Cross-Cultural Differences in Plagiarism: Fact Or Fiction?

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Cross-Cultural Differences in Plagiarism:
Fact or Fiction?

Diana J. Simon*

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Are there cross-cultural differences in plagiarism? Is it helpful—let alone fair—to try to generalize attitudes toward plagiarism across cultures? Is this issue of relevance for learning institutions like law schools? And how do these issues intersect with the legal profession?

My perspectives on these issues stem from 25 years of legal practice handling complex commercial disputes combined with over 20

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years as a law school professor, first as an adjunct professor and now as a part of the legal writing department. The two perspectives—the practicing attorney view and the academic view—are not identical.

I started thinking about this issue when I began teaching international students years ago. I am fortunate to have taught students from all over the world: Palestine, Cambodia, Vietnam, Mexico, China, Africa, Canada, and Japan, among others.

As a litigator, I never really thought about plagiarism. I was focused on writing persuasive briefs, making persuasive arguments, building a client base, and winning cases. I was writing brief after brief that I borrowed from other people: other partners in my firm, judicial opinions, firm associates who had written the first draft, and the list goes on. Neither I, nor any professional colleague or opponent, was ever accused of wrongdoing by a judge. Simply speaking, plagiarism was a non-issue. Our profession understood the rules and, with few exceptions, abided by them.

Then, I started teaching at a law school where plagiarism is a hot issue. Students cheated. We have plagiarism policies. We have a software system to detect plagiarism. As the population of international students started to increase, I found myself starting to wonder: Are there cross-cultural differences in plagiarism?

This article addresses that question, as well as the different attitudes that prevail in the academic and professional worlds in five stages. Parts I, II, and III address differences that exist in views of plagiarism in the West as opposed to Asia, and Part IV addresses the response to those views, arguing that they are unfair and inaccurate stereotypes. Parts V, VI, and VII address plagiarism in the “real world” of litigation—the world in which most law students will reside upon graduation. Finally, Part VIII concludes with a modest proposal for handling plagiarism in law school.

Why is the focus only on Asia? That is where the literature has its focus, and that is where most of the international students who attend classes in the United States hail from. Further, American

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1. Number of International Students Studying in the United States in 2017/18, by Country of Origin, STATISTA, https://www.statista.com/statistics/233880/international-students-in-the-us-by-country-of-origin (last visited Dec. 2, 2018) (showing China with the most students—363,431—and India and South Korea next in line with 196,271 and 54,555, respectively); see also Neil G. Ruiz, The Geography of Foreign Students in U.S. Higher Education: Origins and Destinations, BROOKINGS (Aug. 29, 2014), https://www.brookings.edu/interactives/the-geography-of-foreign-students-in-us-higher-education-origins-and-destinations (relying on the number of foreign student visa approvals from 2001 to 2012, this report concluded that China had the most number of students coming to the United States, and Seoul, Beijing, Shanghai, Hyderabad, and Riyadh were the five foreign cities that sent the most higher education students to the United States).
universities are establishing and expanding their presence in China, so the issue is cropping up in that context as well.²

Before reading, though, be forewarned: I could not find any articles dealing with this topic for students in law school. The literature is mostly limited to undergraduate students or high school students. In addition, the literature is not “scientific.” Most of the articles on point are written by professors teaching international students and are based on their observations and knowledge through experience.

Before getting into the literature, let’s do a simple exercise.³ Read the question below, and then, for each statement, indicate whether you “strongly agree,” “slightly agree,” “slightly disagree,” or “strongly disagree.” Then, rank them.

When I copy another’s materials without attribution when writing articles, reports, or essays, I am unfair:

1. to myself because I’m not being myself.
2. to the college because the educational goals of the college can never be reached if students just copy information.
3. to myself because the teacher might recognize what I did and punish or embarrass me in front of other students.
4. to the writer of the original passage because I’m taking the credit that he/she really deserves for the words and ideas.
5. to my classmates because most of them worked harder by writing in their own words, but I mainly copied and yet get the same or even better grade.
6. to myself because I’m not learning much when I just copy another person’s writing.

