

## Intro to Plagiarism

*Teachable Moments ... is a regular feature of Perspectives designed to give teachers an opportunity to describe techniques or strategies for presenting a particular research or writing topic to their students. Readers are invited to submit their own “teachable moments” to the editors of the column: Elizabeth Edinger, The Catholic University of America, e-mail: [edinger@law.edu](mailto:edinger@law.edu), or Craig T. Smith, Vanderbilt University, e-mail: [craig.smith@law.vanderbilt.edu](mailto:craig.smith@law.vanderbilt.edu).*

**By Jane Scott**

*Jane Scott is Assistant Professor of Legal Writing at St. John's University School of Law in Queens, N.Y.*

The solution to the problem of law student plagiarism, in the view of many legal educators, is to improve our teaching of what plagiarism is and how to avoid it.<sup>1</sup> Not surprisingly, the effort to address our students' understanding of plagiarism has been concentrated in the legal writing field.<sup>2</sup> The Legal Writing Institute publishes a policy brochure for law schools to adapt and use, offering a clear definition of plagiarism, hypotheticals for class discussion, student acknowledgement forms, and other resources.<sup>3</sup> Many legal writing textbooks now include sections on plagiarism.<sup>4</sup> These materials candidly address potential sources of confusion for students, such as the disparity between law school and law practice, where

unattributed copying is a time-honored tradition, and cultural differences in attitudes toward plagiarism.<sup>5</sup>

Despite these resources, I suspect that many legal writing teachers continue to give the topic of plagiarism short shrift. Part of the reason, perhaps, is that most teaching materials focus on the kind of plagiarism that arises in seminars and research courses, where a student uses text or ideas from a published source without proper attribution. In a typical first-year legal writing course, however, published sources do not provide the ready-made solution that a plagiarist seeks. Instead, plagiarism in first-year legal writing courses commonly takes the “peer-to-peer” form, in which one student copies another student's paper and submits it to the professor as his or her own.<sup>6</sup> No amount of attribution and citation can convert this insidious practice into correct and honest writing.

If we seek to prevent plagiarism in our first-year legal writing courses, we should instruct our students directly about peer-to-peer plagiarism. We might do well to focus solely on this form of misconduct at the start of the legal writing course, leaving until later a consideration of proper attribution of sources, the correct handling of quotations, and other topics. A more narrowly tailored discussion of plagiarism might be more effective at conveying what first-year legal writing students need to know: that copying from a fellow student is plagiarism, that it is relatively easy for the professor to detect, and that its consequences can be disastrous.

My own brush with peer-to-peer plagiarism was so unsettling that I resolved to do whatever I could to prevent another occurrence. The result was the lesson described below, which I now use on the first

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<sup>1</sup> See, e.g., Robert D. Bills, *Plagiarism in Law Schools: Close Resemblance of the Worst Kind?* 31 Santa Clara L. Rev. 103 (1990–1991); Terri LeClercq, *Failure to Teach: Due Process and Law School Plagiarism*, 49 J. Legal Educ. 236 (1999).

<sup>2</sup> See, e.g., LeClercq, *supra* note 1; Kristin Gerdy, *Law Student Plagiarism: Why It Happens, Where It's Found, and How to Find It*, 2004 BYU Educ. & L.J. 431; Patsy W. Thomley, *In Search of a Plagiarism Policy*, 16 N. Ky. L. Rev. 501 (1989); 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 (2007).

<sup>3</sup> Legal Writing Institute, *Law School Plagiarism v. Proper Attribution* (2003), available at <[lwionline.org/plagiarism\\_resources.html](http://lwionline.org/plagiarism_resources.html)>.

<sup>4</sup> See, e.g., Laurel Currie Oates & Anne Enquist, *The Legal Writing Handbook* 856–857 (4th ed. 2006); Linda H. Edwards, *Legal Writing and Analysis* 12–13 (2d ed. 2007).

<sup>5</sup> See, e.g., Legal Writing Institute, *supra* note 3; Oates & Enquist, *supra* note 4, at 857.

