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**PLAGIARISM IN CYBERSPACE: LEARNING THE
RULES OF RECYCLING CONTENT WITH A VIEW
TOWARDS NURTURING ACADEMIC TRUST IN AN
ELECTRONIC WORLD**

*Deborah R. Gerhardt**

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INTRODUCTION

[1] Plagiarism is an issue of trust. If we respect honor codes, we gain the comfort of knowing that what we read is spoken in the voice of the author and what we write will not be misrepresented as someone else's original work. Are these simple comforts anachronistic? Perhaps. Acts of plagiarism among students are on the rise,¹ and recently, a series of famous academics, historians, journalists, and even a Tony-award

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¹ Mark Ellis, *Copycat: Don't Click That Mouse!; Stealing Someone's Writing Is Plagiarism*, COLUMBUS DISPATCH, Mar. 30, 2005, at 1G; see also Sara Rimer, *A Campus Fad That's Being Copied: Internet Plagiarism Seems on the Rise*, N.Y. TIMES, Sept. 3, 2003, at B7 (stating that "[t]hirty-eight percent of the undergraduate students surveyed said that in the last year they had engaged in one or more instances of "cut-and-paste" plagiarism involving the Internet, paraphrasing or copying anywhere from a few sentences to a full paragraph from the Web without citing the source." Furthermore, "almost half the students said they considered such behavior trivial or not cheating at all." Three years ago, "only 10 percent of students had acknowledged such cheating in a similar, but much smaller survey." To read more about the study, see The Center For Academic Integrity, CAI Research, http://www.academicintegrity.org/cai_research.asp (last visited Apr. 4, 2006)).

nominated playwright have been accused of plagiarism.² If our academic communities hope to reverse this trend, we must reflect on how and why plagiarism occurs and what we can do about it. Now that we are empowered by the Internet, plagiarism is easier to commit and more tempting than ever before. Thanks to this same technology, plagiarism is also easier to catch.³ We may attribute much of this trend to the ease of purchasing or copying research papers on the Internet, but some of it is also due to foggy notions of what plagiarism means and the proper way to borrow content in academic writing. If we want to encourage students to make the most out of their expressive powers and make full use of their many electronic resources, should honor codes still punish plagiarism? Are these rules still necessary? Should we stop the free recycling of electronic content? Do we really need to counsel restraint?

[2] My answer to these questions is “Yes.” When plagiarism occurs, trust in academic integrity breaks down. Imagine what would happen if a law school dean delivered a moving commencement address which students soon discovered was downloaded from the Internet.⁴ How would the community respond? The dean would lose the respect of the community, and his or her reputation would be irreparably damaged. The harm to the dean personally is only the beginning. Based on a community sense of academic trust supported by honor codes, the students should have had the right to presume that the words in their commencement address were written for them. After learning that their dean abused this trust, the

² See *infra* Section III; Jesse McKinley, *Playwright Created a Psychiatrist By Plagiarizing One, Accusers Say*, N.Y. TIMES, Sept. 25, 2004, at B; Randy Dotinga, *Who can Repair Journalism’s Image?*, Christian Science Monitor, April 14, 2004 (lamenting that 2004 was “the most miserable” track record for plagiarism incidents “in the history of modern American journalism”).

³ See Turnitin, <http://www.turnitin.com>; Google, <http://www.google.com>. Websites, such as these, allow for quick and easy internet searching of specific phrases. Plagiarism detection software is being used more and more frequently by both educational institutions and businesses. See Judson Berger, *Plagiarism Detection Tools*, AJR American Journalism Review, June/July 2004

⁴ See generally Carolyn Norton, *Orange High Grad Remarks Stolen*, DURHAM HERALD-SUN, June 2, 2004, at A1; Carolyn Norton, *Board Opts Not To Censure Member; Orange Schools Officials Denounce His Plagiarism*, DURHAM HERALD-SUN, June 15, 2004, at A1 (explaining a similar incident in Orange County, North Carolina, where the Orange County school board chairman copied from the Internet a speech written by Donna Shalala, and used much of it in the school’s 2004 graduation ceremony. After the plagiarism was discovered by a local journalist, Cook resigned from the board). See also, Judson Berger, *Plagiarism Detection Tools*, AJR American Journalism Review, June/July 2004 (explaining another similar incident Richard Judd, President of Connecticut State University gave a speech which used text taken from the New York Times, London’s Independent and a Cyprus government web site).

students would feel cheated out of an important rite. Even if the dean were to be removed from the faculty, students might wonder how often this type of conduct occurs and is not caught. These students might never again listen to an academic with the same sense of reverence. This breakdown in trust is the most pernicious result of plagiarism.

[3] Trust in academic integrity is a necessary prerequisite to the evolution of scholarship. A sense of community trust distinguishes the university experience. Incidents of plagiarism damage community trust, especially when penalties are not imposed. Some may argue that student exposure to such conduct is a healthy dose of real world experience. Punishing intentional incidents of plagiarism on campus with tough penalties may serve as a valuable deterrent. But we need to work to assure that incidents of plagiarism are rare exceptions and do not occur because students are genuinely confused about what plagiarism is and how to avoid it. In this article, I attempt to put a positive spin on a traditionally negative topic by proposing methods for teaching students to avoid plagiarism in a way that will clarify the concept of plagiarism, nurture academic integrity and strengthen community trust.

[4] Section I of this Article explores why many students do not have a clear understanding of plagiarism. Section II advocates the adoption and use of a clear and simple definition of plagiarism without an intent element. Section III illustrates the damage that results from incidents of plagiarism—both to individuals and to the academic community. Section IV explains when incidents of plagiarism may amount to copyright infringement, and why plagiarism standards still must be applied to information that copyright law places in the public domain. Section V sets forth the author's Ten Rules for Avoiding Plagiarism. Section VI concludes that vigilant observation of the Ten Rules will nurture a community of academic trust.

I. WHY THE CONCEPT OF PLAGIARISM IS UNCLEAR TO TODAY'S STUDENTS

[5] Our students' foggy conception of plagiarism⁵ is not entirely their fault. If we take a moment to walk through the cultural environment in which they have grown up, it is easy to see why the concept of plagiarism is counterintuitive to many of our students. This lack of clarity is fertile ground for future work. Here, I attempt to enumerate some of the environmental influences that may lead students to adopt assumptions

⁵ Ellis, *supra* note 1.

about the use and recycling of content that are inconsistent with the idea of plagiarism.

A. EDUCATIONAL AND CULTURAL ENVIRONMENTS
LEGITIMIZE COPYING

[6] Much of learning is a process of copying and repeating.⁶ When a toddler repeats a word, it is great cause for celebration. That same child will learn to write by copying letters seen in print. Children learn to sing and play musical instruments by listening, and become amazingly adept at replaying melodies they have heard. They learn to draw and paint by copying what they see in life and in master works. In high school and college, students memorize their lecture notes and redeliver this content back to professors on exams, often without the expectation of attribution. Students are so often rewarded for their ability to repeat back what they learned without attribution, that principles of plagiarism must seem artificial when they are introduced.