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³ This list of questions is taken from a study conducted by Glenn Deckert at Hong Kong Baptist College and will be more fully addressed in Part II. Glenn D. Deckert, Perspectives on Plagiarism from ESL Students in Hong Kong, 2 J. SECOND LANGUAGE WRITING 131, 131-148 (1993). It might be interesting to administer a similar questionnaire to law students to see: (1) whether graduate students would answer these questions differently from undergraduate students; and (2) what differences, if any, exist between the answers of American students and the answers of international students.
7. to my teacher because he/she is trying to teach me to write well, but I’m not cooperating.⁴

If you strongly agree with answers one and six, your answers are like a small group of first year students at a college in Hong Kong, whose primary concerns are egocentric concerns about learning and feeling right about oneself.⁵ In contrast, from a Western perspective, the most important concerns are “for either the college, the original writer, one’s own classmates, or one’s relationship with the teacher.”⁶ More on that study and the author’s findings later.⁷

I. ONE SCHOOL OF THOUGHT: DIFFERENCES IN ATTITUDES BETWEEN THE WEST AND ASIA TOWARD PLAGIARISM ARE EXPLAINED BY CULTURAL DIFFERENCES.

One view is that the practices and perceptions of Asian students vary from Western academic practice when it comes to plagiarism.⁸ While one proponent of this view, Colin Sowden, cautioned that it is important to avoid stereotyping, he then seemed to make several generalizations.⁹

One such generalization is that Asian students accept the idea of “communal ownership of knowledge.”¹⁰ For example, if a source or philosopher is extremely well known, the information has entered the realm of common knowledge, and there is no reason to think that the ideas belonged to that philosopher.¹¹ Similarly, citing sources in these situations is seen as disrespectful or insulting to your professor because you are insinuating that your professor does not know the source, which could be as obvious as Aristotle or Confucius.¹²

Another “cultural characteristic” is that good students do not challenge their teachers, but rather “faithfully copy and reproduce

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4. Id. at 135.
5. Id. at 140.
6. Id.
7. See infra Part II.
9. See Sowden, supra note 8.
10. Id.
11. See id. at 226-27.
them.”  

In the literature, generalizations also exist about the nature of the Asian culture as a collectivist culture. Achieving group consensus is valued over individualist thinking. For example, in China, the emphasis is on allegiance to a few acknowledged authorities with “resulting convergence of perspective and greater social harmony.” Stated more critically, China is a society of official standard thought, and “[m]any academics who commit plagiarism are also officials, so they’re seldom held responsible.”

Another underlying reason that exists for cultural differences is that learning takes place through rote memorization, and rote memorization is more important than expressing creativity. For example, an author and college professor, Glenn Deckert, after six years of teaching first-year Hong Kong college students, concluded: “most Chinese students overuse source material through an innocent and ingrained habit of giving back information exactly as they find it. They are the proverbial rote memorizers or recyclers.” One professor, who taught English at Xiangtan University in China, tells this story: He asked his “first-year undergraduate English majors to write a brief biography of a well-known person.” While grading one paper, he saw a piece on Abraham Lincoln that was written in “simple but perfectly ‘correct’ prose.” He asked a fourth-year student what he thought about the text and that stu-

13. Sowden, supra note 8, at 227.
14. Id.
16. Sowden, supra note 8, at 227.
17. Id.
18. Deckert, supra note 3, at 132.
20. Alastair Pennycook, Borrowing Others’ Words: Text, Ownership, Memory, and Plagiarism, 30 TESOL Q. 201, 218 (1996); Sowden, supra note 8, at 229; see also Farhang, supra note 8.
21. Deckert, supra note 3, at 133.
22. Pennycook, supra note 20, at 201-02; see also id. at 218 (noting that it is “not uncommon in discussions of plagiarism to hear . . . [Chinese] students . . . derided as rote learners”).
23. Id. at 201.
24. Id. at 201-02.
dent smiled and explained: it “was from one of the high school textbooks.” That fourth-year student then proudly “demonstrated that he too knew the text by heart.”

II. THE HONG KONG STUDY: PERSPECTIVES ON PLAGIARISM
FROM HONG KONG BAPTIST COLLEGE.

In this study, Deckert sought to discover how well students in Hong Kong pursuing English as a second language recognize plagiarism and how they view students who plagiarize. The study questioned “239 first-year students at Hong Kong Baptist College, a government-funded, degree-granting institution with 3,400 students.” Later, for comparison purposes, the study was expanded to include third-year students.

