

Creating a Culture of Academic Integrity: Some Legal Issues

Ann H. Franke¹
President, Wise Results LLC

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Academic integrity stands, or should stand, at the heart of every college and university. Academic integrity covers values of honesty, fair attribution, and respect for the opinions of others. Faculty and administrators need to display high standards of integrity and transmit those values to students.

Policies requiring academic integrity are a necessary component of an institutional program. Yet policies may be drafted and then relegated to some cobwebbed corner of the institution's website, never to be consulted again. This happens often in academia with many types of policies. Members of the campus community need to understand the policies, refer to them as needed, and be reminded of them from time to time. The next piece of the puzzle is enforcement. A policy without enforcement may be ignored or flouted. Yet enforcement must be appropriate. Policies with unduly harsh consequences, for example, may be evaded. Overly lenient policies become a joke. An effective system of policies and consequences is necessary to an academic integrity system. Even policies and consequences, together, are still insufficient. The premise of our panel, and this paper, is that institutions need to create and sustain a solid *culture* of academic integrity.

Policies, enforcement, and culture together provide the best available approach. Leaders lead by example and by active transmission of values. Faculty members orient one another and their students. Administrators reinforce the messages and themselves practice high standards of academic integrity. An institutional value is one deeply embedded into the lives of those connected to the institution.

No system, though, will be perfect. A faculty member under pressure to meet a deadline may still falsify research data; the president, seeking personal acclaim, may plagiarize a speech. Professor Sara Sun Beale has written about the importance of a culture of academic integrity.

¹ Ms. Franke can be reached at annfranke@verizon.net.

Her three-part segmentation of students applies with equal force to the rest of academic community:²

“The research on academic integrity suggests you can basically divide students into three groups:

One group of students are very law-abiding and aren’t much affected by their institutional culture. They will fastidiously follow all the rules.

Another group is intent upon pursuing loopholes, and where the loopholes aren’t big enough, they just kind of evade the rules.

The largest group is in the middle, and that group is greatly affected by the institutional culture. There are many, many parallels that you could think of as to how the enforcement and the cultural endorsement of rules really affect the behavior of most people in the middle.”

The many varieties of academic misconduct include:

- Plagiarism
- Forgery
- Misrepresentation of credentials, such as a falsified faculty resume or student admissions application
- Trading grades for personal gain, such as sex or money
- Fabrication or misrepresentation of facts, such as inventing experimental data or justifying delayed completion of an assignment with the fiction that a grandparent died³
- Misrepresentation of identity, such as sending a ringer to take an examination

² Sara Sun Beale, “Integrity in Government: Governmental and Academic Integrity At Home and Abroad,” 42 Fordham Law Review 405, 408 (2003). Visited 1/23/09 at [http://eprints.law.duke.edu/812/1/72_Fordham_L_Rev_405_\(2003-2004\).pdf](http://eprints.law.duke.edu/812/1/72_Fordham_L_Rev_405_(2003-2004).pdf)

³ In one memorable episode, a student fabricated an entire printed funeral program, complete with readings and rituals, for a grandmother who had not died. A professor on another campus, exasperated by spikes in grandparent mortality, announced at the beginning of the semester that he would express condolences by telephone to the family of any student who lost a relative during the course.

- Hoarding or hiding a scarce resource, such as a piece of lab equipment or a library reserve item, so others cannot use it
- Cheating on assignments or examinations. Forms of cheating are endless, from programming answers into a calculator to copying a cheat sheet onto the inside of a soda bottle label⁴
- Alteration of institutional records, such as bribing an employee who maintains student grade records

An individual charged with academic misconduct may seek to explain away an alleged violation as a mistake, accident, or joke. Decision makers must test the proffered explanation against other available facts. They must also examine indicators of the actor's intent and the harm the situation caused.

What approach should a college use to handle academic integrity problems? A college leader might well pose this question to a campus lawyer.⁵ There is, however, no single correct answer, applicable to all settings and all members of the campus community. Issues for examination include: the type of institution; laws applicable to it; its existing policies and procedures; for students, whether the problem is disciplinary or academic; and, most significantly, institutional objectives in addressing academic misconduct.

The law is empowering. It provides ample opportunity for pursuing educational objectives, as well as for punishment.

The following questions and answers are designed to illustrate the main themes of the legal analysis. Most of the discussion applies equally to faculty, students, and staff, except as otherwise noted.

⁴ For a dazzling array of cheating methods, visit "Teachopolis: The Virtual City for Teachers" and click on the Halls of Justice to reach the section "How to Cheat." www.teachopolis.org/justice/cheating/cheating_how_to.htm

⁵ A lawyer would do well to reply, "What process do believe would be most suitable? Let's examine whether we can defend the approach that, in your professional opinion, is most appropriate." Lawyers should not make academic decisions. They should provide advice. In seeking counsel from lawyers, a good approach is to say: "Here's the problem, and in my judgment a good solution would be.... Is that legally defensible?" This is generally preferable to asking a lawyer: "Here's the problem. What should I do now?" On issues, however, outside of one's own professional realm or in areas of past legal difficulty, the catch-all question "Tell me what to do" may be appropriate.

