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# Law Student Plagiarism: Why It Happens, Where It's Found, and How to Find It

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# LAW STUDENT PLAGIARISM: WHY IT HAPPENS, WHERE IT'S FOUND, AND HOW TO FIND IT

*Kristin Gerdy**

Recent headlines make it clear that plagiarism is a hot topic in America. From small-time journalists like the New York Times' Jayson Blair[1] to world-renowned historians like Stephen Ambrose and Doris Kearns Goodwin,[2] American writers are often caught taking credit for words and ideas that are not their own. Plagiarism and other forms of academic dishonesty are pervasive on the campuses of American universities. A 1999 study on academic integrity at the Pennsylvania State University found that forty-four percent of students admitted to cheating on at least one class assignment.[3] And while students who cheat were more likely to have lower grade point averages, cheating was reported across the entire range of student academic achievement.[4] In 2000, a survey of more than 2,000 students at twenty-one colleges revealed that ten percent admitted they had "borrowed" materials from the Internet, while five percent reported they had taken large passages or entire papers from online sources and submitted them as their own work for academic credit.[5] In 2003, an unpublished study conducted by Rutgers University Professor Donald McCabe indicated that forty percent of college students admitted to having plagiarized at least once.[6]

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1. *See* Howard Kurtz, *N.Y. Times Uncovers Dozens of Faked Stories by Reporter*, Washington Post A1 (May 11, 2003).

2. *See* Stephanie C. Ardito, *Plagiarism, Fabrication, and Lack of Attribution: The Misuse of Information is Pervasive and Professionally Challenging*, 19 Info. Today 16 (July 1, 2002).

3. The Pennsylvania State University, *Cyberplagiarism: Detection and Prevention* <http://tlt.its.psu.edu/suggestions/cyberplag/> (accessed Nov. 4, 2003).

4. *Id.*

5. Amy Argetsinger, *Technology Snares Cheaters at U-Va.*, Washington Post A1 (May 9, 2001).

6. Brian Hansen, *Combating Plagiarism*, 13 CQ Researcher 773, 776 (Sept. 19, 2003) (available at <http://www.cqpress.com/docs/Combating%20Plagiarism.pdf>).

## I. WHY AND WHERE PLAGIARISM OCCURS

Student plagiarism occurs despite the fact that the students themselves know that such conduct is wrong. Although research shows that nearly 90 percent of college students acknowledge that plagiarism is wrong, students persist in plagiarizing either because they think they can get away with it, "or because in today's ethical climate they consider plagiarism trivial compared to well-publicized instances of political and corporate dishonesty."[7]

With the increasing amount of material available on the Internet and the nearly universal access students have to that information, it is increasingly easier for students to plagiarize. Instead of going to the library to find the material, check it out or copy it, and then retype it, students can sit in their apartments, connect to the Internet or to an online database like Lexis or Westlaw, run a few searches, and then either download or cut and paste the material into an electronic document. Both the effort and the time required to plagiarize have significantly decreased. However, while experts agree that new technology has made plagiarizing easier for students, they disagree whether the "ease" of cyberplagiarism has led to an increase in its occurrence.[8]

Many factors lead students to plagiarism, but cheating for the sake of cheating is apparently not among them.[9] In October 2003, a query on the Legal Writing Institute's faculty e-mail discussion list asked respondents where, in their experience, they saw plagiarism problems most often in the law school environment and why they believed such problems occurred. The collective insight of the more than thirty faculty members who responded was remarkably consistent. Respondents believed that law school plagiarism was much more likely to occur in seminar papers and in student law review articles than it was to occur in first-year legal writing memoranda. Peer-on-peer plagiarism, the predominant form in first-year legal writing courses, often occurs when students have access to other students' work on a computer. This problem might be compounded where roommates, couples, siblings, or other students share a computer, or where students in study groups share files with one another.

Whether a student plagiarizes a published source, an Internet page, or the work of a classmate, the reasons behind the practice are remarkably consistent, according to this survey.[10] First, some students

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7. *Id.* at 773.

8. *Id.* at 777.

9. *See* The Pennsylvania State University, *Cyberplagiarism: Detection and Prevention, supra* n. 3.

