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Yes, We Can:* Embrace *The Case for Plagiarism* to Enhance Access to Justice

Rebekah Hanley**

> "As a public citizen, a lawyer should seek improvement of . . . access to the legal system. . . . A lawyer should be mindful . . . that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. . . . A lawyer . . . should help the bar regulate itself in the public interest."[1]

I. INTRODUCTION

Lawyers who lie or steal can face disciplinary consequences for those misdeeds, as they should. They have duties to their clients, to the courts, and to the public; those duties are inconsistent with misrepresenting fact or law, and they are inconsistent with misusing the money or property that others have entrusted to their care.

But what about lawyers who "present[] another person's ideas, information, expressions, or entire work as [their] own," thereby engaging in plagiarism?[2] Plagiarizing lawyers have been disciplined based on the notion that they lied, misrepresenting someone else's ideas or language as their own; they can also be

* I know that you know that I am borrowing a recognizable campaign slogan in this title; here is the expected explicit reference to Barack Obama and his campaign team. I wonder how many readers feel this citation adds value or is necessary.

 LRW Clinical Professor, University of Oregon School of Law. The Author thanks the University of Oregon Board of Visitors, whose generous funding supported the excellent research assistant work of second-year law student Mason Rogers.

[1] MODEL RULES OF PROF'L. CONDUCT PREAMBLE AND SCOPE 6 (AM. BAR ASS'N 2020).

[2] Andrew M. Carter, *The Case for Plagiarism*, 9 U.C. IRVINE L. REV. 531, 532 n.5 (2019). This concept is not merely an academic concern; it also has purchase in politics, journalism, and literary publishing. Technically, the definition of plagiarism is expansive and strict. As I wrote a dozen years ago, "[t]here's no rule for how many words you can borrow from a source before you need quotation marks because borrowed language calls for quotes, period. A writer who tries to alter a quote just enough to avoid using quotation marks is plagiarizing." Rebekah Hanley, *Notes on Quotes: When and How to Borrow Language*, OR. STATE BAR BULL. (Feb./Mar. 2011), https://www.osbar.org/publications/bulletin/11febmar/legalwriter.html.

declared copyright infringers for misusing another lawyer's intellectual property by copying that person's legal writing without permission.[3]

Three years ago, in *The Case for Plagiarism*, Professor Andrew Carter invited us to lighten up and for good reason. But I'm not sure that many people received that invitation. This Article strives to amplify Professor Carter's important message: stop maligning plagiarism in the practice of law. Some copying by lawyers does no actual harm, and often any damage caused by plagiarism is outweighed by copying's value: facilitating affordable access to justice. To the extent that copying can extend access to justice, it is something to celebrate and promote, not to discipline or discourage.

Also possible is that people read Professor Carter's piece—and even agreed with him—but wondered exactly how to proceed. This Article embraces Professor Carter's encouragement to rethink the profession's objections to the plagiarism in which practicing lawyers engage. And it attempts to operationalize his suggestions by describing concrete actions our community can begin to implement, some without delay.

We should act now. Though we are ethically bound to avoid misrepresentations and the misuse of others' intellectual property, we simultaneously must work diligently to improve access to the legal system. Truly *equal* access to justice is a lofty goal that is a long way off, and it may not be achievable at all. Still, if letting go of plagiarism norms carried into the profession by academically focused lawyers and judges might enhance or expand the help that is available to people of modest means who experience a legal problem, our obligation to the public interest requires us to seriously explore that proposal.

II. YES, PLAGIARISM IS COMPLICATED IN THE WORLD OF LEGAL WRITING

Before Professor Carter's 2019 article prompted me to think hard about the role of plagiarism in the legal profession, my perspective on the topic had shifted over time, informed by the norms of a sequence of settings.

