joy Cumming, *Plagiarism Litigation Trends in the United States* (U.S.) and Australia, 20 Educ. & L. 209, 216 (2008).

38. Mawdsley & Cumming, *id*. at 222.

39. *Student Wins Suit Accusing a Professor of Plagiarism*, N.Y. Times, Sept. 24, 1997, http://www.nytimes.com/1997/09/24/us/student-wins-suit-accusing-a-professor-of-plagiarism.html; Bordeau v. Lin, 324, 1997 CanLII 12369 (Can. Ont. S.C.).

40. Lillian Corbin & Justin Carter, *Is Plagiarism Indicative of Prospective Legal Practice*?, 17 Legal Educ. Rev. 53, 61 (2006); Bills, *supra* note 36, at 131.

41. The Canadian Bar Association, C*BA Code of Professional Conduct*, CBA viii (2009); *see also* The Federation of Law Societies, *Federation Model Code of Professional Conduct*, FLSC 5. 1-5 (2012).

problematic form of self-interested deceit and thus requires discipline at the law school stage.[42]

Law school is the first site of a lawyer's professional formation, and law schools thus have a role in the integrity of the justice system.[43] All Canadian law societies require their members to be honest and of good character.[44] As part of the entry process, law societies commonly require student disclosure on topics including academic dishonesty.[45] Law society decisions on good character examine the severity of the plagiarism, as well as any later deceit regarding the plagiarism, in order to determine admissibility to the law society.[46]

III. Addressing Student Plagiarism

Student plagiarism's frequency and causes have been extensively researched.[47] There are both internal[48] and external motivators for cheating.[49] McCabe and Christensen Hughes summarize that:

> Factors associated with lower rates of student cheating include the following: smaller institutional size, existence of an honour code, student understanding

42. Kevin J. Worthen, *Discipline: An Academic Dean's Perspective on Dealing with Plagiarism*, Byu. Educ. L.J. 441, 444. (2004).

43. Julia E. Vaughan, *Addressing Law Student Dishonesty: The View of one Bar Admissions Official*, 45 S. Texas L. Rev. 1009, 1010 (2003).

44. *See, e.g.*, Legal Professions Act, S.B.C. 1998, c. 9, s. 19(1); Legal Professions Act, R.S.A. 2000, s. 40; Law Society Act, R.S.O. 1990 L.8, s. 27(2); Legal Profession Act, S.N.S. 2004, c. 28, s. 5(8); The Legal Profession Act, 1990 S.S. L-10.1, s. 24; Rules of the Law Society of Saskatchewan, s.171(2); Regulations made Pursuant to the Legal Profession Act, 2004, S.N.S. c. 28, s. 3.3.1(a).

45. *The Legal Profession Act*, 1990 S.S. L-10.1, § 24; *Rules of the Law Society of Saskatchewan,* 1990 S.S. L-10.1, § 171; Nova Scotia Barrister's Society Regulations: *6.1 – Application for Admission on Transfer*, http://nsbs.org/sites/default/files/cms/forms/applicationforadmissionontransfer.pdf (last visited May 5, 2014); Upper Canada Law Society, *Good Character Amendment Form* (2013), http://www.lsuc.on.ca/GoodCharacterAmendmentForm.

46. Law Society of Upper Can. v. Burgess, 2006 ONLSHP 0066 (Can.); *see also* Applicant 5 (Re), 2012 CanLII 24 (Can. L.S.B.C.).

47. Donald L. McCabe, et al., *Values and Ethical Decision-Making Among Professional School Students; a Study of Dental and Medical Students*, 1 Prof. Ethics 117, 117 (1992); Donald L. McCabe, *The Influence of Situational Ethics on Cheating Among College Students*, 62 Sociological Inquiry 365, 365 (1992); Donald L. McCabe, *The Effects of Professional Education on Values and the Resolution of Ethical Dilemmas: Business School vs. Law School Students*, 13 J.J. Bus. Ethics 693, 693 (1994); Donald L. McCabe, et al., *Academic Dishonesty in Graduate Business Programs: Prevalence, Causes, and Proposed Action*, 5 Academy of Mgmt. Learning & Higher Educ. 294, 294 (2006); Julia M. Christensen & Donald L. McCabe, *Understanding Academic Misconduct*, 36 Can. J. Leg. Higher Educ. 49, 49 (2006) [hereinafter, Christensen & McCabe, *Understanding*].

48. *See, e.g.*, L. Shu, et al., *Dishonest Deed, Clear Conscience: When Cheating Leads to Moral Disengagement and Motivated Forgetting*, 37 Personality & Soc. Psychol. 330, 330 (2011).

49. *See* Christensen & McCabe, *Understanding*, *supra* note 47, at 53.