<sup>6</sup> Gerdy, *supra* note 2, at 432.

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day of class. The approach combines narrative, a research exercise, class discussion, and concrete illustrations of how plagiarism reveals itself to the legal writing professor. It also gives students a preview of a typical legal writing assignment and the professor’s commenting style.

### Introduction

How does one bring up the topic of plagiarism without casting a pall over the entire class? One way is to tell a story. I tell my students that one spring semester, while I was grading a stack of briefs, I encountered a paper that immediately raised my suspicions. By the time I reached the bottom of the first page, there was no mistaking that the paper had been copied from another student’s. I describe the way the hair on the back of my neck began to rise as I realized what I was seeing. I also describe the way the student looked the next time we saw each other: pale, disheveled, avoiding eye contact. Of course, I strip the story of any identifying details, including the student’s gender and the year in which the incident occurred.

In this story, events unfold from the professor’s perspective, which is not a familiar one to the students.<sup>7</sup> The central conflict appears to be the student’s act of plagiarism, but that conflict remains unresolved because I never relate what happened to the student. The real conflict is the professor’s loss of innocence about plagiarism. I explain that the incident made me determined to talk to my students from the outset of the course about plagiarism, no matter how uncomfortable it might be. Thus, the resolution of the conflict serves to introduce the discussion that follows.<sup>8</sup>

Those who are fortunate enough to lack a “plagiarism narrative” of their own should have no difficulty finding one to adapt. A colleague’s experience with peer-to-peer plagiarism can be used for this purpose (stripped of identifying

details, of course). Whether the story is told in the first person or in the third person is less important, I believe, than that it be told from the professor’s perspective.

### Legal Research and Analysis

Next, I tell the students to go to the law school’s Web site and locate the code of student professional responsibility.<sup>9</sup> I ask them to find and read the code’s provisions on plagiarism.<sup>10</sup> Then I ask them whether plagiarism, as defined in the code, includes copying from another student’s paper and submitting it as one’s own writing. When students volunteer answers, I ask them to state their reasoning explicitly. Finally, I direct them to the grievance procedures that apply when a student is charged with unprofessional conduct<sup>11</sup> and ask them to identify the sanctions that may be imposed through the disciplinary process.<sup>12</sup>

Students seem to welcome this activity. It provides a break from the tension created by the story; searching for information online is a familiar activity for them. The code and its plagiarism chapter are not difficult to find, and the interpretation is reasonably clear.<sup>13</sup> Since finding and applying code provisions is something students expect to do in law school, they approach the exercise with interest.

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<sup>9</sup> The Code of Student Professional Responsibility of St. John’s University School of Law is available at <[www.stjohns.edu/academics/graduate/law/current/handbook/appendices/b.stj](http://www.stjohns.edu/academics/graduate/law/current/handbook/appendices/b.stj)>.

<sup>10</sup> The provisions read in part: “Plagiarism is the misappropriation or theft of another’s work and ideas. Students seeking admission to the legal profession must always take great care to distinguish their own ideas and knowledge from information, thoughts and ideas appropriated from other sources and to avoid even the appearance of impropriety in their oral or written submissions.” *Id.* at IV.

<sup>11</sup> *Id.* at IX.

<sup>12</sup> These include, but are not limited to, loss of course credit, reprimand, an act of reparation, suspension, or expulsion. *Id.*

<sup>13</sup> The Code explicitly states:

Except as specifically authorized by the professor or person in charge of the course or activity, all work submitted in law school, whether produced as part of academic or extracurricular activities, must be the work of the individual student. Each student has the responsibility to credit and cite appropriately any material prepared by others, or ideas obtained from others, contained in the student’s written or oral presentations. A student must not submit work that is not the student’s own without clear attribution for all sources. *Id.*

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<sup>7</sup> On the role of perspective in storytelling, see generally Brian J. Foley & Ruth Anne Robbins, *Fiction 101: A Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive Facts Sections*, 32 Rutgers L.J. 459, 467–68 (2001).

<sup>8</sup> See Foley & Robbins, *supra* note 7, at 466–470.

