

The University of New Hampshire Law Review

Volume 22
Number 2 *Volume 22, Number 2 (2024)*

Article 9

6-1-2024

Language Models, Plagiarism, and Legal Writing

Michael L. Smith

Follow this and additional works at: https://scholars.unh.edu/unh_lr



Part of the [Legal Education Commons](#), [Legal Profession Commons](#), and the [Legal Writing and Research Commons](#)

Repository Citation

22 U.N.H. L. Rev. 361 (2024).

This Article is brought to you for free and open access by the University of New Hampshire – Franklin Pierce School of Law at University of New Hampshire Scholars' Repository. It has been accepted for inclusion in The University of New Hampshire Law Review by an authorized editor of University of New Hampshire Scholars' Repository. For more information, please contact sue.zago@law.unh.edu.



Michael L. Smith

Language Models, Plagiarism, and Legal Writing

22 U.N.H. L. Rev. 361 (2024)

ABSTRACT. Language models like ChatGPT are the talk of the town in legal circles. Despite some high-profile stories of fake ChatGPT-generated citations, many practitioners argue that language models are the way of the future. These models, they argue, promise an efficient source of first drafts and stock language. Others make similar claims about legal writing education, with a number of professors urging the acknowledgment of language models. Others go further and argue that students ought to learn to use these models to improve their writing and prepare for practice.

I argue that those urging the incorporation of language models into legal writing education leave out a key technique employed by lawyers across the country: plagiarism. Attorneys have copied from each other, secondary sources, and themselves for decades. While a few brave souls have begun to urge law schools to inform students of this reality and teach them to plagiarize effectively, most schools continue to unequivocally condemn the practice. I argue that continued condemnation of plagiarism is inconsistent with calls to adopt language models, as the same justifications for incorporating language models into legal writing pedagogy apply with equal or greater force to incorporating plagiarism into legal writing education as well.

This Essay is also a reality check for overhyped claims of language model efficiency and effectiveness. To be sure, a brief generated through a text prompt can be produced much faster than writing something up from scratch. But that's not how most attorneys actually do things. More often than not, they're copying from templates, forms, or other preexisting work in a manner similar to adopting the output of a language model to the case at hand. I close with the argument that even if language models and plagiarism may enhance legal writing pedagogy, students should still be taught the foundational skills of legal writing so that they may have the background and deeper understanding needed to use all of their legal writing tools effectively.

AUTHOR. Assistant Professor, St. Mary's University School of Law. The author thanks Afton Cavanaugh, Sarah Eskridge, Brian Frye, and Sam Williams for comments on an earlier draft.

INTRODUCTION.....363

I. LANGUAGE MODELS IN THE TEACHING AND PRACTICE OF LAW368

II. PLAGIARISM: A DETOUR374

 A. *Prohibiting Plagiarism*.....374

 B. *Plagiarism in Practice*.....377

 C. *Support for Plagiarism in Legal Academia*379

III. LANGUAGE MODEL PEDAGOGY? PLAGIARISM PEDAGOGY? WHY NOT BOTH?381

 A. *Overlapping Arguments for Language Models and Plagiarism*382

 B. *Who Needs Language Models When You Have Plagiarism?*385

IV. THE IMPORTANCE OF LEARNING THE BASICS.....387

CONCLUSION389

INTRODUCTION

Before 2022, most people likely had never thought of computer-generated text. To be sure, versions of these programs had existed for some time in the form of autocorrect and spellcheck programs.¹ Some news outlets have been using language generators to write articles on routine occurrences.² But it wasn't until OpenAI introduced a beta version of its software program, ChatGPT, that the public really started paying attention, experimenting, and considering the implications of language modeling more generally.³ With this increased attention came an exponential rise in users and a proliferation of similar programs.⁴ In the months since, there have been countless articles, news reports, and think pieces regarding these programs and how they may impact facets of society, including education,

¹ See Navneet Alang, *Duck Off, Autocorrect*, ATL. ONLINE (March 9, 2023), <https://www.theatlantic.com/technology/archive/2023/03/ai-chatgpt-autocorrect-limitations/673338/> [<https://perma.cc/6H3B-PUUL>] (describing the origins of autocorrect programs and noting that language modeling software works “in a similar way, guessing what word or phrase comes after the one before”).

