

Give Credit Where It's Due by Taking Careful Notes

Avoiding Plagiarism

By Elizabeth Ruiz Frost



In America's War on Plagiarism,¹ plagiarism is winning. Over the past year, numerous public figures — from First Lady Melania Trump to Supreme Court Justice Neil Gorsuch and on and on — have faced public plagiarism accusations. Meanwhile, research suggests that millennials have a more relaxed view of cheating and a less-clear understanding of what constitutes plagiarism than past generations, and are therefore doing it more frequently.²

Plagiarism means using someone else's ideas or words without attribution to the original source. Direct plagiarism means taking language word for word without quotation and proper attribution. Mosaic plagiarism can include paraphrasing someone else's language or ideas without proper attribution.

A person can plagiarize in speech or in writing. Any time a writer or speaker tries to pass off another's work as his own, he has plagiarized. And plagiarism is a strict-

liability offense. Even unintentional copying without attribution is plagiarism. In my experience as a teacher, most people when confronted with plagiarism say, "What I did wasn't plagiarism because I didn't mean to do it!" But intent doesn't matter.

In legal practice, the line where plagiarism begins can be a little hazy. After all, our legal system is based on copying. Stare decisis requires us to apply ideas and language from past judicial decisions. Transactional lawyers routinely use forms authored by others; crafting an original form for every new transaction would be insane. And in litigation, lawyers borrow from past pleadings regularly and often co-author with unnamed associates and partners. That's all certainly copying, but whether it's plagiarism isn't so clear.³

While the line might not be so clear in legal writing, there are examples of lawyers who have been disciplined for plagiarizing in court pleadings.⁴ A lawyer who plagiarizes in a document she claims as her original work violates her ethical obligation to be truthful. Rule 8.4 of the Oregon Rules of Professional Conduct prohibits lawyers from engaging in "dishonesty, fraud, deceit or misrepresentation." Although plagiarism isn't specifically proscribed in the rule, passing off another's work as one's own is deceitful, dishonest and a misrepresentation.

This column suggests a few easy steps that a well-intentioned writer can take during the writing process to avoid unintentional plagiarism.

Take Careful, Annotated Notes

Taking careful notes at the outset of a writing project can prevent anguish down the road. When taking notes, use annotations or signals to yourself that'll help later when drafting.

The best practice in the note-taking phase is to paraphrase everything from the source and paste nothing verbatim into notes. I need to annotate my notes because I'm a little bit lazy and I have a lousy memory. I can type an exact quote faster than I can synthesize and paraphrase. So when I'm reading an article or a case and I find something useful, I often type the passage verbatim into my notes (that's the lazy part). I plan to do the harder work of synthesizing and paraphrasing later. But when I look back in my notes days or hours later, as I'm turning my notes into a draft, I can't always differentiate between the quoted material, my paraphrased notes and my original thoughts (and that's my lousy memory kicking in). Without annotations, I might inadvertently copy and paste text from my notes right into my draft, believing the text to be my own, without quoting or citing the original source.

If you've done something similar, develop a system of annotations for yourself right in your notes to curb the risk of plagiarizing. Here's an idea. For material pasted verbatim from a source, be sure to use quotation marks or a different font in your notes every time, and include a reference to the original source and page number. First, that'll graphically differentiate quoted material from paraphrased material. And second, it'll make drafting citations and cite-checking more efficient down the line.

Next, note paraphrased ideas and language in plain text, together with a reference to the source and page number, of course. And finally, jot down your own original ideas or synthesis in italics or with a unique symbol. When I write, instead of using italics, I insert an arrow before my original ideas in my notes. The

Representing plaintiffs
in personal injury,
child & elder abuse
& wrongful
death matters.



Scott F. Kocher



811 SW Naito Parkway, Suite 420 Portland, OR 97204
P 503.445.2100 | F 503.445.2120 | www.forumlawgroup.com

arrow signals to me, “this led me to think _____,” so I know the thought is my own. That way, I won’t be confused later about what is original and what I learned from another source.

Keep Copies of Every Source

When a task is particularly burdensome, we might be more likely to cut corners. So keep a copy of every source you use in a writing project to reduce your burden later.

In the note-taking phase, a writer might record an idea or phrase in her notes incompletely. When that writer turns from note-taking to drafting, she’ll need to cite-check the original text to contextualize information or confirm a quotation’s accuracy. Cite-checking against the original text takes work. Having to hunt down every source multiple times takes even more work. One can imagine a busy writer faced with numerous trips to the library choosing to cut corners at this stage, which could lead to misattribution or plagiarism. Having the sources readily available when drafting makes those cite-checks less onerous, and thus a writer is more likely to do them.

When it’s feasible, keep a print copy of your sources instead of an electronic copy because print is easier to annotate and thumb through later. Photocopy relevant portions of books with the title page to keep the piles manageable. Where appropriate (i.e., not a library book), highlighting and making marginal notes on a printed copy will make it easier to find the relevant text later. And even without highlights, we tend to create an imprint of a page in our mind when we read in print, so navigating back through print is more efficient than navigating through electronic copies.⁵

When in Doubt, Cite

The third, most obvious step to avoid plagiarizing is also simple: When in doubt, cite a source. Properly attribute all quoted material to its original source and include citations for all borrowed ideas.

