

MEMORANDUM

TO: All Students in Lawyering Skills Courses

RE: Lawyering Skills Course Rules and Ethics Guidelines

During orientation, all of you received a copy of the *John Marshall Law School Student Handbook*, which contains the law school's Code of Conduct. You also took the following oath:

As I begin the study of law, I acknowledge and accept the privileges and responsibilities inherent in my becoming a lawyer, and the high standards and ideals that accompany such an undertaking.

Accordingly, I pledge that I will at all times conduct myself with the dignity befitting an advocate and counselor in a learned profession.

I commit myself to service without prejudice, integrity without compromise, and the diligent performance of my duties with the utmost good faith.

I acknowledge that I will be a zealous advocate, but will act with courtesy and cooperation toward others, and I will at all times behave in a professional manner.

I will remember that my responsibilities to the legal profession permeate my actions both as a student of the law and, therefore, as a member of the bar.

I accept my new status as a professional, and will approach my colleagues and adversaries alike with the same integrity, professionalism and civility, which I expect from them.

This pledge I take freely and upon my honor.

All students intend to adhere to the rules of ethics when they enter law school. Most ethics violations, however, arise out of situations where students or lawyers have either failed to recognize ethical issues, or have felt torn between two alternatives. We understand that it is not always easy to apply the general provisions of the Code of Conduct to specific situations. In addition, there are a number of questions that arise in the context of Lawyering Skills classes that are not specifically addressed in the Code.

For this reason, please treat the following as Lawyering Skills course rules. We have also included comments and illustrations about some of the situations that may develop in our course. Obviously, it is not possible to anticipate every question involving ethics and writing, but we hope this memorandum may be of help in resolving some of the questions you may have. If you are not certain whether particular conduct is permissible, **please ask your professor**. The Student Code of Conduct is found in the Student Handbook.

SUPPLEMENTAL COURSE RULES

ACADEMIC HONESTY AND INTEGRITY

I. Plagiarism. One of the first concerns in Lawyering Skills relates to the definition of plagiarism. The John Marshall Law School plagiarism policy is contained in the Code of Conduct and provides:

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 citation 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, Computer Journal, or RIPL papers. This definition may be supplemented for Lawyering Skills classes.

General Commentary: Most Code of Conduct proceedings involve plagiarism. Plagiarism is a form of theft, specifically, the theft of another's ideas. Plagiarism is also an attempt to gain an unfair advantage over other students by misrepresenting the ideas of another as one's own. Further, plagiarism defeats the pedagogical goals of the Lawyering Skills program. In order to become an excellent writer, you must write your own work. Unless you and your professor

focus on *your* work, you will not improve your ability to research, analyze, and organize.

At the same time, plagiarism is an uncomfortable concept for lawyers. Lawyers must have authority for every statement they make in court. Further, in drafting commercial documents, it is often most efficient to look first at a legal form and then modify it for use by the client.

(1) Comments on the use of another's ideas: When using the ideas you have found in another source, acknowledge the contribution made by that source to your own work. Likewise, if you use the same organization or analytical framework as a prior source, acknowledge the source. When, however, the structure or substance of another's work may be considered a part of general legal knowledge, it is debatable whether attribution is required. A good practice is to trace an idea to its original source and credit that source, while explaining how the idea has evolved. Always err on the side of giving credit.

(2) Comments on the use of another's words: When using the words of another, quote and cite the source. This requirement is particularly important when you are relying on the work of scholars in law review articles or treatises, but it also applies to judicial decisions. When using language from a case, proper attribution will emphasize the weight and importance of the idea. The only exception to this rule may occur in an upper level legal drafting class where you are using a legal form that is intended to be copied and are doing so with the permission of or at the direction of the professor.

II. Unauthorized assistance; permissible and impermissible forms of collaboration.

The Code of Conduct provides:

It is a violation of this student code to: (a) Submit for credit work not originally prepared for the course for which it is submitted without explicit permission of the instructor of the course after the instructor has been advised of the origins of the work

Summary: All students must submit their own work and must submit work prepared for the course in question. Students may not submit a paper for credit if they have previously submitted the same paper for credit in another course, whether at John Marshall or at another institution. Students must also adhere to the professor's rules about collaboration on assignments. You may not give, obtain, or solicit unauthorized assistance or use unauthorized material in the preparation of material to be submitted or presented in class.