Is the institution public or private? A public institution must follow the Due Process requirements of the United States Constitution. The Constitution provides, in relevant part, that neither the federal nor state governments may deprive any person “... of life, liberty, or property, without due process of law.” The Constitution constrains only actions taken by the *government*, including a state college or university. It does not reach non-governmental actors, such as a private university. Dismissing a faculty or staff member from a public university deprives the individual of a property interest. The dismissal of a public university student is also usually deemed to be a property deprivation.

Do any state laws address academic misconduct? Some states have adopted requirements that govern discipline. The requirements may arise from various sources such as:

- A state administrative procedure act or other general law, which would cover public colleges and universities
- A rule issued by the state board of higher education, typically applicable only to public institutions
- A state law specifically addressing campus procedures, which might apply to private as well as public institutions.

What do institutional policies require? It is **always** prudent to review institutional policies before acting on an academic integrity matter. Failure to follow the institution’s own policies and procedures may create a legal claim for breach of contract. This applies to all types of institutions, whether public or private.

On some campuses it can be tricky to locate all the descriptions of academic integrity requirements and procedures. To obtain a full picture, review sources including:

- Student handbook, honor code, code of conduct
- Judicial code
- Course catalog
- Institutional websites (e.g., Dean of Students, Provost, Human Resources, Admissions, Judicial Affairs, academic departments)
- Materials distributed to parents
- Syllabi of individual professors

- Faculty handbook and related policies, such as a code of ethics
- Staff handbook and related policies
- Individual employment contracts, such as for high-level administrators and coaches

Check to make sure the sources applicable to any given campus group are consistent. If they are not, reconcile them. To unify an overall academic integrity program, seek to reconcile all sources with one another, as closely as possible.

An individual disciplined for academic misconduct may allege that he or she did not receive all the rights that the institution promised in its policies and handbooks. In legal terms, the individual alleges a breach of contract. To avoid liability, the best course is to follow closely the relevant policies. A departure from existing policies and procedures may not, however, lead automatically to liability. Sometimes courts may excuse an institution's failure to follow its policies. For example, a student handbook could include a provision stating that the institution reserves the right to change the handbook without notice. As another example, a handbook might set out disciplinary procedures but also state that the institution may depart from them in unusual situations. These are generally questions of state law, so a court in Maine might rule differently from one in Utah about how strictly an institution needs to follow its own policies.⁶

⁶ E.g., Millien v. Colby College, 874 A.2d 397 (Maine, 2005). The court accepted a reservation clause in the student handbook. The clause stated "NOTICE: The reader should take notice that while every effort is made to ensure the accuracy of the information provided herein, Colby College reserves the right to make changes at any time without prior notice. The College provides the information herein solely for the convenience of the reader and, to the extent permissible by law, expressly disclaims any liability which may otherwise be incurred."

Case in Point – Breach of Contract

A recent Georgia case examined whether Emory University, a private institution, followed its handbook in expelling a medical student for dishonesty and plagiarism. The student claimed that the university violated the student handbook in not providing him with adequate time to review reports concerning the charges and in delaying his hearing beyond a 21-day deadline after the accusations were first made. The university had given the student the reports shortly before holding a hearing. Because of some procedural concerns surrounding the hearing, the university later decided to nullify the first hearing and hold a second one. The court pointed out that the student, already having received the reports, had ample time to review them before the second hearing. As to the 21-day requirement, the court observed, first, that the handbook provided exceptions to the deadline in appropriate cases. Second, the court pointed out the student himself had made multiple requests to cancel the hearing, undercutting his claims that the hearing was untimely. The court pointed out that, under Georgia law, a party need not follow a contract *strictly*, only *substantially*. It court ruled that Emory University met its obligations and did not breach its contract with the student.⁷

Is the problem academic or disciplinary? In the realm of student shortcomings, the courts have drawn a line between academic deficiencies and disciplinary matters. What is the difference? Academic deficiency covers a student's failure to meet course or degree requirements. An example would be a student whose grade point average falls below a required minimum. Disciplinary matters, in contrast, focus on behavior. Drug abuse or campus disruptions are disciplinary issues. While it may seem somewhat counterintuitive, academic integrity violations generally fall on the disciplinary side of the line. These problems involve unacceptable behavior, rather than a student's honest but inadequate academic achievement.

How do the courts treat academic and disciplinary problems differently? This distinction is relevant to only to public institutions, because it stems from a Constitutional analysis. As the law has developed, procedures for assessing student academic standing can be *less* formal than procedures for disciplinary matters. Here is an example to illustrate the difference. Take two students. One flunks out and the other is dismissed for damaging campus property. Many

⁷ Kuritzky v. Emory University, 294 Ga.App. 370, 669 S.E.2d 179 (Ga. App., 2008).

people would consider academic failure to be the greater disgrace. It might, therefore, merit more elaborate procedures leading up to the final result. As a general matter, the courts conclude the opposite – that disciplinary infractions require greater procedural thoroughness. Why? Courts have recognized that academic issues fall squarely within the domain of colleges and universities. Judges are ill equipped, and ill disposed, to second guess a grade, a degree requirement, or the reasonableness of a minimum grade point average.

Does the institution differentiate between academic and disciplinary problems? While the courts permit a distinction between situations involving student academic standing and behavioral problems, many institutions treat them identically.