² See Jaclyn Peiser, *The Rise of the Robot Reporter*, N.Y. TIMES (Feb. 9, 2019), <https://www.nytimes.com/2019/02/05/business/media/artificial-intelligence-journalism-robots.html> [<https://perma.cc/X74C-3QYL>] (“Roughly a third of the content published by Bloomberg News uses some form of automated technology.”). See also Lucia Moses, *The Washington Post’s Robot Reporter Has Published 850 Articles in the Past Year*, DIGIDAY (Sept. 14, 2017), https://digiday.com/media/washington-posts-robot-reporter-published-500-articles-last-year/?utm_medium=email&utm_campaign=digidaydis&utm_source=daily&utm_content=170914 [<https://perma.cc/3YWX-VJE6>]; GPT-3, *A Robot Wrote This Entire Article. Are You Scared Yet, Human?*, THE GUARDIAN (Sept. 8, 2020, 4:45 am), <https://www.theguardian.com/commentisfree/2020/sep/08/robot-wrote-this-article-gpt-3> [<https://perma.cc/4KSQ-YCHB>].

³ See Will Douglas Heaven, *The Inside Story of How ChatGPT Was Built from the People Who Made It*, MIT TECH. REV. (March 3, 2023), <https://www.technologyreview.com/2023/03/03/1069311/inside-story-oral-history-how-chatgpt-built-openai/> [<https://perma.cc/D2GY-MJXL>]; Krystal Hu, *ChatGPT Sets Record for Fastest-Growing User Base – Analyst Note*, REUTERS (Feb. 2, 2023, 9:33 AM), <https://www.reuters.com/technology/chatgpt-sets-record-fastest-growing-user-base-analyst-note-2023-02-01/> [<https://perma.cc/ZQ9R-KCJA>].

⁴ See Luca C.M. Melchionna, *Bias and Fairness in Artificial Intelligence*, 95 N.Y. STATE BAR J. 29, 30 (2023).

entertainment, and the practice of law.⁵ Some of these pieces are insightful.⁶ Others are downright weird.⁷

This essay surveys academic and professional commentary regarding the use of language models for teaching legal writing and practicing law and compares it with parallel discussions regarding plagiarism and legal writing. Section I surveys perceptions of language models in legal academia and practice. Lively discussions are already underway in the legal academic sphere regarding the implications of language models—driven both by concern over how these models may be used to circumvent teaching goals, but also by excitement over how the technology may supplement teaching.⁸

⁵ See, e.g., Mandalit del Barco, *Striking Hollywood Scribes Ponder AI in the Writer's Room*, NPR (May 18, 2023, 8:52 PM), <https://www.npr.org/2023/05/18/1176876301/striking-hollywood-writers-contemplate-ai> [<https://perma.cc/PG24-WMNG>].

The regulations the WGA is pushing for would include bans on studios using AI to write or rewrite things like stories, treatments, and screenplays, or even to write the source material that human writers would adapt for the screen. The union also doesn't want the writer's work to be used to train AI.