In one part of the experiment, the students were given questionnaires to determine the students’ views on the practice of plagiarism. Specifically, they were asked the questions at the beginning of this article. The greatest percentage of students, 47%, selected answer six as the most important reason as to why plagiarism is wrong: “I’m unfair to myself because I’m not learning much when I just copy another person’s writing.” The second most popular response to the question was answer one: “When I write this way, I’m unfair to myself because I’m not being myself. Rather, I’m pretending to be better than I am, and that makes me feel uncomfortable.” Thus, approximately 63% of the first-year students focused on themselves as the object of unfairness, instead of concerns about “the college, the original writer, one’s own classmates, or one’s relationship with the teacher.”

This same questionnaire was then submitted to a smaller number of third-year students. These third-year students had finished all their English for Academic Purposes classes in which plagiarism was systematically addressed. Notably, there was a change of perspective as to why plagiarism is wrong, showing that these students

25. Id. at 202.
26. Id.
27. Deckert, supra note 3, at 131.
28. Id. at 133.
29. Id. at 133-34.
30. Id. at 134.
31. Id. at 135; see also supra note 3 and accompanying text.
32. Deckert, supra note 3, at 135, 139.
33. Id.
34. Id. at 139-40.
35. Id.
36. Id.
were in line with the “typical concerns of a Western academic community.”37 In fact, only 19.5% of the third-year students saw unfairness focused on themselves.38 Instead, “concern for the original writer rose from 13.5% among first-year students to 39.0% among third-year students.”39 Among the teaching suggestions flowing from this research, the author suggested that students should be taught about plagiarism and about reading source material with a view toward critical analysis.40 The instructor should also be a good role model by crediting sources when lecturing.41

Because one true story about plagiarism can speak volumes, here is one about Chinese high school students and cheating.42 The article reporting on the event begins: “What should have been a hushed scene of 800 Chinese students diligently sitting their university entrance exams erupted into siege warfare after [proctors] tried to stop them from cheating.”43 Because plagiarism was discovered the year prior to the incident, a new policy to prevent cheating was instituted.44 When students arrived to take a university entrance exam, proctors used metal detectors to relieve students of their cellphones and secret transmitters, some of which were designed to look like pencil erasers.45 These proctors also caught people trying to communicate with students from a location opposite the testing location.46 As soon as the exams were over, a mob of parents began protesting.47 More than 2,000 outraged people gathered to smash cars and chant: “We want fairness. There is no fairness if you do not let us cheat.”48

III. UNIQUE PRESSURE TO CHEAT: SPECIAL FOCUS ON KOREA.

Reading about this incident led me to investigate whether there are pressures to cheat beyond those in a “typical” Western academic community. As one author asked: “[Intellectual fraud] occur[s] eve-
rywhere, of course, but is there a particular susceptibility in Korea?”

In addition to the practice of copying encouraged in Confucianism, “Confucianism also places a premium on social status” measured, in part by one’s profession and educational background. Faking accomplishments is one way of having some upward social mobility. Beyond this, there is a “maniacally strenuous [educational] system.” South Korean teens would “rather die than fail,” and “suicide remains the leading cause of death among Koreans aged 15 to 24.”

Shocked to see this statistic, I went to the source, the Organisation for Economic Co-operation and Development, or the OECD. Established in 1961 with a membership of 36 countries, its mission is to “promote policies that will improve the economic and social well-being of people around the world.” Its membership list includes, among others, the United States, Canada, Denmark, Finland, France, Germany, Greece, Israel, Italy, Japan, Korea, Mexico, Portugal, Spain, Turkey, and the United Kingdom. Notably (at least for purposes of this article), China is not a member.

OECD assesses students internationally and has created a Programme for International Student Assessment (PISA). It was first administered in 2000 and now covers 80 countries, including China. The study is for 15-year-old children. The last study was completed in 2015. Based on this study, students in Korea reported high emphasis on achievement—80% of students wanted to be the best in what they do, whereas the OECD average is 65%. Some 75% of Korean students worry about getting poor grades at school, whereas the OECD average is 66%. Twenty-three percent
of Korean students reported studying more than 60 hours, while the OECD average was 13%.

