

Tripped Up by Electronic Plagiarism

Teachable Moments for Teachers ... is a regular feature of Perspectives designed to give teachers an opportunity to describe a special moment of epiphany that changed their approach to presenting a particular topic to their students. It is a companion to the Teachable Moments for Students column that provides quick and accessible answers to questions frequently asked by students and other researchers. Readers are invited to submit their own “teachable moments for teachers” to the editor of the column: Louis J. Sirico Jr., Villanova University School of Law, 299 N. Spring Mill Road, Villanova, PA 19085-1682, phone: (610) 519-7071, fax: (610) 519-6282, e-mail: sirico@law.vill.edu.

By Hollee S. Temple

Hollie S. Temple, Lecturer in Law, teaches the first-year legal reasoning, research, and writing course at West Virginia University College of Law in Morgantown.

Like most new legal writing professors, I had been cautioned to look out for cheating and plagiarism in my students' work product. But after coasting through three uneventful semesters, I was truly surprised when I discovered two remarkably similar submissions in my stack of 43 office memos.

It was February, and I hadn't slept much in the four months since my youngest child, Henry, was born, so I was amazed that I had even spotted the look-alikes.¹ But there they were—two memos with nearly identical discussion sections. I started tracking the language, paragraph by paragraph. The memos kicked off with different issues and short answers, and the headings weren't identical, but once I entered the discussion sections, I encountered word-for-word replicas. In particular, the rule blocks were identical: same cases, same citations, and even the same explanatory

parenthetical case explanations. The explanatory parentheticals closed the deal for me. Barring impermissible collaboration of some sort, two students couldn't have described the same cases with the same exact words. Or could they have?

We grade blindly, so my first step was to ask my secretary to disclose the students' identities. Surely this would be a boyfriend-girlfriend team, I thought, with one succumbing to the pressure to help the other succeed. I was shocked when I learned that the “culprits” were not a couple, but two of my best female students. (For this article, I'll call them Rachel and Beth.) They had always seemed to be hardworking and honest, and I knew they were close friends.

Then it made sense. Rachel had recently confided in me about a serious health problem that she had been facing, and I knew that she had also been grieving the unexpected death of her father. I connected the dots. Beth must have decided that friendship came first, and when Rachel couldn't get her memo done because of the health problems that had been sidetracking her, Beth let her copy.

I asked my experienced director for advice, and she said that under the circumstances, I should ask the students to come in together to meet with me. I felt mildly uncomfortable as I sent the e-mail, but I knew this was an unpleasant part of the job, and that ultimately the students would learn from the experience.

I had been advised that students often confess right away, but I felt something wasn't right as soon as the students responded to my e-mail. Beth, who had always seemed a little nervous around me, was stressed and upset—she wanted to know why I wanted to meet with her. Rachel also expressed surprise, but said she would be happy to meet with me.

This wasn't going as I'd expected. A few minutes later, Beth called me (at home), and I decided to just tell her what I had discovered.

¹ Between teaching and caring for a newborn, I could only squeeze in about three memos a day, so it was pure serendipity (or from the students' perspective, bad luck) that I happened to read these two submissions in the same sitting.

To make a long story short, it was a terrible conversation. Beth cried and pleaded with me that she hadn't cheated, and assured me that there was no way that Rachel would have cheated either. I tried all of the tactics I knew of to get her to "come clean." Was there any way that Rachel could have "borrowed" some of the text from Beth's computer when Beth wasn't around? No. Was she absolutely sure there wasn't something she needed to tell me? No. I even threatened a little. We could handle this privately, or we could take it to the ethics board, I said. Still no movement.

After having a similar conversation with Rachel, I felt horrible, and I still didn't have a reasonable explanation for how the two submissions ended up looking so much alike. I took them out again, and then a lightbulb went off. I rushed up to my office, logged on to LexisNexis®, and printed out the key Supreme Court case that all of my students had been citing.²

Bingo. These memos looked alike because the students had "lifted" the text for their rule sections directly from the leading case, but hadn't given the reader any hint that they were borrowing so extensively from the Court's opinion. Those explanatory parentheticals that had seemed so suspicious at first blush now made sense; the students hadn't copied from each other, they had copied from the Court! The string citations were identical because they were cut and pasted directly from the case.³

Later, the students told me that Westlaw® and Lexis representatives had actually demonstrated this technique in their training sessions.⁴ Beth and

Rachel said they did not understand that they had committed a form of "digital" or "electronic" plagiarism.⁵ As I graded the remainder of my stack, I noticed that several other students had also lifted text directly from the electronic databases without any attribution.

In class the next week, I raised this issue, and explicitly explained what I would consider to constitute electronic plagiarism (e.g., you need to use quotations if you're actually quoting from a case, especially with the explanatory cites). We've added a section to our syllabus clarifying that this sort of "lifting" is unacceptable, and I will add a portion to my plagiarism lecture based on this experience.⁶ I've also told our reference librarian that we need to make sure that our electronic database trainers don't mislead the students in an effort to tout their products.

I hope my experience will be a cautionary tale for other legal writing professors.⁷ Plagiarism is nothing new, but because it has become so easy to "cut and paste" from electronic sources, we need to be alert for this new strain of the problem. I'm glad I raised the issue with my students, but I wish I had thought of this explanation before the uncomfortable interrogation. Next semester, I'm going to deal with the problem *before* it arises.

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² I concede that I should have been more familiar with the precedent.

³ There were other similarities, too. I think some of them can be attributed to a classroom exercise in which I allowed the students to discuss which facts best satisfied the rules at issue. Rachel and Beth worked together on that in-class assignment.

⁴ Ironically, some professors have been using Lexis and Westlaw to ferret out student plagiarism for years. They run suspicious phrases from their students' submissions through the electronic databases in search of common language. Anna M. Cherry, *Using Electronic Research to Detect Sources of Plagiarized Materials*, 9 *Perspectives: Teaching Legal Res. & Writing* 133 (2001).

⁵ For an excellent discussion of "inadvertent" plagiarism and some suggestions for combating it, see M.C. Mirow, *Confronting Inadvertent Plagiarism*, 6 *Perspectives: Teaching Legal Res. & Writing* 61 (1998).

⁶ If you really want to check on your students, a number of plagiarism-detection programs are now available. For example, Plagiarism-Finder is a Windows application that compares any document to billions of Web pages. The Web address is <www.m4-software.com>. Another popular program is marketed by Turnitin.com, available at <www.turnitin.com>.

⁷ I take heart in the stories of my fellow legal writing professors; they have weathered similar storms. Alison Craig, *Failing My ESL Students: My Plagiarism Epiphany*, 12 *Perspectives: Teaching Legal Res. & Writing* 102 (2004).