As a law student, I internalized the importance of avoiding plagiarism. Originality has value in the academy, for students and faculty alike, but knowledge of precedent and continuing scholarly conversations is important, too. So academics conduct thorough investigations of existing knowledge, emerging with original ideas informed by that work. In the end, students and faculty research, reflect, develop, and place into context original—but necessarily derivative—arguments. When they memorialize their thinking in writing, they carefully cite the resources they rely on and quote any language they borrow.

[3] *E.g.*, Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Lane, 642 N.W.2d 296 (Iowa 2002); Newegg, Inc. v. Sutton, P.A., No. CV1501395TJHJCX, 2016 WL 6747629 (C.D. Ca. Sept. 13, 2016).

Immediately after this law school training and acculturation, as a federal law clerk, I was invited to improve my efficiency by consulting a digital archive of memoranda and lifting applicable portions of my co-clerk's and predecessors' work. As a practicing attorney, I experienced something similar: my supervisors expected me to copy whole sentences from documents previously drafted by my senior colleagues, saving our client money while delivering tested, proven work product. I was not granted mere permission to borrow the ideas and phrases of others; I was instructed to do so. In these relatively resource-rich practice environments, copying saved time; reduced risk; and, in private practice, cut client costs.

Now, as a legal writing professor, I strive to prepare law students to efficiently create outstanding written legal work for their future clients, but I also must monitor for academic integrity. I counsel my students that the kind of collaboration often relied upon in practice—including reusing or upcycling pre-drafted work product—is problematic in the law school setting. Copying can violate school policies. Because students must submit work for grades, fairness dictates that the work, generally speaking, be entirely their own.

This is helpful preparation for the real world. Though some lawyers enjoy the luxury of copying the work product of peers in their organization, newer solo practitioners and lawyers in small organizations are less likely to find something on-point in a brief bank. Whatever situation they may find themselves in, students must be equipped to practice, so they must develop the skills they need to produce written work without the head-start and confidence that an on-point "sample" would provide.

Moreover, sometimes copying by practicing lawyers is not tolerated. A lawyer can face copyright infringement claims and professional misconduct charges for suggesting that another writer's ideas and words are the lawyer's own while endeavoring to efficiently and effectively represent a client. And unfortunately, the same lawyers likely to be operating without the benefit of a deep brief bank—solo practitioners and small-firm lawyers—are more likely than other lawyers to be disciplined for professional misconduct of any sort.[4]

Because I teach not only legal writing but also professional responsibility, I am deeply interested in the tensions that lawyers experience in practice. For example, writing and revising can consume whatever time is made available to the endeavor. But while a lawyer can continue to tighten and brighten her written work product by investing extra hours and reflection, she can't ethically charge her client more than a reasonable fee for preparing the document. Meanwhile, to meet the standard of

[4] Leslie C. Levin, *The Ethical World of Solo and Small Law Firm Practitioners*, 41 HOUS. L. REV. 309, 312 (2004–05) ("Solo and small firm lawyers are disciplined at a far greater rate than other lawyers."); Melissa Heelan, *Ethics Awareness, Education Up as Attorney Discipline Falls*, BLOOMBERG LAW WHITE COLLAR & CRIM. LAW (Nov. 23, 2021, 4:45 AM), https://news.bloomberglaw.com/white-collar-and-criminal-law/ethics-awareness-education-up-as-attorney-discipline-falls (noting that almost half of the lawyers sanctioned in Illinois in 2020 were solo practitioners).

competence, a lawyer might reasonably copy pre-existing text in some contexts, even as competing values prohibit her from doing so in comparable contexts. That dichotomy can prompt confusion and challenge. Further, to the extent that a "copying is misrepresenting" rule effectively converts the competence standard to an originality requirement, professional conduct standards can frustrate, rather than further, equal access to justice. That's a problem. We ought to find a way to reconcile our ethical duties of competence and candor with our duty to improve the profession by facilitating access to justice.

