

MEMORANDUM

TO: All Lawyering Skills Students

FROM: Lawyering Skills Faculty

RE: Plagiarism Policy

Plagiarism is an extremely serious offense that may result in discipline. There are two major types of plagiarism:

1. failure to cite the source of an idea, and
2. failure to use quotation marks around a direct quote.

Use of an idea. If you use the idea (or organization) of another author, you must attribute that idea to the other author. Merely paraphrasing the other author's words is not sufficient. You must also cite to the other source.

Use of the same words. If you use the idea and the words of another author, you must put quotation marks around those words and cite to the source. Both are required. If either the quotation marks or the cite is missing, you have plagiarized the other author's work.

Intent is not required for a writing to be plagiarized.

Using the ideas or words of another student may also be plagiarism.

Regardless of what rules you may have followed on this subject before law school or what practices you may observe elsewhere, this is the standard that you must adhere to in all of your Lawyering Skills classes, in all Moot Court briefs, and in all Law Review or Computer Journal papers.

PLAGIARISM

To help you avoid plagiarism and learn appropriate attribution, consider the examples based on this excerpt:

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

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

Rule 1: You must acknowledge direct use of someone else's words.

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

To avoid plagiarism, you need quotation marks around the words printed in bold, and a citation at the end of the sentence. When you **quote or copy words directly** from the source, you must use quotation marks and give a citation.

Rule 2 You must acknowledge any words you paraphrase from any source.

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

simply be unaware of certain handicaps.

To avoid plagiarism, you need a citation. If you change a few words and mix up the order of the source sentence, you must give a citation. It is permissible to paraphrase only if you give proper attribution.

Rule 3 You must acknowledge your direct use of someone else's idea.

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

To avoid plagiarism, you need a citation because it expresses the same ideas as the source article. Unlike the first two examples, comparing the two statements side by side might not yield conclusive proof of plagiarism. But if you borrowed this idea from the source, you must include a citation. If you are ever in doubt, you should err on the side of giving credit; remember that a citation increases persuasiveness.

Electronic databases: Material obtained through any database, including LEXIS NEXIS ©, Westlaw ©, etc., must be attributed. Bluebook Rules 10.8.1(b) and 17.3. If the original source of any Internet material is not identified, you should document its source with a similar citation form.

CAREFUL LEGAL SCHOLARSHIP

Example 1: *When defining statutory terms, legislators should not attempt to draft a complete list specifying everything the statute is intended to cover. Such lists will inevitably be incomplete; someone will later make a claim that the legislators did not anticipate. Further, the statutory list may quickly become outdated.*

You should have a citation to the source preceded by a signal, pursuant to Bluebook Rule 1.2. Legal writers often **build on other sources** to arrive at their own analysis or conclusion. Sometimes a source may trigger a related idea. In these instances, even when there is no inference of plagiarism, citation to the original source, with an appropriate signal, should be included.

Example 2: *Arline illustrates that it is possible for the statutory definition included in section 504 of the Rehabilitation Act to be construed in such a way as to bring many handicapped individuals within its reach School Board v. Arline, 480 U.S. 273 (1987).*

You should have a citation not only to the case but also to O'Connor's law review article and page number where she discusses the case. When citing to a case mentioned in a law review article or referenced within another case (even if you go on to read the case, as you should), you should also attribute the compilation of the case and the idea to the author of the article.

UNAUTHORIZED COLLABORATION

Collaboration: Students may share work products only up to the point that their professor authorizes team work. Without the professor's authority, use of another student's written work is plagiarism.

CAREFUL LEGAL SCHOLARSHIP

What follows is a two paragraph section taken directly from a law review article, Note, *Legal Fictions Mask Human Suffering: The Detention of the Mariel Cubans Constitutional, Statutory, International Law, and Human Considerations*, 62 So. Cal. L. Rev. 1733, 1754-55 (1989) (footnotes renumbered) (emphasis in original). Then, several examples are used to illustrate how a fictional writer may use this law review article to commit plagiarism in the writing of a brief or memorandum. These examples are provided to illustrate commonly occurring instances of plagiarism so that you will avoid these usages. The examples given do not represent every possible unattributed use of another's work, but are intended to clear up confusion in some areas. Explain why the examples are plagiarism, and provide proper citation.