General commentary on submitting papers for a course: In writing papers for Lawyering Skills courses, for seminars, for a law review, for an independent study, or for any other course, students must submit an original paper prepared for that course. It is a violation of the Code to submit a paper for one course that has previously been submitted for credit in another course. For example, if a student submits a paper as an independent study, and the paper is largely based on a brief a student wrote during the Herzog competition, this is a Code of Conduct violation.

General Commentary on collaboration with others: Do not engage in *unauthorized* collaboration. Depending on the assignment, it may be appropriate to exchange ideas or "collaborate." Indeed, you will be assigned to work together on certain projects. For example, it will often be very helpful to collaborate on legal research exercises, so that you all can share insights on how to use various materials. You also need to learn effective techniques for collaborating and communicating about the law.

With respect to memoranda and briefs, however, you will learn the most by producing your own work, thinking about the professor's evaluation of that work, and then rewriting the paper. When your professor critiques what is essentially someone else's work, it will not help you develop your writing skills. Accordingly, the LS Program has adopted the following rules designed to promote exchanges of ideas, while at the same time mandating independent research and writing.

Collaboration

Students are permitted to:

- (1) discuss any aspect of an assignment with the professor at any time;

(2) discuss research strategies, legal concepts, problems, and potential arguments related to any assignment with other students in their legal writing section or in a section working on the same problem until seven days before the first draft of an assignment is due, or whatever time limit is imposed by the professor for a particular assignment;

(3) discuss research strategies with law school library staff at any time; and

(4) discuss questions relating to grammar, syntax, style or organization with staff at the Writing Resource Center at any time.

Students in Lawyering Skills courses are not permitted to:

(1) discuss any aspect of a graded individual writing assignment with anyone other than the professor, law school library staff, Writing Resource Center staff, or other students in the section or another section working on the same problem; or

(2) discuss any aspect of a graded writing assignment with anyone other than the professor, law school library staff, or Writing Resource Center staff within the time period specified by the professor from the date the first draft of an assignment is due; or,

(3) collaborate with other students on the writing process of a graded assignment;¹ or,

(4) ask to see or gain access to another student's written work or show or give another student access to their written work on any graded assignment. Where an assignment involves both a first draft and a rewrite, you may not exchange your work product with another student until the rewrite has been handed in.

Please note that all of these provisions relate to discussion outside the actual class sessions. From time to time,

¹ This prohibition includes outlining assignments together or simultaneously transcribing the orally expressed ideas of another for the purpose of including the expression of the ideas in one's own paper.

professors will ask students to work collaboratively on in-class writing exercises.

Commentary on use of unauthorized sources: First year Lawyering Skills courses do not provide training in on-line searching until the second semester. First semester students should not do LEXIS or WestLaw searches, although students may use on-line services to retrieve specifically identified documents or to update authority.

From time to time, professors may impose additional rules relating to sources. Professors generally encourage students to use every means of research available, just as lawyers do in practice. On some occasions, however, additional limits may be appropriate. One such circumstance might involve writing a brief appealing from a recent decision. If an appeal is in fact pending, the professor may ask you not to look at the briefs that have been filed with the court in that case. To do so would constitute a violation of the Code of Conduct.

III. Lateness, Candor, Honesty and Integrity. You must hand in assignments on time or suffer the penalties imposed by your Lawyering Skills professor. You must comply with all requirements relating to page and font limitations. Finally, your writing should be consistent with the ethical standards for lawyers; represent legal authority fairly and accurately.

Commentary on Timeliness: Each Lawyering Skills syllabus specifies when assignments are due. Law is a profession governed by strict deadlines. In practice, failure to comply with a deadline can have very serious effects on a client's legal rights.

If a paper is handed in after the time specified, the professor will impose a penalty. Do not attempt to circumvent these penalties by misrepresenting the time you submitted your paper. If you do so, you are attempting to obtain an unfair advantage over other students. Such conduct would also constitute furnishing "false information... relating to ... law school sponsored activities or programs," in violation of the Code of Conduct.