What Is Due Process? Due process is, as explained above, a concept applicable to public institutions. The Due Process clause of the United States Constitution embodies two closely related concepts – *substantive* due process and *procedural* due process. Substantive due process asks, in effect, whether the punishment fits the crime. In a criminal case, is a five-year prison term too severe a penalty for a misdemeanor? In a civil case, is a \$10 million punitive damage award disproportionate to that discrimination that an individual suffered? These are questions addressing the appropriateness of the penalty imposed.

Case in Point – Substantive Due Process.

A law professor at Texas Southern University gave a student zero credit for a writing assignment because the student did not follow directions to work independently. The grade brought the student’s average below the minimum needed to remain in school. The student sued, alleging, among other claims, that the zero grade violated his right to substantive due process. An appeals court in Texas sided with the professor: “Giving a student a zero for cheating on course work is not irrational. It is a logical punishment, often handed down by teachers, for turning in work that is not one's own, or for helping another person turn in work that is not their own. It is rational in that it gives no credit to a student who may not have done any work himself, and it is rational in that it serves as a deterrent to keep students from engaging in or repeating academic dishonesty.” The court concluded the student was not deprived of his substantive due process.⁸

⁸ Jackson v. Texas Southern University – Thurgood Marshall School of Law, 231 S.W.3d 437, 440-441 (Tex. App. Houston, 14 Dist., 2007).

The second thread of due process is *procedural* due process. As the name suggests, procedural due process examines whether the decision maker used suitable procedures to reach the outcome. Different settings require different procedures. Imposing the death penalty requires a full trial. Suspending a student from a public high school does not. Perhaps influenced by the media, some people wrongly believe that due process *always* entails combative lawyers, withering cross-examination, fiery arguments, and a neutral decision maker wearing a black robe. These elements (minus the hyperbole) are the stuff of court cases. They would, however, be excessive in a campus context. Due process is a flexible concept.

Might ill motives lie behind the charges against the student? In unusual circumstances, a fellow student or professor might bring a charge of academic misconduct for improper reasons. Attached as Appendix A is a case involving a department chair's pursuit of a plagiarism allegation against an assistant professor, in which the court agreed with the assistant professor that the chair acted maliciously.

Case in Point – Charges Made in Bad Faith

A law student with a learning disability struggled academically, allegedly because the university did not provide the accommodations it had promised her. The student complained to her constitutional law professor that she was not receiving transcripts of the course lectures in a timely fashion. The professor then, in front of the entire class, admonished the student for not taking the midterm examination on time and disclosed that the student had a learning disability. The student reported the professor's inappropriate comments to an associate dean. Several months later, after the student completed a take-home final examination, the professor brought charges of cheating and plagiarism against her. The student sued and alleged, among other claims, that the professor's academic integrity charges were improper. The student claimed that the professor was retaliating against her for going to the associate dean about the in-class remarks. The court declined to dismiss the retaliation claim, allowing the student to proceed to trial to prove the retaliation.⁹

What type of process must a public university student receive before being punished for an academic integrity violation? The Constitution requires some type of process, with some type of

⁹ Di Lella v. University of the Dist. Of Columbia David A. Clarks School of Law, 570 F.Supp.2d 1 (D.D.C., 2008).

hearing. Courts around the country vary somewhat in the details. The minimum, essential steps include:

- Advance notice to the student of the specific charges and the policy prohibiting the alleged misconduct
- If the student contests the charges, a summary of the evidence against him or her
- An opportunity for the student to explain his or her side of the story to the decision maker
- Good faith procedures and decisions.

Certain courts have elaborated on these elements setting, for example, a minimum number of days for advance notice; requiring that the student have an opportunity to cross-examine adverse witnesses; and requiring a written decision. For a fuller discussion, see William Kaplin and Barbara Lee, The Law of Higher Education vol. 2, pp. 973-988(4th ed. 2006, Jossey-Bass).

What's the difference between a student disciplinary problem and an academic one? Not all student problems are easily categorized as either academic or disciplinary. Consider a student who:

- Steals a copy of an exam before it is given. The theft is a disciplinary matter, pursued for an academic advantage
- Fails to attend mandatory class sessions
- Refuses to submit to a physical examination required for nursing students

If the institution provides different procedures for disciplinary and academic violations, selecting the appropriate route may be tricky. In situations of uncertainty, a lawyer might advise using the more elaborate process. Another option is to allow the student to elect which route to follow. If the student is given a choice, document the decision in writing.

Case In Point – The University Needs to Be Fair But Doesn't Need to Be 100% Correct

An international student enrolled in a Ph.D. program in English at the University of Houston. A professor, concerned about the student's habits in attributing sources, coached her extensively and arranged for tutoring. Members of the English faculty later brought two separate charges of plagiarism against the student. An internal hearing panel, consisting of 3 students and 2 professors, sustained both charges. The student sued for, among other claims, race discrimination. She offered affidavits from two professors from other institutions questioning the University of Houston's conclusion. By casting doubt on the presence of plagiarism, the student hoped to bolster her discrimination claim. The court was not persuaded. It explained that "the question is not whether the university made an erroneous decision, but whether the university's decision was made with discriminatory motive. Even an incorrect determination that plaintiff submitted a plagiarized paper constitutes a legitimate nondiscriminatory reason for her expulsion." The affidavits thus did not carry the day for the student's discrimination claim. The institution is entitled to make a wrong judgment, so long as it does not make a discriminatory one.¹⁰

How can a lawyer contribute to a culture of academic integrity?

