

The Faculty Advisory Committee, sitting as the Honor Code Review Council, has reviewed the decision of the Judicial Council in this honor code case. The accused student, who was represented by counsel, filed an opening and a reply brief; the prosecutor filed a responsive brief. Oral argument was heard on February 21, 2002. We affirm the Judicial Council's finding of liability, but modify its determination of appropriate punishment.

Background

The relevant facts, which are set forth more completely in the opinion of the Judicial Council, may be briefly stated. The student in question enrolled in a seminar that required the completion of a paper. The student consulted with the instructor about the paper, and the instructor recommended that the student read an article contained on a CD-Rom, which the instructor provided to the student. The seminar paper submitted by the student contained a substantial amount of material copied verbatim from the CD-Rom article. The Judicial Council found that somewhere between 8-14% of the seminar paper was copied verbatim (the difference depends on how one counts material contained in footnotes). The prosecutor also represents, and the student does not deny, that an additional 21% of the paper was "substantially similar" to the CD-Rom article.

Before the Judicial Council, the student maintained that the copying was inadvertent. The student claimed to have downloaded the article onto a computer, and also to have taken research notes on the computer. When he prepared the seminar paper, the student maintained, the material from the article was mistaken for research notes. By a vote of 7-2, the Judicial Council rejected this defense, finding that the student had knowingly copied the article. The Judicial Council found the frequency and the length of the verbatim copying made it implausible that the material from the article had been used by mistake. The Judicial Council found the extensive paraphrasing of passages from the article to be if anything even more damning, since this suggested an awareness of the need to conceal the extensive copying.

The student also advanced a legal defense: that the offense of plagiarism as defined by the Honor Code requires a finding of a specific intent on the part of the student to deceive the instructor. The student argued that the facts did not demonstrate the requisite "intent to deceive" because the CD-Rom had been supplied to the student by the instructor, and the student had included multiple citations to the CD-Rom article in the seminar paper. By a vote of 5-3 (with one member not participating), the Judicial Council rejected this legal defense.

With respect to punishment, the Judicial Council recommended that the student be given an opportunity to rewrite the paper, with the instructor to determine the final grade taking into account the plagiarism in the original paper. Other than that, the Judicial Council recommended that no punishment be given, not even a notation on the student's transcript. In support of this recommendation, the Judicial Council noted that "the Prosecutor stated that this case involved the lowest proportion of plagiarized material of any case on record at this Law School," and that "the Accused had no experience writing research papers, and therefore only vague familiarity with the requirements of citation and attribution."

Plagiarism and Intent to Deceive

The student does not ask this Committee to reweigh the evidence presented to the Judicial Council with respect to the finding that the student knowingly copied the CD-Rom article. Instead, the student renews the argument that the Honor Code requires, as one element of the offense of plagiarism, that the copying be done with the intent to deceive the instructor.

If all we had before us were the language of the Honor Code, this contention would be easily dismissed. The Honor Code provides in relevant part:

Section 2 - Violations

A violations [sic] occurs when a student knowingly:

....

- (e) plagiarizes; which includes, but is not limited to, failing to attribute language or ideas to their original source or failing to indicate by quotation marks a passage from another source of more than (5) consecutive words;

....

The introductory clause makes abundantly clear that the default mental state for an Honor Code violation is knowledge ("A violation[] occurs when a student knowingly..."). An additional mental state requirement is found in three subparts – subparts (a), (g), and (h), where it is stated that the student commits a violation only if the student is found to have acted for a designated "purpose." No such additional requirement is found in subpart (e), which deals with plagiarism. Indeed, subpart (e) contains a specific definition of plagiarism, which definition makes no reference to any state of mind. Thus, plagiarism is governed by the default mental state of knowledge. Plagiarism occurs either when a student *knowingly* fails to attribute language or ideas to their original source, or when a student *knowingly* fails to indicate by quotation marks a passage from another source of more than five consecutive words.

The primary evidence in support of an "intent to deceive" element is not the language of the Honor Code, but a passage in the "Official Comments" published in 1986 when the present version of the Honor Code was adopted. Ordinarily, we would not consider such material, since it is standard interpretational practice not to resort to

“legislative history” when, as here, there is no ambiguity in the text itself. Moreover, we assume it is primarily the text of the Honor Code, rather than any commentary, that students consult in determining what sorts of conduct constitutes an Honor Code violation. Nevertheless, it appears that the Official Comments are published on the Northwestern web page immediately after the text of the Honor Code. Thus, there is some possibility that students have consulted this material and have been guided by it in determining the scope of Honor Code. So we will consider the argument.