[7] When students first encounter the concepts of plagiarism, it must be very strange to enter a context in which they must use independent judgment to determine whether it is acceptable to recycle and share. From their earliest years, these values have been taught as unequivocal aspirations. If sharing toys and educational resources is considered a basic socialization skill, students may not stop to question whether they can share text or charts. Recycling paper and plastic is strongly encouraged, and using appropriate receptacles has become a routine responsibility in our schools. The concept of recycling does not apply only to trash. It applies to physical property that becomes part of the creative process. School children are encouraged to create collages from images they cut from magazines. Sculptures are created from all sorts of discarded materials such as empty milk jugs. Children are also encouraged to share and recycle intellectual property. Students are encouraged to discuss ideas, and classroom participation is often rewarded on report cards. Collaboration and intellectual sharing often form not just the process but also the content of lessons. The evolution of art history would make no sense without talking about what one artist learned from those who came before. An art teacher may demonstrate that Pablo Picasso and Georges Braque could not have discovered cubism if they had not applied

⁶ [I]f man has any 'natural' rights, not the least must be a right to imitate his fellows, and thus to reap where he has not sown. Education, after all, proceeds from a kind of mimicry, and 'progress,' if not entirely an illusion, depends on generous indulgence of copying." BENJAMIN KAPLAN, AN UNHURRIED VIEW OF COPYRIGHT 2 (1966).

techniques they copied from Paul Cezanne.⁷ Students learn that Shakespeare's characters and plots were not original creations and that Thomas Jefferson could not have drafted the Declaration of Independence without reading and recasting the ideas of other intellectual giants such as John Locke.⁸

[8] When the school day ends and students turn to entertainment, they are inundated with an infinite quantity of recycled content that is everywhere in our popular culture. We listen to music that loops famous riffs from other songs. We read books that are turned into movies, and then the characters from these movies appear on an endless array of products, such as breakfast cereals, clothing, toys, and video games. Most students do not know that it takes hours of negotiation and boxes of trademark and copyright licenses to make all this borrowing appear so seamless. In this environment, where recycling is encouraged and borrowed content appears all over the place, we should not be surprised if a student does not understand whether she may copy statistics from a web site into her research paper.

B. THE FREE AVAILABILITY OF ELECTRONIC CONTENT AND THE EASE OF COPYING MAY CONTRIBUTE TO FALSE ASSUMPTIONS ABOUT RECYCLING INTELLECTUAL PROPERTY.

[9] Our students grow up in an environment where copying is an essential tool in the creative process. The amazing power of new electronic devices turbo charges their creative ability. In school, students are taught to use and become comfortable with modern technology. They learn to cut and paste text in the same way they cut and pasted text and graphics from magazines to make collages. Hundreds of new electronic devices from software to telephones promote vast electronic storage space and the ability to copy and recast digital content. Laptops and MP3 players have become vessels for carrying libraries of text, film and music. As computer literacy becomes an essential skill in our global wired economy,⁹ educational institutions strongly encourage students to flex their technological muscles by using these powerful new learning tools to advance their educational goals. Some high schools and colleges distribute iPod MP3 players¹⁰ or laptops¹¹ to students, and more and more

⁷ WILLIAM FLEMING, ARTS AND IDEAS 513-14 (3d ed. 1968).

⁸ NOBLE E. CUNNINGHAM, JR., IN PURSUIT OF REASON: THE LIFE OF THOMAS JEFFERSON 48-50 (1987).

⁹ THOMAS L. FRIEDMAN, THE WORLD IS FLAT: A BRIEF HISTORY OF THE TWENTY-FIRST CENTURY (2005).

¹⁰ Daily Illini, Other Campuses: Duke Evaluates iPod Experiment (Mar. 1, 2005),

professors are podcasting lectures.¹² Armed with the technology to copy mountains of material, students have the technical ability to collect significant quantities of electronic information for educational use.

[10] An infinite array of electronic content is easily accessible at no cost. On the Internet, it is easy to find information on any subject. Electronic resources from public library websites provide easy access to many sources of information. Websites, newspapers, magazines, and academic journal articles are all freely available to students. Thanks to our high-speed connections and advanced software applications, it is easy to copy electronic content from all of these sources and use it for any purpose.

[11] The free availability of electronic material is another source of confusion. A student may understandably assume that anything available for free is not owned by anyone, and therefore, may be freely used. It is not uncommon for people to confuse the Internet with the public domain – many people believe that anything on the Internet is free to use and adapt for any purpose.¹³ Professor Donald L. McCabe, a management professor at Rutgers University who collects and studies data on plagiarism, has found that “[t]here are a lot of students who are growing up with the Internet who are convinced that anything you find on the Internet is public knowledge and doesn’t need to be cited.”¹⁴ This misunderstanding is plausible. When something is available for free, it is not self evident why one may not use it.¹⁵ For example, it is legal to tape a free network television show (or record it on a TiVo® machine) and watch the entire program later.¹⁶ Yet, copying even short passages from the transcript into a paper without attribution is problematic. A student needs a rather sophisticated understanding of plagiarism and intellectual property law to

<http://www.dailyillini.com/media/paper736/news/2005/03/01/News/Other.Campuses.Duke.Evaluates.Ipod.Experiment-880567.shtml?noreferrer&sourcedomain=www.dailyillini.com>.

¹¹ Tom Lappas, Henrico Citizen, *Laptop Program to Continue*, http://www.henricocitizen.com/news/news_item.2005-03-05.8644660338 (last visited Mar. 13, 2006).

¹² Information Studies at Duke University, Duke University Podcasting Symposium (Sept. 27-28, 2005), <http://isis.duke.edu/events/podcasting/bios.html>.

¹³ Rimer, *supra* note 1.

¹⁴ *Id.*

¹⁵ The law recognizes the availability of a work at no cost to consumers as a factor weighing in favor of a finding of fair use against a challenge of copyright infringement. *See Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 448-49 (1984).

¹⁶ *Id.* at 49-50. However, downloading the same movie (or a copyrighted song) from the Internet to experience later is not fair use, and violates United States copyright laws. *See A&M Records v. Napster, Inc.*, 239 F.3d 1004 (9th Cir. 2001).

fully grasp why the copying of the entire show is permitted in the first context but copying small portions of text into a paper is not. At a minimum, our students should learn that public domain materials such as government data may be used without seeking copyright permission, but in academic writing, proper attribution is required.

C. STUDENTS HAVE INSUFFICIENT EXPERIENCE APPLYING PLAGIARISM PRINCIPLES.

[12] A national survey of 24,763 high school students found that thirty-five percent of the students surveyed admitted that they had copied an Internet document for a classroom assignment within the past twelve months.¹⁷ I generally trust my law students so I was surprised by this statistic. My mother was not surprised at all. She recently retired from teaching English at Shaker Heights High School in my hometown, Cleveland, Ohio.

[13] I asked her how she prevents students from turning in papers downloaded from the Internet. She responded, “My students do all their writing assignments in class. We have no choice. Everything is on the Internet.” I was stunned. My memories of writing high school papers by hand at a quiet desk in my bedroom suddenly seemed ridiculously outdated. How unfortunate it is that these students would not experience the luxury of writing independently according to their own clock. As I reflect on this new reality, the idea that distresses me the most is that requiring writing to be done under supervision sends a clear message to these students: your teachers do not trust you.

