



EX ANTE

A LITTLE PLAGIARISM

Should plagiarism be a crime or a tort? It should not be. The harms it causes are too slight to warrant cranking up the costly and clumsy machinery of the criminal law. And plagiarists rarely have sufficient assets to make suing them worthwhile, even if such harm as plagiarism does in a particular case could be monetized, which usually it could not be. Plagiarism is thus the kind of wrongdoing best left to informal, private sanctions.

Despite these sanctions, there is a good deal of plagiarism, so they must be less than totally effective. But the same is true of formal legal sanctions; murder is heavily punished, but there are plenty of murders. And except in the student case, plagiarism can hardly be thought a social problem grave enough to warrant draconian solutions. It may even be a diminishing problem, especially in the student case. Although digitization has reduced the cost of committing plagiarism along one dimension – you don't have to go to a library and copy out passages by hand in order to plagiarize if you have a computer and access to the Web – it has increased it along another. For the advent of powerful plagiarism-detection software is increasing the detectability, and hence the expected punishment cost, of plagiarism.

Curiously, most litigation over plagiarism is instituted by, rather than against, students expelled or otherwise disciplined for committing plagiarism. The ingenious legal theories spun by the student litigants run the gamut from breach of contract to denial of due

process of law (if the school is a public institution). The threat of litigation makes some academic administrators gun-shy about expelling students caught plagiarizing.

THE JURIST'S MARCH

Fully two thousand spectators crowded the lawn on the west side of the United States Capitol on May 10, 1884, to witness the unveiling of a large bronze statue of Chief Justice John Marshall. According to the *Washington Post*,

The programme began with the rendition by the Marine band of "The Jurist's March," composed for the occasion by Prof. Sousa.

The *Green Bag* would like to hear that march. Unfortunately, as best we can tell, John Phillip Sousa did not write "The Jurist's March."

He wrote 136 marches, but none of them were for or about lawyers. We are pretty sure that the Marine band was not playing Tchaikovsky's "Jurisprudence March," which is sometimes called the "Jurist's March." It was not written until November 1885, and was performed for the first time on December 5, 1885, during a celebration of the 50th anniversary of the founding of the composer's alma mater, the Imperial School of Jurisprudence in St. Petersburg. (Yes, Tchaikovsky spent some time in law school.)



And so we are still searching.

It is possible that the *Post* misreported the title and provenance of the tune played by the Marine band that day. After all, the story opens with this characterization of Marshall's place in the sequence of Chief Justices of the United States: