

JUDICIAL COUNCIL OPINION

No. 84-2

Hearing Dates: May 30, 1984  
June 4, 1984

Opinion Issued: June 15, 1984

Judicial Council Members Cardwell, Chandler, Curme, MacKinnon, Weissman and Wilson delivered the majority decision of the Council. Member Levin dissented in part and concurred in part. Member Jens dissented. Member Haffner took no part in the Council's decision on a remedy.

#### FINDINGS OF FACT

1. The Defendant has just completed the first year of instruction at Northwestern University School of Law and is subject to the provisions of the school's Honor Code.

2. On Thursday, May 10, 1984, the Defendant submitted a paper to Law School Professor Michael Perry in lieu of a final examination in his Law Philosophy and Politics class.

3. On Thursday, May 10, 1984, at 11:00 p.m. Professor Perry informed the Student Bar Association prosecutor that he suspected the Defendant of plagiarizing portions of his/her paper.

4. On Friday, May 11, 1984, the Executive Committee of the Student Bar Association found probable cause pursuant to Article II, Section 7 of the Honor Code.

5. Notice of the finding was sent to the Defendant and on May 30, the Council convened for a formal pretrial hearing.

#### INTRODUCTION

At the pretrial hearing on May 30, 1984, the Defendant<sup>1/</sup> pleaded guilty to intentional plagiarism, in violation of Article I, § 2, Subsection 5 of the Honor Code. The Defendant, under oath, affirmed that the plea was voluntary and that it

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<sup>1/</sup> The Defendant was represented by David Bohrer, Northwestern University School of Law '83, an associate with the law firm of Ross & Hardies.

constituted a waiver to his/her right to a trial. Following the Defendant's plea, the pretrial hearing was adjourned and immediately thereafter the Council convened a sentencing hearing. At this hearing, Professor Perry testified regarding his course, the Defendant's behavior as a student in that course, and his discovery of the violation. Two other professors testified as to their knowledge of the Defendant as a student and a person. There was also testimony from a student in Professor Perry's class regarding the nature and atmosphere of that class. Finally, the Defendant testified as to the circumstances surrounding the violation including factors which s/he believed relevant to the Council's determination of a penalty. The Defendant's suggested penalty included prohibition from membership on any of the Northwestern University legal journals, a temporary notation on his/her transcript, and some form of public service work for the benefit of the School of Law and its students. Defendant's counsel noted that, in a previous case on point, a semester suspension was imposed: the Defendant however preferred that s/he be allowed to return in the fall of 1984. The prosecutor's suggested penalty included a year's suspension, a permanent notation of the violation to be placed on the Defendant's transcript and prohibition from membership on any of the Northwestern University legal journals. Following the conclusion of testimony, the Council adjourned the meeting.

On June 4, 1984, the Council reconvened to consider in detail the facts and testimony presented in order to formulate an appropriate penalty. At the conclusion of the meeting, the Council voted to impose the following sanctions:

1. One year suspension from the School of Law, to begin at the start of the 1984-1985 school year. The Defendant will be allowed to re-enroll for the 1985-1986 school year.
2. A temporary notation indicating "withdrew by reason of suspension" to be placed on the Defendant's transcript. When the Defendant graduates, the Registrar will be directed to remove the notation.
3. The Defendant shall be barred from membership on any legal publication affiliated with the Northwestern University School of Law.

#### DISCUSSION

The Council in this case was presented with a most serious breach of the Honor Code--intentional plagiarism. Between 60 and 70% of the paper submitted as his/her own work was plagiarized from an essay which the Defendant had obtained from a student at another university. Close to 100% of the plagiarized material was copied word for word. The Defendant also admitted that s/he had contemplated plagiarizing the paper two weeks before it was due. In short, the paper which the Defendant submitted to Professor Perry was an overt and premeditated misappropriation of the ideas and exact language of another.

The Defendant testified that s/he was under a great deal of pressure throughout the semester. In addition to family and social difficulties, the Defendant pointed to feelings of insecurity regarding his/her academic potential. The record also established that a number of students in Professor Perry's class including the Defendant perceived the course as disorganized and confusing. According to the Defendant, these factors combined to produce a situation in which, two weeks before the paper was due, under pressure and fearful of a failing grade, the Defendant felt it was necessary to take the actions s/he did.

Both the study and practice of law require the ability to maintain one's integrity in the face of demands and pressures. The Defendant's act lacked integrity and was an inexcusable response to the pressures s/he felt. The Defendant had the opportunity to take the final examination. Additionally, s/he could have asked for an extension on his/her paper. That s/he chose not to consider these alternatives but instead opted to commit plagiarism was more than a mere lapse in judgment: it was a grave misstep which indicates an unhealthy and distorted sense of priorities. The picture presented by the Defendant's testimony is that of an immature student who has yet to come to grips with the demands and responsibilities placed on all who pursue a career in law.