## Public Policy

Then I project on the screen the application form used by our state's appellate committees on character and fitness.<sup>14</sup> I explain to the students that they will fill out this form, or one like it for another state, after they have finished law school and taken the bar exam. I point out the question that asks, "Have you ever been placed on probation, dropped, suspended, expelled or otherwise been subjected to discipline by any institution of learning?"<sup>15</sup> Then I ask the class, "Why would the state be concerned about licensing someone to practice law who had tried to deceive a professor in order to get a better grade?"

Students can easily see the parallel between lying to a professor and lying to a court. With a little nudging, they can identify other parallels, such as misappropriation of a client's funds. The discussion allows students to play the role of rule enforcer rather than rule violator, and they seem eager to embrace it.

Showing the bar application forms on the screen also encourages students to visualize themselves filling out those same forms in a few short years, making the issue more personal and real. Before we leave the topic, I show them another important form on the bar admission Web site: the Form Law School Certificate, in which the law school itself must disclose any charges of misconduct or disciplinary actions that have occurred during the applicant's law school career.<sup>16</sup>

## Grading and Commenting

My next objective is to show the students how plagiarism reveals itself to a legal writing professor. I begin by explaining the nature of the writing assignments they will be working on during the semester, and the process I use for the submission

and return of papers. I explain that I will be using electronic commenting when I grade their papers, and I project on the screen a page from a "sample" graded student memo, to show what it will look like.

The memo shows comments written in the margins of the page, some positive and others noting areas for improvement. In a couple of places, portions of the text have been highlighted in yellow. I explain that I use yellow highlighting to indicate typographical, citation, and spelling errors. Then I call the students' attention to one of the highlighted areas. It is a simple editorial oversight, such as "The plaintiff took took an overdose of medication." I note that such errors are easy to make, which is why it is critical to proofread.

Then I open another student memo on the screen, this time a clean, unmarked paper. "Now I'm grading another student's memo for this same assignment," I explain. "And at first I'm just reading straight through from beginning to end, to get a general sense of it." Scrolling through to the last page, I continue: "OK, it looks like this student has formatted the memo correctly, and all the required sections are included. So now I'm going back to the beginning, and I'll start reading more closely."

There on the first page, in the Facts section, is the same sentence: "The plaintiff took took an overdose of medication." I go back to the first paper and look at the paragraph as a whole. Sure enough, the paragraph in the second paper is almost identical, with only a few minor differences.

"At this point I know that one of these two papers was copied from the other," I explain. "I don't yet know which one is the original and which is the copy. For all I know, there may be other papers in the stack that contain this same language. What I do know is that someone has committed plagiarism. And that's all it takes to start an investigation into academic misconduct."

The point can be illustrated in many ways. For example, one can show a graded paper in which a student has mischaracterized the holding of a case

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<sup>14</sup> New York Supreme Court Appellate Division, *Application for Admission to Practice as an Attorney and Counselor-at-Law in the State of New York*, available at <[www.nybarexam.org/Docs/AdmissionsPackage.pdf](http://www.nybarexam.org/Docs/AdmissionsPackage.pdf)>.

<sup>15</sup> *Id.* at 3.

<sup>16</sup> *Id.* at 22–23.

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and the professor has written a comment explaining the correct holding. In another paper, the same mischaracterization appears, written in identical language. Or the graded paper might include a quote from which several words have been dropped, resulting in a mangled sentence. The professor's comment reads, "Check the accuracy of this quote." The same quotation, with the same omission, appears in an ungraded paper.

Good writing, as well as bad, can be used in the demonstration. For example, in the graded paper, the professor may have written "Good, clear thesis sentence" at the beginning of a paragraph; an identical thesis sentence in the next paper leads to the discovery of extensive copying. A well-composed Question Presented may have attracted a positive comment in the graded paper, with particular praise for the student's choice of key facts. In the ungraded paper, the professor finds the same Question Presented, word for word.

Students seem to get the point: In the process of grading and commenting on a paper, the legal writing professor gets to know its language well, and is likely to recognize that language if it shows up in another paper. The repeated examples on the screen illustrate this point effectively, and the professor's "live grading" in front of the class gives the demonstration immediacy.