10. The responses of these law professors were also consistent with the findings of Patrick G.

plagiarize in order to get or maintain high grades. This situation might be particularly prevalent in a law school setting, where the competition between students for spots at the top of the class is intense and where the stakes relating to career success are seen as extremely high. When students believe (either correctly or incorrectly) that they are not performing at the level of some of their classmates, they are more easily tempted to plagiarize.

Second, some students plagiarize unintentionally as the result of sloppiness. This carelessness often occurs when students are imprecise with note taking—either not clearly indicating the source of material or not clearly indicating whether notes are quotations or paraphrases.

Third, other students plagiarize because they procrastinate or have poor time management skills. They wait until the last minute to write the paper and run out of time; then they panic, and they look for a "short cut" to save them. One legal writing professor opined,

> [students plagiarize] because they don't have time to put together original thoughts of their own after doing extensive reading (or they don't have the ability), and they know that the key to a good grade is to go beyond the simple synthesis of existing authority. So, they 'lift' the original thought.[11]

Fourth, still other students claim that they plagiarize because they do not understand what plagiarism is or how to remedy the problem through proper attribution. Often students will write long sections of a paper that are based on a source and will provide one general citation at either the beginning or the end of the section. Frequently these sections will contain verbatim quotations that are not indicated with either quotation marks or pinpoint citations. When asked to explain their lack of attribution, these students often respond with perplexed looks and claims that they did "cite" the authority—they simply did not understand that they needed "a citation after every sentence or after every thought that came from someone else."

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Love and Janice Simmons in their 1998 study on plagiarism in graduate programs. *See* Patrick G. Love & Janice Simmons, *Factors Influencing Cheating and Plagiarism among Graduate Students in a College of Education*, 32 College Student J. (Dec. 1998). Among the factors that these authors found as inhibiting plagiarism were personal confidence, positive professional ethics, fairness to authors, desire to work and learn, professors' knowledge of the subject matter, probability of being caught, time pressures (plagiarizing might actually take more time than writing the paper oneself), the need for the knowledge in the future, fear, and guilt. Among the factors that contributed to plagiarism were grade-, time-, and task-related pressures, a view that professors were lenient and tended to overlook plagiarism, negative personal attitudes, lack of awareness, and lack of competence.

11. E-mail from Grace Wigal, Director of Legal Research and Writing, West Virginia University College of Law, to DIRCON listserv, *Re: Plagiarism* (Oct. 23, 2003) (copy on file with author).

Finally, some students plagiarize because they believe that they are unlikely to be caught or because they believe that faculty members choose to ignore the problem, leading them to determine that the benefits of plagiarism outweigh the risks of being caught.

## II. HOW TO DETECT PLAGIARISM

Once a faculty member knows where and why students tend to plagiarize, the faculty member is still left with the most difficult task— identifying and documenting plagiarized work. This section will first address indications of plagiarized work that can aid faculty members as they read student papers. It will then describe three methods of plagiarism detection and their applicability to both published source and peer-on-peer plagiarism. Finally, it will discuss the advantages and disadvantages of using a formal plagiarism detection program.

### A. The Faculty Role

Even when a faculty member knows that student plagiarism is a possibility, she still needs to know what to look for in order to find it. The signs are not universal, but there are several consistent patterns and some almost conclusive signs of plagiarism.[12] These signs do not constitute absolute proof of plagiarism, but they do provide the faculty member with the basis for undertaking a plagiarism investigation.

A common indication that material is plagiarized is the faculty member's sense that "something about this paper seems familiar . . . ." Whether the source material is another student's paper or a leading publication on the topic, the faculty member's familiarity with that source is often the first, and perhaps the best, initial indication that the author has plagiarized. The ability to recognize source material depends upon faculty members' familiarity with the basic canons of their disciplines. However, even strong familiarity certainly will not enable faculty members to recognize much of the material available to students.

In courses where students submit multiple written assignments or multiple drafts of a single assignment, unexplained and dramatic improvement in writing style and analysis can signal potential plagiarism. Inconsistent vocabulary, tone, sentence structure, depth of analysis, and other factors that give the impression that the writing "doesn't sound like the student" are often the first clue faculty members find when they encounter a case of plagiarism.