This high-stakes academic pressure is further illustrated by what happens on the day Korean students take their annual university entrance exam known as the Suneung. The entire nation goes into “hush” mode on exam day, even grounding planes, clearing roads, and halting military exercises during the main language listening test. It’s like the SAT, but “the importance that Korean society places on it makes it far more intense.”

These types of pressures to conform and excel within a community probably interfere with creativity and individualism. After all, writing from scratch without reference to any other work is a form of individualism. In contrast, repeating what has already been written is an act of conformance. There is, of course, another side to the story.

IV. THE SECOND SCHOOL OF THOUGHT: SUCH STEREOTYPES ARE HOGWASH AND HYPOCRITICAL.

The other viewpoint is that these generalizations and cultural stereotyping amount to nothing more than “teacher folk wisdom.” For example, in one book, the author noted that the “sheepish” student in the anecdote about memorizing information about Abraham Lincoln “knew perfectly well that he had not done the writing assignment as intended.” Other authors attack the reasoning of

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63. Id. at 3.
67. Hogwash, CAMBRIDGE DICTIONARY, https://dictionary.cambridge.org/dictionary/english/hogwash (last visited Oct. 27, 2018). For readers who are not familiar with this term, it was formed around the mid-15th century and means a type of pig and waste liquid or food refuse from a kitchen. Although the meaning of it has changed over the centuries, it now means anything that is nonsense. Hogwash—Historical Origins of English Words and Phrases, LIVEJOURNAL, https://word-ancestry.livejournal.com/129790.html (last visited Jan. 8, 2019).
69. See Pennycook, supra note 20, at 201-02 and accompanying text.
70. Baurain, supra note 68, at 130.
Sowden in his article, explaining that while his work is “well-intentioned and interesting, [his] article, like most of those holding the same position, is flawed in several ways, including relying on dubious assumptions about other cultures’ writing practices, and using unwarranted confluences of separate concepts or issues to advance his argument.”

Many of these writers criticize as hypocrites those who approach the issue of plagiarism from some moral high ground. These writers, who pretend to be open-minded, instead place English in a superior position and place “other languages and rhetorical traditions . . . in a deficit position.” This tendency of Westerners to thumb their noses at language traditions different from their own also disregards or ignores a “well-established tradition of cheating and plagiarism in Western education.”

In fact, an entire encyclopedia could be written using examples of Western plagiarism because the list of “accused plagiarists is long and prestigious.” For example, many of Benjamin Franklin’s sayings were taken from other sources, and he even referenced this practice when he asked, “Why should I give my Readers bad lines of my own when good ones of other People’s are so plenty?” Also, John F. Kennedy’s famous “Ask not what your country can do for you; ask what you can do for your country,” and Franklin D. Roosevelt’s, “The only thing we have to fear is fear itself,” were borrowed from other sources.

In addition to famous lines by memorable orators, famous writers are also plagiarists. For example, Alex Haley, who won a Pulitzer Prize for Roots, an account of several generations of an African-American family living in America, a family that Haley said was his own, admitted as part of a settlement of a lawsuit against him, that some sections of his book originally appeared in a novel called The African. Gail Sheehy, whose book Passages was a national best-seller, also settled a plagiarism lawsuit, under the terms of which her accuser collected “$10,000 down plus 10 percent of all royalties.

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72. See BAURAIN, supra note 68, at 129.
73. Id.
74. Id. at 130.
75. Pennycook, supra note 20, at 206.
76. Id. at 208.
77. Id.
78. Arnold Lubasch, ‘Roots’ Plagiarism Suit is Settled, N.Y. TIMES, Dec. 15, 1978, at A1 (reporting of settlement of lawsuit against Haley by Harold Courlander who contended there were substantial similarities between Roots and his earlier novel).
including a $250,000 paperback sale.”

Generally, in the West, many of our general practices condone plagiarism. For example, political figures rely on speechwriters to write their speeches. Moreover, company executives routinely sign their name to documents drafted by underlings. In addition, in our own profession, lawyers borrow from the work of underlings and other lawyers, judges borrow from the work of lawyers, and then lawyers, in turn, borrow work from those judges.

Plagiaristic hypocrisy was perhaps at its finest when, in 1980, Stanford University learned that its handbook on plagiarism had itself been plagiarized by the University of Oregon. Oregon officials apologized and said they would revise their guidebook.