The allegedly ambiguity-creating language in the Official Comments is contained in the following passage (primarily the first sentence):

Violations – Article 1, Section 2

The words ‘knowingly’ and ‘purpose’ were substituted for “intentionally”¹ and ‘intent’ at various points in the violations section to make clear that the Honor Code requires specific rather than general intent before an Act is deemed to be a violation. Along these same lines, improperly removing library material from general circulation (see Section 2(a)) is a violation only if done with “the purpose of depriving others of the use of that material.” This phrase was added to ensure that, for example, failing to return an overdue book could not be construed as a violation unless this failure was accompanied by the requisite intent.

The definition of plagiarism (see Section 2(c)[sic]) though not all inclusive, was inserted to provide students with an easily accessible and accepted definition.

The student argues that the first sentence in this passage means that the Honor Code requires a finding of “specific intent” before any violation is made out. In the context of plagiarism, the argument goes, the relevant “specific intent” must be a specific intent to deceive the instructor.

We do not think that this is what the passage in the Official Comments means. As the first sentence explains, the Code was purged of the words “intentionally” and “intent” and in their place the new Code uses the words “knowingly” and “purpose.” The only plausible reading of this passage is that the Honor Code requires *a specific kind of* intent, i.e., a specific kind of mental state, before an Act is deemed to be a violation. The third sentence of the passage, describing the “purpose” requirement in subpart (a) as being the “requisite intent,” suggests as much. Absent a specific “purpose” requirement, the Code requires only a finding that the accused acted knowingly. This is especially clear with respect to plagiarism. As the second paragraph of the Official Comments quoted above indicates, questions about the meaning of plagiarism were handled by adopting a specific definition of plagiarism that makes no reference to mental states, not by inserting any requirement that copying occur for any particular “purpose” – such as to deceive the instructor.

¹ The variation in the form of quotation marks appears in the original.

In any event, there would still be the question of what language in subpart (e) incorporates a specific intent to deceive requirement. The student suggests that it is the word “plagiarism.” But this word has no independent operative significance in this case, because the Code contains a stipulated definition of what plagiarism “includes,” and there is no dispute that the student’s conduct falls within the stipulated definition (*i.e.*, there is no dispute that the student “fail[ed] to attribute language or ideas to their original source”). It is true that even where a general term has a stipulated definition, courts sometimes draw on the common-law meaning of the general term in resolving interpretational disputes. But courts do this only when the stipulated definition is ambiguous. Here, the student has pointed to no ambiguity in the stipulated definition that requires us to turn to the general meaning of “plagiarism” to flesh out the meaning of the Honor Code.² So we come around again to the main problem with the student’s argument: The Honor Code unambiguously makes it a violation knowingly to copy without attribution or quotation marks, and the argument for a specific intent to deceive can succeed only by creating ambiguity where none exists.

Accordingly, we reject the contention that the Honor Code requires a specific intent to deceive to establish the violation of plagiarism, and affirm the Judicial Council’s finding of liability.

Appropriate Punishment

The Judicial Council essentially determined to impose no punishment in this case. This is out of keeping with the seriousness of the offense of plagiarism and with the punishment that has been imposed in previous plagiarism cases.

There can be no question about the seriousness of the offense of plagiarism in an institution of higher learning. To the extent a student copies material generated by someone else, the student obtains no educational value from the assignment. Copying the work of others is not a learning experience, but the perpetration of a misrepresentation. Equally troubling, the student who engages in plagiarism obtains an unfair advantage over other students, who must expend the time and effort to engage in original research, analysis and expression. Perhaps most importantly, plagiarism is a form of dishonesty, and as such represents a mode of behavior that has no place within an academic environment or the profession of law.

In fixing an appropriate punishment, it is important not only to consider the seriousness of the offense, but also to try to preserve a reasonable degree of uniformity in punishments over time. Treating like cases alike not only helps assure fairness, but also promotes better communication about the consequences of violating the Honor Code.

² The parties have briefed the question whether the general meaning of “plagiarism” includes the element of intent to deceive, but we find the materials cited inconclusive. Different institutions adopt different definitions. Northwestern Law School’s definition of plagiarism does not include the element of intent to deceive.

