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Helping International Students Avoid the Plagiarism Minefield: Suggestions from a Second Language Teacher and Writer

By Diane B. Kraft¹

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Teachers of international law students are more concerned than ever about plagiarism, and with good reason. More international students are coming to U.S. law schools to get their LL.M., J.D., and other graduate degrees, while Westlaw, Lexis, and myriad other Internet sites are making it ever easier for students to copy text verbatim directly from source material. These teachers may be tempted to view plagiarism by international students as fairly common (chalk it up to cultural differences), and its prevention straightforward (be sure they understand the plagiarism policy). However, the reality is more complicated, particularly for international law students, who face a minefield of potential plagiarism even when they have no intention to plagiarize. Legal educators who are aware of the reasons nonnative English speakers may plagiarize will be better able to help their students learn to avoid plagiarism. Below are some suggestions.

1. Be wary of the stereotypes.

Perhaps the most pervasive stereotype about plagiarism by international students is that of the Asian student who plagiarizes because it is acceptable to do so in his culture, or at least it is not viewed as a serious problem. Support for this comes from several studies that showed plagiarism

was not addressed in classrooms in Hong Kong and South Korea because teachers were not concerned about it.² Some have attributed this casual attitude toward plagiarism to differing views of intellectual property and authorship.³ In traditional Chinese rhetoric, for example, writers could combine their own ideas with those of others without attribution because it was understood that readers would be familiar with the sources.⁴ One 1985 study concluded that Chinese students were prone to plagiarism because they were encouraged to copy and memorize texts as part of the learning process.⁵ My own experience in studying Russian suggests that copying texts as a way of learning is not limited to Asian cultures. My professor—a native Russian speaker—encouraged us to do what he had done when learning English: copy pages and pages of text in the target language to gain a better feel for the language.

However, there is no consensus that “cultural differences predispose L2 writers to write in a way that is likely to be called plagiarism”⁶ or that could lead to plagiarism. More recent studies of students in China, Vietnam, and Japan found that students in those countries viewed plagiarism negatively.⁷ One scholar argues that “the principles shaping attitudes toward plagiarism are not necessarily ‘hard-wired’ cultural distinctions but more malleable ones that also reflect evolving social and

“Legal educators who are aware of the reasons nonnative English speakers may plagiarize will be better able to help their students learn to avoid plagiarism.”

² Diane Pecorari, *Teaching to Avoid Plagiarism* 109 (2013).

³ Joel Bloch, *Plagiarism, Intellectual Property and the Teaching of L2 Writing* 3, 19 (2012).

⁴ *Id.* at 14.

⁵ Carolyn Matalene, *Contrastive Rhetoric: An American Writing Teacher in China*, 47 *C. Eng.* 789, 803-04 (1985).

⁶ Pecorari, *supra* note 2, at 111. “L2” means “second language.”

⁷ *Id.*

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“One of the most difficult tasks in writing in a second language is paraphrasing—putting someone else’s ideas into your own words.”

cultural developments.”⁸ For example, attitudes about citation and plagiarism have changed in China in the past twenty years, with the result that unattributed copying from well-known sources is no longer acceptable in some kinds of writing.⁹

In short, it is important not to assume that a student from a particular part of the world has a particular view of plagiarism. To rely on a stereotype could mean alienating students when discussing plagiarism in the classroom, and perhaps missing the real cause of plagiarism when it does occur. During the three years I taught English as a Foreign Language to South Korean university students, I diligently spent an entire class each semester on plagiarism: what it was, why it was unacceptable in my class, and how to accurately cite source material. Because ESL scholarship at the time tended to focus on cultural differences as a main reason for plagiarism, I believed that clearly stating the “what” and “why” of my expectations would be enough to prevent my students from plagiarizing. While this approach probably helped the students to a point, a more nuanced understanding of why my students might be tempted to plagiarize would certainly have helped them even more.

2. Paraphrasing is harder than it looks.

Writing in a second language is very, very difficult. After more than six years of studying French and eight years of studying Russian, at my best I could write only a passable essay in either. A well-written academic paper or legal brief would have been excruciatingly time consuming to produce. One of the most difficult tasks in writing in a second language is paraphrasing—putting someone else’s ideas into your own words.¹⁰ Yet unless a student is writing a pure opinion piece, she will be expected to paraphrase often. One of the strategies language learners use to cope with paraphrasing when writing in a second language is “patchwriting.” Here’s an example:

Original:

“[Patchwriting is] copying from a source text and then deleting some words, altering grammatical structures, or plugging in one synonym for another.”¹¹

Patchwriting:

A student who patchwrites copies from a source and then deletes words, alters grammatical structures, or uses one synonym for another.

Here, the writer who is patchwriting has used the simple present tense instead of the present progressive tense, deleted the words “text” and “some,” and substituted “uses” for “plugging in.” I no longer have the papers I wrote for my French and Russian classes, but if I did, I suspect I would find similar examples of patchwriting in them. This is not because I thought it acceptable to copy from sources, but because I wanted to be sure my work was grammatically correct and accurately conveyed the ideas of the original authors. As a nonnative writer of the target languages, I doubted that I could do either without relying—heavily at times—on the language of the source material. Indeed, patchwriting is considered a developmental stage of language learning,¹² and as such we should expect that nonnative writers will use it at some point in the process of mastering the target language.

