He Said, You Said.

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An essay by
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Most of us have heard some comment or read statements somewhere that impressed us. We were impressed enough that, at a later time, and perhaps in some other form, we repeated that statement or comment. And depending on how much time may have passed or, perhaps, as a researcher, we had come into contact with a plethora of other similar materials, we may not repeat the comment verbatim. But we liked the statement or idea that went along with the comment, so we reused the material. As indicated, this is not an uncommon occurrence; after all, we are sharing what we like with others. It is at this juncture, however, that there may be a problem.

Did the person you shared the comment with respond with something like, “Hey, that’s a great idea.” or perhaps with “That’s really interesting. Do you mind if I repeat that?” And if they did, did you then say, “Well, I read that Benjamin Franklin first wrote that in his Poor Richard’s series.” or “Thanks, but I heard that on PBS radio on the morning drive.” Most likely you did not; after all we were sharing what we knew. Again, not an uncommon occurrence. But now let’s change the context and you find yourself in law school researching the law. You are constantly reminded that precedent, binding, black letter law, and stare decisis are important concepts so, as you begin to memorialize your research and the accompanying knowledge you have attained in a written formal memorandum or brief, it is imperative that you include the ideas, reasons, and words that the legal authors used in the original documents into your own. What you do next will either enhance your credibility or (it can happen) your legal career abruptly ends.

Let’s look at the negative side of the two possibilities first. It is this position that we want most to avoid.

When you use the words, thoughts, or ideas of another, purporting, in the mind of the recipient, as being your words, thoughts, or ideas you have engaged in an act of academic dishonesty. When you stop to consider what you did, you must come to the

¹ © May 2010. Every writer can benefit from another set of eyes and I thank my colleagues Professor Thomas Jones and Assistant Angela Jimenez for those eyes.
conclusion that you have done an act similar to looking over the shoulder of the person sitting in front of you during an examination and using his or her answer as being your own. It is cheating. Every academic institution has a policy dealing with cheating even if the penalties among the institutions are varied. It is generally assumed that those who engage in the educational challenges associated with higher education want those who would cheat to be removed. Removal can be accomplished by fiat: “You have been found guilty of cheating and therefore expelled from this [institution/area of study/program].” or due to academic grade decay resulting from having received a zero credit for the assignment in which you cheated. Neither is a desirable outcome, and both are avoidable when you apply the same schema to avoid that outcome.

Let’s backup and address the idea that you will become a credible researcher, someone who will use the research materials in an effective and persuasive way. Along the way we will try to maintain an effective grade point.

Suppose for a moment that your car has broken down. It won’t start and you have tried all that you know to get it started. You have the vehicle delivered to a local mechanic’s garage and it is there that you meet Greg, the mechanic. Greg has spent the past fifteen minutes going over your car doing whatever it is that mechanics do. Greg tells you that he is not really a fully trained mechanic and that he is still in mechanics’ school, but he has diagnosed your problems and they can be fixed for the handsome price of $1,223.76. Greg tells you nothing more, but you ask for additional information. Greg tells you that cars that display symptoms similar to your car need new flauntenhowers. Also, Greg offers, cars made by Sepinnjons (not your model) will also need the hameritics reprogrammed and brought up to a new standard. Greg asks for your $1,223.76.

Most of us would likely show some reticence in giving Greg the requested funds. Things that might impact our decision are: 1) Greg is still in school and may lack experience; 2) Greg has yet to describe how the flauntenhower influences the operation of the car, and; 3) Greg has not explained why the reprogramming of the hameritic in a Sepinnjons would have any effect on your car. In the absence of this information, Greg’s credibility is at stake and seeing as how Greg is new to the business, he may not really know what is going on. Greg has failed to convince us that he can fix the car. His analysis of the problem and the potential corrective actions are questionable. In other words, is Greg’s analysis credible?

Now for the new law student. The law student is new to the law and his or her assertions of the law may suffer the same scrutiny and the same result as Greg’s analysis of the car problems. Why would the person to whom the law student is communicating want to put any faith in anything that the new law student asserts? The primary reason is that the new law student knows, or feels, that his or her audience may
be somewhat distrustful of those who profess to know the law and the new law student will therefore tell his or her audience the sources that law student consulted in arriving at a potential answer to the problem. And the law student will do so in such a way as to persuade his or her audience that the law student knows the law. But it is not enough for the law student to simply say, “According to the ordinances of Lewisville . . .”, or “Based upon the laws of Missouri . . .”, or even “The United States Constitution requires . . .”. The law student, seeking the better grade, will go further.

Provide Attribution For the Sources of Your Propositions\(^2\)

As a starting point we will assume that among the many sources researched by the law student is the case of *Burger v. Harper*, a case that can be located in volume 342 of the second series of the MidCentral (M.C. 2d) reporter with the first page of the case numbered as 291. The majority opinion was authored by Judge Jabacob, chief judge of the Michiana (Mna.) state supreme court. Judge Klineral filed a dissenting opinion. The case opinion was authored in 2006 and is twelve pages in length. Following the rules for citation form, a proper citation to the case opinion would be *Burger v. Harper*, 342 M.C. 2d 291 (Mna. 2006).

The law student’s assignment is to write an inter-office memorandum in which the student will predict what a state court might determine as the outcome in a dispute involving injuries suffered by Carlos when Carlos trespassed onto Pauline’s land. The *Burger* Court held that a landowner (Harper) could not set traps meant to snare uninvited guests who entered upon the land. Carlos suffered a broken leg when he fell into an open grate that Pauline had constructed upon her land to prevent her cattle from entering into a neighboring field. The law student writes in the memorandum, “The law requires that landowners be liable for injuries suffered by uninvited guests who trespass upon the land when the guest is injured by falling into an unmarked and open trap.” To assure his or her reader that this is the law that is applied to the law student’s facts, the law student then cites the *Burger* case, with the result being: “The law requires that landowners be liable for injuries suffered by uninvited guests who trespass upon the land when the guest is injured by falling into an unmarked and open trap.” *Burger v. Harper*, 342 M.C. 2d 291 (Mna. 2006).

A review of what the law student wrote reveals that the student has correctly stated the holding in the *Burger* case and in doing so, the law student has solidified his or her credibility by identifying for the reader where the law student located the law. Among the added benefits of providing proper attribution is the fact that the reader of the law student’s memo can also find the law where the law student found the law. There is one other aspect of providing proper attribution to research materials, and that is that law

\(^2\) The rules of citation form are best left for a more in-depth discussion accompanied by instruction and practice. Here the jurisdiction is fictitious and the citation does not refer to any known authority.
student avoids the perception that the stated law is the result of his or her work when in fact the stated proposition was the result of the Burger court’s deliberations. The law student, as author of the memo, has shielded him or herself from claims of plagiarism.

Plagiarism is the practice of intentionally or unintentionally using someone else’s intellectual property without properly acknowledging the original source.\(^3\)

Forms of Plagiarism

The following was taken verbatim from a case opinion:

“Defendants have also brought to our attention a recent decision by the Maryland Department of Public Safety and Correctional Services (of which MDOC is a division) to change its inmate food policies to allow for a religious diet consistent with kosher dietary restrictions. Assuming the change is implemented as planned, the provision of a kosher diet would make it unnecessary for Rendelman to relitigate his claim for injunctive relief even if he were eventually returned to MDOC custody.” \textit{Rendelman v. Rouse}, 569 F.3d 182, 187 (4th Cir. 2009).\(^4\)

For our purposes, we will assume that the citation rules have been followed and, by including quotation marks, a law student using this in the memorandum has given proper attribution, i.e. included both a proper citation (this is where the quoted materials can be found) and the exact quote taken from the pages for the case. However, each of the following examples is, when applying the definition given above, plagiarism.

\textit{Example 1}

Defendants have also brought to our attention a recent decision by the Maryland Department of Public Safety and Correctional Services (of which MDOC is a division) to change its inmate food policies to allow for a religious diet consistent with kosher dietary restrictions. Assuming the change is implemented as planned, the provision of a kosher diet would make it unnecessary for Rendelman to relitigate his claim for injunctive relief even if he were eventually returned to MDOC custody.