- Know and follow our own professional ethical responsibilities.
- Understand the institution's values. Keep that big picture in front of us as we work on issues.
- With input from stakeholders, help write and enforce clear policies.
- Speak internally not only about policies and expectations, but also the values underlying them. For example, training sessions can discuss *why* policies require certain procedures, not just what the procedures are.
- Engage people on a deeper level on doing the right thing

¹⁰ Bisong v. University of Houston, 493 F.Supp.2d 896 (S.D.Tex.,2007)

The institution won in each of the cases described in the Case In Point boxes above. Appendix A describes a case in which the alleged wrongdoer won. For the most part, courts provide colleges and universities considerable flexibility in managing their problems of academic integrity. Follow your own policies, know whether Constitutional requirements apply, proceed in good faith, and work, as always, to advance your mission.

Selected Resources

Center for Academic Integrity, Clemson University

www.academicintegrity.org

Nationally-recognized center. Website includes many articles, sample policies, and other resources. Sponsors an annual conference,

Center for Intellectual Property

University of Maryland University College

www.umuc.edu/distance/odell/cip/links_plagiarism.shtml#integrity

Excellent bibliography on plagiarism, detection methods, and academic integrity.

Plagiarism.org

www.plagiarism.org/index.html

Resources on citation protocols and plagiarism. Companion site to TurnItIn.com

Professor Donald McCabe, Rutgers University

One of the leading authorities in the field.

http://business.rutgers.edu/files/mccabe_cv_08.pdf

“Promoting and Sustaining an Institutional Climate of Academic Integrity,” report by the Education Policies Committee, The Academic Senate for California Community Colleges (Spring 2007)

www.asccc.org/Publications/Papers/downloads/PDFs/academic-integrity-2007.pdf

Last, but not least... **Cheating** (1952)

A campy 11-minute film about the consequences of cheating in high school. Some film buffs consider it a cult classic for excellent lead actors and lighting effects. In the public domain. www.archive.org/details/Cheating1952

Appendix A

Supreme Court of Alabama

James SLACK

v.

Christopher STREAM

Jan. 18, 2008

(988 So.2d 516)

Excerpted below is the opening section from an Alabama Supreme Court opinion. As the excerpt explains, Professor Christopher Stream was an assistant professor of government at the University of Alabama, Birmingham. He and a colleague submitted a manuscript to a scholarly journal for publication. One of the reviewers alleged that some passages in the manuscript were taken from other sources and not properly attributed. Professor Stream apologized to his co-author, taking responsibility for the problem. The manuscript was never published.

Professor James Slack, chair of the department, learned of the reviewer's concerns. Unaware of the university's policy on plagiarism, Chairman Slack issued a reprimand to Professor Stream, who had accepted a new faculty position elsewhere. Slack sent copies of his reprimand to, among others, various journals, Stream's new university, and the university from which he had received his doctoral degree.

Professor Stream sued Professor Slack for defamation and related tort claims. Stream won a jury verdict for \$212,000 in compensatory damages and \$450,000 in punitive damages. Slack appealed.

The Supreme Court of Alabama observed that when Slack became department chair five years earlier, he had received a copy of the university's handbook containing the plagiarism policy. A department chair is responsible for knowing the university's policies. Without regard to the policy, Slack willfully and maliciously distributed the letter of reprimand, beyond the scope of his responsibility, to external parties. The mental distress that Stream suffered from the incident justified the punitive damage award. The Alabama Supreme Court observed in its legal conclusions:

The evidence showed other bases for awarding mental-anguish damages in light of the significance of the status of professional reputation in Stream's academic field. As Dr. Mary Guy of Florida State University testified at trial, the damage to an academician's reputation caused by an accusation of plagiarism is "extreme and it takes years and years and years to overcome...."

The case illustrates the problems that an overly-zealous ethics enforcer, acting alone, can create when straying beyond institutional culture and policy.

Only the court's factual and procedural discussions appear below, with footnotes omitted. Interested readers can find the full opinion at 988 So.2d 516 or contact Ann Franke for a copy at annfranke@verizon.net.

Chief Justice COBB.

James Slack, the defendant in an action in the Jefferson Circuit Court alleging against Slack defamation, invasion of privacy, and intentional interference with a business contract, appeals from a judgment in favor of Christopher Stream, the plaintiff. We affirm.

I. Factual Background and Procedural History

The testimony at trial reveals the following facts. In the fall of 2002, Stream accepted an appointment as assistant professor in the Department of Government at the University of Alabama at Birmingham ("UAB").

During the summer of 2003, the Young Men's Business Club of Birmingham invited Stream to speak about Amendment One, a proposed constitutional amendment placed on the ballot in a 2003 special election that would have significantly restructured the sources of revenue for Alabama. Stream asked his graduate assistant, Vladimir Shilkrot, to assist him in finding newspaper articles concerning Amendment One. Stream used these newspaper articles, as well as other articles and research he had compiled, to compose his notes for the speech.

Soon after Stream presented the speech, Michael Howell-Moroney, also an assistant professor of government at UAB, approached Stream about coauthoring an article regarding Amendment One for submission to a scholarly journal. The article, *Evidence of Public Regardingness: Doing the Right Thing in the Alabama Tax Vote?* was submitted to the *Journal of Politics* ("the JOP"). On December 17, 2003, William G. Jacoby, the editor of the JOP, e-mailed Stream, informing him that the article was being rejected for publication based on the reviews of two referees. In

his e-mail, Jacoby referenced issues raised by the two referees such as "the sizable literature of self-interest effects" that were not referenced in the article, the model specification, and the use of aggregate data to test hypotheses about individual behavior. Jacoby, however, encouraged Stream and Howell-Moroney to revise their article using the referee's critiques and to submit the article to a more subject-focused journal.