We note the Honor Code provides that “[a]djudications under the Honor Code shall be consistent with previous Judicial Council opinions unless overruled,” Art. V, § 3(b), and that before recommending a penalty the Judicial Council shall “review past convictions and consider penalties imposed in those cases.” Art. VI, § 1(b)(ii).

In an effort to help achieve consistency in setting sanctions, we have canvassed all reported Honor Code cases for which written reports are available in the library. The cases are summarized in the table appended to this opinion. This review indicates that plagiarism has most commonly resulted in some kind of a suspension from the Law School and a permanent notation on the student’s transcript. The three most recent plagiarism cases, adjudicated by Dean Van Zandt in the summer of 2001, all resulted in one- or two-year suspensions, transcript notations, a grade of F in the course, and a requirement that remaining credits toward graduation be earned in residence at the Law School. Going back further in time, we find that a plagiarism case reviewed by the Honor Code Review Council in 1984 resulted in a two-year suspension and permanent transcript notation; a 1983 Judicial Council case affirmed by the Honor Code Review Council resulted in a one-semester suspension and a temporary transcript notation; and a 1973 case resulted in a one-semester suspension with permanent transcript notation.

Although the 1983 case provided only for a temporary transcript notation, the Honor Code Review Council wrote the following year (Case 1984-1):

[H]onor code infractions involving serious academic honor violations, including plagiarism, shall carry as a minimal penalty permanent notation on the student’s transcript. The notation shall consist of a brief but specific description of the penalized conduct. The reason given for this action is that all prospective employers, and anyone else authorized to examine the student’s transcript, have a right to this information. An attorney is licensed and charged with a public trust, and therefore the notation is material evidence in that regard.

This particular case did not involve plagiarism, and hence its statement about the importance of permanent transcript notation in plagiarism cases was dictum. Nevertheless, we find it persuasive.

The one anomaly among the plagiarism cases is a 1997 decision of the Judicial Council in which the student pleaded guilty to plagiarism after submitting a paper 75% of which was copied from the instructor’s treatise. The student in question was an LLM student from Japan. The Council essentially imposed no penalty, finding the plagiarism “to be primarily a cultural misunderstanding.” The case was clearly viewed as presenting mitigating circumstances not present in previous plagiarism cases.

Turning to the present case, the reasons cited in mitigation by the Judicial Council do not in our opinion warrant departing from the usual sanctions of suspension and permanent transcript notation. The proposition that “this case involved the lowest proportion of plagiarized material of any case on record at this Law School” is more an

artifact of the absence of information about the percentage of plagiarized material in earlier decisions than anything else. We do not regard a paper that consists of 8-14% verbatim copying from a single source and up to 35% verbatim or paraphrased copying from this source to be in any sense a “de minimis” violation. The Honor Code specifically prohibits copying more than five words without quotation marks; the plagiarism here vastly exceeds this explicit prohibition.

Nor are we moved by the observation that “the Accused had no experience writing research papers” and “only vague familiarity with the requirements of citation and attribution.” All JD students at Northwestern sign a statement upon matriculation indicating that they have read the Honor Code, and all students learn the rudiments of legal research and writing in their first year of law school, including specific instruction about the importance of avoiding plagiarism. The student in question has a bachelor’s degree from an Ivy League university. This is a far cry from the 1997 case in which copying could be attributed to a “cultural misunderstanding.”

The one point in mitigation we recognize is that the student’s paper did include multiple citations to the plagiarized article. By citing the article, the student in effect engaged in only partial misappropriation of that article, rather than complete misappropriation.

In light of the severity of the offense, the historical pattern of sanctions for similar conduct, and our assessment of the proffered mitigating circumstances, we conclude that the appropriate punishment here is a one-semester suspension from the Law School and permanent notation on the student’s transcript. Given that more than half of the current semester has already passed, the suspension will commence after the conclusion of the current semester, but any credits earned by the student this semester will not be recorded until after the suspension is complete. If the student needs additional credits to graduate, then the student should apply for readmission at the conclusion of the suspension; all applicable credits must be earned in residence at Northwestern Law School.

By the Honor Code Review Council (Professors Calabresi, Heinz, Merrill [chair], M. Shapo, and Speta; Postlewaite not participating), March 7, 2002.