To help my Korean students as they struggled with paraphrasing an idea in English, I told them to cover the original text, then paraphrase the material orally (this was also a test to be sure they understood the material; if they didn’t, they wouldn’t be able to do this part of the paraphrase exercise), then paraphrase it in writing, using their oral paraphrase if they were satisfied with it. Only when they were satisfied with the written paraphrase could they look at the original, to be sure the paraphrase

⁸ Bloch, *supra* note 3, at 76.

⁹ *Id.* at 131, 169.

¹⁰ Let’s face it: paraphrasing is difficult even in one’s native language.

¹¹ Pecorari, *supra* note 2, at 28 (quoting R.M. Howard, *The New Abolitionism Comes to Plagiarism, in Perspectives on Plagiarism and Intellectual Property in a PostModern World* xvii (L. Buranen & A.M. Roy eds. 1999)).

¹² Pecorari, *supra* note 2, at 28.

accurately conveyed the original idea. The students found the exercise difficult, but it helped them with their paraphrasing skills.

When an educator of nonnative English speakers does find instances of plagiarism in the form of patchwriting, the first step is to have a conversation with the student to determine why she wrote the plagiarized section or sections of the paper as she did. If it appears the problem was improper paraphrasing, an effective response is to work with the student on how to paraphrase properly—or have a writing center instructor do so—rather than assume the student was too lazy to paraphrase or didn't understand that copying is not acceptable. Writing in a foreign language is one of the most difficult language skills to master, and a little understanding can go a long way toward helping students as they struggle.

3. In law, sometimes copying is OK.

If the difficulty of writing in a foreign language weren't enough, international students learning to write legal memos and briefs in the U.S. face a second hurdle: learning not to plagiarize when writing in a field where plagiarism is sometimes acceptable. For example, it is widely accepted in legal practice to copy language from form books, contracts, and pleadings written by attorneys within the writer's firm or organization.¹³ It may even be acceptable to copy parts of other firms' pleadings as well as parts of judicial opinions, for example when stating a standard of review.¹⁴ While proper citation is, of course, essential when writing briefs—a judge can ignore an argument unsupported by authority¹⁵—it is much more difficult to know when it's OK to use a particular phrase verbatim and when to paraphrase it. This is

true for all beginning law students, but particularly for those whose native language is not English.

In one of the assignments I wrote as a first-year law student, a key part of the analysis involved the phrase inextricably linked. I quickly learned that I had to use that phrase verbatim in my analysis but did not need to use quotation marks around the phrase each time I used it because it was a legal term of art, not a new idea. The legal reader—like the Chinese reader of traditional rhetoric—understood that the phrase was not my own, and did not need me to remind him. This seemed odd to me at the time, but my confidence in my ability to write in my native English kept me from second-guessing myself each time I used such key phrases in subsequent memos and briefs. Had I been writing the brief as a law student in another country and in a foreign language, I would likely not have had that confidence. Instead, I would probably have been flummoxed for a time about when I needed to put a phrase in my own words, when I needed to use a key phrase verbatim but without quotation marks, and when I needed quotation marks around a phrase I used verbatim from the source. Multiply this uncertainty by the thousands of words law students write each year, and you can see the plagiarism minefield our international students face.

As a native English speaker trained in law, I know that using phrases like *inextricably linked*, *beyond a reasonable doubt*, and *reasonable expectation of privacy* without quotation marks is neither patchwriting nor plagiarism. I can also recognize when a phrase taken verbatim from a source does need quotation marks, for example a description of the facts from a case or compelling language from the court's reasoning. Our international law students will, in time, also learn to make these distinctions. One way to help them is to highlight examples of key phrases from the sources discussed in class, and discuss why they do or do not need quotation marks. One legal scholar's advice regarding first-year J.D. students also applies, and particularly so, to international law students: “[B]efore holding students accountable for plagiarism, give them a short grace period to let them experiment, without

“[I]nternational students learning to write legal memos and briefs in the U.S. face a second hurdle: learning not to plagiarize when writing in a field where plagiarism is sometimes acceptable.”

¹³ Diane B. Kraft, *When Is Copying OK in Legal Writing?* Ky. Bench & Bar, May 2013, at 30.

¹⁴ *Id.*

¹⁵ Legal writing also differs from other forms of rhetoric in that the reason citation is essential is not to recognize the original author of the words or idea, but to establish that the idea comes from precedent. That the citation need not come from the original source, but rather may come from a source that is much more recent than the original source, often confuses new law students regardless of their native language.

fear, with this new form of written discourse.¹⁶

What will likely not work is simply giving a written plagiarism policy to incoming international students and expecting that they will automatically understand how to apply it to their own writing.¹⁷

A charge of plagiarism is serious indeed, and the consequences to the student found to have committed plagiarism are potentially life changing. I do not argue that international students who plagiarize should not be held accountable. Rather, I urge educators to keep in mind that students from other cultures likely have varied and complex views about plagiarism that differ from the stereotypes, that particular instances of plagiarism might have legitimate linguistic explanations, and that the conventions of the legal profession regarding what is and is not acceptable copying complicate the situation for these students even further. If we remember this, we will be in a much better position to help our international students avoid plagiarism.

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¹⁶ Lurene Contento, *Freeing Students to Write More Effectively—Taking the Fear Out of Plagiarism*, Second Draft, Fall 2011, at 27.

¹⁷ Bloch, *supra* note 3, at 79; Robin Nilon, *The Calculus of Plagiarism: Toward a Contrastive Approach to Teaching Chinese Lawyers*, 2 S.C. J. Int'l L. & Bus. 1, 4-5 (2005-2006).