How to Avoid Committing Plagiarism in Law School

Ruth Ann McKinney
Director, The Writing and Learning Resources Center
The University of North Carolina School of Law
© 2006

By the time you’ve gotten to law school, you have probably learned a lot about what constitutes plagiarism in scholarly settings. If not, you should visit the official website for UNC’s Writing Center at http://www.unc.edu/depts/wcweb/handouts/plagiarism.html immediately for an excellent and thorough discussion of plagiarism. The purpose of the present paper is: (1) to refresh your memory about what constitutes plagiarism and why it is a particularly serious matter in university settings; (2) to make sure you’re clear on the significant consequences of intentional or even careless plagiarism under UNC’s Code of Student Conduct; (3) to introduce you to the professional conventions surrounding use of another’s words or thoughts in the practice of law; (4) to make sure you’re clear on how to avoid plagiarism in RRWA and in other practically oriented writing settings throughout your law school experience; and (5) to make sure that you consider how to avoid plagiarism in pure scholarly writing while you are in law school.

Part I: What constitutes plagiarism and why it is a serious matter in university settings.

Scholarship is about the development of ideas, with high quality scholarship being about the development of new ideas. New ideas are formed as scholars think about existing ideas and then weave their own thoughts into what has gone before, creating new ideas in the process. Because the development of new ideas rests on the ideas that have gone before, it is critical for writers to be clear about what ideas are their own unique thoughts, and what ideas are thoughts they discovered through research or other means. Any time a scholar deliberately, or even recklessly, leads a reader to believe that ideas or words are those of the author, when they are not, the scholar is plagiarizing.

The UNC Honor Code adopts a widely accepted view of plagiarism, defining it in the Code of Student Conduct as “the 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." Instrument of Student Judicial Governance Sec. II.B.1. Under this definition, it is unacceptable (and constitutes plagiarism) to borrow someone else’s exact words, or even to summarize their ideas in your own words, without giving the original author (or source, where there is no specific author) clear credit for those words or ideas. Note that under UNC’s campus-wide Honor Court system (which is in effect at the Law School as well as the undergraduate school), plagiarism that results from carelessness is as abhorrent as plagiarism that results from a conscious intent to deceive.

Committing plagiarism is a serious matter in any university setting because the business of education is rooted in the study of old ideas and the integration of those old ideas in the development of new ideas. It is critical for all scholars, faculty and students alike, to
take care that proper attribution is given for the existing ideas upon which their own thinking (and writing) is built. At the law school, you will have many opportunities to think about law and to turn in written work both in the classroom and in extracurricular activities such as journal publications or moot court competitions. The Code of Student Conduct, discussed in the following section of this paper, prohibits plagiarizing in all student work and carries significant consequences if such plagiarism occurs.

Part 2: The consequences of intentional or reckless plagiarism in the UNC Honor Court system.

UNC has a student-run Honor Code that has been in place since the University’s inception. Under this system, anytime a student deliberately or recklessly presents another’s ideas or words as the student’s own while enrolled at the University, the student is subject to action by the Honor Court. This rule applies equally whether the student is submitting a draft or a final product, and whether the student is submitting the work in a formal class setting or as part of an extracurricular exercise (such as a national competition for a moot court team or an article for the Law Review, or even during a competition for a spot in one of these student organizations).

If a student is reported for a possible incident of plagiarism, the student’s case is first reviewed by the student Attorney General for that student’s school. Like a District Attorney, the Attorney General makes the decision to bring a charge or to not bring a charge based on an initial investigation. If the Attorney General brings a charge, a student defense counsel is chosen, a plea is entered, and the matter will then go to a hearing before the Honor Court for a trial on the merits and/or to institute sanctions. If the student pleads guilty or is convicted, sanctions may include possible suspension, expulsion, and failure in the course or, at minimum, on that assignment.

For a law student, the consequences of a report of possible plagiarism are even more far-reaching than they are for students in other departments and programs. Under the rules for admission for the practice of law in most states, the student would have to report the alleged violation and the results of the investigation to the State Board of Law Examiners—even if the Attorney General decides not to bring a charge after investigating a reported incident or even if a student is found innocent. The State Board of Law Examiners would then assess on its own whether the violation (or alleged violation) raised questions of integrity that would cast doubt on the student’s moral character and fitness to be licensed to practice law.

Part 3: The conventions for using the words and/or ideas of another in practical legal writing.