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12. *See e.g.* The Pennsylvania State University, *Cyberplagiarism: Detection and Prevention,* supra n. 3; Julie J.C.H. Ryan, *Student Plagiarism in an Online World,* ASEE Prism Mag. (Dec. 1998) (available at <http://www.asee.org/prism/december/html/student_plagiarism_in_an_onlin.htm>).

Within individual papers, changes in formatting within the paper or the occurrence of strange formatting can signal plagiarism. Examples of the type of formatting inconsistencies that often occur with copying and pasting include:

(1) font size (type that is suddenly smaller or larger);

(2) font style (a switch from a Times font to a `Courier font`);

(3) font color (often indicating that material has been downloaded from a webpage because colored text usually appears gray when printed);

(4) a mixture of straight (") and curly (") quotation marks;

(5) strange or inconsistent margins, page numbering, or headings;

(6) inconsistent citation format (a mixture of ALWD citation format, Bluebook format, and even MLA or APA citation format); and

(7) awkward page and line breaks.

Similarly, stylistic inconsistencies can signal plagiarism. Changes in writing style within the paper, characterized by sentences that do not "fit" with the surrounding text, often indicate lack of original authorship. Paragraphs that are markedly more sophisticated in both style and substance than the remainder of the paper are likely plagiarized. Conversely, sometimes students try to personalize a paper by adding a few of their own sentences or paragraphs to a "borrowed" piece. Likewise, incoherent text and problems with flow might signal that a section has been "cut and pasted" from another source.

Lack of recent reference sources, unusual references, or even fake references are common characteristics of plagiarized work, particularly in a legal context. When a student work is missing the most current cases or commentaries on a topic, the cause might well be that the student is relying upon a dated law review article for the analysis, if not the actual language, in the paper.

While most signs of plagiarism come from the text itself, perhaps the most telltale sign of plagiarism comes from the purported author of the piece. A student who is unable to discuss, summarize, or replicate the analysis in a paper he or she supposedly wrote is almost certainly guilty of some form of plagiarism.

## B. Technical Aids in Detecting Plagiarism

Once a faculty member has an indication that plagiarism has occurred within a student's paper, she must undertake an in-depth investigation to locate the source material upon which the suspect paper is based. Three investigative processes are most effective: using a full-

text database like LexisNexis or Westlaw, using Internet search engines, and using specialized plagiarism detection software or services. The choice of technique will depend on the suspected source material, the faculty member's time allowance, and the institution's budget.

When a faculty member suspects that a student might have plagiarized from a case, law review article, or other traditionally published work, the most effective investigation will make use of the LexisNexis and Westlaw online full-text databases. Similar databases in areas of social or political science (usually available at the law library or university library) might also be fruitful. While full-text database searching does take time, it is considerably faster than searching manually for source material through hard copy sources. An additional benefit is that full-text database searching does not require the law school to incur additional monetary costs, since most faculty members and student research assistants who might assist in the investigation are included in the school's unlimited access contracts with the vendors.

In order to successfully use an online database to identify source material, the faculty member must first select suspect passages from the potentially plagiarized paper. These passages could be as short as a three- or four-word phrase or as long as a paragraph, but they should be unique and likely to have been plagiarized in their entirety. While it might be possible to locate plagiarism using a partially plagiarized phrase, it will require the faculty member to cull through many more "hits" to find the actual source. Once the suspect passages are identified, the faculty member must input them into the service, typically the combined law review, periodical, and text databases. Beginning with a phrase search will allow the database to retrieve any sources that contain the exact phrase, but inability to retrieve source material from the phrase should not end the investigation. A search using the two or three most significant words and proximity connectors can retrieve source material from which the student borrowed language and ideas but not necessarily verbatim quotations.

If the faculty member suspects plagiarism but is unsuccessful in locating source material on a commercial database, it is possible that the student found that material on the Internet, and investigation using Internet search engines can prove effective. Search engines like Google, Altavista, Metacrawler, and others are free and easily accessed by faculty. The process for searching materials is similar to using the full-text databases, but faculty members should realize that they will likely have to cull through many more sources in order to locate the plagiarized source. In addition, the coverage of each search engine is different, and in order to obtain the most reliable set of results, the faculty member might have

to run the search in multiple engines or use a "meta" engine like Copernic,[13] which allows a search in multiple engines simultaneously.