In devising a just remedy, the Council was motivated by competing concerns. As previously noted, the violation in this case was severe, and thus demanded an appropriately punitive measure. On the other hand, the Council was of the opinion that the penalty should take into account the fact that the Defendant's lack of maturity in dealing with the pressures of law school had a substantial role in his/her decision to plagiarize. It was felt that given time away from the legal community, the Defendant might develop the maturity necessary to function as a responsible student. Other factors also mitigated in the Defendant's favor. All three professors who testified indicated that they believed the Defendant to be a bright and promising law student. They acknowledged that the Defendant had demonstrated a keen interest in his/her work and a willingness to pursue difficult issues outside of class.

Under Article VI § 2 of the Honor Code, the Council was bound to formulate a remedy consistent with previous Council decisions. The only previous Honor Code proceeding for which a record exists relevant to the present case involved a student who pleaded guilty to plagiarizing 40% of his/her casenote entry in the joint legal publication writing competition. The student was suspended for a semester, was barred from legal journal membership and received a temporary notation on his/her transcript indicating "withdrew by reason of suspension," to be removed upon the student's graduation. That case can be

distinguished from the present proceeding on three grounds. First, the violation at hand involved a graded academic course as opposed to an extracurricular activity. Second, the extent of plagiarism in the instant case (60-70%) was substantially greater. Finally, there was a larger period of premeditation in this case. Because of these significant distinctions, the Council believed it both necessary and appropriate to consider other penalties in conjunction with the punishment sanctioned in that proceeding.

The Council concluded without hesitation that the Defendant be barred from membership on any of the Northwestern University legal journals. By a 7-1 vote, the Council agreed that membership on the journals is a privilege which the Defendant, by his/her act of plagiarism, has forfeited.

The Council chose to reject two sanctions which were permanent in nature and therefore excessively punitive. The penalty of expulsion was considered at some length. By a 7-1 vote, the Council decided that this was an inappropriate solution. A majority of the Council felt that the Defendant's act, though a severe breach of the Honor Code, did not warrant a punishment which would effectively end his/her legal career. The Council was of the opinion that such a penalty failed to take into account the Defendant's immaturity and his/her potential for contribution to the legal profession. It was a majority decision, therefore, that the Defendant deserved a second

chance. The Council's decision against a permanent notation on the Defendant's transcript was based on the same reasons as the decision not to expel. While there was some disagreement on this point, a number of members expressed concern that a permanent notation would have a permanently adverse effect on the Defendant's ability to compete for certain jobs.

Other alternatives which the Council considered and rejected included the Defendant's own suggestion that s/he be required to do some type of work for the school. The Council saw this as a difficult remedy to administer. More importantly, it was felt that this penalty was too lenient and would not adequately remind the Defendant of the seriousness of his/her act. Probation was also proposed, but eventually eliminated, because it appeared to lack any significant punitive or rehabilitative effect.

Ultimately, the Council voted in favor of a suspension with a temporary notation. A suspension will remove the Defendant from the pressures of law school and thereby give him/her the time necessary to mature emotionally. Second, it will serve the punitive goals which the Council felt were appropriate. Finally, a suspension is consistent with reported precedent and is an appropriate means by which to uphold the integrity of the School of Law and its Honor Code.

There was considerable discussion as to whether the suspension should last 6 months, 1 year or 2 years. The 6



month suspension option was discarded for two reasons. The Council agreed that an important goal of the suspension would be to give the Defendant time to pursue other interests, and thereby gain practical experience in dealing with the responsibilities and demands which face all adults. Six months seemed too short a time to allow the Defendant to constructively engage in such activities. In addition, 6 months appeared to be too lenient a punishment in light of the egregiousness of the Defendant's violation.

A suspension for 2 years was debated at length. Those in favor argued that 2 years away from law school would afford the Defendant even more time in which to mature and grow as a person. In addition, when the Defendant returned it would be with a new group of students, thus giving the Defendant a clean slate. Eventually, however, there was a consensus that 2 years was too long a time to make the Defendant wait before returning to law school.

By a 6-2 vote, the Council agreed that a 1 year suspension and a temporary notation would best serve the dual needs of punishment and rehabilitation. As previously discussed, a year away from the pressures and demands of law school will give the Defendant time to reflect on what s/he has done, and also the chance to pursue other activities in which s/he can gain the perspective necessary to respond to difficult situations with maturity. The Council felt that, given available precedent, it

had little choice but to recommend that a temporary notation be placed on the Defendant's transcript. Such a penalty serves to maintain the integrity of the School of Law and its Honor Code. While this sanction will affect the Defendant's initial job search, its effect will not be permanent.