While the conventions surrounding our understanding of plagiarism in a scholarly setting are generally stable across all academic disciplines, the conventions (expectations) regarding the use of another’s words in the non-academic practice of law are unique to the legal setting. Because legal reasoning rests so squarely on precedent, much of legal argument is built upon arguments developed in the past. Additionally, words in the practice of law are the heart and soul of how lawyers make and win arguments, and the use of
exactly the right term to reflect a particular concept is critical. Words that express complex legal concepts develop special meaning over time as they are repeated over and over, from one generation to the next. All words with special legal significance (“terms of art”) were new at one time, but eventually gain a life of their own through repeated use, becoming public knowledge or part of the public vocabulary of the legal profession.

Once a term of art becomes part of the general knowledge of well-educated lawyers, it also becomes part of our collective professional vocabulary and no longer requires attribution to an original source as a matter of plagiarism. However, because it is often difficult to decide what information or words are “common knowledge” as we research a new area of law, it is often also difficult to determine when a specific word or term that we uncover needs to be surrounded by quotation marks or when an idea needs to be attributed to an original source. Additionally, there are many times when a savvy legal writer would want to include quotation marks around a particular phrase or word to alert the reader to the fact that the phrase or word is a term of art and/or that the concept represented by the quoted phrase or words is rooted in a respected source or legal authority clearly cited by the author.

Conventions surrounding the use of another’s words or ideas in the practice of law are further complicated by the fact that much of what lawyers read and write about (appellate cases, statutes, and administrative regulations) result either from a judge summarizing the carefully crafted arguments (generally in writing) of attorneys arguing for opposing sides, or result from committee decisions concerning legislation or regulations drafted after much lobbying from counsel representing disparate interests. In each of these situations – the drafting of judicial opinions, the drafting of legislation, and the drafting of regulations – the “authors” of the underlying ideas have a very different sense of ownership of their words and ideas than do scholars in academia. In an academic setting, use of another’s words or ideas without attribution is completely unacceptable and threatens the livelihood of the original scholar. In the practice of law, however, the lawyer’s primary goal is to influence a legal result and thus practicing attorneys are not invested in the ownership of their words and ideas in the same way that academic scholars are. In many situations, in fact, a lawyer might want to remain behind the scenes and would not want to be known as the source behind a concept or as the drafter of specific language. Most lawyers would be quick to tell you that it is affirming and a source of pride to find their own words or ideas repeated in a court’s opinion or a piece of legislation and that attribution is not part of their agenda.

Nonetheless, despite less of a sense of ownership of their own words, lawyers in practice cite to authority with more frequency than do writers in many other disciplines. The Bluebook, in fact, has over 400 pages devoted to the details of how to cite properly. All this attention to proper citation arises because the “weight” (status) of the cited authority lends credence to a lawyer’s argument, and the source of words or ideas matters a great deal to decision-makers. To the legally trained reader, the source of an idea or of words influences how the reader assesses the importance or value of those words or ideas. Moreover, the importance of using quotation marks to indicate that exact words have roots in another source rests in the parallel importance of the words themselves. The less significant and less powerful the impact of a court’s words or a statute’s language, the less important it is to use exact quotations and the more valuable a well-worded paraphrase of
the concepts becomes. Whether paraphrasing or using exact quotations, however, the art of persuasion encourages a practicing lawyer to cite to reliable authority.

Despite the fact that practicing lawyers take a somewhat unique view of the acceptable use of another’s words or ideas in practical writing (at least as compared to the view taken by scholars in an academic setting), law students need to follow academic standards when submitting any writing in law school. Whether submitting a draft for class, a complete paper for an upperclass seminar, a memorandum of law for an intra-school competition, or a full-blown brief for a national competition, students need to be aware of the prevailing academic definitions of plagiarism and must never submit the words or ideas of another as their own in the law school setting. Similarly, when submitting writing that results from a group or collaborative activity, students should be clear about the boundaries that are set by their professors or the school concerning the attribution of the words used in any document submitted by the group or by individuals within the group.

**Part 4: How to avoid committing plagiarism in RRWA.**

RRWA, like other skills-based courses you will take in law school, teaches you writing conventions as they are followed in the practice of law. Nonetheless, we are also an academic course functioning within an academic community, and we are subject to the standards set by UNC’s Honor Court concerning plagiarism. Happily, the Honor Court’s standards are consistent with “best practices” in the legal profession, and you will have no trouble with possible plagiarism (and no trouble in the practice of law) if you apply the following principles to your work in RRWA and in your practice as an attorney:

- When you conduct your research, be sure to take careful notes so that you do not later confuse your own ideas and words with those of a source you uncovered during your research.