Perhaps the biggest deterrent to using either a full-text database or an Internet search engine to detect plagiarism is the time investment required. The faculty member must decide which phrases and ideas to search, determine which databases to use, and attempt to replicate the student's thinking. Further, it is important that the investigator not stop looking simply because the first search phrase chosen does not "hit." Plagiarism investigation is much like putting together a jigsaw puzzle— one can look at the pieces for a long time and fail to see how they fit together. Then suddenly one piece fits with the result that piece after piece becomes clear, and the final picture materializes. The first several phrases searched might fail to retrieve source material, but eventually one phrase will, and from the source of that phrase the trail of plagiarized materials unfolds—often through examination of the references within the one identified source.

In addition to full-text or search engine investigation, faculty members can use specialized plagiarism detection software to investigate potential infractions. These services analyze the electronic version of the suspect paper and compare it with a database of materials seeking similarities. Two goals motivate the use of detection software: (1) to decrease the amount of time involved comparing texts; and (2) to increase the "universe" of texts for comparison.

Commercial plagiarism detection software falls into three categories: (1) software that compares specified documents for similarities; (2) software that searches the Internet for similarities; and (3) software that enables faculty members to perform "authorship" tests.

When peer-on-peer plagiarism is suspected, a plagiarism detection service that compares documents for similarities will likely be most effective. Stand-alone software packages like CopyCatchGold,[14] WordCheck,[15] and CopyFind[16] allow the user to compare files on the hosting computer using key word matching and frequency patterns. The limitation of this type of service is that it only allows the user to check papers against other papers housed on that computer, so faculty must obtain and retain electronic copies of all student work in order to accumulate a sufficient collection of potential source material.

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13. Copernic's meta search software can be downloaded at no charge from its website: http://www.copernic.com/en/index.html.

14. Access this software at http://www.copycatch.freeserve.co.uk.

15. Access this software at http://www.wordchecksystems.com/.

16. Access this software at http://www.plagiarism.phys.virginia.edu/Wsoftware.html.

When a faculty member suspects that material is plagiarized from Internet sources but does not want to independently locate source material by way of a search engine, software that searches the Internet for sources with similarities might be appropriate. Stand-alone software that can be downloaded to the faculty member's computer is available in the EVE2: Essay Verification Engine.[17] Unlike an independent search using a search engine, an EVE2 search will indicate the "strength" of the test—high, medium, or low—and results are presented on screen with highlighted passages and links to potential Internet source material.

Faculty members who prefer delegating plagiarism detection to independent companies can subscribe to services like MyDropBox[18] (formerly EduTie.com), Plagiarism.org,[19] and its companion student site Turnitin.com.[20] These companies collect student papers in electronic format over the Internet, conduct plagiarism checks, and return result reports. Alternatively, faculty members who suspect plagiarism can submit electronic versions of student papers themselves. The service then compares each submission with files in its database and on the Internet and applies a comparative algorithm to identify possible plagiarism. Results are returned to the faculty member via e-mail within twenty-four hours after submission. Result reports include an assessment of the probability of plagiarism within the paper and identify potentially plagiarized material, providing hyperlinks to source material on the Internet.

The most important limitation of these services for law school faculty is that the universe of potential source material canvassed by these services does not include the proprietary databases on LexisNexis and Westlaw, despite their presence on the Internet. Therefore, unless a faculty member suspects that the majority of students who might plagiarize in a class would take information from the general Internet, the investigations performed by these services might be insufficient to identify many instances of law school plagiarism.

Although it does not identify the source material for potentially plagiarized writing, authenticity-checking software like the Glatt Plagiarism Program[21] might be useful for faculty who wish to confirm suspicions of plagiarism. Derived from a reading comprehension tool called the "cloze procedure,"[22] Glatt's software removes every fifth word

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17. Access the EVE2 website at http://www.canexus.com/eve/index.shtml.

18. Access the MyDropBox.com website at http://www.mydropbox.com/.

19. Access the Plagiarism.org website at http://www.plagiarism.org.

20. Access the Turnitin website at http://www.turnitin.com/.

21. Access the Glatt Plagiarism Services website at http://www.plagiarism.com.

22. The "cloze procedure" was developed in 1953 by Wilson Taylor. For explanation and

from the suspect paper. The student author is then asked to replace the missing word. The software uses factors including the accuracy of the replacements and the time spent in making replacements to assign a "plagiarism probability score."

