ADMINISTRATION

Failure to teach: due process and law school plagiarism
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Law schools do not explicitly teach their students what plagiarism is and how to avoid it. Instead, most schools simply offer up a blanket prohibition buried in an honour code distributed on, and forgotten after, the first day of class. They justify this perfunctory treatment on the basis of two assumptions: first, that students arrive at law school understanding the rules of scholarship and plagiarism; and second, that there is very little actual plagiarism by law students. Both these assum-ptions are fundamentally flawed. Students have not been given consistent instructions on how to avoid plagiarism and, as a result, they often stumble into accidental plagiarism that may jeo-pardise their academic and professional careers.

The problem of plagiarism in American law schools is reaching a crisis point as two national trends race toward a collision. While the law schools refuse to admit that their old methods for dealing with plagiarism are out-dated and ineffective, the courts show increasing willingness to review academic disciplinary hearings and reverse their findings on due process grounds.

Faculty cannot agree on the elements of plagiarism; some even turn it into a metaphysical question. Even when a school clearly defines plagiarism, most faculty are afraid or reluctant to report it. Many law schools appear to assume that students arrive at law school understanding what plagiarism is and that it is wrong. Students do not know what plagiarism is and they are increasingly guilty of it. Few law students enter law school with a clear understanding of paraphrasing and its limitations, even though college writers should know that unacknowledged paraphrasing frequently leads to unintentional plagiarism.

Courts step in when academic disciplinary proceedings do not satisfy due process. Due process does not require a specific set of disciplinary procedures but they must be basically fair ones. Due process has two key elements: notice and consistency. Recent cases should serve to alert law school administrators that courts will reverse disciplinary proceedings if students are disciplined for an offence their institution has never explained to them, or if students have been disciplined without fair hearings and without adherence to written procedures.

The only way to prevent increasing abuse by students, inconsistent discipline and interference by the courts is for law schools aggressively to rework their plagiarism policies. An ideal policy would contain a concrete definition of plagiarism. In addition, it would address the complications created by collaboration by the use of electronic resources and by the lower plagiarism standards of legal practice. Finally, an ideal policy would set graduated levels of disciplinary response that would provide predictable and fair punishments for violations of varying severity.

Failure to attribute is the key to plagiarism. It is the law school's responsibility to introduce the new concepts of legal attribution and its weight in the law. The most important choice in creating a definition is whether or not to define plagiarism as an intentional act – whether a student can be guilty of 'accidental' or 'good faith' plagiarism.

In addition to disseminating an updated definition of academic plagiarism, a responsible policy should mention collaboration, electronic resources and standards of plagiarism in the practice of law. If the law faculty has determined that no collaboration between students is allowed on any project or that collaboration is required on most assignments, that determination should be spelled out. Teachers have a duty to their students to articulate, before each assignment, what degree of collaboration is acceptable or expected or forbidden.

Few law schools mention electronic resources either in their definition of plagiarism or in their plagiarism policy. And yet students and practitioners alike now rely extensively on computer databases to find court opinions and law review articles. Teachers should explain why attribution to these sources is important. Regardless of the type of researching, the path away from plagiarism is always through attribution.

After creating a concrete definition and addressing its complications, the faculty should agree on the range of sanctions, which can be academic or disciplinary or both.

Law school administrators have a vested interest in their students' awareness of the school's policy. It is they who will defend the written definition and policy, so it should also be they who share its importance with students. After developing a plagiarism definition and a policy, explaining them to students and discussing them among the faculty, law schools have a further responsibility: they need to compare their definitions and sanction with those of other law schools throughout the country. If today's diversity of opinion across law schools continues, it is bound to become an issue for the courts.