\textit{Analysis}

This is the simplest form of plagiarism to detect. The author has used the exact language given in the original and included it in the memorandum without any indication of where the materials came. There is no citation and no quotation marks. Moreover, the use of specific words such as Rendleman, MDOC, and kosher diet allows the reader an easy search task on either Westlaw or Lexis-Nexis to determine the original source. Keep in mind, under the definition, that the author can claim neither unintentional use

\(^3\) Palmquist, Mike (2003). \textit{The Bedford Researcher}. Boston: Bedford/St. Martin’s Press. In addition to this cited source, every law school has something similar to a Student Handbook that will include a definition of plagiarism. The definition chosen for inclusion here uses easily understood language and it removes all consideration of intent or mistake.

\(^4\) \textit{Supra} note 1.
nor mistake. The language was included in an assignment the author submitted in completion of the assignment. This is plagiarism.

**Example 2**

Recently defendants in custody of the Maryland Department of Corrections have also brought to the court’s attention proposed changes in its inmate food policies to allow for a religious diet consistent with kosher dietary restrictions. If the change is implemented as planned, the provision of a kosher diet would make it unnecessary for some prisoners to relitigate claims for injunctive relief even if the prisoners were eventually returned to MDOC custody.

**Analysis**

This is a bit harder form of plagiarism to detect. The author has undertaken to change specific words while eliminating identifiable words and phrases to mask his or her use of the court's language. The alterations from the original might be found acceptable if the author had included a citation to the source. Quotation marks would be inappropriate because there is not the use of exact language. The author has misappropriated the work product of the court. This is plagiarism.

**Example 3**

Defendants have also brought to our attention a recent decision by the Maryland Department of Public Safety and Correctional Services (of which MDOC is a division) to change its inmate food policies to allow for a religious diet consistent with kosher dietary restrictions. Assuming the change is implemented as planned, the provision of a kosher diet would make it unnecessary for Rendelman to relitigate his claim for injunctive relief even if he were eventually returned to MDOC custody. *Rendelman v. Rouse*, 569 F.3d 182, 187 (4th Cir. 2009).

**Analysis**

Here, the author might argue the lack of plagiarism. The author has included the appropriate citation as a means of acknowledging the source document. But the specific need for quotation marks when the exact language is being cited has been violated. The requirement that the author employ the use of quotation marks and the appropriate citation is a conjunctive rule. Doing one without the other, e.g. including quotation marks without including the citation, is plagiarism. The author is not afforded the defense of unintentional omission or mistake.

**Example 4**

Maryland courts will need to remain abreast of administrative action in regard to changes in policy as it applies to inmate food policies at penal facilities. Currently under review, the change would make it unnecessary for prisoners to sue over the right to access religious dietary needs should a prisoner be transferred throughout the Maryland Department of Correction’s many locations.
Analysis

Perhaps a tedious and demanding use of time to prove a violation of the plagiarism definition, but this is plagiarism. The author has distilled the essence of the original materials found in the source and reformed the idea conveyed by the court into the author’s own words. This is paraphrasing but the source materials must be attributed. The author might attempt to claim that he or she was putting into his or her own words an understanding of what the court held but the author has misappropriated the idea found in the court’s words. The misappropriation of an idea (intellectual property) previously communicated is yet another form of plagiarism. The claim of plagiarism is supported by the effort expended by the author to mask the original source.

This short paper cannot identify all of the possible examples that would be dispositive of all claims of plagiarism. Indeed, it is not the intent of the author to scare new law school students in a paranoid state of mind, fearful that everything they submit will be scrutinized to the nth degree in an attempt to uncover each and every instance of plagiarism. What the reader of this paper should come away with is an understanding that legal writers will be professional in all that they produce and ethical when assigning credit to work product. Writers new to the rigors of law school papers will, it is hoped, find that both faculty and institution afford the writer with some transition time in which to learn the rules of attribution and how best to employ legal authorities into the author’s analysis. The law school student, having read this paper or any number of other similar papers, must place themselves on notice that there are rules, conventions, and expectations when it comes to submitting work product for academic credit. The student that values his or her reputation and standing in the legal community will make an effort to understand the current rules by asking questions and seeking guidance.

Academic dishonesty has and will continue to be an enormous impediment to acceptance in State and Federal Bar memberships. If he said it, give proper attribution before you use it.