- When you are summarizing a rule of law, do not feel that you have to quote the words of a court or the exact words of a statute for every principle you are including in your memo or brief. Much of the time, a summary in your own words is easier to follow and has more punch than cutting and pasting a series of quotations that have no particular flare of their own. When summarizing the thoughts of the court, or summarizing a piece of legislation, you will need to cite to the authority or authorities whose ideas you are summarizing. When summarizing or paraphrasing, it is not enough to change a few words – you must think about what you’ve read and synthesize the ideas in your own words (with attribution to the original author).

- When you find language in a case or statute that is particularly compelling, either because it is exceptionally eloquent or because it introduces words that are “terms of art” within the area of law you are addressing, you will need to use quotation marks for two reasons: (1) to avoid plagiarism, and (2) to let your reader know that these words are special, and have special meaning within this area of law. When you borrow exact words that have intellectual significance, even only one or two, you must include quotation marks around them and pinpoint cite to the source of those words. Later in your paper, if you refer back to those special words, you may choose
not to continue to use the quotation marks unless you are, again, wanting to bring to
your reader’s attention that they are words with special meaning.

- Carefully read and follow Rule 5.2(a) – 5.2(d), starting on page 69 of The Bluebook,
  whenever you use a quotation but need to alter it slightly so that it fits in your own
  work.

- Carefully read and follow Rule 5.2(e), on page 70 of The Bluebook, whenever you
  use a quotation that is quoted in the case you are citing (for example, if you are using
  words from the Smith case, but the judge who wrote the Smith case took those words
  from and cited the Jones case). See also Rule 10.6.2 on page 92.

- Carefully read and follow Rule 5.3, starting on page 70 of The Bluebook, whenever
  you leave words out of a quotation, borrowing only part of a phrase or sentence from
  its original source. When you are rephrasing (or paraphrasing) the words in a
  quotation, but keeping some of the original words, you must follow Rule 5.2,
  keeping quotation marks around even one significant word that you have not
  changed.

Anytime you have questions about whether to cite authority, how much authority to
cite, and whether you need to incorporate quotation marks in your writing, err on the side of
cautions by providing clear citation and attribution. We are here to help. Feel free to contact
your RRWA professor, your RRWA T.A., an Honors Writing Scholar, or the Director or
Deputy Directors of RRWA if you have any concerns about the proper way to attribute
ownership of ideas and words when you submit your work in RRWA.

Part 5: How to avoid committing plagiarism in other settings while you are a law
student.

When submitting drafts or final products in writing in any law school class,
interdisciplinary class, or extracurricular activity, you are bound by the rules prohibiting
plagiarism that are set out in UNC’s Code of Student Conduct. Be sure you are clear about
your individual professor’s guidelines concerning all written assignments, even those that
are a very small part of the overall grade for the class or even with early drafts. Similarly,
be sure you understand the rules of plagiarism when participating in any extracurricular
activities at the law school. If you are taking a course in another school or department, be
aware of the conventions and expectations within that discipline. The importance of being
aware of differing expectations concerning plagiarism is especially important for joint-
degree students.

Under UNC’s Code of Student Conduct, students can commit plagiarism
intentionally or unintentionally. Intentional plagiarism occurs where the student deliberately
intends to take credit for someone else’s words or ideas. Unintentional plagiarism occurs
where the student writes a paper in “reckless disregard” of the risk of plagiarizing the ideas
or words of another.

To avoid committing intentional or unintentional plagiarism, make sure you
understand what constitutes plagiarism and take meticulous research notes from the
beginning to end of your project. Also, become knowledgeable about The Bluebook (or other forms of citation if you are writing an interdisciplinary paper where The Bluebook is not in effect), especially when and how to cite the source of your ideas and words. Rule 5 in The Bluebook concerning alteration of quotations is an especially important Rule to follow in legal writing to avoid plagiarizing. Finally, budget your time well so that you do not inadvertently plagiarize because you are too tired to think clearly about an assignment. As with your writing in RRWA, there are lots of professionals at the Law School who are here to help you with questions you may have about how to quote and paraphrase properly in all your written work. When in doubt, ask your Professor, the Associate Dean of Academic Affairs, or the Assistant Dean of Student Affairs concerning appropriate attribution in your writing.