Case Number	Deciding Body	Summary of Decision	Penalty
2001-5	Dean Van Zandt	Plagiarism. “[T]he student had taken wholesale sections of four law review articles and used them verbatim in his/her paper. In other places, the student took large verbatim sections, but changed a few words to make the sentence fit in the context of the others. In other situations, the student simply followed the pattern already laid out by the author of the law review article.” Student had been warned that the first draft contained improperly attributed material -- verbatim material not in quotes, etc.	Law school will notify bar examiners; one year suspension; permanent transcript notation; grade of F; and credits remaining toward degree must be earned in residence at the law school; paper must be resubmitted to dean of students in acceptable form.
2001-2	Dean Van Zandt	Plagiarism. Senior research project. First draft. “[L]arge portions were verbatim or substantially the same” as a law review article.	Law school will notify bar examiners; two year suspension; permanent transcript notation; grade of F; and credits remaining toward degree must be earned in residence at the law school.
2001-1	Dean Van Zandt	Student’s paper composed “largely of verbatim passages from 4 law review articles. These verbatim passages included, at one point, an 11-page passage of the student’s paper, which came entirely from one law review article without a single change. The 189 footnotes in Student 001’s paper were also verbatim of those in the law review articles that were cited. Only one of the four law reviews articles themselves was cited in a footnote, and even it was a reference, not as a citation of copied text.” [assignment described as a 20-30 page paper]	Law school will notify bar examiners; one year suspension; permanent transcript notation; grade of F; and credits remaining toward degree must be earned in residence at the law school.
1999 (3/26)	JC	Acquits student; accused of writing for 3 minutes over time.	N/A
1999 (3/25)	JC	Acquits student; accused of writing for 30 seconds after time.	N/A
1999 (Feb.)	JC	Student “pleaded guilty to improperly collaborating with a former student and attempting to represent that student’s ideas and work product as his own.”	Temporary transcript notation, until graduation. Permanent incomplete for class (legal writing) and requirement to retake the class in second year.

1997	JC	Plagiarism. Student plead guilty to plagiarism. “[A]pproximately 75% of the Accused’s paper was directly copied from the professor’s treatise. None of this portion of the paper was cited or attributed to the professor or the professor’s work. The teacher’s assistant further concluded that in all likelihood, the remaining 25% of the paper was directly copied from an uncited and unattributed source.” (p. 2)	Rewrite the paper or take a different class with a paper requirement. “Despite the obvious plagiarism in the Accused’s paper, the Council finds that the lack of intent to deceive the professor or cheat the other students should limit the extent of the Accused’s penalty. The Council finds this to be primarily a cultural misunderstanding.” (p. 2)
94-01	HCRC	Reviewing case described immediately below. Affirmed conviction. Modified penalty. In affirming the conviction, the HCRC wrote concerning the “manifest weight of the evidence standard”: “The Review Council emphasizes the limited nature of this review. Whatever individual Review Council members might have found in a <u>de novo</u> proceeding, the standard that the Review Council must apply here provides very little discretion.” (p. 5)	Penalty modified to: permanent transcript notation and grade of F. Suspension overturned; no suspension. “The Review Council finds that a permanent notation on the defendant’s transcript serves at least two purposes. First, it is an appropriate penalty for such a serious violation. Moreover, it will provide an effective method of providing notice about this violation to others who would have good reason to know about it.” (p. 6) “Placing a notation about this violation on the defendant’s transcript is a way of indicating the seriousness of this breach, because the transcript memorializes major events in students’ law school careers. This is a statement to the defendant her/himself that the law school condemns this behavior in no uncertain terms.” (<i>id</i>) [additional extended discussion of purposes of permanent notation] Principal reason for no suspension was that this was a retrial due to procedural errors, and no suspension had been imposed after the first conviction.
94-01	JC	Convicted student of using an outline during a closed book Torts exam.	One-year suspension; readmission through regular processes; specific notation on transcript, which may be expunged by the Dean only upon application and not sooner than ten years after graduation. “Both plagiarism and the use of prohibited materials on an exam are serious violations in which the wrongdoer takes an unfair advantage over his/her classmates.” (p. 13)
1991	HCRC	Approves stipulation and diversion to alternative penalty based on defendant’s having written between 3 and 7 minutes after end of exam.	Reprimand; no notation; disclosure of matter to bar authorities upon proper request; 30 hours community service.