[14] Teachers have good reason not to trust their students. Intentional acts of plagiarism happen often. It is much easier to copy than to create. Many web sites sell research papers on any topic, and if they do not have them in stock, they will create one for you.¹⁸ In our competitive society, students may feel compelled to buy content if they do not have the confidence to create it themselves.

[15] There may be more benign reasons why students seem to have less familiarity with plagiarism concepts. Writing a paper has become only one of many ways of evaluating a student’s performance in a course. Oral

¹⁷ Press Release, Josephson Institute of Ethics, 2004 Report Card: Press Release and Data Summary, http://josephsoninstitute.org/Survey2004/2004reportcard_pressrelease.htm (last visited Mar. 13, 2006).

¹⁸ A quick internet search returns such results as: <http://www.termpaperrelief.com>, <http://www.perfecttermpapers.com>, and <http://www.essaytown.com>.

reports, group projects, class participation and multiple choice tests are often preferred alternatives to the research paper. I often meet law students, especially those who majored in the sciences, who had very little writing experience in college. For these reasons I believe that vague understandings of plagiarism result not just from cultural influences, but also from relatively less experience applying plagiarism standards.

D. LEGAL WORK EXPERIENCES SEND CONFUSING SIGNALS ABOUT RECYCLING CONTENT

[16] The realities of work experiences also create confusion about whether recycling content is permissible. During the first year of law school, students are taught that all text taken from another source must be attributed with a footnote. In the summer after their first year, law students learn that writing a contract or a complaint from scratch is as impractical as reinventing the wheel. In practice, young lawyers are expected to recycle content from published form books or the firm's form pleadings and agreements as models, and edit them to fit the facts of their case. In the practice of law, text is freely used and recycled without attribution.¹⁹ If the carefully crafted text or reasoning from a lawyer's brief is adopted by the Court and recited in a judicial opinion, the taking often marks a clear victory. No one would think of crying "plagiarism" in this context. Against this tide of mixed messages about when copying is cause for celebration or severe academic penalties, students need clear guidance. In teaching our students about plagiarism, we must talk about context and how it drives the standards for attribution.

E. THE IMPORTANCE OF CONTEXT AS A CLARIFYING PRINCIPLE

[17] Because the environmental influences identified above are so pervasive, we must acknowledge them. Before beginning a course of instruction in plagiarism, I believe it is important to reflect on the fact that students learn by imitation. Our students are also taught that in many contexts, recycling goods and ideas are considered positive civic and creative conduct. In their work experiences, they are expected to recycle content without attribution. And in everything they do, education, work, and play, they are inundated with the recycling of content and intellectual property in the media, and the vast reproductive power of modern

¹⁹ For example, the Lexis® research service provides various forms for every jurisdiction.

technology. Faced with this reality, educators must make a strong concerted effort to explain plagiarism. In doing so, it is important to remember the critical element of context.

[18] Plagiarism rules apply broadly, but they do not apply everywhere, and therefore students must be taught to identify the contexts in which their resourceful instincts about recycling content must be substituted with practices for avoiding plagiarism. I believe that a coordinated effort to understand plagiarism as a collective academic good should be a campus wide experience, but each discipline must also teach its specific expectations. For example, the rules on when and how to cite sources are vastly different in law and journalism. Students must also learn to analyze how and why the expectations vary within their particular discipline. In law school, students learn that the expectations regarding attribution differ in corporate agreements, memoranda supporting motions in court, and in academic research papers. We must teach them the purpose of plagiarism rules and the nuances of how they apply in different contexts so that unlike the hypothetical Dean of Plagiarism in the introductory example, our students will know that the context itself sends a message and will honor the rules of attribution expected by their community.

II. WHAT IS PLAGIARISM?

[19] There is no standard definition of plagiarism. At first, this may seem odd. Upon further reflection, it becomes clear that a standard definition is not possible because context drives different expectations, and therefore, different rules in different situations. In most United States jurisdictions, plagiarism is not a defined legal term or cause of action.²⁰ Each academic community defines plagiarism for itself.²¹ The elements differ from place to place.²² The specific citation rules differ tremendously from field to field, and many academic disciplines have accepted citation form books that students are expected to follow.²³ Therefore, the applied rules of

²⁰ Plagiarism in academia is usually handled within the setting of the academic institution. However, some jurisdictions have made the purchasing of term papers for use in an academic setting a criminal offense. For a typical example see TEX. PENAL CODE § 32.50 (Vernon 2004).

²¹ Duke University, Duke University Honor Council, <http://www.duke.edu/web/HonorCouncil/links.html> (last visited Mar. 13, 2006); RICHARD FYFFE & SCOTT WALTER, *THE DIGITAL DIFFERENCE: RESPONSIBLE CONDUCT OF RESEARCH IN A NETWORKED WORLD* 11, available at https://kuscholarworks.ku.edu/dspace/bitstream/1808/230/1/RCR_Final.pdf (last visited Mar. 13, 2006).

²² RICHARD FYFFE & SCOTT WALTER, *supra* note 22, at 11.

²³ The generally accepted citation form book for lawyers and legal scholars is the

attribution at two law schools may be more similar than two departments in the same University. Nevertheless, a general definition of plagiarism is usually adopted by a university or college and applied to all of its varied disciplines.

[20] Generally, these definitions fall into two camps, those with²⁴ and without²⁵ intent elements. At the University of Richmond, the honor code

Bluebook, see THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n et al. eds., 18th ed. 2005). However, students of journalism and mass communication adhere to very different rules such as those set forth in the Associated Press Stylebook.

²⁴ The College of William and Mary states:

Plagiarism occurs when a student, with intent to deceive or with reckless disregard for proper scholarly procedures, presents any information, ideas or phrasing of another as if they were his or her own and does not give appropriate credit to the original source. Proper scholarly procedures require that all quoted material be identified by quotation marks or indentation on the page, and the source of information and ideas, if from another, must be identified and be attributed to that source. Students are responsible for learning proper scholarly procedure. While any amount of improperly unattributed material may be sufficient to find plagiarism, a student may be presumed to have acted with intent to deceive or with reckless disregard for proper scholarly procedures when a significant amount of improperly unattributed material is presented as if it were the student's own work. In the absence of direct proof of the accused's intent, the hearing panel shall determine whether the amount of improperly unattributed material is so significant that intent may be presumed.

William and Mary Honor Code, Section 2: Infractions, <http://www.wm.edu/so/honor-council/> (last visited Mar. 13, 2006). The University of North Carolina at Chapel Hill prohibits "plagiarism in the form of deliberate or reckless representation of another's words, thoughts, or ideas as one's own without attribution in connection with submission of academic work, whether graded or otherwise." The University of North Carolina at Chapel Hill, Instrument of Student Governance, Section II.B.1. (July 1, 2003), <http://instrument.unc.edu/instrument.text.html>.

²⁵ The University of California at Berkeley provides:

Plagiarism is defined as the use of intellectual material produced by another person without acknowledging its source. This includes, but is not limited to: (a) Copying from the writings or works of others into one's academic assignment without attribution, or submitting such work as if it were one's own; (b) Using the views, opinions, or insights of another without acknowledgment; or (c) Paraphrasing the characteristic or original phraseology, metaphor, or other literary device of another without proper attribution.

