

**WHAT YOU DON'T KNOW CAN HURT YOU:  
HOW TO RECOGNIZE PLAGIARISM AND AVOID COMMITTING IT**

**Brian L. Porto  
Professor of Law  
Vermont Law School**

Prepared for presentation during J.D. Orientation, August 23, 2016

## I. Introduction: What Is Plagiarism?

You probably heard the word “plagiarism” beginning in your freshman year of college, if not earlier. But even though the word is familiar, you may not understand the multiple forms that plagiarism can take or how to avoid committing it. The best evidence of this is that plagiarism, usually born of ignorance or uncertainty, continues to be a serious problem in law schools nationwide. This is one instance in which what you don’t know can hurt you because engaging in plagiarism in law school could cost you the opportunity to graduate or, even if you do graduate, could prevent you from being admitted to the Bar. Thus, the time you spend reading these materials and pondering the hypothetical scenarios they present could spare you considerable emotional and financial pain in the future.

### **Query:** How do you define plagiarism?

Let’s see how well your definitions match up with those provided by various authorities. According to Webster’s New World Dictionary, to plagiarize is “to take ideas, writings, etc. from another and pass them off as one’s own.” The English word “plagiarism” derives from the Latin word “plagiarius” meaning kidnapper, seducer, or plunderer, in this instance used to denote a literary thief. In essence, then, plagiarism is literary theft.

But the definition of plagiarism with which you need to be most familiar is the one provided in the Vermont Law School Honor Code, Article I.B.1, which can be found in the Student Handbook. It defines plagiarism as **“knowingly appropriating another’s words or ideas and representing them in writing as one’s own.”** We will use the VLS language as our working definition of plagiarism for the remainder of this

presentation because: (1) it is the definition you will be subject to for the next three years and (2) it shows that plagiarism encompasses not only failing to quote or cite borrowed language, but also failing to cite ideas discovered during research and borrowed for use in your own analysis. Now, armed with a working definition of plagiarism, we are ready to identify and consider the various forms that plagiarism can take.

## II. Types of Plagiarism

The VLS regulations identify three forms of plagiarism, namely, word-for-word, paraphrased, and idea plagiarism. **Query:** What is word-for-word plagiarism? Yes, word-for-word plagiarism is quoting the exact words of another person without citing the original author or putting the borrowed work in quotation marks. This is the type of plagiarism that a professor suspects, particularly at the undergraduate level, after reading passages whose substantive and/or stylistic quality seems far greater than that of the student's earlier work. What would be a clear example of word-for-word plagiarism in the law-school setting? **Rule 1: Always acknowledge the direct use of someone else's words.**

**Query:** What is paraphrased plagiarism? Paraphrased plagiarism is using the words of another, with some changes, but without citing the original work. The key point here is that changing a few words or rearranging the order of phrases or clauses in the borrowed work does not make that work your own, so you must still cite the source even if you paraphrase. In other words, you can plagiarize without intending to deceive, **so a lack of intent is not a defense to a plagiarism charge.** See George Washington University Law School, "Citing Responsibly: A Guide to Avoiding Plagiarism," (2003), p. 2. You must quote and attribute phrases that originate with another person (e.g. the

Teflon President, the Stealth Justice, No Drama Obama, etc.). And you must attribute and quote each phrase, statement, or idea that you paraphrase; a citation at the beginning or at the end of a paragraph full of paraphrased material is not sufficient. Otherwise, you have engaged in plagiarism. To avoid committing plagiarism when, for example, summarizing the words of legislation or a court opinion, “you must think about what you’ve read and synthesize the ideas in your own words (with attribution to the original author).” See Ruth McKinney, “How to Avoid Committing Plagiarism in Law School,” p. 4. [available at <http://www.law.unc.edu/documents/academics/plagiarism/plagiarism-rrwa.pdf>]. **Rule 2: Always acknowledge any paraphrase of someone else’s words.**

