

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

Written by Brian Porto, Esq. and edited by Professor Anna Connolly for presentation
during Vermont Law School J.D. Orientation, August 2022

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 confusion is that plagiarism, usually born of ignorance or uncertainty, continues to be a serious problem in law schools nationwide. Regarding plagiarism, 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. Similarly, the Legal Writing Institute, which seeks to enhance the teaching of and the scholarship about legal writing, defines plagiarism as “taking the literary property of another, passing it off as one’s own without appropriate attribution, and reaping from its use any benefit from an academic institution.” See Mary Donnewold, *Plagiarism: Proceed with Caution*, Before the Bar Blog, September 1, 2011, p 3.

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 during your time here, 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? 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.

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. You must also cite the source if you borrow for your paper the organizational structure of a previous document. *See*

<https://libguides.uakron.edu/plagiarism>

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 also 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 every 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. 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 <https://silo.tips/download/how-to-avoid-committing-plagiarism-in-law-school>]. A good tip to help you do this successfully is to pretend you are explaining the idea to a friend, which should enable you to use language that is customary to you. *See* Donnewold, *supra*, p. 5.

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 and are relying on those cases, 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 colleague 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: Acknowledge a source when your own analysis or conclusion builds on that source.

Rule 5: 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].

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 to complete 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 and organize your work carefully so that you won’t feel pressure to take short cuts 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: its integrity. Your professors must ensure that you are learning to think and write independently so they can evaluate your progress properly. See Linda H. Edwards, *Legal Writing: Process, Analysis, and Organization* 9-11 (5th 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).

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 from internal firm work product is generally not plagiarism (but make sure that is indeed the understanding before doing so and always check the work from which you borrow!).

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, *see 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 plagiarized pages from a published article in a brief he submitted to a bankruptcy court. The Court stated, “This is misrepresentation, pure and simple.” *Iowa Sup. Ct. Att’y Disciplinary Bd. 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.** Include in your notes citations to and quotations of information you are likely to use in your work, whether obtained from print or electronic sources, even if you don’t anticipate quoting the material directly; 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.** Do this 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 worse;
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. **Err on the side of caution by including a citation even when in doubt about whether it is necessary.** In legal writing, providing a citation for any proposition that is not your own original idea is always best 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 preexisting 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. **Cite print sources rather than online sources when possible because they are more permanent.** But if the source is only available electronically, cite the electronic source;
 6. **Provide citations even for things that feel like common knowledge.** Do not confuse “general common knowledge” (e.g., generally accepted knowledge about important historical people or events) with common knowledge in the law, which usually derives from case law (e.g., *Brown v. Board of Education*, *Roe v. Wade*, etc.), statutes (e.g., Title IX, Clean Air Act, etc.), or a factual record, and must be cited. See Legal Writing Institute, *Law School Plagiarism v. Proper Attribution*, p. 3;
 7. **Know when citations are unnecessary.** In legal writing the only circumstances in which citations are unnecessary occur 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.** 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. Answers are included in Appendix A.

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.*

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. And, as a 2009 Harvard Law School graduate found, the inclusion of a notation of reprimand for plagiarism on a law school transcript can be toxic to one's career plans. *See Walker v. President & Fellows of Harvard Coll.*, 840 F.3d 57 (1st Cir. 2016). 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 a 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. Conn. Bar Examining Comm.*, 263 Conn. 39, 818 A.2d 14 (2003). *See also In Re White*, 283 Ga. 74, 656 S.E.2d 527 (2008).

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* (Appendix B).

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" and "Turnitin," that are designed to detect plagiarism. SafeAssign, for example, compares submitted assignments to a set of existing works to identify areas of overlap between the two. Robin F. Hansen and Alexandra Anderson, *Law Student Plagiarism: Contemporary Challenges and Responses*, 64 J. of Legal Educ. 416, 418 (2015); 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 A: 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 (i.e., the writer borrowed the idea from the source), it is idea plagiarism.
3. 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. If the writer developed the idea after reading the source, the writer should cite the source that helped crystallize the new idea.

Florida Board of Bar Examiners

ADMINISTRATIVE BOARD OF THE SUPREME COURT OF FLORIDA
1891 Eider Court, Tallahassee, FL 32399-1750



CERTIFICATE OF DEAN OF LAW SCHOOL

FOR COMPLETION BY THE APPLICANT

Instructions to Applicant: Please clearly print the information requested in this section and forward the form to your law school Dean, or other appropriate official, for completion as soon as possible after conferral of your J.D. degree. For Item B. below, write "N/A" if you have not yet filed your application for admission to The Florida Bar.

- A. Applicant Name: _____
- B. Applicant File Number: _____
- C. Social Security Number: _____
- D. Name of Law School: _____

FOR COMPLETION BY LAW SCHOOL DEAN

Instructions to Law School Dean: Please complete this section, attach a copy of the applicant's final law school transcript, and forward both documents directly to the Florida Board of Bar Examiners at the address above. Please include any explanatory comments on reverse. The Board sincerely appreciates your cooperation in completing this form.

I certify that the information set out below regarding the above-named applicant is true and correct to the best of my knowledge.

- A. Date applicant entered law school: _____
- B. Date J.D. degree conferred: _____
- C. LSAT score: _____
- D. Average law school grade: _____
- E. Final class rank: _____
- F. It is probable that the degree was awarded after the administration of the bar examination; therefore, I am advising that this applicant completed requirements for graduation on _____ (date).
- G. From the records in your office, or from your personal knowledge, please check "yes" or "no" below. If your answer to any is "no," provide a short summary of details on reverse.

Yes No 1. Is the applicant honest?

Yes No 2. Is the applicant thorough in fulfilling obligations?

H. Please check “yes” or “no” below. If your answer to any is “yes,” provide a short summary of details below. In responding to Item 1., you are requested to disclose any pertinent information regardless of final disposition and regardless of formal or informal expunction of such information. To your knowledge, or do records in your office reflect that the applicant:

- Yes No 1. has ever been accused of a violation of the honor code or student conduct code, warned, placed on scholastic or disciplinary probation, suspended, requested or advised to discontinue studies, dropped, expelled, or requested to resign, or otherwise subjected to discipline for academic or personal conduct reasons by any educational institution?
- Yes No 2. has ever been a party to legal or administrative proceedings?
- Yes No 3. has ever been charged with, arrested for, or convicted of any traffic or criminal offense?
- Yes No 4. has ever been accused of a violation of trust?
- Yes No 5. has ever been denied admission to the Bar of any other state?
- Yes No 6. has been diagnosed with, suffered from or been treated for a mental illness involving a severe thought disorder (including, but not limited to, schizophrenia), a severe mood disorder (including, but not limited to, major depressive disorder or bipolar disorder) or substance use disorder (including, but not limited to, abuse of or addiction to/dependence on alcohol, marijuana, cocaine, or prescription medications)?
- Yes No 7. currently has a mental health condition that impairs or limits, or if left untreated could impair or limit, the ability to practice law in a competent and professional manner?
- Yes No 8. has ever been delinquent in any financial obligations?

I. Comments:

Name Printed: _____

Title: _____

Signature: _____

Date: _____