Thomas H. Davenport & Randy Bean, *The Impact of Generative AI on Hollywood and Entertainment*, MIT SLOAN MGMT. REV. (June 19, 2023), <https://sloanreview.mit.edu/article/the-impact-of-generative-ai-on-hollywood-and-entertainment/> [<https://perma.cc/N7RK-QPGP>] (describing potential impacts that AI may have on the entertainment industry, while noting that there may be technological limits); Will Douglas Heaven, *ChatGPT is Going to Change Education, Not Destroy It*, MIT TECH. REV. (Apr. 6, 2023), <https://www.technologyreview.com/2023/04/06/1071059/chatgpt-change-not-destroy-education-openai/> [<https://perma.cc/GX9P-U34Y>] (arguing that despite initial concerns over language models, they will likely end up supplementing educational practices); Robert J. Kovacev, *ChatGPT and the Practice of Law: Ignore at Your Peril*, LEGALTECH NEWS ONLINE, (Feb. 3, 2023, 9:04 AM), <https://www.law.com/legaltechnews/2023/02/03/chatgpt-and-the-practice-of-law-ignore-at-your-peril/> [<https://perma.cc/M9GL-EFYG>] (arguing that even if technology like ChatGPT doesn't replace lawyers, they must be aware of the technology to maintain requisite competence with available technologies); Nicole Serena Silver, *The Future of Education – Disruption Caused by AI and ChatGPT: Artificial Intelligence Series 3/5*, FORBES (June 5, 2023, 9:25 PM), <https://www.forbes.com/sites/nicolesilver/2023/06/05/the-future-of-educationdisruption-caused-by-ai-and-chatgpt-artificial-intelligence-series-3-of-5/?sh=1a5475753269> [<https://perma.cc/96SL-ALQR>] (noting the potential implications of language models for education); Jessica Toonkel & Sarah Krouse, *Who Owns SpongeBob? AI Shakes Hollywood's Creative Foundation*, WALL ST. J., Apr. 4, 2023, at A1 (suggesting that language models can “recommend plotlines and character arcs” as well as dialogue).

⁶ See Michael L. Smith, *Language Models, Plagiarism, and Legal Writing*, 22 U.N.H. L. REV. (forthcoming Apr. 2024).

⁷ See Gillian Brockell, *We ‘Interviewed’ Harriet Tubman Using AI. It Got a Little Weird*, WASH. POST (July 16, 2023, 8:00 AM), <https://www.washingtonpost.com/history/interactive/2023/harriet-tubman-artificial-intelligence-khan-academy/> [<https://perma.cc/5HZF-AS5H>].

⁸ See, e.g., Tammy Pettinato Oltz, *ChatGPT Professor of Law*, 2023 U. ILL. J. L. TECH. & POL'Y 207, 221 (2023); Joseph Regalia, *From Briefs to Bytes: The GAI Renaissance in Legal Writing 4* (Mar. 2, 2023) (unpublished manuscript) (on file with SSRN); Aspen Leading Edge, 25: *Generative A.I. With*

I focus on the latter body of commentary: enthusiasm for language models as a tool to aid in legal writing. Many commentators state that practicing attorneys should at least be aware of language model technology. A substantial subset of these commentators goes further and urges attorneys to use language models to aid in their practice. A similar trend appears to be taking off in legal academia. A number of law professors are urging that professors educate themselves regarding language models and consider discussing the potential use and drawbacks of these models with students. Others go further, urging that language models may be used to enhance student skills—particularly with regard to legal writing.⁹

This essay urges those who encourage the use of language models in legal writing classes to take a step back and consider how language models fit in with the broader range of skills a practicing lawyer must employ. Specifically, I argue that it is a mistake to rush forward to teach students how to use language models in writing without also teaching them another crucial skill relied upon by virtually all practicing attorneys: plagiarism. Practicing attorneys plagiarize all the time—they copy portions of motions to reuse in future cases, they work from templates generated by other attorneys in their firms or offices, and they use prior versions of contracts as the foundation for future agreements, just to name a few examples.¹⁰ In light of this, some law professors urge that plagiarism is something that is taught alongside core legal writing skills—rather than treated as an intolerable offense.¹¹ Part II discusses this work and explains how plagiarism is relevant to teaching legal writing and to the practice of law.