**Query:** What is plagiarism of ideas? You plagiarize ideas when you use an argument or a theory that is original to another writer and fail to cite that writer. So if you read a law review article and borrow, for your own work, an argument made by the author of that article, do not simply rewrite that argument in your own words without crediting the author. Identify the author and the source article. Even if you completely rewrite the borrowed idea, you must cite the source of that idea. If the source article cites cases to support its argument—the one you have borrowed—you should cite only the article, not the cases, unless you have read them, too. In other words, cite only sources on which you have relied directly for information. **Rule 3: Acknowledge the direct use of someone else’s idea.**

The three rules stated above apply to both “professional” writing (e.g. memoranda submitted to a superior at work or motions or briefs submitted to a court) and “scholarly” writing (books and law journal articles). But two additional rules govern scholarly writing, which you will do if you earn a position with the *Vermont Law Review* or the

*Vermont Journal of Environmental Law*. **Rule 4: In scholarly writing, acknowledge a source when your own analysis or conclusion builds on that source. Rule 5: In scholarly writing, acknowledge a source when your idea about a particular court opinion came from a source other than the opinion itself.** See: Legal Writing Institute, *Law School Plagiarism v. Proper Attribution* (2003), p. 4. [available at [www.lwi.org](http://www.lwi.org)].

### **III. Why Plagiarism Happens**

Most incidents of plagiarism occur because the offending writer has managed time badly; hence, the writer feels pressured to use a quick, expedient solution in order to submit an assignment on time. Under these circumstances, the pressure to “copy it from somewhere, anywhere” can be intense. Therefore, the keys to avoiding the temptation to plagiarize are to plan ahead and organize your work carefully so that you won’t feel pressure to take short cuts in order to meet a deadline. Section V includes several specific tips that will help you avoid committing plagiarism. See: Matthew C. Mirow, *Plagiarism: A Workshop for Law Students* (LexisNexis 2003).

### **IV. Plagiarism in Law Practice**

Professors are especially concerned about plagiarism for three reasons. First, they make professional reputations by doing original research, so Professor A naturally wishes to discourage Professor B from appropriating her ideas and presenting them as his own. Second, widespread plagiarism by students would damage an academic institution’s most prized possession, namely, its integrity. Your professors must ensure that you are learning to think and write independently so they can properly evaluate your progress. See: Linda H. Edwards, *Legal Writing: Process, Analysis, and Organization* 9-

11 (5<sup>th</sup> ed. 2010). Third, plagiarism in law school calls into question one's ability to later serve the public honestly and competently as a practicing lawyer. See: Robin F. Hansen and Alexandra Anderson, *Law Student Plagiarism: Contemporary Challenges and Responses*, 64 *Journal of Legal Education* 416, 421 (2015).

Practicing lawyers are less particular about the ownership of their words and ideas. See: McKinney, *supra*, p. 3. Still, plagiarism can occur in law practice, too. To be sure, no plagiarism occurs when an associate in a law firm includes in a motion for summary judgment part of a similar motion written by a partner six months ago. Copying that produces a firm work product is generally not plagiarism. And most lawyers would be pleased to see their words or ideas repeated in a court opinion or legislation, even without attribution. *Id.*

But courts have punished for plagiarism lawyers who have (1) copied the legal analysis in the opposing party's memorandum without attribution, *DeWilde v. Gannett Pub. Co.*, 797 F. Supp. 55, 56 (D. Me. 1992); (2) copied, in an appellate brief, most of the trial court's opinion without attribution (see Mirow, *Plagiarism: A Workshop For Law Students*, n. 14); and (3) submitted plagiarized writing samples to a program assigning attorneys to criminal defendants. *In re Steinberg*, 202 A.D.2d 232, 620 N.Y.S.2d 345 (App. Div. 1994). The Iowa Supreme Court publically reprimanded an attorney who included seventeen plagiarized pages from a published article in a twenty-one-page brief he submitted to a bankruptcy court. The Court stated, **"This is misrepresentation, pure and simple."** *Iowa Supreme Court Attorney Disciplinary Board v. Cannon*, 789 N.W.2d 756 (Iowa 2010). So, don't forget about plagiarism when you graduate from law school and enter law practice.