University of California, Berkeley, Berkeley Campus Code of Student Conduct, <http://students.berkeley.edu/sas/conduct.html> (last visited Mar. 16, 2006). Vanderbilt University defines plagiarism as "the failure to acknowledge the sources from which we borrow ideas, examples, words and the progression of thought." Vanderbilt University, Undergraduate Honor Council: What Is Plagiarism, and How Can I Avoid it?, <http://www.vanderbilt.edu/HonorCouncil/infostud.php> (last visited Mar. 16, 2006). Yale

provision on plagiarism has no intent element, and defines it as any “presentation, oral and/or written, of words, facts, or ideas belonging to another source without proper acknowledgment.”²⁶ However, if you drive sixty miles east on Interstate 64, you will find a much more lenient standard including an intent element. At the College of William and Mary, a student will not be found guilty of plagiarism unless the student acted “with intent to deceive or with reckless disregard for proper scholarly procedures.”²⁷

[21] In my experience, codes with no intent element promote clarity in teaching and understanding plagiarism. Where intent is an element of plagiarism, students and faculty often have trouble parsing their honor code to figure out what is permitted, and I am often asked questions about whether inadvertence or failure to understand the definition itself is a defense. The inquiry may devolve into a legalistic inquiry akin to statutory interpretation. The relevant question changes from “Is this plagiarism?” to “Is this act of plagiarism punishable under our honor code?”

[22] When no intent element muddies the water, the paper record establishes whether plagiarism has occurred. You have plagiarism whenever someone takes the work of another and presents it as his own work. When intent is an element, the paper record is never enough. Under these codes, a finding of plagiarism depends on proof of the student’s state of mind. A student who violates proper scholarly procedures, steals the ideas of others and lies to the reader by presenting work as though it originates from her may be excused if the student did not act intentionally or recklessly. Therefore, codes with intent elements send a signal that some acts of plagiarism are excusable, and this signal erodes trust in academic integrity.

[23] Codes with intent elements are also tougher to enforce. As Professor Nimmer noted in the context of copyright infringement, “[I]nnocence . . .

defines plagiarism as “the use of someone else’s work, words, or ideas as if they were your own.” Yale College, Undergraduate Regulations, Appendix F, Cheating, Plagiarism, and Documentation, <http://www.yale.edu/yalecollege/publications/uregs/appendixes/cheating.html> (last visited Mar. 16, 2006).

²⁶ University of Richmond, Statute of the Honor Code of the University of Richmond 18 <http://www.student.richmond.edu/~urhc/statutes.pdf> (last visited Mar. 16, 2006).

²⁷ College of William and Mary, Honor Code, <http://www.wm.edu/so/honor-council/honorcode.htm> (last visited Mar. 16, 2006) [hereinafter “William and Mary Honor Code”].

may often be easy to claim and difficult to disprove.”²⁸ Intent elements invite the defense that the student did not understand scholarly procedures or the meaning of plagiarism. On such campuses, one may argue that ignorance is the safer course, for if students have a clear understanding of plagiarism they are arguably disadvantaged under such a code. To level the field at these schools, I advocate requiring attendance at a lecture on plagiarism during first year orientation, and obtaining a signed form from each student indicating that they understand the requirements of the honor code.

[24] Taking out the intent element promotes clarity, more careful scholarly practices and ease of enforcement. Codes with no intent elements send a message that plagiarism and academic integrity are taken seriously, and that the students are expected to know and honor these principles. The major risk in adopting a code without an intent element is that a student who attempted to follow the rules, but made honest mistakes, may be charged with plagiarism. Even if no penalty is assessed, the charge itself may amount to unjustly harsh punishment.²⁹ The accusation of plagiarism will inspire feelings of “deep shame” and may put a student’s career in jeopardy.³⁰ The accusation may be noted on the student’s transcript or disciplinary record, and therefore, will be seen by graduate school admission committees and prospective employers. A law school graduate must establish sufficiently strong moral character before he or she will be licensed to practice law. Law school deans are frequently required to certify proof of the moral character of each applicant to a state bar, and must disclose charges of plagiarism even if the student is absolved. Imagine the example of a student who has cited a source for every proposition, but has repeatedly failed to use quotation marks around language cut from an outside source. Many in legal academia would consider such work to constitute plagiarism. It is my hope that more education about plagiarism and use of the ten rules attached to this article will avoid mistakes such as this. But for each student who commits such errors because he or she honestly

²⁸ 4 MELVILLE B. NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHT § 13.08 (1963). Leaving out the intent element creates a direct parallel to copyright infringement. *See* 17 U.S.C. § 501(a) (2000). “Anyone who violates any of the exclusive rights of the copyright owner as provided by section 106 through 122 or of the author as provided in section 106A(a), or who imports copies or phonorecords into the United States in violation of section 602, is an infringer of the copyright or right of the author, as the case may be.” *Id.*

²⁹ Interview with Ruth McKinney, Clinical Professor of Law and Director of the Learning Resources Center, University of North Carolina School of Law, in Chapel Hill, N.C. (Dec. 2005).

³⁰ *Id.*

misunderstands proper attribution form, an institution's honor code should be flexible enough to allow the professor to have some discretion over whether to submit the incident to the honor court or use the incident as a critical "teaching moment" where the student receives a warning and an opportunity to fix the piece, instead of an automatic sanction.³¹

[25] Irrespective of the level of intent, every act of plagiarism harms the academic community, and I believe that each such harm should be redressed. Once a student submits a paper he has downloaded from the Internet, harm has occurred. If another student in the class submits a paper containing text from another source without attribution, a separate harm has occurred. These students may be assessed different penalties, but both are acts of plagiarism, and both damage community trust. Both acts consume valuable time and institutional resources by requiring an investigation by the professor and the entity that adjudicates the honor code. In each case, these injuries are significant, and should be addressed, regardless of the student's state of mind.³²

[26] I found what I consider to be the best definition of plagiarism on Princeton University's website. Princeton defines plagiarism as "[t]he use of any outside source without proper acknowledgment."³³ The site next explains that "'[o]utside source' means any work, published or unpublished, by any person other than the student."³⁴ I like Princeton's definition because it is clear, short, and easy to understand. I also like that it is unequivocal. The Princeton website supports this definition with a generous amount of explanatory material including examples illustrating how the principles should be applied in different academic contexts.

[27] I often cite the Princeton definition as a useful tool for defining plagiarism. Even at schools where the code has an intent element, I caution students that the safest practice is to think about the code as if the intent element is missing. If their work is published, it may be evaluated by someone at another school where the plagiarism code has no intent element or at some future date when the intent element has been removed.

[28] When I lecture on plagiarism, I explain to students that plagiarism is stealing—because without proper attribution, you are taking someone

³¹ *Id.*

³² See NIMMER, *supra* note 29, § 13.08 (discussing how this same reasoning supports the absence of an intent element in the context of copyright infringement).

³³ Princeton University, Rights, Rules, Responsibilities, <http://www.princeton.edu/pr/pub/rrr/04/33.htm#d> (last visited Mar. 19, 2006).