In addition, one author argues that the idea that “cultural conditioning is primarily responsible for plagiarism among . . . Asian students is a dubious one.” Fundamentally, authors take aim at the idea that “[w]hat [Westerners] might call cheating, [students from Eastern cultures] might call . . . sharing.” They contend that the truisms about Asian culture and plagiarism, such as the collectivist culture, learning by imitation, and strong respect for authority, while usually well-intentioned, spring “from a morally lethal combination of half truths and ideological assumptions.”

For example, in one article, the author referred to the claim that plagiarism is acceptable in the Far East as “dubious.” He referred

81. See, e.g., Deckert, supra note 3, at 132.
82. Id.; see also Gil Troy, How Originality Vanished From Political Speeches, POLITICO (July 21, 2016), https://www.politico.com/magazine/story/2016/07/melania-trump-speechwriter-plagiarism-ghostwriters-history-214081 (Warren Harding was the first President to hire a full-time White House speechwriter but a “speechwriter taboo mostly persisted until Franklin Roosevelt’s New Deal expanded the [White House] exponentially.”).
83. Deckert, supra note 3, at 132.
84. See infra Part V.
86. Id. at 213. Though this example might be ironic, some might argue that it also falls into the realm of the absurd. Plagiarism policies in handbooks are a form of rule-making, and, in some ways, are no different than statutes. For example, there are many uniform laws on the books but no state accuses another state of plagiarism. This is another place where the academic world and the practical world do not see eye to eye.
88. Liu, supra note 71, at 239.
89. Farhang, supra note 8.
90. BAURAIN, supra note 68, at 129.
to several examples such as: 1) plagiarism, as a practice, has been considered unethical for a long time; 2) the two Chinese words for plagiarism are derogatory and mean to rob and steal; 3) six Chinese books on composition published in the 1980s and 1990s (before the onset of this controversy on multi-cultural differences), all required citation of sources for information that is borrowed; and 4) even in ancient China, writers had to cite to "Zi," a shorthand for Confucius, when quoting Confucius.\(^\text{91}\) Further, while plagiarism is a problem in China, as it is elsewhere, this does not mean it is acceptable, and the media criticizes it routinely.\(^\text{92}\)

In addition, Liu argues that Sowden's suggestion that memorization and respect for authority lead to plagiarism is speculative.\(^\text{93}\) While Chinese students do rely on memorization to learn, this method is to learn how to write better and is not the same as copying work and claiming it as the writer's own.\(^\text{94}\) In fact, if memorization is used as a tool for copying, it is condemned in the Chinese language because the word for that practice means, literally, "dead and inflexible memorization."\(^\text{95}\)

Also, as for whether group work or sharing knowledge to promote harmony leads to plagiarism, this type of learning in groups is more prevalent in the West.\(^\text{96}\) Therefore, why is it that a practice in the East is more likely to lead to plagiarism than the exact same practice in the West?\(^\text{97}\) In sum, the author concluded that viewing the issue as one of culturally conditioning yields no pedagogical solutions, and the real culprit is lack of language proficiency and resources.\(^\text{98}\)

In another article published in response to Sowden's findings, a lecturer teaching in Hanoi argued that in Vietnam, like China, plagiarism is neither allowed nor legitimate.\(^\text{99}\) The Vietnamese terms for plagiarism have negative connotations.\(^\text{100}\) Further, although memorizing essays and showing respect for authorities are both common practices, neither practice encourages plagiarism.\(^\text{101}\) In Vi-

\(^{91}\) Id. at 235-36.
\(^{92}\) Id. at 236.
\(^{93}\) Id. at 237.
\(^{94}\) Id.
\(^{95}\) Id.
\(^{96}\) Id. at 238.
\(^{97}\) Id.
\(^{98}\) Id. at 239. The author, however, also stated that the main reasons for plagiarism among Asian students should be studied with "[e]xtensive empirical research." Id.
\(^{99}\) Ha, supra note 71.
\(^{100}\) Id.
\(^{101}\) Id.
etnam, for example, when quoting Ho Chi Minh, the source is supposed to be acknowledged by saying “Uncle Ho.” The author also explained that in Vietnam, the convention and accepted practice for acknowledging sources is by including a full list of sources in a bibliography at the end of the paper. In sum, the author is critical of academics in the West who hold inaccurate stereotypes about Asian students and then legitimize the act of plagiarism in Asian societies.