## V. Avoiding Plagiarism

In law school and law practice, you can avoid plagiarism by following a few simple tips when researching and writing.

1. Take careful notes during research, including citations to information you are likely to use in your work, whether obtained from print or electronic sources; do not assume that you will have plenty of time to look up cited material when writing your final draft;
2. When writing your paper, provide citations (or quotation marks, when appropriate) for words and ideas that are not your own, even when you are unsure of the proper citation form. Cite your sources as best you can and include quotation marks as you go. You may suffer a grade penalty for improper citation form, but you will avoid a plagiarism charge, which is infinitely more unpleasant;
3. Allow yourself sufficient time to review your work for errors and omissions. This review will reveal whether you have included a proper citation for each sentence that requires one. As you edit and proofread, ask yourself if you have quoted or cited an authority every time you have used the words or ideas of others;
4. When in doubt about whether to include a citation for certain material, err on the side of caution by including a citation. In legal writing, it is always best to provide a citation for any proposition that is not your own original idea because citations to authority increase the persuasiveness of your arguments in the eyes of the lawyers and judges who must read them. Good legal writing uses pre-existing legal authorities to support its conclusions. Besides, your citations will

- be useful to other lawyers in your office or to other scholars as they work on similar cases or related scholarly articles in the future;
5. When citing primary or secondary authority appearing either in print or online, cite the print source because it is more permanent. But if the source is only available electronically, cite the electronic source;
  6. Do not confuse “general common knowledge” (e.g. the birth and death dates of famous persons or the generally accepted dates of important historical events) with common knowledge in the law, which usually derives from case law (e.g. *Brown v. Board of Education*, *Roe v. Wade*, etc.) or statutes (e.g. Title IX, Clean Air Act, etc.) and must be cited. See Legal Writing Institute, *Law School Plagiarism v. Proper Attribution*, p. 3;
  7. Remember that in legal writing the only circumstances in which no citations are necessary are when (a) you are stating your own interpretation of a subject instead of that of a court or other authority, or (b) you are explaining how a particular legal rule might apply to novel facts.
  8. During law school, work to improve the mechanics of your writing because the more you struggle with writing mechanics, the more tempted you will be to plagiarize.

## **VI. Plagiarism Exercises**

Below are four examples of possible plagiarism that could arise in written assignments. After reading the following excerpt from a law review article, consider whether any of the examples, all of which discuss the subject of that article, constitute plagiarism.

A handicap could be defined by listing certain traditionally recognized handicapping conditions, or a legislature may choose to provide a more comprehensive list of the types of disabilities that will be considered ‘handicapping conditions’ in that state. These approaches are problematic, however, because they can lead to legislation that does not include certain groups of handicapped people simply because the legislature was not aware of a particular handicap.

Maureen O’Connor, Note, *Defining “Handicap” for Purposes of Employment Discrimination*, 30 Ariz. L. Rev. 633, 636 (1988).

Example Number 1: *The term “handicap” may be defined in general terms, or a legislature may choose to provide a more comprehensive list of the types of disabilities that will be considered “handicapping conditions” in that state.*

**Has the writer committed plagiarism? If so, what form does it take? What is the remedy?**

Example Number 2: *It is problematic to define a handicap by providing a list of the types of disabilities that will be covered because certain groups of handicapped people might be excluded. The legislature might simply be unaware of certain handicaps.*

**Plagiarism? If so, in what form? Remedy?**

Example Number 3: *The term “handicap” is difficult to define in a statute. Any attempt to provide a complete list of covered disabilities, however, will be inadequate; some conditions will inevitably be omitted.*

**Same questions as above.**

Example Number 4: *When defining statutory terms, legislators should not attempt to draft a complete list specifying everything the statute is intended to cover. Such lists will inevitably be incomplete; someone will later make a claim that the legislators did not anticipate. Further the statutory list may quickly become outdated.*

**Same questions as above.** See George Washington University Law School, *Citing Responsibly: A Guide to Avoiding Plagiarism* (2003), pp. 5-7.