³⁴ *Id.*

else's content. I also explain that plagiarism is lying because if someone else's ideas appear in your paper with no footnote, you are telling your reader that the ideas are your original thoughts.³⁵ Invoking two of the Ten Commandments generally gets their attention.³⁶ At this point, they are ready to listen to the consequences of committing plagiarism.

III. CONSEQUENCES OF PLAGIARISM

[29] Committing plagiarism in college or graduate school can cast a permanent stain on a student's academic record. A typical honor code will provide for a range of penalties, including a failing grade in the course, academic probation, or expulsion. The penalty will be assessed depending on the severity of the conduct. In 2001-2002 at the University of Virginia, forty-eight students were expelled, forced to resign or had their degrees revoked for committing plagiarism.³⁷ Therefore, it is certainly not hyperbole when scholars call plagiarism "an academic capital offense, punishable by academic death."³⁸

[30] The immediate academic consequences are harsh. The damage to one's reputation may be even more difficult to overcome. William Shakespeare gave us an unforgettable illustration on the value of reputation:

Good name in man and woman,
Is the immediate jewel of their souls.
Who steals my purse, steals trash; 'tis something, nothing,
'Twas mine, 'tis his, and has been slave to thousands:
But he that filches from me my good name
Robs me of that which not enriches him
And makes me poor indeed.³⁹

Many talented and successful public figures have struggled to cleanse their

³⁵ One prominent scholar more succinctly describes plagiarism as "deception." Kevin J. Worthen, *Discipline: An Academic Dean's Perspective on Dealing with Plagiarism*, 2004 BYU EDUC. & L.J. 441, 444 (2004).

³⁶ The Eighth Commandment states, "Thou shalt not steal," and the Ninth Commandment provides, "Thou shalt not bear false witness against thy neighbour." *Exodus* 20:1-17 (King James).

³⁷ Michelle Boorstein, *U-Va. Expels 48 Students After Plagiarism Probe*, WASH. POST, Nov. 26, 2002, at B1.

³⁸ Worthen, *supra* note 36, at 442 (quoting K.R. St. Onge, *THE MELANCHOLY ANATOMY OF PLAGIARISM* 39 (Rowman & Littlefield 1988)).

³⁹ WILLIAM SHAKESPEARE, *OTHELLO* act 3, sc. 3, lines 156-162 (Norman Sanders ed., Cambridge Univ. Press 2003).

good name from the stain of plagiarism. Former Delaware Senator Joseph Biden committed plagiarism on a paper in his first year in law school.⁴⁰ He was caught.⁴¹ He was given an F in the course, and then he was permitted to repeat it.⁴² The more devastating punishment came twenty-three years later when this incident contributed to the unraveling of Senator Biden's 1988 campaign for President of the United States.⁴³

[31] Similarly, Doris Kearns Goodwin, a speechwriter for President Johnson and a Pulitzer Prize winning historian, suffered severe damage to her reputation as a result of plagiarism allegations.⁴⁴ In 2002, she was at the height of her career as an historian.⁴⁵ Her books were respected by her colleagues and loved by the public. She appeared weekly on national news programs as a commentator providing thoughtful historical perspectives on current issues.⁴⁶ She won a Pulitzer Prize and served on the prestigious Pulitzer Board. As a result of copyright and plagiarism allegations, copies of her book "The Fitzgeralds and the Kennedys" were destroyed.⁴⁷ Speaking engagements were canceled.⁴⁸ Her weekly appearances as a commentator on network and public news programs were canceled.⁴⁹ She was even forced to resign from the Pulitzer Board.⁵⁰

[32] Plagiarism may also harm the person whose ideas are stolen. The English Playwright Bryony Lavery wrote "Frozen" about the psychological fallout from the murder of a young girl.⁵¹ The play was performed on Broadway and nominated for a Tony award.⁵² Dr. Dorothy Lewis, a well known criminal psychiatrist and professor at Yale, was

⁴⁰ Lee May, *Biden Admits Plagiarism in Writing Law School Brief*, L.A. TIMES, Sept. 18, 1987, at 1.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Peter H. King, *As History Repeats Itself, the Scholar Becomes the Story*, L.A. TIMES, Aug. 4, 2002, at A1. Another famous historian, Stephen Ambrose confronted similar charges of plagiarism.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ McKinley, *supra* note 2, at B1.

⁵² *Id.* "Frozen" was nominated for Best Play, Best Performance by a Leading Actress in a Play, Best Performance by a Featured Actor in a Play, and Best Director of a Play. Broadway.com, Broadway's *Frozen* to Shutter on August 22, http://www.broadway.com/gen/buzz_story.aspx?ci=40851.

asked to participate in a discussion with the audience about the play.⁵³ When she read the script, Dr. Lewis found that it copied words from articles she had published and statements she had made in an interview for a New Yorker article.⁵⁴ Dr. Lewis was stunned.⁵⁵ She reported, “I was absolutely staggered. I felt I’d been robbed. She’d lifted my life.”⁵⁶

[33] As suggested earlier, each incident of plagiarism erodes trust on campus. Perhaps the greatest harm occurs when plagiarism goes unpunished. Imagine the law review editorial board that receives an article for publication from a law professor, spends time reviewing it, and commits to publishing it, only to learn that the article incorporates multiple incidents of plagiarism. The law students on this board have a right to expect law professors to set standards of high academic quality because law professors’ reputations and professional advancement depend on the quality of their scholarship. When an incident like this happens, the students naturally wonder whether recycling the work of others is common practice among academics. If the only consequence is the denial of publication for their law review – while another journal may publish the piece tomorrow – our students may have legitimate questions about whether any ethical principles bind legal academics. They may also become much less trusting readers, for if plagiarism is so common, how can they be expected to know if what they read is new original thought of an author or someone else’s recycled expression? This breakdown in academic trust is perhaps the worst consequence of plagiarism, and its roots run deep into our educational system.

[34] Even when an institution acknowledges an act of plagiarism as unacceptable, academic trust can be lost. In the fall of 2004, prominent Harvard law professor Charles Ogletree was accused of plagiarism.⁵⁷ Ogletree’s book *All Deliberate Speed* was written to set forth his “own personal perspectives and observations, and how [*Brown v. Board of Education*] has influenced [his] life.”⁵⁸ Ironically, six paragraphs of Ogletree’s memoir were copied from a book by Yale Law Professor Jack Balkin.⁵⁹ How did this happen? Ogletree explained how the copying

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *See id.*

⁵⁶ *Id.*

⁵⁷ Stephen M. Marks, *Ogletree Faces Discipline for Copying Text*, THE HARVARD CRIMSON, Sept. 13, 2004, available at <http://www.thecrimson.com/article.aspx?ref=503341>.

⁵⁸ *Id.*

⁵⁹ *Id.*

occurred:

I made a serious mistake during the editorial process of completing this book, and delegated too much responsibility to others during the final editing process....I was negligent in not overseeing more carefully the final product that carries my name....