Students can also see from these examples that copying another student's work means copying that student's mistakes. Although some mistakes can be cleaned up by spell-checking (if the plagiarizer has budgeted adequate time), others may simply be unrecognizable to the beginning legal writer. Even copying an "A" paper can lead to detection: the very quality of the writing can be so distinctive that the professor wonders, on seeing it again, "Where have I read this before?"

It is important to reassure students that mere coincidence will not be mistaken for plagiarism: some wording choices will naturally show up in more than one paper, and many students make the same spelling and citation errors. I explain that

something more is required than the random overlap of a few words, and that the initial discovery of identical language is just the beginning of a thorough comparison of the two papers. At the same time, I make it clear that a paper need not be copied in its entirety in order to be plagiarized. Even if only a portion of the paper has been lifted from another student's and all the rest is original, the student has committed plagiarism.

Showing examples of graded papers also introduces the students to the professor's commenting style and prepares them for the kinds of comments they will see when their own papers are returned. That preview can be useful in reducing students' discomfort upon receiving a heavily marked-up paper.

#### Clarification

I end the lesson by going over the course rules on collaboration. I encourage the students to discuss their research and analysis with one another, but emphasize that they may not collaborate in the writing of their assignments. The distinction can be expressed through a simple rule: they may not show a draft of their written work to another student, or look at another student's draft.

#### Repetition

At several points during the semester, it is useful to return briefly to the subject of peer-to-peer plagiarism. For example, as the due date for a graded assignment approaches, students should be reminded to keep their belongings secure and not to leave their laptops unattended. I urge them to keep their electronic files clearly labeled and organized, so they do not inadvertently send someone a draft of their paper when they meant to send some other document. Students are well-advised to regularly print out hard copies of their drafts as insurance against computer casualties, but they should do so at home. Suggestions like these help students avoid becoming victims of plagiarism, but at the same time serve as a general reminder of the plagiarism discussion, conveying an "eyes on the street" message.

## Conclusion

There is no way of knowing whether talking to students directly about peer-to-peer plagiarism actually reduces its incidence. Indeed, one can be reasonably sure that some students will plagiarize no matter what the professor does.<sup>17</sup> Like other forms of high-risk behavior, plagiarism involves some factors that are beyond the reach of reason.

Nevertheless, devoting class time to the subject is essential. First-year legal writing students need to understand that copying from another student's paper is a form of plagiarism that will not go unnoticed and that could end their law school careers. Peer-to-peer plagiarism can be addressed more effectively if we unbundle it from other, equally important instruction about plagiarism. The approaches described above, such as active learning, role-playing, repetition, and storytelling, can be helpful in conveying the message so that students take heed.

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## Another Perspective

“Legal scholarship is an extraordinary conversation that influences the evolution of the laws that shape our lives. It defies space. Normally, my thoughts about plagiarism, copyright and trademark law are heard only by the students who attend my lectures. However, if I publish these thoughts in an article, my voice may be heard by colleagues and students at many other schools. Publication also defies time. Articles with powerful resonant arguments written years ago are still read, discussed, and cited. The idea that our thoughts and words will last for some time is a frightening proposition. We expose our thoughts, not just to the immediate audience, but to an infinitely broader group, amongst whom there are bound to be unforgiving critics. Published writings are one of the only places where the great ideas of our democracy are created, examined in detail and tested. Writing and editing legal scholarship is our chance to participate in this conversation.

How can we participate? First, we can listen to the voices that came before ours and honor their contributions to legal scholarship. Then, empowered with this knowledge, we can find our own voices. Separating one's own voice from those of our teachers is an active process we must always maintain with vigilance. However, the vigilance need not use much energy if we habitually incorporate careful practices for identifying the voice behind each idea. Like the playwright who creates different voices in a drama by identifying separate characters in the script, we must strive to identify each voice in legal writing just as clearly.”

—Deborah R. 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. 10, 59–60 (2006).

<sup>17</sup> See Bills, *supra* note 1, at 133.