Attached to Jacoby's e-mail were the comments from the two referees, designated as "reviewer 1" and "reviewer 2." Although the reviewer's comments concerning the alleged plagiarism were not specifically referenced in Jacoby's e-mail, reviewer 1 stated in his comments:

"The quality of writing is also problematic, in that I found several instances of plagiarism in the manuscript with fairly modest effort (I suspect there are many more cases in the paper as well). This is completely unacceptable for a manuscript submitted for publication. If one of my students had turned in this paper to me, he or she would have faced *serious* penalties in the university's honor court."

(Emphasis in original.) Reviewer 1 quoted three sources he found had been plagiarized: an Associated Press article by Phillip Rawls, an article by Thomas Spencer, and an article from the *Clarke County Democrat*, a local newspaper in Grove Hill.

Stream forwarded Jacoby's e-mail to Howell-Moroney on the same day he received it. After reading the comments of reviewer 1, Howell-Moroney telephoned Stream and learned that Stream had not read the reviewers' comments. Upon learning that one of the reviewers had found incidences of plagiarism in the article, Stream testified that he was "stunned," "embarrassed," and "ashamed." Stream claims that during the conversation with Howell-Moroney, while thinking aloud he stated that he wondered if the plagiarized material could have come from materials provided by Shilkrot. That evening, Stream e-mailed Howell-Moroney apologizing for his "laziness." In the e-mail, Stream wrote: "It's no excuse, but I've had several career decisions to make this semester and the stress has gotten to me. I had hoped to ease my stress by taking advantage of my grad assistant, but that's no excuse. It was still my responsibility to check what he had given me." Howell-Moroney responded to Stream's e-mail, writing: "I appreciate your apology, but don't hassle it. Let's just tighten that puppy up and send it back out."

By the 2003-2004 academic year, Stream had become dissatisfied at UAB and decided to look for other employment. On January 26, 2004, the University of Nevada, Las Vegas ("UNLV"), extended an offer to Stream to become assistant professor in its Department of Public Administration, and Stream accepted UNLV's offer on January 30, 2004, to begin teaching there in the summer of 2004. Howell-Moroney learned on or about February 16, 2004, of Stream's

planned departure from UAB and decided at that time that he would inform Slack of reviewer 1's findings of plagiarism. According to Howell-Moroney, he decided to inform Slack of reviewer 1's findings because he believed that he could be accused of plagiarism if it was ever disclosed that the reviewer found incidences of plagiarism in the manuscript. Upon learning of reviewer 1's finding of plagiarism, Slack asked for and received a copy of the e-mail from Jacoby and a copy of the manuscript.

After reviewing the manuscript, Jacoby's e-mail to Stream, and the reviewers' comments, Slack reviewed the university handbook, but he was unable to find a policy or procedure dealing with plagiarism by a member of the faculty. According to Slack, he met with Tennant McWilliams, dean of UAB's School of Social and Behavioral Sciences, before March 1, 2004, regarding the plagiarism incident, and Dean McWilliams did not disclose to him during that meeting that a policy existed concerning plagiarism by a faculty member. Dean McWilliams, however, does not recall such a meeting. Purportedly unable to find a policy regarding plagiarism by a faculty member, Slack conducted research on the Internet and found, among other items, a "Statement on Plagiarism" approved by the American Association of University Professors. The "Statement on Plagiarism" stated, in part:

"Any discovery of suspected plagiarism should be brought at once to the attention of the affected parties and, as appropriate, to the profession at large through proper and effective channels--typically through reviews in or communications to relevant scholarly journals."

Slack contacted Jacoby and had tenured professors in the Department of Government review the manuscript. Slack also telephoned Shilkrot because Howell-Moroney had stated that Stream mentioned Shilkrot and because Shilkrot was referenced in the e-mail exchange between Howell-Moroney and Stream. In an e-mail from Shilkrot to Slack following their telephone conversation, Shilkrot said that he had summarized for Stream five articles for a political science publication that had been submitted to Stream for peer review as a time-saving measure for Stream.

On March 17, 2004, Slack called Stream into his office and asked Stream if he was "associated" with a claim of plagiarism. Stream responded that he was not. Slack then asked Stream if he had submitted a manuscript to the *JOP* that had been rejected because of plagiarism. Stream responded that he and Howell-Moroney had submitted an article to the *JOP* and that the article had been rejected but that it had not been rejected for plagiarism. Stream alleges that he ended the conversation with Slack so he could discuss the matter with Howell-Moroney to "put things in context."

On March 17, 2004, in response to numerous requests from Slack, Jacoby sent Slack a memorandum explaining that, besides the issues mentioned in Jacoby's e-mail to Stream of December 17, 2003, Stream and Howell-Moroney's manuscript "probably would have been rejected anyway" because of the plagiarism found by reviewer 1.

On March 18, 2004, Slack wrote the following letter to Stream:

"This letter serves as a REPRIMAND for UNETHICAL SCHOLARLY BEHAVIOR.