Ogletree...[admitted] that he had not read the passage of Balkin's book that appears in his own work. An assistant inserted the material into a manuscript and intended for another assistant to summarize the passage, according to Ogletree's statement. The first assistant inadvertently dropped the end quote, and the second assistant accidentally deleted the attribution to Balkin before sending draft to the publisher.⁶⁰

[35] This incident is humbling because many of us in law do most of our research electronically. We shift in and out of multiple electronic sources, cutting text as we go, and pasting it into our notes and outline. In view of this common practice, it is easy to imagine how text from one of our sources could inadvertently end up appearing in a finished work. In legal academia, we collaborate constantly but rarely stop to check whether we can trust other's research practices. If we have no agreed upon system for conducting research, how can we rely on each other's work? If it is not clear who is responsible for creating and checking text that appears in an article, how can such mistakes be avoided? How can we collaborate if we cannot be sure that our colleagues will follow careful practices? These lingering questions must be answered so that any mistrust created from incidents like this can be cured.

[36] Whether the fallout from this unfortunate incident has an affect on Charles Ogletree's fine reputation remains to be seen. Professor Ogletree made a public apology, and Harvard has not disclosed whether he was disciplined in any other way.⁶¹ Even this understandable, unintentional incident has harmed the greater academic community. It must have been terribly embarrassing for the two research assistants who worked with Professor Ogletree and made the errors in attribution. Furthermore, it has not reflected well on Harvard, especially since other prominent Harvard

⁶⁰ *Id.*

⁶¹ Sara Rimer, *When Plagiarism's Shadow Falls on Admired Scholars*, N.Y. TIMES, Nov. 24, 2004, at B9.

professors were also recently accused of plagiarism.⁶²

[37] This incident also leaves us with an uncomfortable mistrust of legal scholarship generally. After reading this story, one of my students questioned how much of legal scholarship is actually written by research assistants. This question again reflects the mistrust such incidents inspire. As professors, we must practice what we preach by giving appropriate attribution to students who make original contributions to our work. And we must not let these incidents erode trust in academic scholarship, but instead use them as a foundation for developing practices that will nurture academic trust.

IV. THE HARSH PENALTIES OF COPYRIGHT INFRINGEMENT

[38] Although false attribution generally does not amount to legal misconduct,⁶³ the unauthorized reproduction of someone else's work may expose a writer to liability for copyright infringement. When a person copies expression protected by copyright or uses that expression in creating a new derivative work, he or she may be found liable for copyright infringement.⁶⁴ The powers of a copyright owner are stronger than many people realize. It is possible to commit copyright infringement without actually copying the text of a work itself.⁶⁵ The rights of a copyright owner include the right to create derivative works.⁶⁶ Therefore, a play may be infringed when someone copies a specific character or plot, even if none of the script is copied.⁶⁷ Although intent is an element of plagiarism in some universities,⁶⁸ intent is not an element of copyright infringement.⁶⁹ A musician may be found liable for infringing a copyright in a song even if he never remembers hearing it.⁷⁰ The United States copyright laws impose high economic damages. For each proven act of copyright infringement, a defendant may be liable for statutory damages

⁶² Daniel J. Hemel and Lauren A.E. Schuker, *Prof Admits to Misusing Source*, THE HARVARD CRIMSON, Sept. 27, 2004, available at <http://www.thecrimson.com/printerfriendly.aspx?ref=503493>; see also *supra* notes 45-51.

⁶³ *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23, 37 (2003) (holding that § 43(a) of the Lanham Act (15 U.S.C. § 1125(a)) does not create a remedy for false attribution).

⁶⁴ 17 U.S.C. § 106 (2000).

⁶⁵ 17 U.S.C. § 106(2) (2000).

⁶⁶ *Id.* For a definition of derivative works, see 17 U.S.C. § 101 (2000).

⁶⁷ *See id.*

⁶⁸ *See supra* Section II.

⁶⁹ *See* 17 U.S.C. § 501 (2000).

⁷⁰ *Bright Tunes Music Corp. v. Harrisongs Music, Ltd.*, 420 F. Supp. 177, 180-81 (S.D.N.Y. 1976).

of \$750 to \$30,000. If the infringement is willful, the damages may be as high as \$150,000 for each work.⁷¹

[39] As law students gain a more sophisticated understanding of copyright law, it is important that they remember that although the laws of copyright cover a broad array of expressive work, plagiarism is broader for several reasons. First, copyright law has the safe harbor of fair use.⁷² Under this exception, some reproduction and display of copyrighted works is permitted for certain uses such as news reporting, criticism, commentary or teaching.⁷³ Another limitation of copyright protection is the limited duration of the copyright term.⁷⁴ After the term of copyright in a work expires, the work falls into the public domain where it is free for anyone to copy or use as they like without risk of being sued for copyright infringement.⁷⁵ All works in the United States published before 1923 are in the public domain,⁷⁶ and we can copy them freely without fear of committing copyright infringement. It is important for our students to remember that for plagiarism purposes, there is no public domain. If a writer uses ideas from public domain works without proper attribution, the writer has committed plagiarism.

V. RULES FOR AVOIDING PLAGIARISM

[40] A playwright marks different points of view in a story by assigning each voice a character. In legal writing, footnotes serve the same function. Like the characters in plays, footnotes in law review articles mark different voices in three ways. First, if words appear in quotation marks, the author is saying, these are the words of another speaker. That speaker will be identified in the footnote. Second, when no quotation marks appear in a sentence but a footnote appears at the end of it, the author is saying that the ideas are from the speaker in the footnote, but the words are mine. Third, if a sentence had no quotation marks and no footnote, the author is telling the reader, “These words and these ideas are mine.”

⁷¹ 17 U.S.C. § 504(c)(1)-(2) (2000). The copyright laws also set forth harsh injunctive penalties, such as the impounding and disposition of the infringing articles. *See* 17 U.S.C. § 503 (2000).

⁷² 17 U.S.C. § 107 (2000).

⁷³ *Id.*

⁷⁴ *See* 17 U.S.C. §§ 301-305 (2000).

⁷⁵ *See Id.*

⁷⁶ Prior to the Copyright Act of 1976, the term of a copyright was a maximum of 56 years. Thus, copyrights initiated before 1923 would have expired before the January 1, 1978 effective date of the 1976 revisions. *See* 17 U.S.C. § 301 (2005); Act of Mar. 4, 1909, ch. 320, §§ 23-24, 35 Stat. 1080-1081 (1909) (extending the copyright term to 56 years, 28 years from publication, renewable for an additional 28 years).

Behind every statute, every judicial opinion and every law review article is a person or group of people who have a particular point of view. If you think of your research paper as an organized conversation among these specific characters, it will help you to remember why marking their different voices is so important.

[41] It is worth remembering that footnotes serve other valuable functions in addition to identifying the person who added an idea to our collective school of thought (and avoiding charges of plagiarism). Footnotes provide valuable information about the author's credibility on the topic at issue. When footnotes name experts, they give readers of legal scholarship confidence in the author's authority. They reflect whether the author has read information that has informed his or her understanding of the subject. In this way, footnotes can be used to communicate the quality of research that preceded a piece. A well footnoted piece may demonstrate that the student has done thorough research, and has put time and effort into acknowledging sources. By directing readers to other articles on related topics, footnotes give readers directions to intellectual adventures they many not have found otherwise.