> and acceptance of academic misconduct policies, severity of penalties for students found responsible for cheating, peer disapproval of cheating, certainty of being report[sic] by a peer, and peers' cheating behaviours.[50]

It has been suggested that the single most influential factor in student cheating is knowledge that other students are cheating.[51] When people think others are cheating, they feel entitled, and perhaps pressured, to do the same. Another factor in academic misconduct is student perception of what constitutes cheating.[52]

The costs of plagiarism for law students are potentially higher than they may be in other fields, because law students must establish the good character requirement for admission to the bar. Nonetheless, as with other fields of study, a sense of entitlement or justification is likely a significant factor in law student plagiarism.[53] In contrast, plagiarism may well also arise less out of entitlement than out of a sense of opportunity while under significant time constraints. Law student plagiarism may exist along a spectrum with desperate offenses (out of opportunity) located on one extreme and calculated offenses (out of a sense of entitlement) on the other.

A. Addressing Desperation and Opportunism

Some students likely plagiarize largely out of desperation as a one-time event. Law schools tend to have a culture of strict deadlines, mimicking court filing dates and limitation period deadlines. Some students, while successful throughout their undergraduate studies, experience overwhelming pressure during law school and plagiarize to complete assignments on time. Addressing plagiarism committed by this type of student can be as simple as ensuring that paper late penalties are not so severe as to undermine the value of a student handing a late, but genuine, paper. One possibility is to have late penalties set to a maximum level such that a student still has a chance at passing the assignment even if the assignment is modestly late. Policies on extensions should be spelled out in advance such that a student experiencing a personal crisis feels able to approach a professor.

The factor of opportunity to plagiarize can be reduced on at least two fronts. First, assignment design can affect students' ability to plagiarize.[54] Narrowly construed assignments may be more difficult to plagiarize than broadly framed assignments. Furthermore, if a professor designs highly specific and unique assignments that cover material that the professor knows very well, it will be

50. *Id*. at 54.

51. David A. Rettinger & Yair Kramer, *Situational and Personal Causes of Student Cheating*, 50 Res. Higher educ. 293, 307 (2009) ("Direct knowledge of others' integrity violation behaviors is strongly associated with increased violations of one's own.").

52. Christiansen & McCabe, *Understanding*, *supra* note 47, at 7, 15.

53. *See*, *e.g.*, Rettinger & Kramer, *supra* note 51, at 307.

54. Eleanor Kutz, et al., *Addressing Plagiarism in a Digital Age*, 9 Human Architecture: J. Soc. Self-Knowledge 15, 20 (2011).

more difficult for a student either to buy a paper from the Internet or use unattributed verbatim materials or paraphrases without detection.

The structural environment of law school instruction can also reduce the opportunity for plagiarism. If a student is taught such that the professor observes the student's writing abilities (e.g., through in-class assignments), the professor will more easily be able to detect material that is inconsistent with the student's known writing abilities. A student will be less likely to cheat if he or she knows that the professor is familiar with the student's skill level and is thus likely to catch the student submitting unauthentic work.

B. Addressing Entitlement

Some students likely plagiarize out of a sense of entitlement.[55] Such students may take such elaborate steps as retyping passages from obscure books, arranging bogus footnotes and stitching together lengthy passages on a single topic from multiple sources. If a student plagiarizes in multiple classes, including such steps as having professors read fake paper outlines or drafts, this suggests a sense of entitled dishonesty.

How can plagiarism occurs out of a sense of entitlement be prevented? A student's personal sense of entitlement to cheat may be undermined by broad-based messages to the contrary. A key step in creating a culture that actively discourages plagiarism is to have a clear definition of it. Terri Leclerq suggests, "[t]he definition should be uniform...each school should create a policy that clearly defines its understanding of paraphrasing (including examples), collaboration, databases, academic versus professional attribution, and sanctions–including whether intent will be a factor."[56]

Perhaps most important, a cultural environment that does not accept plagiarism will also be fostered when students realize that professors check for plagiarism and when students do not get the impression that other students are cheating.[57] Responding to plagiarism in a way that identifies offenders and institutes appropriate sanctions requires that professors have the support needed to investigate plagiarism, a time-consuming process.[58] Services like "Turnitin" will not necessarily catch unattributed paraphrasing, meaning that

55. *See, e.g.*, Rettinger & Kramer, *supra* note 51, at 307.

56. Leclercq, *supra note 3*.

57. Donald L. McCabe, *Cheating Among College and University Students: A North American Perspective,* 1 Int'l J. Educ. Integrity 9, (2005) *available at* http://www.ojs.unisa.edu.au/index.php/IJEI/article/viewFile/14/9.