"(1) During Fall Semester 2003, you and a co-author submitted a manuscript, entitled 'Evidence of Public Regardingness: Doing the Right Thing in the Alabama Tax Vote,' to the *Journal of Politics* (JOP manuscript 111803A).

"(2) During Fall Semester 2003, you received a copy of the reviewers' comments on the paper.

"(3) Reviewer number 1 ... states:

" 'The quality of writing is also problematic, in that I found several instances of plagiarism in the manuscript with fairly modest effort (I suspect there are many more cases in the paper as well). This is completely unacceptable for a manuscript submitted for publication. If one of my students had turned in this paper to me, he or she would have faced *serious* penalties in the university's honor court.'

"(4) Reviewer number 1 provides three examples of plagiarism....

"(5) According to the co-author, you admitted that the plagiarization occurred in the manuscript sections for which you had writing responsibility.

"(6) The co-authored [sic] provides a 17 December 2003 e-mail ... from you to verify that you took responsibility for the plagiarized sections of the manuscript.

"(7) In the 17 December 2003 e-mail, you place blame for the plagiarism on your MPA graduate assistant.

"(8) However, in a 25 February e-mail ..., the MPA graduate assistant asserts the following:

"• That you instructed the graduate assistant to collect summaries for the manuscript.

"• That you did not make him aware, nor get his permission for quoting his own intellectual property verbatim in your manuscript.

"• (As a relevant aside, the graduate assistant also asserts that you instructed him to read and summarize five (5) manuscripts sent to you by a reputable scholarly journal (s) seeking your expert opinion and not the opinion of someone with a bachelor's degree, in this case, the MPA

graduate assistant. According to the graduate assistant, this was done as a 'time saving measure' for yourself.)

"(9) Furthermore, the passages in question, those to which reviewer number 1 calls attention, are without citation. Hence, even if the MPA graduate assistant provided you with satisfactory paraphrases, there is still no citation of the source of those paraphrases.

"(10) On 17 March, I talked with you about the issue. You denied knowing anything about the word 'plagiarism' being included in a review of a manuscript submitted to *JOP*. You initially offered to let me see the reviews but, once I accepted the offer, you said that you had not received a hard copy from *JOP* and you had erased the electronic version.

"(11) On 17 March you called the co-author to discuss our conversation. The co-author has sent me an e-mail ... outlining that conversation in which he heard you admit that you intentionally lied to me.

"(12) On 17 March I received an e-mail from the editor of *JOP* ..., in which he verifies that plagiarism did occur and that this is 'reprehensible and unethical behavior.'

"It matters not whether you plagiarized as a result of poorly paraphrased passages submitted by a third party (in this case, an MPA graduate student), or whether you plagiarized the actual words of this same third party who never gave you permission to use those words as your own. You did not cite the original source (even if the student would have supplied an acceptable paraphrase), and you did not even officially acknowledge in the manuscript that you were using the words crafted by that student.

"It matters not because plagiarism of any flavor constitutes intellectual theft, instills doubt in our discipline's ability to self-govern scholarship, and ultimately constitutes the rape of the academy.

"What journal editors decide to do with you--for both plagiarism and passing off to persons with bachelor degrees manuscripts which were written in earnest, sent to reputable scholarly outlets in earnest, and then entrusted to you for deliberation--is beyond my realm. But what is equally telling is this: I have taken the time, as well as your co-author, to apologize to the *Journal of Politics*. As of this date, you have not.

"What your new employer does with you is also none of my business. Whether the University of Nevada at Las Vegas considers your actions to constitute an academic misdemeanor or a capital offense will ultimately reflect on its faculty and the value that its faculty and administration places on scholarly integrity and intellectual honesty.

"But as far as this department is concerned, had you not resigned your tenure-track faculty position and chose to remain at UAB, a strong recommendation to central administration would have been forthcoming for the issuance of a termination notice.

"Your behavior is deeply troubling, not just because of its potential harm to the reputation of the Department of Government at UAB, but also because of the actual damage it inflicts upon the academy and the fundamental processes in which the academy invests to guarantee honesty and quality in the discovery and dissemination of new knowledge in our discipline.

"It is for the reasons stated above that I render this reprimand."

(Capitalization and emphasis in original.) Slack placed a copy of the letter in Stream's office mailbox, mailed a copy of the letter to Stream via first-class mail, and had his secretary escort him to Stream's office, where Slack watched as she taped a copy of the letter to Stream's chair. Attached to the letter were various documents and correspondence referenced in the letter. Stream was not in his office on March 18, 2004, to receive the letter.

Dean McWilliams recalls meeting Slack in the hallway at UAB on the morning of March 18, 2004. Slack mentioned to Dean McWilliams that he had serious concerns about a case of plagiarism by Stream. Dean McWilliams suggested the two meet that afternoon to discuss the matter. Dean McWilliams then went into a meeting, and when he emerged from the meeting he found the letter of reprimand and its attachments sitting on his secretary's desk. Dean McWilliams became concerned because the attachments indicated that the letter of reprimand had been sent to various universities and journals. Dean McWilliams telephoned the office of general counsel for UAB and was told not to discuss the Stream situation with Slack. The following week during an alumni dinner in Georgetown, District of Columbia, Dean McWilliams had a discussion with Slack regarding Stream but avoided any conversation about UAB's written policy concerning plagiarism based on the advice of general counsel. He avoided such conversation based on his understanding that Slack had acted outside the scope of his authority by issuing the letter of reprimand and disseminating it to individuals outside UAB.