[42] Footnotes also provide the reader with critical contextual information which may be necessary to understand the meaning or truthfulness of a statement. For example, the reader will attach a different substantive value to the statement "We are winning the war in Iraq" depending on who said it, when it was said, and the affiliation of the speaker. The statement will be evaluated differently depending on whether it was made by President George Bush, Carol Lin of CNN or Jon Stewart from the Daily Show. Providing such contextual information through footnotes gives the reader a much more meaningful communication of the statement.

[43] To encourage sound practices in scholarly communications, to protect ourselves from plagiarism and its consequential harm to community trust, I have developed the following Ten Rules⁷⁷ to help us all avoid plagiarism.

1. THINK ABOUT DISTINGUISHING YOUR WORDS AND IDEAS FROM OTHER VOICES.

[44] If we reflect on the importance of each voice as we read, and make it a practice to honor the voices that teach us, we will remember that attribution is not a mere "formality." Yet many law students worry that if

⁷⁷ A list of these rules without explanatory text is attached for easy future reference.

they carefully observe the rules of plagiarism, they will end up with research papers in which almost every sentence ends with a footnote. Often, what has happened in cases like this is that the student has written a review of the law. If you find yourself confronted with this challenge, here is my advice. Stop and give yourself time to think about the subject. Be generous with your imagination. Try to write about the topic when you are away from your sources and after you have had some time to digest your research. Do whatever you need to do to discover your thoughts so that you can add creative insights of your own. Find your voice so that the piece will become your addition to the conversation on this topic.

2. IF YOU CUT CONTENT FROM A SOURCE AND PASTE IT SOMEWHERE ELSE, PUT THE CONTENT IN QUOTATION MARKS IMMEDIATELY, AND NOTE THE SOURCE.

[45] This rule is important to keep in mind while you are taking notes and creating outlines and drafts. Although it may seem like adding the citation is distracting and takes valuable time from the flow of writing, adding the citation immediately will save you time later by providing a quick reminder of where you found the content. In this preliminary stage, the citation form need not be perfect. You can take time to fix the form later, but remember to note the source in some way. If you follow this rule, you will remember that the copied text is not yours, and you will avoid inadvertent acts of plagiarism, like the embarrassing incident which occurred in Professor Ogletree's memoir.⁷⁸

[46] This rule is especially important for long term projects. Months may pass between the time you paste content into your notes and the day when you attempt to use it in a draft. If you noted your source specifically and accurately, you will avoid the maddening and time-consuming process of trying to remember where you found it.

3. PUT ALL BORROWED CONTENT IN QUOTATION MARKS OR AN INDENTED BLOCK, AND CITE YOUR SOURCE.

[47] Quoting is using someone else's expression. When you use any outside source including conversations, interviews, words, images, or graphs from any source, put the borrowed content in quotation marks or indent it as a block quotation and drop a footnote. There are no exceptions. Information from the Internet and public domain works, such as government documents, must be acknowledged. If you are looking

⁷⁸ See Marks, *supra* note 58.

through your notes and cannot remember where you found a certain quotation, either find the source or do not use the quotation. This rule sounds basic, even obvious, but breaking this rule gets many people in trouble.⁷⁹ Violations are easy to catch and often require no more time and effort than conducting a simple Google® or Lexis® search. If you follow careful electronic research practices described in Rule 2, you will protect yourself against inadvertent violations of this rule.

4. USE QUOTATIONS MARKS AROUND ANY NEW OR UNUSUAL TERM, AND CITE THE SOURCE.

[48] Most plagiarism codes have no “de minimus” exception. If you are using even one word because you liked how someone else used it, put that word in quotations marks. This rule is especially important to remember when an author has used a new or unusual term or a term used to describe a particular group. Here is an example of this principle:

Example 1: The “Copy Left” believes that the public’s creative rights are being smothered by corporate efforts to control digital content through copyright protection.

The footnote would reference the source, Robert S. Boynton, *The Tyranny of Copyright?*, N.Y. TIMES, Jan. 25, 2004, at 42.

In this example, the author uses the term “Copy Left” to describe copyright thinkers who advocate a robust public domain. It is important that the author provides proper attribution for this term. Because the meaning of “Copy Left” is not common knowledge. Without proper attribution, it may not be clear whether the term is a label created by the author. Referencing a source that provides a broader definition gives the reader an opportunity to find additional information about this school of thought.

5. WHEN YOU PARAPHRASE, CHANGE THE WORDS, CHANGE THE SENTENCE STRUCTURE, AND CITE YOUR SOURCE AFTER EVERY SENTENCE.

[49] Paraphrasing is rewriting someone else’s idea in your own words. The proper attribution is to note the source, but omit quotation marks. This type of attribution signals to your reader, I borrowed this idea, but I

⁷⁹ See Marks, *supra* note 58; McKinley, *supra* note 2, at B1; Rimer, *supra* note 62, at B9.

am retelling it in my own voice. When paraphrasing, do not forget about Rules 3 and 4. If there is even one key word and you cannot think of an appropriate synonym, put it in quotation marks. It is easy to imagine how inadvertent violations of this rule may occur when working on a computer. Therefore, be especially careful when switching back and forth between electronic documents. When taking notes or creating a draft, always remember Rule 2, and put material you copy from another source in quotation marks and include a citation so that later you will remember that the words are not yours.

Here are examples of improper and correct paraphrasing:

Example 2: Original Quotation:

“Few areas at the intersection of constitutional law and politics generate more controversy or opinions than the federal appointments process. It has become like the weather: almost all commentators and many participants gripe about it, but no one seems able (or at least willing or prepared) to do anything about it.” MICHAEL J. GERHARDT, *THE FEDERAL APPOINTMENTS PROCESS* 1 (2000).

Example 2(a): Improper Paraphrasing: Some words are changed, but not the structure. Citations are missing.

Few areas at the meeting point of constitutional law and politics generate more controversy or opinions than the appointments of federal judges. The complaints have become as inevitable as those about the weather: people complain about it, but no one is capable of doing anything.

Example 2(b): Improper Paraphrasing: The structure is different but not the words. Citations are missing.

The federal appointments process generates more controversy than most areas at the intersection of law and politics. No one seems willing or prepared to do anything about it, and almost all commentators and many participants gripe about it as though it has become inevitable, like the weather.

Example 2(c): Correct Paraphrasing: Both words and

structure were changed. Citations are included.

The process of appointing federal officials provokes intense partisan controversy. MICHAEL J. GERHARDT, *THE FEDERAL APPOINTMENTS PROCESS* 1 (2000). Yet, few in government or academia offer real solutions. *Id.*

[50] This rule is designed to avoid plagiarism which results from electronically cutting a quotation from a source or your notes, pasting it to your draft, and then changing a couple words to make it fit. If, as in Example 2(a) you only substitute a few words from the original source, you may inadvertently change them back to what they were originally as you edit your final draft, and end up with a violation of Rule 3. If you merely invert the sentence structure, as in Example 2(b), you have again violated Rule 3 and committed plagiarism, because you have used the author's expression without proper attribution. You also risk compounding this error because while editing, you may invert it again, thereby incorporating an entire sentence without proper attribution. Remember that in legal scholarship, there are only two acceptable ways to use text from an outside source: either (1) leave an author's expression intact, setting it off in quotations marks or in a block quotation, or (2) change both the words and the sentence structure, and use a citation after every sentence.