In short, we've been told to (sometimes) plagiarize, but we've also been told that plagiarism by lawyers is (sometimes) problematic. The tension is patent. Also troubling is the hypocrisy of judges who, while saving time by copying from their own earlier opinions, law clerks' memoranda, and lawyers' briefs, criticize lawyers for engaging in similar cost-cutting strategies. Clients' interests should be paramount; they want their lawyers to produce clear written work product as efficiently as possible. Copying can advance those interests, including for those who are least able to afford costly legal representation. As a result, we ought to advance from description and criticism of anti-copying rules to concrete action intended to effect positive change: enhanced access to justice.

III. YES, PROFESSOR CARTER DEFENDED PLAGIARISM BY LAWYERS, AND I AM HERE FOR IT

In his 2019 article *The Case for Plagiarism*, Professor Carter argued "against an anti-plagiarism rule" and thus, reluctantly, "in favor of plagiarism." He concluded that an anti-plagiarism rule, as it applies to writing in law practice, "cannot be justified" and, in fact, can exacerbate the justice gap.[5]

In arriving at that conclusion, Professor Carter revisited some familiar territory. For example, he began with his take on *Iowa Supreme Court Attorney Disciplinary Board v. Cannon*, a disciplinary matter focused on an Iowa lawyer who cut entire paragraphs from an online article, pasted them into a court brief, and omitted any citation to the source of the prose.[6] Indeed, only two of Mr. Cannon's 19 pages of "legal analysis" were *not* copied from that online article. Mr. Cannon was caught and subsequently disciplined but only because the high quality of the legal writing in his brief surprised the judge.[7]

Professor Carter systematically considered, and thoughtfully rejected, arguments favoring the status quo based on various players' needs and interests. Courts benefit from precise writing, not from original writing. Clients' interests are similar: they want their lawyers to produce clear, compelling arguments and for the

[5] Carter, s*upra* note 2, at 554.
[6] 789 N.W.2d 756 (Iowa 2010).
[7] Carter, *supra* note 2, at 531–32 (discussing *Cannon*, 789 N.W.2d at 757).

lowest possible price. So, neither courts nor clients need protection against lawyer plagiarism.

Nor do the authors of copied legal prose deserve protection in Professor Carter's view. He asserted that any economic interests that might be "offended by plagiarism in a brief are barely perceptible."[8] Further, in the context of practical legal writing, the prevalence of collaboration and the implications of stare decisis seriously undermine any moral rights concerns associated with copying.

Professor Carter closed his article by encouraging the legal discipline to drop its objections to plagiarism: "If plagiarism allows attorneys to provide cost-effective legal services to . . . under-resourced Americans, then courts and professional tribunals should have no objection."[9]

Professor Carter's piece is both provocative and compelling. It invites us to rethink core values and to reprioritize competing interests. Professor Carter asks us to loosen up—to abandon old norms in an effort to enhance access to justice. This is an important call to action that we should consider seriously. After all, much of what practicing lawyers write about is settled law; spending time devising an original way to talk about established principles cuts against the efficient administration of justice. Generating creatively drafted passages demands that lawyers spend more hours, and their clients spend more dollars, than necessary to inform the court about the state of the law. The justice gap is immense and problematic; if permitting lawyers to copy existing text instead of creating original prose can help shrink that gap, our profession has a responsibility to allow—not punish—that conduct.

Yet, for the first few years anyway, there was little indication that Professor Carter's idea gained traction in advancing the profession toward meaningful change. As of 2020, it had been cited just four times: three times by academics in law review articles (to define plagiarism and related norms and penalties) and once by me, in a bar journal about automated brief-writing software. It is now also cited extensively and with approval, by Professors Megan Boyd and Brian Frye in a recent law review article arguing, among other things, that academics should teach law students to plagiarize appropriately.[10]

I was excited to see Professors Frye and Boyd run with Professor Carter's thesis. More of us should similarly be talking about and acting on our opportunity to address the tension between barring plagiarism and expanding access to justice. This Article, citing Professor Carter once again, extensively and with enthusiasm, is my effort to further advance our collective quest to reform legal writing norms in the name of more equitable access to justice.