It might be that the truth is somewhere in between the different perspectives on this issue. It might depend on the individual student and that student’s experience and background. It might depend on the nature of the task the student is asked to perform. Nonetheless, the best approach seems to be that a teacher should avoid stereotyping, but not be wholly blind to, or ignorant about, differences that might exist in different cultures on the issue of plagiarism.

V. PLAGIARISM AND LITIGATION: DID YOU HEAR ABOUT THE LITIGATOR WHO WAS SANCTIONED FOR PLAGIARISM? THIS SOUNDS LIKE THE LEAD-IN TO A JOKE.

Because we are training law students to be lawyers and because I was a litigator for so many years, it seems highly impractical to divorce plagiarism in the academic setting from plagiarism as a practicing lawyer—which law students will become when they leave the academic nest.

A litigator’s job is not to create original works. Rather, a litigator’s job is to win, and in order to win, an effective legal writer must write about precedent, quote legal authorities selectively, and rely on earlier documents and thinkers. In fact, as a young associate working for a large firm, I remember that when I first received an assignment to write a motion, my first question was to ask whether anyone had written a similar motion, so I could build off that prior motion. No one chastised me for asking this; this was considered a form of initiative.

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102. Id. at 76-77.
103. Id. at 77-78.
104. See id. at 78.
106. Id.
Litigators often and appropriately copy from others in writing briefs and pleadings.\textsuperscript{107} Lawyers routinely rely on form books, and even the Federal Rules of Civil Procedure contain an appendix of forms.\textsuperscript{108} Law firms have brief and pleading banks, and, to save money for the client, lawyers are discouraged from reinventing the wheel. Interestingly, Rule 11 contains a list of representations when a lawyer signs a pleading, such as: 1) the pleading “is not being presented for any improper purpose;” 2) “claims, defenses, and other legal contentions are warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law;” 3) “the factual contentions have evidentiary support;” and 4) “the denials of factual contentions are warranted on the evidence.”\textsuperscript{109} Nowhere in this list is a claim of originality of authorship.\textsuperscript{110}

In addition, litigation filings are widely recognized as a blend of research, writing, and editing by multiple authors, some of whom get no credit. Judge Posner, in his book on plagiarism, gives the example of the solicitor general, who “signs the briefs that the federal government submits to the Supreme Court, though he does not write them.”\textsuperscript{111} Similarly, when an attorney “ghost writes” a brief in representing a pro se party without either the lawyer or the party acknowledging that contribution, the American Bar Association has determined that this non-disclosure does not violate the Model Rules of Professional Conduct.\textsuperscript{112} Finally, at least in North Carolina, it is not unethical for one lawyer to use several pages of another lawyer’s brief, even without that second lawyer’s permission, and even where the lawyers do not practice together.\textsuperscript{113} Essentially, North Carolina’s State Bar Council reasoned that lawyers often rely on the work of others when writing a brief, “the application of the common law is all about precedent, which invites the re-use of arguments,” and the utilization of others’ work furthers the client’s interest by reducing the time required to prepare a brief and, thus, reducing the charge to the client.\textsuperscript{114}

Even judges themselves are not immune from plagiarism. Judge Posner writes that “only a small minority [of judges write their own

\textsuperscript{107} Peter A. Joy & Kevin C. McMunigal, The Problems of Plagiarism as an Ethics Offense, 26 CRIM. JUST. 56, 57 (2011).
\textsuperscript{108} Id.
\textsuperscript{109} Id.; FED. R. CIV. P. 11(b).
\textsuperscript{110} See FED. R. CIV. P. 11(b).
\textsuperscript{111} RICHARD A. POSNER, THE LITTLE BOOK OF PLAGIARISM 26 (Pantheon Books, 2007).
\textsuperscript{112} ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 07-446 (2007).
\textsuperscript{114} Id.
opinions]; the others edit their law clerks’ opinion drafts to a greater or lesser extent—sometimes so extensively that the judge deserves to be considered a coauthor . . . though not the sole author.”

Judges or clerks also often insert into their opinions, “without attribution, verbatim passages from lawyers’ briefs.” One of my proudest moments as a lawyer was when a judge ordered relief never before ordered in the state (pre-filing injunctive relief) and copied my findings of fact and conclusions of law verbatim. Not once did it cross my mind that I should get attribution. All these examples of copying in litigation only scratch the surface.