Finally, law school demands a great deal from its students and graduates and the Council agreed that the Defendant might benefit from some form of counseling as a means to learn how to cope with anxieties and pressures.

In conclusion, it is important to point out that this was a difficult case for all concerned. The penalty which the Council eventually agreed to reflects a concern for preserving the integrity of the School of Law and its Honor Code. It will inflict hardship upon the Defendant. At the same time, however, the penalty recognizes the Defendant's youth. It will provide the chance to come back to law school when s/he is older and more able to fulfill the potential s/he has for the study and practice of law.

Catherine A. Cardwell  
Catherine A. Cardwell

Logan M. Chandler  
Logan M. Chandler

Ann M. Curme  
Ann Curme

Deborah G. Weissman  
Deborah G. Weissman

-DISSENTED-  
Joshua M. Levin

Cynthia A. Wilson  
Cynthia A. Wilson

Katherine L. MacKinnon  
Katherine L. MacKinnon

-DISSENTED-  
Jeffrey A. Jens

## D I S S E N T

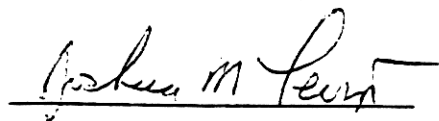
I respectfully dissent from the central conclusion drawn by the majority of the Judicial Council, i.e. that the Defendant's conduct warrants a forced absence of one year, time necessary to "reflect on what s/he has done," and "gain the perspective necessary to respond to difficult situations with maturity." Such a view, I believe, exaggerates the rehabilitative effect which a lengthy suspension is likely to have on the Defendant; it also disregards the possibility, if not the likelihood, that the Defendant, through introspection borne out of his/her personal trials to date, is already in a position to contribute positively and honestly to the law school community. I concur with the majority's view that a suspension of some length is necessary, given the gravity of this Honor Code offense. To my mind, however, the appropriate length of such a suspension should be no more than a single semester. This judgment stems from my belief that suspension is almost exclusively a punitive -- not a rehabilitative -- remedy, one necessary to uphold the integrity of the school's honor system rather than to enable an Honor Code violator to "mature."

The Judicial Council views any act of plagiarism, no matter how small, more seriously than it does perhaps any other Honor Code offense. The Defendant in this matter has confessed to an act of plagiarism which was as extensive as it was intentional. I agree with the Council's decision to impose a penalty which unambiguously requires the Defendant to pay a heavy price for such a misdeed. Suspension from law school for one semester -- coupled with the placement of a temporary transcript notation and a prohibition against law journal involvement -- would certainly have constituted such a price; it would have served as a

clear signal to the Defendant and other students that plagiarism is an act with potential consequences too severe to risk.

It is likely that suspension serves no useful purpose beyond this, however; a remedy which keeps a student from attending law school to encourage the student's maturation may serve only to embitter the student instead. The Council is not in a position to determine the correlation between a year's suspension and a particular student's emotional growth. Even if such a finding could be made, the Council would owe it to a student to measure his/her emotional growth to date -- e.g. from the trial, loss of friendships, loss of job opportunities -- before it set its own schedule for the student's rehabilitation. The Judicial Council's basis for concluding that the Defendant is not yet rehabilitated is slim; so, too, is its rationale for deciding that more rehabilitation would come from one year's suspension than from a single semester's.

I share the sense of the accompanying dissent, that the Defendant's stigma, in itself, may prevent his/her repeat of an Honor Code violation. I recognize, too, the limited value of a suspension, both to reinforce the Defendant's lesson and to deter similar acts by other students. A semester suspension would have represented a valid punitive response to plagiarism, without placing the Council in a precipitant judgment of the Defendant's current readiness for law school. By choosing not to expel the Defendant, the Council explicitly voted to give him/her a second chance; I was wholly unconvinced that this chance needed a full academic year before it could commence.

A handwritten signature in dark ink, appearing to read "Joshua M. Levin", written over a horizontal line.

Joshua M. Levin

## DISSENT

I respectfully dissent from the decision of the Honors Code Board in the matter of . . . I believe the sentence given (a one year suspension, exclusion from all law journals, and a temporary notation upon ~~his/her~~ transcript that will be expunged upon graduation) was too severe. I favored a sentence of a temporary transcript notation until graduation, exclusion from all law journals, and one year's probation. In regard to the probation, it was my view that if ~~s/he~~ should again violate the Honor Code in any way during the probationary term that ~~s/he~~ be suspended.

