

M E M O R A N D U M

December 13, 1982

TO: The Faculty

FROM: The Honor Code Review Council
 (a/k/a the Faculty Advisory Committee)

Pursuant to Rules 8.08 and 8.10 concerning dispositions under the Honor Code, we hereby inform the faculty that the disposition of the Judicial Council in case 82/83-1 (opinion attached hereto) is affirmed. Because the disposition provides for suspension of the offending student, the Council's affirmance is hereby submitted to the full faculty for review.

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JUDICIAL COUNCIL OPINION

~~82-180-1~~

82-1

Hearing Dates: October 25, 1982
 November 11, 1982

Opinion Issued: November 18, 1982

Judicial Council members Bernstein, Butler, Cohen, Feldstein, Firestein, Hancock, Harris, and Rothschild delivered the unanimous decision of the Council.

FINDINGS OF FACT

The parties stipulated to the following facts:

1. The Defendant is a student at Northwestern University School of Law, subject to the provisions of its Honor Code.
2. On Monday, August 31, 1982, the Defendant submitted a casenote to the editors of The Northwestern University Law Review, The Journal of Criminal Law and Criminology, and The Journal of International Law and Business as a participant in the 1982 Joint Writing Competition.
3. On Tuesday, September 21, 1982, the editors of the Law Review informed the Prosecutor that they suspected that the Defendant had plagiarized portions of his casenote. After the editors of the Law Review informed the editors of The Journal of Criminal Law and Criminology and The Journal of International Law and Business of their suspicions, the editors of both Journals joined in the accusation.
4. On Tuesday, October 5, 1982, the Executive Committee of the Student Bar Association made a finding of probable cause pursuant to Article 2, Section 7 of the Honor Code.
5. On October 13, 1982, the Defendant waived ^{his/her} right to a speedy trial under Article 3, Section 1 of the Honor Code.
6. The Prosecutor has highlighted in yellow those portions of the Defendant's casenote that he has found to have been plagiarized in violation of Article 1, Section 2, Subsection 5 of the Honor Code. The Defendant does not contest these findings of the Prosecutor.

INTRODUCTION

On October 25, 1982, the Defendant pleaded guilty to the charge of Plagiarism -- a violation of Article 1, Section 2, Subsection 5 of the Honor Code of the students of Northwestern University School of Law. Following the submission of the guilty plea, the Judicial Council conducted two penalty hearings and twice conducted deliberations as to the appropriate penalty to assess. The dates of these hearings and deliberations were October 25, 1982, and November 11, 1982.

DECISION

During the course of the Council's deliberations regarding an appropriate penalty to impose on the Defendant, it was the unanimous conclusion of the Council members that a penalty which included a period of suspension was in order. In light of the gravity of the offense^②, the members felt that they had little discretion in this regard. The Council initially disagreed as to the exact contours of the penalty. Although it is difficult to categorize the seriousness of the Honor Code violation in this case in relation to other possible offenses, the plagiarism herein involved was excessive, purposeful, and without a reasonable or mitigating explanation other than the pressures that all participants in the writing competition felt.

According to the testimony of the Prosecutor, the text of the Defendant's casenote contained plagiarized material in twenty-five (25) percent of the text and forty-eight (48) percent

of the footnotes. The Defendant did not dispute the Prosecutor's testimony. Much of the plagiarism found was material copied line-by-line, word-for-word. The Defendant's action was not the innocent assimilation of another's ideas; rather, it was widespread copying of other authors' texts. The Defendant plagiarized forty (40) percent of the total written material -- text plus footnotes.

Due to the above evidence of a palpable violation of the Honor Code, the Council summarily rejected defense counsel's argument that the Defendant had suffered enough from knowing that he was under investigation for approximately one month prior to the October 25th hearing. Defense counsel further suggested that any additional penalty would be unduly harsh and serve only to injure an otherwise promising legal career.* Rather, during the Council's initial deliberations, Council members were unable to discern a compelling rationale for the Defendant's actions and found the character testimony of the Defendant's witnesses as not dispositive of the penalty issue.

Surfacing during these deliberations was a clear concern for maintaining the integrity of the Law School, its educational processes, and the feeling that a prospective member of the bar should act with honesty and integrity while pursuing the study of law.

Facing both a consensus that it should impose some penalty and some concern over what that penalty should be, the Council considered an alternative that met the concerns of all members. On

*In the alternative, defense counsel suggested a penalty of a six-month suspension and no notation. The Prosecutor recommended a one-year suspension, no notation, and a ban on any future participation by the Defendant on any of the Law School publications.

November 11, 1982, the Council voted unanimously, eight to zero (8-0), for the following sanctions:

1. Six months suspension (one term), to begin at the commencement of the 1982-83 spring term;
2. The Defendant shall never be affiliated in any capacity with any of the Northwestern University School of Law legal publications; and
3. The Defendant's transcript will bear the notation that the Defendant "Withdrew by reason of suspension." However, the Council believes that this notation should not appear permanently on the transcript. Rather, when the defendant completes the requirement of the Law School and receives his/her diploma, such notation shall be removed by the Registrar from the Defendant's transcript.

Removal of the notation after graduation serves to satisfy the concerns of all members of the Council. The members believe that such a notation will not permanently burden the Defendant's professional career. The Council members further believe, however, that the presence of the notation while the Defendant remains a student at the Law School will serve a number of important goals. First, it will protect the academic integrity of the School and its students. Second, the temporary notation will not cover up the fact of suspension from concerned outsiders who ask the Defendant for a copy of his transcript. Finally, it will also serve as an incremental punishment on the Defendant by making his initial job search more difficult and forcing the Defendant to address the fact of his/her plagiarism and suspension to those who inquire.

The Council understands that, regardless of its disposition of the notation issue, the Registrar and Dean of the Law School are under a duty to inform the Committee on Character and Fitness of the Illinois Bar Examiners -- or its equivalent in other states -- of the Defendant's Honor Code violation. Furthermore, testimony of

Dean Yandle and the argument of both defense counsel and the Prosecutor convinced the Council that it had full authority to determine when and under what circumstances the fact of an Honor Code violation could be made known.

At the October 25th deliberations, the Council had decided six to two (6-2) to suspend the Defendant for one semester with notation. The Council made no provision at that time for the subsequent expungement of the notation. When a member of the majority subsequently joined the minority, the Council called for a rehearing. In light of the importance of the decision to the Defendant and the possible ramifications notation might have on the Defendant's career prospects, the members felt that a five-to-three vote was too close a decision to make without the utmost deliberation. It was the opinion of the Council that it retained jurisdiction over the proceedings until such time as the Faculty Review Committee received the decision and documentary evidence of the case.

The penalty as it now stands responds to the concerns of all involved. As mentioned previously, the notation will not mar the Defendant's record permanently. The penalty will be swift, severe, and might make the Defendant's initial job search more difficult than it otherwise would be. It will not, however, extend beyond the Defendant's graduation. In effect, the Council members believe that the Defendant should have a clean slate thereafter.