VI. THE DEFINITIONS OF PLAGIARISM.

There are many well-known quotes about plagiarism that, in a nutshell, reflect just how controversial a concept it is. As one American playwright wrote: “If you steal from one author, it’s plagiarism; if you steal from many, it’s research.” Or, as T.S. Eliot said, “Immature poets imitate; mature poets steal.”

In a more serious vein, Black’s Law Dictionary defines plagiarism as the “deliberate and knowing presentation of another person’s original ideas or creative expressions as one’s own.” If this definition were applied to any of the examples of legal writing referenced in the preceding section, all of them would qualify. As for colleges, the University of Oregon defines plagiarism to mean “using the ideas or writings of another as one’s own.” In contrast, the University of Washington’s definition of plagiarism, based on a state statute, defines plagiarism more broadly to mean “the submission or presentation of someone else’s words, composition, research, or expressed ideas, whether published or unpublished, without attribution.” Under both of these definitions, lawyers writing briefs would qualify.

115. POSNER, supra note 111, at 20-21.
116. Id. at 21.
117. While this quote is credited to various people, it is often attributed to the playwright Wilson Mizner, If You Steal From One Author, It’s Plagiarism, If You Steal From Many, It’s Research, QUOTE INVESTIGATOR, http://quoteinvestigator.com/2010/09/20/plagiarism (last visited Nov. 9, 2018).
118. T.S. ELIOT, Phillip Massinger, in THE SACRED WOOD 112, 114 (1920).
A more workable, practical definition of plagiarism in the context of litigation was proffered by Judge Posner. After stating that “originality is not highly prized in law” and discussing common practices among practicing lawyers, he posited that the “reader has to care about being deceived about authorial identity in order for the deceit to cross the line to fraud and thus constitute plagiarism.”122 He introduced an element of detrimental reliance.123 In other words, in all these situations referenced above, no one is claiming originality, and no one expects those materials to be original. For example, “[n]o one accuses judges of plagiarism . . . [and] the quality of a judicial opinion is a function of the soundness of its reasoning, not its originality.”124 Only a definition of plagiarism that includes detrimental reliance could account for why litigators and judges are not constantly assaulted with accusations of plagiarism.

VII. A BRIDGE TOO FAR: COURTS CRACK DOWN ON PLAGIARISM.

Plagiarism in litigation, however, is not without limits. Two examples of cases that are often cited in the plagiarism literature are Iowa Supreme Court Attorney Disciplinary Board v. Cannon125 and Lohan v. Perez.126 In Cannon, the Iowa Supreme Court agreed that a lawyer should be publicly reprimanded when his briefs used a law review article verbatim in 17 of 19 pages of one brief without attribution.127 In the bankruptcy court proceeding out of which the lawyer’s unethical conduct arose, the lawyer had submitted two briefs.128 Because the briefs were of “unusually high quality,” the court ordered the lawyer to certify that he was the author.129 When the lawyer admitted that he “relied heavily” upon a law review article without attribution, the bankruptcy court initiated sanction proceedings.130 At the hearing before the grievance commission, the lawyer testified that he did not intend to plagiarize but he was pressed for time and made the wrong decision to plagiarize large sections of the article.131 After broadly defining plagiarism as a “misrepresentation,” the court also recognized that the term is "something of a scarlet letter that imposes a brand on a wide variety

123. Id. at 20.
125. 789 N.W.2d 756 (Iowa 2010).
127. 789 N.W.2d at 758, 760.
128. Id. at 757.
129. Id.
130. Id. at 758.
131. Id.
While it made clear that the ethical rules were not empowered to nab lawyers who merely fail to use adequate citation methods, those rules do prevent wholesale copying of 17 pages of material without attribution.\textsuperscript{133} Similarly, the United States District Court for the Eastern District of New York sanctioned a lawyer when the lawyer submitted an opposition to a motion to dismiss that was copied, without acknowledgement, from website articles and materials having nothing to do with the claims at issue.\textsuperscript{134} The lawyer did not dispute the plagiarism accusations.\textsuperscript{135} The court, however, denied the defendants’ request for costs and attorneys’ fees in defending the action, reasoning that the defendants failed to show any prejudice from the plagiarism or how the plagiarism caused additional fees to defend the claim.\textsuperscript{136} Finding that the only victim of sanctionable misconduct was the justice system itself, the court ordered the lawyer to pay a $1,500 fine.\textsuperscript{137}