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[8] *Id.* at 539.

[9] *Id.* at 555.

[10] Megan E. Boyd & Brian L. Frye, *Plagiarism Pedagogy: Why Teaching Plagiarism Should Be a Fundamental Part of Legal Education*, 99 WASH. U. L. REV. ONLINE (Nov. 23, 2021), https://wustllawreview.org/wp-content/uploads/2021/11/Plagiarism-Pedagogy-.pdf.

IV. YES, THE ACCESS TO JUSTICE CRISIS IS REAL

The access to justice gap is immense, and ignoring the crisis is irresponsible. Here is a summary of the problem: the cost of legal assistance has risen so high that while the rich can afford to hire lawyers, the poor cannot. As a result, people with limited means decline to pursue available remedies, forfeit rights and property, label legal problems as bad luck, or attempt self-representation, generally with disappointing results. This oversimplifies the landscape, but not by much.

Professor Carter touches on this in *The Case for Plagiarism*, noting that "two out of three Americans would struggle to raise $1000" to cover a lawyer's fees for addressing a legal need.[11] As a result, people with legal needs often assume that they cannot afford a lawyer's assistance and many are correct. Some don't bother seeking help; others struggle to secure representation.[12]

Highlighting the justice gap more than Professor Carter's short article does may help explain the urgency I feel to do something to improve it. Recent research revealed that while approximately four out of five Californians facing child custody issues sought legal help, only about half with that need secured legal assistance.[13] People facing employment law issues were much less likely to seek assistance, and only twenty-six percent of those who sought help received legal representation.[14] Most importantly, of the potential litigants who consulted legal aid organizations, fewer than one in five secured professional representation in court.[15]

That evidence is consistent with other findings that legal representation is out of reach for most Americans. If we remove plagiarism from the list of disciplinable offenses that lawyers worry about when they deliver low-cost legal services to people of modest means, we may well allow lawyers to offer more services to more people. It's certainly worth a try.

V. NO, PLAGIARIZING LAWYERS AREN'T MERELY LAZY, CARELESS, OR UNSKILLED

Professor Carter followed his discussion of *Cannon* by asking why a court would care that Mr. Cannon attempted to pass off another's writing as his own.[16] That's a fair question. I think it's also worth exploring a different one: why would

[11] Carter, *supra* note 2, at 537–38.
[12] STATE BAR OF CAL., 2019 CALIFORNIA JUSTICE GAP SURVEY TECHNICAL REPORT 14 (Sept. 2019), https://www.calbar.ca.gov/Portals/0/documents/accessJustice/California-Justice-Gap-Survey-Technical-Report.pdf.
[13] *Id.* at 14.
[14] *Id.*
[15] *Id.* at 13.
[16] Carter, *supra* note 2, at 533.

Mr. Cannon (or someone else like him) attempt to pass off another's writing as his own in the first place?

The copying part seems relatively straightforward. We can imagine a number of reasons a lawyer might copy rather than draft something new. Perhaps the lawyer is a generalist, not a specialist. He has little time to devote to this task, or his client has a modest budget. Moreover, his firm has no brief bank like larger, more established organizations do. Nor does he have a deep bench of junior associates to whom he can delegate drafting. He is looking for an efficient way to educate the court about the state of the law. Surely polished, published prose by an expert in the field will be more useful to the judge than a generalist's rapidly drafted explanation of the law.

This all demonstrates that, as Professor Carter explained, copying can "save[] time and money."[17] Having cut and pasted the relevant rules and illustrations of them, the lawyer can minimize the client's expenses, provide the court with a clear description of the applicable legal standards, and dedicate his preserved time to marshaling the facts or seeking justice on behalf of other clients.