Commentary on Extensions: As with a court deadline, you must request extensions *before* the paper is due. Extensions on due dates will be granted only for the reasons courts generally grant extensions, such as a death in the family, serious illness, or other circumstances that make a timely submission impossible. Events of which students have advance knowledge, such as weddings, holidays (although we have made every effort to avoid conflicts

between deadlines and religious holidays), and vacations, are not a basis for granting extensions. As lawyers, you will need to balance many responsibilities in your professional and personal lives. Any extension request that misrepresents the reason for an extension violates the rules of the Lawyering Skills Program and the Code of Conduct

Commentary on accommodations for disability or illness: Students seeking an accommodation on a paper or project must request the accommodation before the paper is due. If you need to request an accommodation, you may begin the process by talking with your Lawyering Skills professor, with the Director of the Lawyering Skills program, or with the Office of Student Services. To protect your privacy, please submit the documentation to the Office of Student Services. They will keep the information confidential and will notify your professor only of the appropriate accommodation.

Commentary on page limitations: Attempting to evade page limitations on papers through the use of fonts and margins other than those given to you by your legal writing professor is an attempt to gain an unfair advantage over others. Courts set strict limits on the number of pages allowed for briefs, and likewise specify the margins and fonts to be used. Courts will not accept nonconforming briefs, and neither will your Lawyering Skills professor.

Commentary on Representing Legal Authority Fairly: Do not suggest or make arguments in memoranda or briefs unless they are well-grounded in fact or a good faith argument for modification, extension, or reversal of existing law. (This is the standard embodied in Rule 11 of the Federal Rules of Civil Procedure.)

MISAPPROPRIATION AND MISUSE OF PROPERTY

IV. The Code of Conduct provides that:

It is a violation of this student code to:

(a) Damage, hide, or otherwise exert unauthorized control over property belonging to another person or the law school;

(b) Obtain or attempt to obtain unauthorized access to any school record, database, or communication to or from law school personnel, or any student e-mail sent, received, or stored on school servers or computers;

(c) Use or attempt to use the law school's computer or e-mail systems in violation of the school's regulations or in furtherance of any conduct that would constitute a violation of this code of conduct.

Commentary on library materials: The rule about library materials is self-explanatory. There is nothing as unfair to other students as hiding, stealing, defacing, or destroying library materials. Students who engage in this type of conduct are deliberately interfering with the work and the careers of others. Violations of this rule are usually dealt with very harshly by the Discipline Committee. Law schools serve as gate keepers to the profession. The law student who steals from a classmate may become the lawyer who steals from a client.

Commentary on use of on-line research services: Please understand that the term "library materials" includes both print and on-line materials. Because John Marshall is an educational institution, it receives licenses from certain vendors of on-line data bases, such as LEXIS and WestLaw. These licenses permit John Marshall students access to the data bases as a part of the educational process. You may not access these data bases for other than educational purposes. Students who work or volunteer part time outside of the law school may not use their student passwords to these services during the course of their outside activities. To do so is a misappropriation of the vendors' property that jeopardizes the law school's educational licenses.

RESPECT FOR OTHERS

V. The Lawyering Skills Program is based on the law practice model. Successful lawyers value respect, collegiality and professionalism. The Code of Conduct provides:

It is a violation of this student code to:

(a) Engage in any threatening, intimidating, or disruptive conduct or comments ... if it interferes with the rights of others to participate fully and freely in the educational process;

(d) Engage in conduct which threatens or endangers the health or safety of any person on school premises, or at

school-sponsored, or school-supervised functions at any place.

General commentary: All of us in modern life are under stress. Sometimes the stress associated with meeting an objective causes us to put pressure on others. This may be true of finishing a paper, getting a certain grade, or winning a competition. You may not, however, threaten, harass or intimidate another. You may not do anything in an attempt to seek an unfair advantage over other students.

Commentary on conduct towards faculty: Lawyering Skills faculty make every attempt to evaluate student work fairly and objectively. Professors base grades on careful consideration of the relative strengths and weaknesses of all the papers, taken as a group. Attempting to argue with, harass, or intimidate a member of the faculty or staff in order to change a grade, obtain unauthorized assistance, or receive an unwarranted extension of accommodation is harassment. It is also an attempt to gain an unfair advantage over another student. If, however, you have a question about how you can improve your research, writing, and analytical skills, please do not hesitate to make an appointment with your professor. We are here to help you.

Commentary on conduct towards other students: All students are given the same opportunities to succeed and we hope that all of you will. Do not pressure your classmates to provide you with unwarranted assistance on papers. Asking for or providing such assistance is unfair to all parties, and to other students in the class.

I hope the above memorandum clarifies some of the questions you may have about how the Code of Conduct will apply in our Lawyering Skills section. If you have any other questions, please ask.

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.

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 and accompanying text.

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)).