58. Alison Schneider, *Why Professors Don't Do More To Stop Students Who Cheat*, 45 Chron. Higher Educ. A8 (January 22, 1999); Donald L. McCabe & Gary Pavela, *Ten (Updated) Principles of Academic Integrity: How Faculty Can Foster Student Honesty*, 36 Change 10, 13 (May-June 2004) *available at* http://www.jstor.org/stable/pdfplus/40177967.pdf?acceptTC=true (44 percent of 2,500 faculty members surveyed "acknowledged that they had ignored at least one suspected incident of cheating"); Kristin Gerdy, *Law Student Plagiarism: Why It Happens, Where It's Found, and How to Find It*, BYU Educ. & L.J. 431, 434-35 (2004).

it is up to individual professors to use their intuition and initiative to catch plagiarizers who use this method. Furthermore, if the privacy and ownership concerns associated with "Turnitin" are a deterrent to its use, several free products do not appear to keep copies of the document submitted, but simply check its contents against the Internet.[59]

C. Process and Penalties

Several universities have two types of plagiarism responses, formal and informal.[60] The informal process is for minor incidents and may not lead to the student having a permanent record, while the formal process involves a hearing and possible impact on the permanent record.[61] The problem with this dichotomy of responses is that there is no way to verify whether a student has already been subject to an informal proceeding. A routine plagiarizer operating out of a sense of entitlement might be caught once, convince the professor the event was due to mere carelessness, and two weeks later be caught again by a different professor, who also uses the informal process, unaware of the earlier incident. Within law schools it would be helpful to retain the "no permanent record" element of the informal process, but to also have a method by which it could be verified whether or not a particular student has already gone through the informal process. If a professor catches a plagiarism incident appropriate for the informal process, the professor ought to be able to confidentially verify whether or not this is the first time this has occurred with respect to a particular student. Otherwise, there is a risk of students facing only the light sanction of the informal process if the plagiarism detected is "minor" even when this happens multiple times. There are time and human-interest pressures that work against initiation of a formal hearing process, considering the stakes involved, and it may be that professors rarely use this process unless a glaring piece of plagiarism is discovered. A formal hearing can lead to expulsion. For a law student likely tens of thousands of dollars in debt, being expelled from law school without a degree is very serious, the possibility of which not all professors feel comfortable initiating.

Institutional responses should address plagiarism in a manner that identifies repeat offenders and ensures that the punishment fits the level of the offense. This means plagiarism that is truly a product of misunderstanding or oversight should not be punished severely, a process that is fair. Considering

59. *See*, *e.g.*, Chimpsky, http://chimpsky.uwaterloo.ca (last visited May 5, 2014); Plagium, http://www.plagium.com (last visited May 5, 2014); Plagiarism Checker, http://www.plagiarismchecker.com (last visited May 5, 2014); Plagiarisma, http://plagiarisma.net (last visited May 5, 2014); Article Checker, http://www.articlechecker.com (last visited May 5, 2014).

60. *See*, *e.g.*, Jim Sibley & Luisa Canuto, *Guide to Teaching for New Faculty at UBC*, Vancouver: UBC Press 8 (2010) *available at* http://ctlt.ubc.ca/files/2011/05/Faculty_Guide_2010.pdf; University of Saskatchewan Office of the University Secretary, *Student Conduct and Appeals*, http://www.usask.ca/university_secretary/honesty/caught.php (last visited May 5, 2014).

61. *See*, *e.g.*, U. Saskatchewan, *supra* note 60.

that it is unclear how often plagiarizers actually get caught, when they are caught the response should be as sophisticated as possible, so that the rare opportunity for deterrence is not missed.[62] The penalties for plagiarism vary; a student may be awarded a 'o' on an assignment or in a course, and may get a penalty on the official record. Students may also be suspended or expelled from university. Universities' responses to allegations need to present the student with adequate due process and procedural fairness.[63]

IV. Conclusion

Contemporary conditions, including the low rate of apprehension of plagiarizing university students, the rise of plagiarism-related e-commerce, and treatment of students as consumers rather than learners, all challenge the meaningfulness of law schools' prohibition of student plagiarism. There nonetheless remain strong reasons for addressing such challenges and encouraging law student adherence to plagiarism rules; these reasons relate to goals of pedagogy, university values and professional responsibility. While universities may use electronic verification services to police plagiarism, the more potent solution is to maintain a strong cultural stance against such conduct within the law school.[64] A strong culture of academic integrity will minimize the belief that other students are cheating and the likelihood of plagiarism.[65] Therefore law schools should maintain the present distinction between the practice and the study of law, and ensure that the distinction is clear to law students.

62. *8 Astonishing Stats on Academic Cheating*, Open Education Database (December 19, 2010), http://oedb.org/library/features/8-astonishing-stats-on-academic-cheating.

63. *See*, *e.g.*, Williams v. Univ. of B.C., 2007 CanLII 996 (Can. B.C.S.C.).

64. Dickerson, *supra* note 11, at 62-63 (following an extensive survey of internet essay mills, Dickerson advocates a comprehensive environmental management model in response.).

65. *See*, *e.g.*, Rettinger & Kramer, *supra* note 51, at 307; *see also* Donald L. McCabe, Linda Klebe Treviño & Kenneth D Butterfield, *Cheating in Academic Institutions: A Decade of Research* 11 Ethics & Behavior 219, 219 (2001) (summarizing that "although both individual and contextual factors influence cheating, contextual factors, such as students' perceptions of peers' behavior, are the most powerful influence").