Put another way, dismissing Mr. Cannon, or another copying lawyer, as "lazy" represents an oversimplified judgment of an entirely rational decision to copy. Cannon conducted research and read caselaw. And Cannon examined the facts, analyzing thirty-two boxes of documents. Still, he ran short on time to prepare his briefs.[18] Ultimately, Cannon's problem wasn't really the copying but rather the lack of proper quotations and citation. He lied to the court about authorship; that conduct involved dishonesty and misrepresentation, violating Rule 8.4(c).

So why not quote and cite the source instead of suggesting that the writing is original? After all, noting that the information flows directly from an expert in the field should carry some persuasive weight. That weight only increases when a lawyer copies from primary, not secondary, authority. Why would a lawyer pretend to have personally written something that, if properly cited, carries even more weight than her own assertions?

Some attorneys may be careless: they cut and paste but fail to note that in an early draft and, when revising, overlook that the material was lifted, not drafted. Some may even intentionally plagiarize, hoping to inflate the image they convey to create an exaggerated impression of their expertise in the material.

But others likely are motivated to omit quotation marks and citations out of fear that long block quotations will never be read at all. Judges have told us, time and time again, that they detest seeing long block quotations in briefs.[19] Those judges hate long block quotations so much, they tell us, that when reading a brief they simply skim those passages, or worse, skip them entirely.[20] So what's a rational lawyer to

[17] *Id.* at 536.
[18] Iowa Supreme Ct. Attorney Disciplinary Bd. v. Cannon, 789 N.W.2d 756, 758 (Iowa 2010).
[19] *See Carter*, *supra* note 2, at 537 n.43.
[20] *See id.*

do? Some busy lawyers—representing high-need, low-resource clients—may be knowingly sacrificing their professional reputation and future in order to efficiently get critical information before the court in a format in which the court is likely to actually read it.

That's frustrating. And if law professors and other lawyers can help solve this problem, we should.

VI. YES, WE HAVE THE POWER TO SHIFT NORMS AND IMPROVE ACCESS TO JUSTICE AS A RESULT

Let's explore what we might do as a discipline to become more client- and access-to-justice-oriented. One idea, in response to Professor Carter's invitation, is that we relax a bit, allowing ourselves to become less fussy about quoting and citing—that we interrogate our objections to plagiarism with an eye toward productive reform. Here are some possible adjustments to norms and practices that could help us chip away at the justice gap.

A. Cabin "Plagiarism" within Academia

Perhaps we could begin by refining the definition of "plagiarism" as it applies to legal writing. A bifurcated definition of "plagiarism" could emerge: the legal academy could retain the traditional test while practicing legal professionals could stop labeling uncited, borrowed prose in legal work product as a "misrepresentation" that is subject to discipline. As a result, the only "plagiarism" that would remain relevant to lawyer admission or discipline would revolve around conduct that occurred outside of practice, like during school.[21]

As Carter explained, "the heavy rule against plagiarism that prevails in the academy makes good sense . . . because originality has a unique value in the academic setting."[22] But that value fades away in the legal practice setting, where the need for efficiency, clarity, and precision, among other concerns, combine with stare decisis to depress—or even eliminate—the benefits of originality. We can retain our academic norms and also accept that copying in practice does, will, and often should occur. Otherwise, we allow well-resourced organizations and clients to benefit from wholesale copying from brief banks while requiring that solo practitioners, new lawyers, and their clients invest time and money in creating original prose that may be less helpful to readers than lifted language would have been.

So, a refined definition might clarify that legal publications like law review articles and monographs, along with student-authored scholarly works for credit,

[21] *See, e.g.*, *In re* Zbiegien, 433 N.W.2d 871, 875, 877 (Minn. 1988) (concluding that plagiarism in a law school seminar paper, an "onerous act" that involved "an element of deceit," reflected poorly on bar applicant's character and fitness to practice law).

[22] Carter, *supra* note 2, at 534.

must be original. But in practice, lawyers may copy pre-drafted prose, and sometimes skip the quotation marks and citations, without fear of being branded as a "plagiarizer," because plagiarism is just not applicable to much of the practical work product that lawyers generate.