Discussions of language model use in legal education tend to overlook plagiarism. This essay unites these discussions and demonstrates the inconsistency of urging adoption of language models without simultaneously urging the teaching of plagiarism. Part III contains the bulk of the essay's analysis, delving into the interplay of plagiarism and language models. First, the reasons to use language models mirror reasons why students should be taught effective plagiarism techniques. The argument that students should train with tools that will be widely employed by practicing attorneys applies just as forcefully to requiring students to learn to plagiarize as it does to using language models (arguably more so as it remains to be seen just how widely language models will be used). The argument that language models will allow students to work more efficiently and write more effectively also applies to plagiarism practices.

Second, the skills needed to use language models effectively mirror those that

Joe Regalia (downloaded using Spotify) (discussing ChatGPT and other forms of AI and how they may affect the teaching of legal writing).

⁹ See discussion *infra* Section I.

¹⁰ See discussion *infra* Section II.B.

¹¹ See generally Brian L. Frye & Megan E. Boyd, *Plagiarism Pedagogy: Why Teaching Plagiarism Should Be a Fundamental Part of Legal Education*, 99 WASH. U. L. REV. ONLINE 1 (2021), <https://wustllawreview.org/2021/11/23/plagiarism-pedagogy-why-teaching-plagiarism-should-be-a-fundamental-part-of-legal-education/> [<https://perma.cc/RL33-987B>].

transform simple plagiarism into effective work product. The abilities to review and revise initial drafts, to double-check authorities in a template, and to apply a preexisting piece of writing to an updated set of circumstances are all skills required of attorneys who wish to employ both language models and plagiarism in their practice. This overlap is a further reason why those proposing the use of language models in teaching legal writing should seriously consider incorporating plagiarism into their lesson plans as well.

This essay also offers a reality check regarding the significance of language models. This developing technology is drawing a lot of buzz, and perhaps it has its uses. But in judging whether it is truly significant or groundbreaking, the use of language models must be weighed against the effectiveness of alternate methods of practicing law. In isolation, language models seem potentially groundbreaking in their efficiency and ability to offer initial drafts of briefs, contracts, and other work product.¹² But when placed alongside the longstanding practice of attorneys working from templates—sometimes a substantial library of templates tailored to particular types of clients and cases—the novelty and added benefits of language models become less apparent.¹³ This is not to say that plagiarism accomplishes all that language models might. But considering language models in the context of what attorneys already do may give cause to curb one’s enthusiasm over this shiny new toy.

* * *

Before getting into the weeds any further, some notes on terminology are warranted. I use the term “plagiarism” throughout the article rather than alternative terms like “copying,” “reuse,” or “repurposing” because that is how others advocating the practice and teaching of plagiarism use the term.¹⁴ Part of the process of recognizing that plagiarism is a part of everyday life for the practicing attorney and implementing this insight through legal education involves treating “plagiarism” as more than just a dirty word. Instances where plagiarism runs afoul of classroom rules and procedures or is used to intentionally mislead the reader may still draw condemnation and consequences, but plagiarism in other circumstances

¹² See Slauck, *AI Poised to Disrupt the Law in Ways We Can – And Can’t – Imagine*, MO. IN-HOUSE COUNS. (June 27, 2023), <https://molawyersmedia.com/missouriinhouse/2023/06/27/ai-poised-to-disrupt-the-law-in-ways-we-can-and-cant-imagine/> [https://perma.cc/P2UZ-PZNP]; Regalia, *supra* note 8, at 5.

¹³ See *infra* Section II.B (discussing how attorneys regularly copy from preexisting sources, including templates and brief banks).

¹⁴ See, e.g., Andrew M. Carter, *The Case for Plagiarism*, 9 U.C. IRVING L. REV. 531, 535–36 (2019); Frye & Boyd, *supra* note 11; Brian L. Frye, *A License to Plagiarize*, 43 U. ARK. LITTLE ROCK L. REV. 51, 51–52 (2021). But see Francesco Mazzotta, *Sense, Sensibility, and Smart Contracts: A View from a Contract Lawyer*, 49 UCC L. J., May 2020, at art. 2, n.56 (distinguishing plagiarism from copying and arguing that plagiarism is “the attempt to pass off the ideas or expression of another as one’s own,” while acknowledging that copying is widespread and that “[o]nly a naif tries to draft a financial contract from scratch”).