90-2	JC	Rejecting a motion to dismiss for a variety of reasons.	N/A
1989	Dean Bennett	Acquits student of violation. Allegation was that student hinted that another had been subject of an HC acquittal.	N/A
88-1	HCRC	Reversing a judicial council conviction. Judicial council had convicted student of violating honor code by altering his transcript so that "shadow" grades were included.	N/A
87-1	HCRC	Reversing liability conviction in below case. HC not prohibit appearances of impropriety: "[W]e think that the Honor Code, while recognizing a duty of honesty that students have towards each other, is aimed primarily at actual, intentional and knowing wrongdoing rather than the mere appearance of wrongdoing." (p. 5)	N/A
87-1	JC	JC convicted student. Student had opened a hornbook during an examination in which hornbooks were expressly prohibited by the professor's instructions. The JC accepted the defendant's testimony that s/he only opened the book to retrieve from it a notecard on which she had summarized some matter from the hornbook (and the JC accepted that the use of student-written summaries of hornbook material was acceptable). The conviction was under section 2(c) of the HC: "A violation occurs when a student knowingly ... uses material not permitted by the professor in an examination or other graded assignment." The JC concluded that the forbidden hornbook had been "used" b/c it had been opened.	No penalty. "The Council was convinced that the Defendant is an honest person who used bad judgment during the examination and has already suffered enough by being brought up on charges and eventually convicted of violating the Honor Code." (p. 7)

84-1	HCRC	<p>Student admitted to reproducing a single page of a commercial outline for use in an examination.</p>	<p>Permanent transcript notation and the student is barred from using any commercial outline in any course during the student's next semester at NU Law.</p> <p>"In the context of Case No. 84-1, and also as a general matter, it was unanimously agreed that honor code infractions involving serious academic honor violations, including plagiarism, shall carry as a minimal penalty permanent notation on the student's transcript. The notation shall consist of a brief but specific description of the penalized conduct. The reason given for this action is that <u>all</u> prospective employers, and anyone else authorized to examine the student's transcript, have a right to this information. An attorney is licensed and charged with a public trust, and therefore the notation is material evidence in that regard." (p. 1)</p>
84-2	HCRC	<p>Plagiarism. "The penalty which the panel hereby assess recognizes the gravity of premeditated substantial plagiarism in a paper that constituted the entire basis of the grade in the course."</p> <p>According to JC opinion: student pleaded guilty to 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." (P. 3) The JC opinion notes a prior case in which the student plagiarized 40% of a casenote submission to a journal.</p>	<p>"[P]ermanent and specific notation of the offense on the student's transcript." Requirement that student be required to disclose plagiarism conviction if making application to a student journal. Two-year suspension from law school, "with readmission to be achieved <u>only</u> through the regular readmission processes of the School."</p>

83-1	JC	Acquit student of plagiarism charge. “The judicial council votes unanimously to acquit the defendant of the charge of intentional plagiarism. It is the council’s decision that it has not been shown beyond a reasonable doubt, Art. IV, Sect.4(5), that the defendant intended to pass off the work of others as his own original work. Evidence presented at trial indicates that the defendant may have copied the challenged phrases onto notecards with inadequate citation and then, several days later, copied the phrases into the text of his draft without realizing that he was not the originator of the phrases.” (p.3)	N/A
82/83-1	JC (aff’d per curiam by HCRC)	Plagiarism. Student pled guilty to a charge that he {NB: gender unknown} had plagiarized his casenote submission for admission to the journals. “[T]he 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.” (p. 2) “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 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.” (p. 3)	One semester’s suspension; temporary notation on transcript (expunged upon graduation); permanent bar from journals.
81-1	JC	Dismissed a complaint for “lack of jurisdiction” b/c the trial was not started within the four week period required by the HC. Conclusions of Law: “In accordance with the directive of Article VI, Section 1 of the Honor Code, the Council decided that in construing the provisions of the Code it would look only to the Code and interpret provisions with reference to one another.”	N/A

73-1	HCRC	<p>Plagiarism. “The accused plead guilty to a charge of submitting for credit, in a seminar given in the second semester of the 1972-73 academic year, a paper which was substantially verbatim a copy of a law review article written by another person. The accused submitted various facts in support of his plea for mitigation of the penalty.”</p>	<p>Suspension, only one semester, due to delay in proceedings and student’s withdrawal from prior term. Student must apply for permission to graduate to the HCRC. Student must complete an additional semester of law school. Notation of “honor code violation” shall be entered on the accused’s law school record.</p> <p>“The HCRC considers the offense of plagiarism to be a most serious offense, ordinarily justifying expulsion, absent mitigating circumstances.” (p.2) Notation necessary b/c “[p]otential employers and bar examiners are entitled to know of his past unethical conduct.” (p. 3) Otherwise, law school involved in a “cover up.” (<i>id</i>)</p>
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