On the morning of March 18, 2004, Slack telephoned Lee Bernick, chairman of the Public Administration Department at UNLV, at his home between 6:00 a.m. and 6:30 a.m. Slack introduced himself to Bernick and asked Bernick if he knew he was hiring a plagiarist. Bernick stated that he needed more information, and Slack informed Bernick that he would be sending information via facsimile. When Bernick arrived at his office, he found a copy of Jacoby's memorandum of March 17, 2004, as well as reviewer 1's comments. Later in the morning Bernick received an e-mail from Slack requesting confirmation that he had received the facsimile. Bernick replied via e-mail, "I did receive the information. Thank you for the material."

Slack replied to that e-mail on the morning of March 19, stating, "FYI. Here is the letter that [Stream] is receiving today in the mail." Attached was the letter of reprimand. Slack then forwarded to Bernick two e-mails Stream had sent Slack requesting that Stream and Slack meet. Bernick testified that he felt that by referencing UNLV in the letter Slack "was trying to intimidate the university, UNLV, into not hiring Dr. Stream."

Unbeknownst to Stream, Slack also sent copies of the letter of reprimand to the chair of the Department of Government at Florida State University (the institution that had awarded Stream his Ph.D. degree), as well as to the editors of at least eight scholarly journals that had published articles authored by faculty of UAB's Department of Government. In his cover letter to the chairman of the Department of Government at Florida State, Slack wrote: "[Y]ou should know that he is a graduate of your doctoral program. While I realize that one bad apple does not spoil the barrel, I'm sure you understand that the product of one's program influences the opinion of others about that program." In his cover letter to the *Journal of Public Affairs Education*, Slack wrote: "Whether or not you want this person to affiliate in any way with your journal is your choice." In his cover letter to the editor of the *American Review of Public Administration*, Slack wrote: "Whether you want this person to affiliate with the *American Review of Public Administration* is your choice, but I submit this letter of reprimand to you." In his cover letter to the editor of the *Public Administration Review*, Slack wrote: "Whether or not you want this person to affiliate in any way with *PAR* is naturally your choice, but you need to know this." Slack sent similar cover letters to the *Urban Affairs Review* and the *Journal of Urban Affairs*. In all the cover letters, Slack stated: "In fact finding, I discovered that he also let an unqualified third party review and summarize manuscripts for him that were specifically sent to him as an external referee by a reputable journal."

Upon receiving the letter of reprimand, Bernick informed Martha Watson, dean of UNLV's College of Urban Affairs, of the allegations against Stream. Watson and Bernick telephoned Stream and asked him to come to Las Vegas so they could discuss the allegations. Stream met with Watson and Bernick on March 30, 2004. On March 31, 2004, Watson wrote a memorandum to UNLV's president and provost explaining the investigative process and her findings. Watson concluded that the incidences of plagiarism in the manuscript constituted sloppy scholarship and that she found no evidence that Stream intended to plagiarize. Thus, she proposed that UNLV not rescind its job offer to Stream. In doing so, Watson wrote:

"Further, I am concerned about the process whereby we became aware of this problem, which resembles a systematic effort to ruin a career. Certainly, a letter of reprimand was warranted; providing us with unsolicited copies of this confidential personnel document and writing to the institutions which granted the Ph.D. seems excessive. Finally and most importantly, we have

been given confidential personnel documents (e.g., the letter of reprimand) which we did not request. Our use of that material to terminate our contract with Stream raises ethical and perhaps has legal implications."

UNLV's president eventually approved Watson's recommendation, and Stream was allowed to join the UNLV faculty for the fall semester 2004. However, Bernick had initially offered to allow Stream to teach two summer courses at UNLV in 2004 for which he would have been paid between \$10,000 and \$12,000. Because of the ongoing investigation, Stream was not permitted to teach these classes.

The faculty of the Department of Government held a meeting on April 2, 2004, regarding plagiarism. According to Angela Lewis, a member of the faculty in the Department of Government, during the April 2 meeting Slack told the faculty that Stream had plagiarized in a manuscript submitted to the *JOP*. Lewis also alleged that Slack had told her that Stream had misused a graduate assistant. Lewis further stated that after learning of the charges against Stream, she was afraid to be associated with Stream during the remainder of his tenure at UAB. In fact, she considered Stream to be "an academic leper." According to Lewis:

"Well, if a junior faculty member commits plagiarism and you're associated with that person, it can harm your career. If you're associated with them, either publishing with them or doing any kind of work with them, I mean, it can harm my reputation in my field and my career and my reputation at UAB."

Gary Mans, director of public relations at UAB and a former graduate student in the Department of Government, recalled receiving a telephone call from Slack in which Slack stated that he had information that Stream had possibly committed plagiarism and that he was going to see to it that Stream never worked in academia again. Slack, however, denies ever having such a conversation with Mans.

Rachel Harris, who was a student in UAB's Department of Government during the spring semester 2004, had a conversation with Slack regarding Stream's departure from UAB. According to Harris, she understood from her conversation with Slack that Stream was being forced out of UAB because of plagiarism. Harris also stated that "one of the biggest things [she] heard" among students in UAB's Department of Government during the spring semester 2004 was about Stream and plagiarism.