## **VII. The Consequences of Plagiarism**

No temporary benefit that you might derive from plagiarizing another writer's work is worth the penalty you are likely to pay if your plagiarism is discovered. Plagiarism in law school can lead to punishments ranging from failure of the course in which the offense occurs to suspension or dismissal from the school. Vermont Law School's Honor Code (Article I) identifies plagiarism as a Class One Violation, punishable (Article V) by suspension, expulsion, or the withdrawal of an awarded degree.

Beyond that, a plagiarism charge can result in denial of admission to the Bar even for students whose law schools exonerated them. Your bar exam application will ask: **“Have you ever been placed on probation, dropped, suspended, expelled, or otherwise been subjected to discipline by any institution of learning?”** Even students whose law schools exonerated them have seen the plagiarism charges reconsidered by state bar committees, which concluded that the applicants should not be admitted. See, e.g., *In re KSL*, 269 Ga. 51, 495 S.E.2d 276 (1998) (holding that state board of bar examiners was not bound by law school's exoneration of bar applicant on plagiarism charge during law school, so only issue for resolution was whether sufficient evidence existed to support board's finding of plagiarism, which court answered in the

affirmative). In another case, a student accused of plagiarism in law school admitted wrongdoing and agreed to a one-semester suspension. After graduation, when he sought admission to the state bar, a bar committee denied him admission after he testified evasively about the plagiarism case. The state Supreme Court affirmed. *See Doe v. Connecticut Bar Examining Committee*, 263 Conn. 39, 818 A.2d 14 (2003).

To avoid these problems, keep in mind that by enrolling in law school, you have entered the legal profession. Your reputation as a lawyer starts here. Don't do anything that will prevent the Dean from certifying to the Bar of any state where you have sought admission that you are a person of good moral character. *See Florida Board of Bar Examiners, Certificate of Dean of Law School* (attached).

Finally, if, despite the warnings here, you are still inclined to tempt fate, know that professors now have available to them computerized resources, such as "SafeAssign," that are highly sophisticated with regard to detecting plagiarism. SafeAssign, for example, compares submitted assignments to a set of existing works to identify areas of overlap between the two. Decarlous Y. Spearman, *Citing Sources or Mitigating Plagiarism: Teaching Law Students the Proper Use of Authority Attribution in the Digital Age*, 42 Int'l. J. of Legal Info. 177, 202 (2014).

### **VIII. Conclusion**

Plagiarism is literary theft. Like any theft, it involves taking something that does not belong to you, in this instance, the words or ideas of another writer. Remember that it is not the use of another person's words, phrases, ideas, citations, or arguments that is prohibited; rather, it is the unattributed use that is prohibited. Julie M. Cheslik, *UMKC Plagiarism Policy: Writing to Avoid Plagiarism 2* (1990). Law school plagiarism often

results from ignorance of the rules of proper attribution. Whatever the source of the plagiarism, though, the penalties for it can be severe; in other words, **what you don't know can hurt you**. So when in doubt, review these materials; if you can't find the answer here, ask a faculty member for help.

### **Appendix: Answers to Plagiarism Exercises**

#### Example Number 1:

1. Yes.
2. Word-for-word (a.k.a. peer-to-peer) plagiarism.
3. Quotation marks.

#### Example number 2:

1. Yes.
2. Paraphrased plagiarism.
3. Place a citation after each sentence.

#### Example Number 3:

1. This is a closer call, because the passage lacks conclusive proof of plagiarism.
2. If plagiarism exists here, it is idea plagiarism.
3. To avoid a plagiarism charge, cite the source from which you borrowed the idea.

Example Number 4:

1. Again, the passage lacks conclusive proof of plagiarism, but it arouses suspicion.
2. If plagiarism exists here, it is idea plagiarism.
3. To avoid a plagiarism charge (and enhance your credibility), cite the source that helped crystallize this idea for you.