When I talk to students about plagiarism, I hear a couple repeated misconceptions about when to cite. First, I’ve heard confused writers say they didn’t think they needed to cite material that wasn’t a direct quotation. That is incorrect. Writers need to cite all borrowed ideas and



YOUR JOB IS TO PROTECT YOUR CLIENTS.
OUR JOB IS TO PROTECT YOU.

LEGAL
ETHICS

BAR
DISCIPLINE

LAW FIRM
ORGANIZATION

RISK
MANAGEMENT

Holland & Knight

www.hklaw.com
Portland, OR | 503.243.2300

Pictured from left to right:
Seated: Calon Russell, Nellie Barnard, David Ekanich, Peter Jarvis.
Standing: Roy Pulvers, Dayna Underhill, Allison Martin Rhodes.

Copyright © 2016 Holland & Knight LLP. All Rights Reserved.

language, even if they don't quote language verbatim. That means even paraphrased ideas and language require a citation to their original source.

Second, some have confessed they omitted citations because they thought the borrowed idea was common knowledge. Common knowledge does not require a citation — that is true. But sometimes writers are wrong about what constitutes common knowledge. The Harvard College Writing Program defines common knowledge as information that would be “generally known to an educated reader, such as widely known facts and dates, and, more rarely, ideas and language.”⁶ For example, one needn't cite a source for the fact that Salem is the capital of Oregon. That's a common fact.

Common ideas and language are harder to come by than common facts. An idea could be so universally accepted that one need not cite a source for support, though those ideas are awfully rare. And some language is so widely known that the source doesn't require citation. As an example, if one were writing about Julius Caesar, the quotation “et tu, Brute” might not require a citation. But with ideas and language, those instances are rare. As a rule of thumb, include a citation when in doubt. A writer won't get in trouble for including too many citations.

Try a Plagiarism Checker

As an extra safeguard, running your work through an online plagiarism checker might be of some, albeit limited, use. These programs should be used as an extra safeguard, second only to one's own diligent note-taking and cite-checking. Most online plagiarism checkers compare one's own text against publicly available text on the internet. Their search will scour publicly available texts like news articles, electronic versions of academic journals and books in the public domain that have been uploaded to the internet. They won't catch text stolen from a dusty old tome in the library, though.

I experimented with a couple plagiarism checks for this column, and they did an impressive job of finding quoted material. (They're mostly paid services, so I won't advertise them by name here.) I ran this article through a couple and it came up clear (phew!). Next, I sneaked in a bit

of stolen text from a blog, and the online programs successfully detected the stolen text. Then I threw in an unattributed sentence from an Indiana Supreme Court case, and they detected that as well.

These online programs might help a person find direct plagiarism because they'll search for exact language matches, but they can't detect mosaic plagiarism, where a writer has paraphrased text or borrowed an idea without proper attribution. So because these online checks can only check against texts posted on the internet and can only find direct plagiarism, they're of somewhat limited use.

Conclusion

I suspect a surprising number of us have plagiarized at one point or another, though it might have been completely unintentional. Busy writers working with lots of sources and lots of ideas can confuse their own original thoughts with something they've read elsewhere. When you write, incorporate the few, easy steps from above in your own writing process to avoid unintentional plagiarism. And if you mentor a more junior writer, consider talking to him or her about your expectations for original work and what he or she could do to avoid plagiarizing.

Endnotes

1. America has never declared war against plagiarism.
2. “Plagiarism Lines Blue for Students in Digital Age,” Trip Gabriel, *New York Times*, Aug. 1, 2010, available at www.nytimes.com/2010/08/02/education/02cheat.html.
3. “The Problems with Plagiarism as an Ethics Offense,” Peter A. Joy and Kevin C. McMunigal, 26 *Crim. Justice* 56, 57 (2011), available at www.americanbar.org/content/dam/aba/publications/criminal_justice_magazine/cjsu11_ethics.authcheckdam.pdf.
4. *Id.* at 56-57.
5. “Writing (and Reading) Appellate Briefs in the Digital Age,” Mary Beth Beazley, 15 *J. App. Prac. & Process* 47, 49 (2015).
6. Harvard College Writing Program, *Harvard Guide to Using Sources*, at <http://isites.harvard.edu/icb/icb.do?keyword=k70847&pageid=icb.page342055>.

An archive of *The Legal Writer* is available online at: www.osbar.org/publications/bulletin/legalwriterarchive.html.

Elizabeth Ruiz Frost teaches Legal Research and Writing and other courses at the University of Oregon School of Law.



BAER **NEUTRAL**
NOT PASSIVE

Over 30 years experience
Critical listener
Direct, no-nonsense
communications

norm@normbaer.com
503-308-2724
www.normbaer.com



Wendy L. Votrubek,
RN, BSN, MPH, LNC

Helping you understand
medical records, giving
you more time to
practice law

ASSISTING ATTORNEYS WITH:

- Medical record review and analysis, both civil and criminal defense attorneys
- DME attendance
- Cost projections
- Appropriateness of charges
- Expert location and vetting
- Medical record retrieval with Bate Stamps and OCR

INTEGRITY
Legal Nurse Consulting PDX

503-775-3221

wendy@legalnursepdx.com
<http://legalnursepdx.com>