After learning that Slack had disseminated the letter of reprimand to UNLV, Florida State, and various journals, Stream wrote a letter to those individuals who had received a copy of the reprimand letter, explaining that the allegations contained in the letter were untrue, that Slack

had not followed due process in investigating the allegations, and that UAB was investigating whether Slack had violated UAB policy in sending the letter of reprimand to them.

Although Slack stated that he was unable to find a policy applicable to plagiarism by a faculty member in the faculty handbook, the handbook contained a "Policy Concerning the Maintenance of High Ethical Standards in Research and Other Scholarly Activities" ("policy 22"). Policy 22 contains the following pertinent provisions:

"Any UAB employee (including, but not limited to, regular and adjunct faculty, fellows, technicians, and student employees) or any UAB student who has reason to suspect any other employee or student of misconduct with regard to the conducting or reporting of research has the responsibility of following up these suspicions in accordance with the procedures outlined below. For purposes of this policy, 'misconduct' means fabrication, falsification, plagiarism, or other practices which seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting, or reporting research. It does not include honest error or honest differences in interpretations or judgments of data....

"It is the responsibility of student employees, trainees, fellows, faculty members, staff members, or other employees who become aware of misconduct in research and other scholarly activities to report such misconduct to one of the following: (a) their department/unit head, (b) the dean of the school in which their department/unit is located, or (c) the UAB Scientific Integrity Officer. In the case of graduate students or of trainees at any level, such evidence also may be reported to the Dean of the Graduate School.

"The individual receiving such evidence of misconduct must immediately report such evidence and the allegation of misconduct to the UAB Scientific Integrity Officer, the department/unit head and the dean of the unit in which the alleged misconduct occurred, and the Provost. If the UAB Scientific Integrity Officer determines that the allegation warrants initiation of the inquiry process, the inquiry shall be initiated immediately, and the Office of Counsel shall be informed.

"Allegations of this nature are very serious matters, and all parties involved should take measures to assure that the positions and reputations of all individuals named in such allegations and all individuals who in good faith report apparent misconduct are protected. Details of the charge, the name of the accused, the identity of the individual bringing suspected fraud, and all other information about the case shall be kept confidential as far as possible, compatible with investigating the case. Revealing confidential information to those not involved in the investigation shall itself be considered misconduct."

Slack contends that he was not aware of policy 22 until UAB's provost referenced it in communications to Slack on April 23, 2004.

On April 27, 2004, then acting UAB Provost Eli Capilouto sent a memorandum to the provost of UNLV, stating:

"I understand you were forwarded a copy of a letter of 'reprimand' dated March 18, 2004 from Dr. James Slack to Dr. Christopher Stream. We are reviewing the facts of this matter. The University of Alabama at Birmingham has not made a finding of wrongdoing. Any suggestion to the contrary by Dr. Slack was not the result of an inquiry by the University into the matter and was, at best, premature."

UAB initiated an investigation in accordance with policy 22 as to both the claim of plagiarism against Stream and Slack's actions in writing and disseminating the letter of reprimand. The committee assembled to conduct the investigation questioned all participants in the matter. Immediately before Slack's meeting with the committee, Dean McWilliams required Slack to tender his resignation as chairman of the Department of Government.

The investigative committee concluded that although the manuscript for the article contained verbatim quotes from published newspaper articles without attribution, there were mitigating circumstances surrounding the writing of the manuscript. The committee also concluded that Slack, as chairman of the department, should have been aware of policy 22 or should have at least sought guidance from Dean McWilliams and the Scientific Integrity Officer before writing a letter of reprimand without investigating the allegations and then circulating the letter of reprimand to uninterested parties.

Provost Capilouto stated that he found Slack's dissemination of the letter of reprimand beyond UAB to be unacceptable. He also called Slack's actions "callously precipitous." Provost Capilouto also ordered Slack to stop distributing information about Stream. According to Provost Capilouto, Slack committed himself to working with Stream in making the appropriate retractions. However, Slack never made the retractions.

On June 28, 2004, Stream sued Slack and UAB in the Jefferson Circuit Court. Stream alleged that Slack was guilty of defamation, invasion of privacy, and intentional interference with a business contract. On August 3, 2005, Slack filed a counterclaim, alleging that Stream had defamed him by disseminating to journal editors information that Slack was being investigated by UAB for his actions relating to the letter of reprimand; Slack also filed a cross-claim against UAB, alleging that UAB had denied him due process by forcing him to resign as chairman of the Department of Government and that UAB had retaliated against him by forcing his resignation as chairman of the department in response to the exercise of his First Amendment right to free speech. The

trial court eventually dismissed all claims and cross-claims against UAB based on the doctrine of sovereign immunity. Slack moved for a summary judgment in his favor based on the doctrine of State-agent immunity, which the trial court denied.

On June 14, 2006, the jury returned a verdict in favor of Stream on Stream's claims of defamation, invasion of privacy, and intentional interference with a business contract against Slack, awarding Stream \$212,000 in compensatory damages and \$450,000 in punitive damages. The jury also returned a verdict in favor of Stream on Slack's counterclaim. A judgment was entered by the trial court on the jury's verdict.

(Further text of the opinion omitted. The Supreme Court of Alabama affirmed the verdict in favor of Professor Stream and upheld the damage award.)