[51] When summarizing someone else's work, remember to put a footnote at the end of each sentence. These rules apply to primary authority, like judicial opinions and statutes, as well as secondary authority, like law review articles and treatises. If, for example, you want to summarize key points in a judicial opinion, it is important to use a footnote at the end of every sentence if the idea in the sentence originates from that source. This rule is important because its application will clarify to the reader how much of your text is a summary of this outside source as opposed to your original thoughts about this source. A correct case summary would look like this:

Example 3(a): Correct Case Summary:

In *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994), the United States Supreme Court examined whether 2 Live Crew infringed Roy Orbison's copyright in "Oh, Pretty Woman" by creating a rap parody of the song. In 17 U.S.C. section 107, Congress listed four factors in an effort to reflect how courts apply the fair use defense. *Id.* at 577.

The Court explained that each fair use case must be decided on its own facts, and that no bright line rules apply. *Id.* It held that the Sixth Circuit erred by isolating the fourth factor and concluding that the fair use defense was virtually barred based on the fact that 2 Live Crew sold their song commercially. *Id.* at 583-84. Instead, all four factors “are to be explored, and the results weighed together, in light of the purposes of copyright.” *Id.* at 578 (citations omitted).

[52] The following is an incorrect case summary because most of the paragraph does not clarify whether the ideas come directly from the opinion or represent the author’s interpretation of the opinion.

Example 3(b): Incorrect Case Summary:

In *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994), the United States Supreme Court examined whether 2 Live Crew infringed Roy Orbison’s copyright in “Oh, Pretty Woman” by creating a rap parody of the song. The Court explained that each fair use case must be decided on its own facts, and that no bright line rules apply. Congress listed four factors in an effort to reflect how courts apply the fair use defense. It held that Sixth Circuit erred by isolating the fourth factor and concluding that the fair use defense was virtually barred based on the fact that 2 Live Crew sold their song commercially. Instead, all four factors should be weighed, in view of the purposes of copyright law.

6. PROVIDE THE SOURCE FOR ALL IDEAS AND DEFINITIONS THAT ARE NOT COMMON KNOWLEDGE.

[53] How do you tell whether an idea is common knowledge? If you did not know it before reading it, it is not common knowledge. If your reader might find it unfamiliar, it is not common knowledge. If you are not sure whether the fact is commonly known, protect yourself and use a footnote identifying a readily available source such as a dictionary definition.

7. DO NOT PRESENT FICTION AS FACT.

[54] Violation of this rule can result in dramatic career ending charges of plagiarism. Michael Bellesiles won the Bancroft prize in history for his book *Arming America* about the second amendment and gun ownership in

the United States.⁸⁰ Unfortunately, instead of taking the time to research actual probate records about gun ownership, he created some records. Michael Bellesiles is no longer teaching at Emory.⁸¹ Another dramatic example occurred in 1998, when Stephen Glass, one of the young stars of the New Republic ruined his career as a journalist by manufacturing facts for his stories.⁸² At the time, the New Republic was so highly regarded; it was nicknamed the in-flight magazine of Air Force One.⁸³ The Glass incident came close to destroying the entire publication.⁸⁴

8. IF YOU ARE NOT SURE WHETHER A REFERENCE NEEDS A CITATION, USE ONE.

[55] It is always better to be cautious and careful, and to give your readers more information. If you are not sure whether a citation is necessary, protect yourself from the risk that someone else may think it is, and give proper attribution.

9. KEEP A MANUAL ON PROPER CITATION FORM WITH YOU WHEN YOU WRITE.

[56] Many honor codes specifically indicate that students are presumed to be familiar with appropriate scholarly procedures.⁸⁵ When you are writing, have THE BLUEBOOK: A UNIFORMED SYSTEM OF CITATION or another accepted citation form book at your side for easy reference when you have questions.

10. TAKE YOUR TIME.

[57] Many errors in attribution occur because writers are rushed. It takes time to think and digest new ideas. It takes time for the creative juices to marinate. Give yourself this luxury. Make dates with your writing assignment. If you set aside a specific block of time every week over an entire semester, you will end up with a far superior learning experience

⁸⁰ Jon Wiener, *Historian with a History: The Nominee for U.S. Archivist Has a Prejudice for Dubious Methods*, L.A. TIMES, May 2, 2004, at M1.

⁸¹ *Id.*

⁸² Neil Steinberg, *Fake Articles Sting Editors: Writer from Suburbs Admits Fabrications*, CHI. SUN-TIMES, Jun. 13, 1998, at 4; Rob Mackie, *Friday Review: Video/DVD releases: Shattered Glass*, THE GUARDIAN, Oct. 1, 2004, at 21 (explaining that the incident inspired the movie "Shattered Glass").

⁸³ Mackie, *supra* note 83.

⁸⁴ *Id.*

⁸⁵ For example, the William and Mary honor code provides, "Students are responsible for learning proper scholarly procedure." William and Mary Honor Code, *supra* note 25.

and final product than you can create in one exhausted night. When we are hurried and tired, we are all more likely to make mistakes. The consequences of plagiarism are too high to put yourself in this risky position.

VI. CONCLUSION

[58] Why is it important to name our sources? Avoiding plagiarism to protect our reputations is one answer, but it is not the only answer. Each of our answers will be different. In this final section, I offer some of my answers as fuel for personal and community reflection. I believe that one answer becomes apparent if we reflect on the individual's place in legal scholarship.

[59] 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.

[60] 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.

[61] Once we have clarity on how to maintain trustworthy scholarly practices, we can reflect on the type of community that following an honor code creates for us. If we respect the rules of plagiarism, we can trust that when we read scholarly books and articles, we are reading text that is the

well nurtured intellectual child of the author. When plagiarism occurs, it brings down more than the author. It diminishes all of us by tarnishing the trust that gives our community its academic integrity. Because the academic community reaches beyond our walls, when we follow the rules of plagiarism and trust that others will follow them, we nurture integrity in ourselves and the larger academic community. We all benefit from the unique opportunity law school gives us to explore ideas in class and informally with friends and professors. Academic writing gives us the chance to develop our thoughts more fully, to explore the ideas of others and contribute our voice to an important and lasting conversation. The rules of plagiarism teach us to honor the hard work of others. These rules also give us a reason to trust that if another author uses your carefully crafted text at another school, in another country or in another time, you will be remembered in an attribution. In this way, this extraordinary conversation and each contributing voice are enriched by our honor codes and the rules of plagiarism.

TEN RULES FOR HOW TO AVOID PLAGIARISM

1. Think about distinguishing your words and ideas from other voices.
2. If you cut content from a source and paste it somewhere else, put the content in quotation marks immediately, and note the source.
3. Put all borrowed content in quotation marks or an indented block, and cite your source.
4. Use quotations marks around any new or unusual term, and cite the source.
5. When you paraphrase, change the words, change the sentence structure, and cite your source after every sentence.
6. Provide the source for all ideas and definitions that are not common knowledge.
7. Do not present fiction as fact.
8. If you are not sure whether a reference needs a site, use one.
9. Keep a manual on proper citation form with you when you write.
10. Take your time.

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