Original:

Even if the Mariel Cubans are not being "punished," their civil detention still denies them their liberty interest in being free from prolonged detention. The Fourth and Eleventh Circuit Courts of Appeal have held that excludable aliens have no liberty interest in freedom from prolonged detention, and therefore, are not entitled to due process of law. These courts reason that detention, even for as long as seven years, is merely a part of the exclusion process. These courts inaccurately rely on the well-settled principle that "an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative."¹

The problem with these circuit court decisions is that they fail to distinguish between an alien's interest in his or her "initial admission" or "application" for admission, which in most cases has already been processed and denied, and his or her interest in being free from arbitrary and prolonged detention; these two interests are distinct. Consider that the courts have long recognized that an alien's interest in admission is distinct from his or her interest to be free from arbitrary and prolonged criminal detention, the latter of which is protected by the due process clause.²

A criminal sentence can only be handed down in accordance with the due process clause, but why aliens should only receive the protections of the due process clause after violating our criminal laws, and not prior to civil detention, has never been satisfactorily explained.³

¹ Landon v. Plasencia, 459 U.S. 21, 32 (1982) (emphasis added). Further, at least one commentator has suggested that this principle is not well settled at all and is, in fact, incorrect. See Note, The Measure of a Nation, 73 VA. L. REV. 1501 (1987) (authored by Christopher R. Yukins) (suggesting that the history of Supreme Court decision making indicates that aliens do have an interest in admission to the United States, but that the process due is defined by those procedures which Congress has provided to an alien).

² See Wong Wing v. United States, 163 U.S. 288 (1896); United States v. Henry, 604 F.2d 908 (5th Cir. 1979).

³ See Jean v. Nelson, 472 U.S. 846 (1985) (Marshall, J., dissenting). Justice Marshall presents an impassioned critique of the logic behind the Fourth and Eleventh Circuit decisions. The paradoxical nature of this distinction becomes more obvious, and less tolerable, when one considers that the conditions of the "civil" confinement are often worse than the criminal confinement, not to mention the fact that the civil confinement. See supra notes 25-39

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PLAGIARISM EXAMPLE 1

Several federal appellate courts have held that excludable aliens have no liberty interest in freedom from prolonged detention and, therefore, have no due process rights.

PLAGIARISM EXAMPLE 2

In holding that the due process clause does not apply to the Mariel Cubans, the courts have failed to distinguish between two interests, the Cubans interest in freedom from arbitrary and prolonged detention and their interest in the initial application for admission in to the United States.

PLAGIARISM EXAMPLE 3

Those federal appellate courts that have denied a due process liberty interest in freedom from prolonged detention reason that prolonged detention, even for several years, is just a part of the exclusion process. In so holding the federal appellate courts erroneously rely on the Supreme Court's holding that "an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative." Landon v. Plasencia, 459 U.S. 21, 32 (1982).

PLAGIARISM EXAMPLE 4

As one recent commentator has noted, these circuit court decisions are problematic because they fail to make the distinction between an alien's interest in his initial admission and his interest in freedom from arbitrary detention. *See Note, Legal Fictions Mask Human Suffering: The Detention of the Mariel Cubans Constitutional, Statutory, International Law, and Human Considerations*, 62 S. Cal. L. Rev. 1733, 1754-55 (1989). The United States Supreme Court has, however, long recognized that these two interests are distinct because the freedom from arbitrary and prolonged detention in the criminal context is protected by the Fifth Amendment due process clause. *See, e.g., Wong Wing v. United States*, 163 U.S. 228 (1896).

(ENDNOTE 11) The format for these examples is inspired by Ralph D. Mawdsley, Legal Plagiarism (National Organization on Legal Problems of Education 1985) (using examples from H. Bond, T. Seymour and J. Stewart, Sources: Their Use and Acknowledgment (Trustees of Dartmouth College 1982)).