Admittedly, a bifurcated plagiarism definition would create a disconnect for those teaching law school skills classes and working to turn out practice-ready law school graduates. Students who practice creating documents based on academic standards would be subject to an unfamiliar set of standards when they enter practice.

But that's true already. New lawyers in large firms, accustomed to crafting from scratch and meticulously citing and quoting every source, are expected to crib from drafts in their organizations' brief and contract banks—without citing them. Why create cost and risk by starting anew when the firm already owns outstanding models that were written by a different employee? Those lawyers transition from one set of norms to another; the rest of the profession can do the same.

B. Propose or Support Changes to the Ethical Rules

Relatedly, if we're going to continue to call uncited copying by practicing lawyers "plagiarism," the legal profession could legitimize it by adjusting disciplinary rules, the associated comments, or their application to situations involving copied text. The Model Rules of Professional Conduct—and many corresponding state rules—prohibit "misrepresentation" by lawyers, labeling it misconduct that may result in professional discipline.[23] Recall that Mr. Cannon was disciplined for misrepresenting himself as the sole author of a brief that lifted seventeen pages from another source. We could legitimize lawyer copying by revising the lifted-prose narrative in the spirit of Robin Hood, a thief who is heralded as a hero because of his benevolent motivation and impact.

To flip the plagiarizing lawyer script, we must make clear that copying may technically be wrong, but it is nevertheless justifiable in certain contexts.[24] When some lawyers incorporate pre-drafted material into their work, they are taking from the haves to serve the needs of the have-nots.

[23] MODEL RULES OF PROF'L. CONDUCT r. 8.4 (AM. BAR ASS'N 2020).

[24] An economist would likely argue that all efficiency improvements are worthwhile and justifiable, regardless of whether the beneficiaries already enjoy ample resources. Thus, copying by lawyers is justifiable in more—perhaps even all—contexts if one's goal is to broadly maximize efficiency rather than to increase access to justice for those who cannot currently afford it. Practically, however, there may be little need to legitimize copying by all lawyers in all contexts; for a variety of strategic and financial reasons, lawyers whose sophisticated clients have deep pockets are more likely to draft or lift from their own resources than to copy from other materials.

More specifically, the definition of "misrepresentation" in disciplinary codes could explicitly exempt the use of copied, unattributed text in some circumstances through the introduction of a comment along these lines:

> *Reliance on or incorporation of pre-drafted materials, from any accurate and credible source, to deliver affordable legal representation*[25] *does not necessarily amount to* ***misrepresentation*** *in violation of the rules, even if the pre-existing writing is or is not cited. That is because competent and diligent lawyers may reasonably rely on stock language located in a form or other available resource to, for example, explain a legal principle or the terms of an agreement, where that language adequately and efficiently addresses the client's needs.*

Or the profession could create a defense to a plagiarism-focused misrepresentation complaint for lawyers preparing briefs on behalf of clients who cannot afford to pay high hourly fees for original writing by lawyers.[26] Lawyers would concede the fact of the copying but explain that critical competing interests outweighed any harm it may have caused. Again, a new comment accompanying Rule 8.4 could address this concern:

> *Plagiarism, an academic and literary construct, does not necessarily violate a Rule of Professional Conduct or provide a basis for attorney discipline. For instance, under certain circumstances, by incorporating pre-existing text into a new document, even without attribution, a lawyer can facilitate the delivery of competent, low-fee representation. Copying violates the Rules' prohibition against* ***deceit or misrepresentation*** *only where an attorney's omission of quotation marks or accurate citation is both intentional and materially misleading regarding the meaning or weight of authority.*

Lawyers do copy despite the willingness of courts to discipline them for misrepresentation. Some may be consciously violating a professional conduct rule, deferring to their personal moral compass rather than the rules as written. Given the extensive copying known to occur among practicing lawyers creating documents on behalf of clients,[27] the legal discipline may choose to update its rules rather than

[25] The ABA would almost certainly narrow this, limiting it to lawyers copying while representing indigent clients on a pro bono basis. That would be consistent with the ABA Model Rules of Professional Conduct's most recent revision, which reified the notion of tailoring a rule to facilitate access to justice for that group of clients. Generally, the rules prohibit lawyers from giving their clients financial assistance to protect against various risks and abuses. But that rule can also complicate—or outright extinguish—a client's ability to continue pursuing a valid claim. Amended in 2020, Model Rule 1.8(e) now permits lawyers who represent indigent clients on a pro bono basis to provide those clients with modest gifts covering basic living expenses, like food, rent, transportation, and medicine. Both before and after that revision, lawyers would be subject to discipline for offering similar assistance to any other client.

[26] *But see supra* note 24 (predicting that a narrower carve-out would be more palatable).

[27] *See generally* Boyd & Frye, *supra* note 10.

continue selectively and unevenly enforcing them. If we decline to update the rules, we will continue subjecting an unlucky few lawyers to disciplinary sanctions; subjecting the clients of risk-averse lawyers to the cost of unnecessary legal writing; and subjecting the public to an artificially constricted supply of affordable legal representation.

C. Reframe the Conversation about Long Block Quotations

I imagine that abandoning precedent and rewriting disciplinary rules feels like a reach. I am calling for immediate action by law school faculty while outlining dramatic changes that are largely beyond our control. We can talk about these potential reforms, and encourage others to do the same, but changes like the ones proposed above seem unrealistic for the foreseeable future. They may be thought experiments more than action items. In contrast, here's something concrete that we can do today: stop accepting, excusing, and catering to lazy reading, even—or especially—by judges.

Let me be clear: judges are not lazy. They are busy. And their longstanding critique of long block quotations has a solid foundation. The strongest, most compelling legal writing elegantly integrates short quotations—precious words and phrases thoughtfully snipped from an authoritative source—into the author's own prose, tailored specifically for the purpose and audience of the new document. Judges, like most readers, prefer reading strong writing over weak writing. Judicial distaste for long block quotations is just one of the reasons that legal writing professors have been counseling law students and other legal writers to avoid them.

But not all clients can afford the expense associated with originality, not all writing projects warrant that kind of investment, and, in many cases, novel wording is counterproductive. The poorest clients lack the means to subsidize unnecessary originality by lawyers; they cannot afford the expense associated with this judicial preference. True, long block quotes do not make for the best possible legal writing. But sometimes the only thing a client needs is serviceable legal writing. If we continue insisting that writers avoid long block quotes because judges have admitted that the writing will not be read, we should expect lawyers to copy (and risk discipline) rather than quote and cite, for fear of being ignored and also dismissed as a poor and lazy writer. As things stand, we should expect a logical lawyer representing a client of modest means to conclude this: if I want the judge to read this explanation of the law, I may need to pretend that I wrote it myself.

We are in a position to push back. We should teach that long quotations can be the most efficient way to explain the law. Originality is often a luxury, not a necessity. The alternative—pre-written prose—will be preferable where time and money are short. What the client, lawyer, and judge should all desire most is language that is accurate, clear, and concise.

Many of us already share with law students and other legal writers that, when efficiency is more important than producing the tightest, brightest possible prose, long quotes are just fine. Are we also ready to tell judges that they have an obligation to read long quotations? Judges, please give the lawyer the benefit of the doubt. If long quotations are in a lawyer's writing, there may be a valid explanation related to a worthy goal: providing affordable representation.

Here is one more related idea: let us examine the formatting rules that invite readers to ignore long quotations. As the rules stand, a quotation of fifty or more words must be indented on both sides and singled spaced in an otherwise double-spaced document. That's what makes long quotations look like "blocks," dizzying, dense bricks of text. Their mere presentation is intimidating.

Perhaps we can help rid our documents of these blocks without ridding them of useful quotations. If material is worth integrating into a new document, we should not be forced to squeeze it into half the linear inches our own original prose would occupy. Specifically, we can lobby the student editors of the *Bluebook*, as well as the keepers of court citation manuals, to change this rule. Let long quotations be double spaced in a double-spaced document.