Faculty members who prefer to use formal plagiarism detection services (as opposed to manual plagiarism investigation using either full-text databases or Internet search engines) often do so because they believe this practice lets students know that they take plagiarism seriously. This attitude, coupled with the increased chance of detection, might have a deterrent effect on students who would otherwise be tempted to turn in plagiarized work. Finally, the use of a "scientific" detection program with its complex algorithm provides actual "evidence" of the infraction, which might be necessary if the faculty member moves for sanctions against the offending students.

Conversely, faculty members who oppose or do not prefer the use of formal plagiarism detection services point out the shortcomings of such systems, particularly when compared to manual investigation techniques. First, faculty members opposed to such services decry a "quick fix" mentality[23] that they believe allows teachers to ignore the issues that led to plagiarism in the first place.[24] Reliance on automated plagiarism detection could cause teachers to neglect teaching proper research process, attribution, or citation.

Second, faculty members who subject all student work to automatic plagiarism detection (particularly those who require students to submit their papers to a plagiarism detection service over the Internet) risk alienating students.[25] Students might see the professor as suspicious, and faculty "risk becoming the enemies rather than the mentors of [their] students . . . replacing the student-teacher relationship with the criminal-police relationship."[26]

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application of the cloze procedure in reading comprehension, *see e.g.* Linda Steinman, *Considering the Cloze*, 59 Canadian Modern Lang. Rev. 291 (Dec. 2002) (available at <http://www.utpjournals.com/product/cmlr/592/592_TCL_Steinman.html>). For specific discussion of the cloze procedure in detecting plagiarism, *see* Steven J. Grubaugh et al, *Writer's Cloze Performance: Detecting Plagiarism at Four Grade Levels*, 33 Reading Improvement 66 (Summer 1996).

23. Hansen, *supra* n. 6 at 780; Rebecca Moore Howard, *Should Educators Use Commercial Services to Combat Plagiarism?* 13 C.Q. Researcher 789 (Sept. 19, 2003) (available at <http://www.cqpress.com/docs/Combating%20Plagiarism.pdf>).

24. The importance of teaching law students about plagiarism and the necessity of having law school plagiarism policies available and publicized to students is the subject of an excellent article by Terri LeClercq, Senior Lecturer in Law, and Norman W. Black, professor in Ethical Communication in the Law, at the University of Texas. Terri LeClercq, *Failure to Teach: Due Process and Law School Plagiarism*, 49 J. Leg. Educ. 236 (June 1999).

25. Hansen, *supra* n. 6 at 780.

26. Rebecca Moore Howard, *Forget About Policing Plagiarism: Just Teach*, The Chron. of

Third, plagiarism detection services scan an incomplete "universe" of source materials. While they might be able to scan millions of discrete web pages, they cannot include books and the multitude of other materials not currently available on the Internet or residing on the faculty member's own computer. Further they do not allow searches of subscription databases like LexisNexis, Westlaw, and other literature databases such as ERIC and Ebsco, or online materials in .pdf format.

Fourth, plagiarism detection services might increase the potential for "false positives"—indications of plagiarism where it really has not occurred. Because the programs make only literal comparisons of text blocks, they cannot screen for incorrect or infrequent attribution or irregularities in citation that would mitigate a plagiarism case. Hence, even using such a service, the faculty member (or someone else) will still have to review the results to determine whether the work is actually plagiarized.

Fifth, to be used effectively and efficiently, submissions must be in electronic format, a requirement that might be burdensome for both faculty and students. Finally, some faculty members have raised potential copyright and privacy concerns that arise when student papers are submitted and become part of the online depository on a commercial site.[27]

Regardless of what technique they use to detect plagiarism once it happens, an understanding of where it is likely to occur and what motivates students to do it can make faculty members better teachers and, perhaps more importantly, better mentors to their students.

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Higher Educ. 24 (Nov. 16, 2001); republished as *Don't Police Plagiarism: Just Teach!* 67 Educ. Dig. 46, 47 (Jan. 2002).

27. *See* Andrea L. Foster, *Plagiarism-Detection Tool Creates Legal Quandary,* The Chron. of Higher Educ. 37 (May 17, 2002).