I wish to first address an issue that arose during this action, i.e., the idea that the integrity of the Law School was somehow at stake in the proceedings. I do not subscribe to such a position. The integrity of the Law School is presently very much intact and would be no matter what the Honor Board decided. Rather, at stake is ~~his/her~~ career in the Law School and possibly ~~his/her~~ career as a lawyer. Granted, ~~s/he~~ has already damaged herself by illicit actions regarding the paper for Professor Perry's class. But I viewed the function of the Honor Board in this matter as being one which kept these damages to a minimum instead of exacerbating them.

Limiting damages does not mean that the defendant would go free. The defendant has and will experience much trouble arising from ~~his/her~~ intentional plagiarism. The following is an inexhaustive summary of difficulties ~~s/he~~ has or will encounter. ~~S/he~~ has experienced an emotionally trying and uncertain time since ~~his/her~~ indictment. ~~His/her~~ reputation among certain students and faculty has already been significantly damaged due to the offense. If

she decides to stay at Northwestern, s/he will undoubtedly suffer the embarrassments, fears, and anxieties of one who stays on at institution in which s/he is known as a rules violator or "cheater". Most likely S/he will receive a low or failing grade in the course. His/her violation will eventually have to be transmitted to the State Bar Association. S/he has also lost a summer research position. These difficulties were minimized during sentencing deliberations but should have been used to mitigate the judgement.

The sentence which I recommended would have strongly impacted the defendant's career at Northwestern without going so far as to temporarily remove him/her from the school, an action that will likely prove to be an extended and unnecessary punishment. Exclusion from any law journal would keep him/her from attaining a goal that, in part, motivated him/her to commit the unacceptable act. A temporary notation would probably make summer and career employment significantly more difficult to obtain. A year's period of probation would put the defendant on notice that any behavior conflicting with the Honor Code rules, if detected, would result in certain suspension. Probation, used extensively in the criminal justice system with first-time offenders enforces the aims of the Honor Board--cessation of of similar actions by the defendant--while allowing the defendant to immediately prove to him/herself and others that S/he can handle the pressures of Law School without resorting to illegal activities. These punishments when coupled with the formal and informal sanction listed in the previous paragraph would result in a just sentence.

While elements of the Honor Board's deliberations focused upon the need to help "rehabilitate" (an inappropriate word for which I do not have a fitting substitute) the defendant, the sentence

reflected the majority's view that the defendant deserved a strictly punitive judgement. Supporting the punitive approach are two general concepts: deterrence and the need to remove the offender from the institution against which s/he has offended. Punishment may serve to deter further illegal actions but there comes a point when further deterrence is not gained through added punishment. To wit, I do not believe that a year's suspension is necessary to deter the defendant from other Honor Code violations, nor, for that matter, is a six month suspension. A lesser sentence would have the same effect as a more severe one. Concerning the issue of suspension, I do not believe s/he should be removed from the Law School community. His/her breach of the rules was serious, but it does not signify that s/he is somehow unfit to be among other members of the School in the year to come. Suspension from the Law School should be reserved for those offenses in which a student directly harms another student or students or for second-time violations of the Honor Code. Furthermore, in a practical sense, the year's suspension is probably too short a period in which to gain meaningful alternate experience and too long a period for the defendant to have to mull over and over again his/her shortcomings and weaknesses. The actions of this first-time defendant did not merit a year's sentence to a literal limbo.

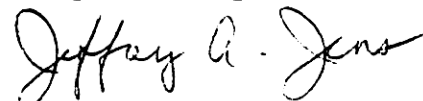
Finally, despite the flagrant nature of the offense, a more lenient approach should have been taken. Lenience is born of a belief that people can and do learn from their mistakes. Unfortunately lenience is an attitude that is generally applauded until it could be applied. Then it is often ignored or denigrated as being too weak a response to the circumstances. The punitive approach



assures the judging body that the defendant will not "play it for a sucker". But something valuable is lost when a punitive stance is chosen over a lenient posture, especially when dealing with a first transgression. In essence, an opportunity to trust in the basic decency of a human being has given way to a mistrust of the defendant's motives and qualities. This defendant has made a great mistake and has openly admitted to it. Lenience would afford *him/her* the chance in the coming school year to pursue a productive course, one that would benefit both the University and *him/her*. I believe that *the defendant* has learned and will continue to learn a great deal from *this* mistake; *s/he* would make the most of the opportunity to return to school in the Fall.

The Honor Board could afford to give *him/her* that chance.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jeffrey A. Jens". The signature is written in dark ink and is positioned above the printed name.

Jeffrey A. Jens