Therefore, based on these cases and others, there is a line that can be crossed. These cases seem to suggest that if a substantial amount of material is copied without attribution, and if those sources are secondary sources (both cases involved non-case authorities), unethical plagiarism has occurred.\textsuperscript{138}

VIII. A KINDLIER, GENTLER APPROACH TO PLAGIARISM IN THE ACADEMIC SETTING.

Based on both the multi-cultural differences that may exist on plagiarism, as well as the limited concept of plagiarism as it applies in the world of litigation, teachers should not view the issue as one of a war on the students but instead should collaborate with students in the classroom setting to build trust around plagiarism.\textsuperscript{139} Unfortunately, that attitude is not currently the prevailing one. In plagiarism literature, the term “battle” is the governing metaphor.\textsuperscript{140} A brief survey of the literature also turns up negative

\begin{itemize}
\item \textsuperscript{132} Id. at 759.
\item \textsuperscript{133} Id.
\item \textsuperscript{134} Lohan v. Perez, 924 F. Supp. 2d 447, 459-61 (E.D.N.Y. 2013).
\item \textsuperscript{135} Id. at 460.
\item \textsuperscript{136} Id.
\item \textsuperscript{137} Id. at 461.
\item \textsuperscript{138} See Shatz & McGrath, supra note 105, at 17 (referencing an “implied distinction” between copying citable sources from outside the litigation context versus the copying of litigation-related material such as a brief).
\item \textsuperscript{139} See BAURAIN, supra note 68, at 132; Pennycook, supra note 20, at 226.
\item \textsuperscript{140} BAURAIN, supra note 68, at 124.
\end{itemize}
themes of “warfare, crime, punishment, detection, vigilant, violence, law enforcement, and disease.”\textsuperscript{141} Plagiarism detection websites “operate on a presumption of guilt and essentially require students to prove their innocence.”\textsuperscript{142} This attitude creates a false red line between “good” and “bad” students, which is too simplistic.\textsuperscript{143}

Instead, as a first step, teachers should educate themselves about the complexity of such issues, instead of approaching the issue from a stance of moral superiority.\textsuperscript{144} Second, students need to be educated not only about what plagiarism is in the academic context but what it means as a lawyer. After all, “the tensions and paradoxes built into academic writing in English [much less legal writing] are daunting for any student but particularly for those working to master difficult conventions in a new language and new sociocultural contexts.”\textsuperscript{145} As one example, it must be confusing for any student, especially an international student, to be told to rely on precedent and use the courts’ words when it comes to legal theories, but at the same time tell them that they cannot violate an honor code by copying anything. Third, the teacher should operate from a position of trust and collaborate with the student, so that instead of an us versus them approach (teacher versus student), the position should be us (the teacher and the student) versus the issue of understanding and preventing plagiarism. Treat the situation like a collaborative lawyer would, and resolve disputes by removing the disputed matter from the court room (or ethics panel) and treat the process as a way to trouble shoot and problem solve rather than to fight and win. Finally, we as teachers need to model good ethics around plagiarism by giving credit where credit is due, whether by using PowerPoints, hypotheticals, or other materials. Our actions speak louder than our words.

\textbf{IX. CONCLUSION.}

In conclusion, there is evidence on both sides of the issue of whether cross-cultural differences exist on plagiarism. All sides also agree that individual differences exist, but some authors find that making observations about patterns that do exist help in understanding the issue. Educators can be more effective if they understand that there might be an issue without stereotyping students into one category or another. Law school professors should

\begin{itemize}
  \item \textsuperscript{141} Id.
  \item \textsuperscript{142} Id. at 125.
  \item \textsuperscript{143} Id.
  \item \textsuperscript{144} Pennycook, supra note 20, at 226.
  \item \textsuperscript{145} Baurain, supra note 68, at 125.
\end{itemize}
also be mindful of the world that exists beyond the academic context where plagiarism is tolerated in many different contexts. Finally, teachers should be collaborating with students instead of plotting against them to achieve what should be a mutually desirable goal of avoiding plagiarism.