Those of us involved in updating the *ALWD Guide to Legal Citation* or the online *Indigo Book* can consider leading the way—making this change now and letting the students follow. Until an update occurs, we could simply refuse to comply with a formatting rule that seems to impair, rather than improve, the reader's experience with our written legal arguments.

D. Listen To—and Implement—the Ideas Others are Proposing

Some scholars are proposing that we take even bigger steps. Their complementary ideas belong in this conversation as well.

In their forthcoming article, Professors Brian Frye and Megan Boyd make provocative statements, starting with their opening line: "As a practicing lawyer, if you aren't plagiarizing, you're committing malpractice."[28] That's a bold assertion and an effective hook. Having secured the reader's full attention, Professors Frye and Boyd proceed to argue persuasively that law schools should teach students that plagiarism is expected in the practice of law and therefore also teach them how to do it effectively.

In concert with that, Professors Boyd and Frye imply that schools might revisit their academic policies. "[P]rohibiting plagiarism in scholarly works is consistent with academic plagiarism norms. However, these policies . . . cover not only scholarly works but also pleadings and other types of documents that lawyers routinely copy without attribution."[29] Here's where academia trips over itself in an effort to

[28] *Id.* at 1.
[29] *Id.* at 16.

consistently apply an overly broad anti-plagiarism rule. In one case that Professors Boyd and Frye flag, a law student was suspended for drafting a contract exactly the same way a competent practicing lawyer would: by incorporating contractual provisions in a sample contract that she found online.[30] That conduct is readily distinguishable from plagiarism in a seminar paper, yet academic integrity policies likely render that distinction irrelevant by equating all written work that is completed for academic credit. An academic integrity policy that differentiates between scholarly work and practical work, or otherwise carves out an exception to acknowledge real-life practice dynamics, would have spared this student the suspension.

Professors Frye and Boyd offer sound arguments. I am eager to learn how the academy receives them.

E. If You Agree, Join the Conversation

Copying is common in practice, and it makes competent representation more affordable. But it still violates academic norms that are deeply entrenched, and courts have held that it violates ethical rules as well. None of that will change without critique, resistance, and reform.

If you are moved to modernize our discipline's thinking in the name of access to justice, add your voice to the conversation that is challenging the status quo. Amplify the message by citing the growing body of scholarship with approval. Complicate the literature by adding new wrinkles to the collaboration. Question your school's policy and your own teaching practices. All of these actions will help reconcile the tension between the anti-copying rhetoric and the realities of the competent, diligent, efficient practice of law.

VII. CONCLUSION

Building on *The Case for Plagiarism*, I invite law faculty to act upon Professor Carter's central premise by reconsidering academic policies and teaching strategies. Of course, academics must be cautious about encouraging law school graduates to copy in the name of enhanced access to justice before the rules governing lawyers evolve. And those ethics rules are unlikely to evolve so long as the lawyers and judges crafting and enforcing them continue to be shaped by academia's longstanding anti-plagiarism norms. Academic policies must evolve as well, and academics are the only ones who can make that happen.

For now, like Professor Carter, I encourage faculty and judges to question longstanding anti-plagiarism norms and, at a minimum, adopt a more progressive mindset about the utility of allowing lawyers to copy—at the right times and for the

[30] Yu v. Univ. of La Verne, 196 Cal. App. 4th 779, 783 (2011).

right reasons. Professor Carter opined that courts *should not* object to plagiarism by lawyers.[31] But courts *do* object to plagiarism by lawyers. My fervent hope is that this response helps erode that objection in the name of increased access to justice.

In the academy, we enjoy the privilege of exploring how Robin Hood plagiarism might expand access to justice. Professor Carter started an important conversation. We can continue that conversation, and yes, we should.

[31] Carter, *supra* note 2, at 555.