ought to be recognized as permissible—if not necessary.¹⁵

As for terminology relating to the relevant technology, programs like ChatGPT, also known as “chatbots,” rely on “large language model” technology—often abbreviated to LLM.¹⁶ Additionally, many discussions simply use “ChatGPT” to describe all versions of LLM and chatbot technology—a practice similar to using “Kleenex” when one is speaking about any brand of tissue.¹⁷ These technologies are often prefaced (or deemed synonymous) with the label “Artificial Intelligence,” or “AI,” in terms like, “AI Generated Text,” or “AI Text Generators,” which references these programs’ ability to produce different outputs tailored to differing inputs and to “learn” over time by being programmed to provide or avoid certain responses.¹⁸

I use the term “language model” to describe technology like ChatGPT and other chatbots. In using this term, I refer to the program as a whole, including both the stage at which the user interfaces with the data, and the underlying technology that relies on information gathered from various sources, including user input, to develop a basis for the responses the model ultimately provides. For this reason, I refrain from using the term, “chatbot,” which tends to denote only the user-facing aspect of the technology. I avoid the “large” qualifier because the abbreviation “LLM” overlaps with a type of legal degree, and discussions of large language models in a legal context therefore tend to lead to confusion. I’ve settled on “language model” rather than alternatives that incorporate “AI” because reasonable disagreement remains over whether “AI” is an appropriate label for the technology.¹⁹

¹⁵ See, e.g., *Copying In the Preparation of Transactional Documents*, 3 ENV’L. INS. LITIG.: L. & PRAC. § 32:43 (2023) (“Using another attorney’s work product is, perhaps, even more essential in the preparation of transactional documents than it is in the drafting of pleadings and motions.”). See also Charles M. Fox, *WORKING WITH CONTRACTS – WHAT LAW SCHOOL DOESN’T TEACH YOU* § 3:4.3 (“Use of Precedent”) (2d ed. 2008) (“In contracts drafting, plagiarism is a virtue. A lawyer drafting a contract should always try to start with a form designed for the kind of transaction involved, or from a contract previously used in a similar transaction.”).

¹⁶ See Brian X. Chen, *Get the Best From ChatGPT With These Golden Prompts*, N.Y. TIMES (May 25, 2023), <https://www.nytimes.com/2023/05/25/technology/ai-chatbot-chatgpt-prompts.html> [<https://perma.cc/EPF2-9AKJ>].

¹⁷ See, e.g., Kovacev, *supra* note 5.

¹⁸ See generally, Long Ouyang et al., *Training Language Models to Follow Instructions With Human Feedback*, ARXIV (Mar. 4, 2022), <https://arxiv.org/abs/2203.02155> [<https://perma.cc/5RBL-FZP6>].

¹⁹ See, e.g., Parmy Olson, *There’s No Such Thing as Artificial Intelligence*, BLOOMBERG (Mar. 26, 2023, 2:00 AM), <https://www.bloomberg.com/opinion/articles/2023-03-26/even-with-chat-gpt-4-there-s-no-such-thing-as-artificial-intelligence> [<https://perma.cc/4CPX-DMA7>] (arguing that “artificial intelligence” falsely suggests that machines are thinking and intelligent and characterizing the label as “one of the most successful marketing terms of all time”). See also Blake Morgan, *The Term AI Is Overused: A Conversation with a Chief Data Officer at the Intercontinental Exchange*, FORBES (Aug. 15, 2017, 4:05 PM), <https://www.forbes.com/sites/blakemorgan/2017/08/15/the-term-ai-is-overused-a->

I. LANGUAGE MODELS IN THE TEACHING AND PRACTICE OF LAW

Legal academics cannot seem to get enough of language models. In the relatively short time since ChatGPT's late 2022 introduction, discussions abound in legal publications, conferences, podcasts, and other discourse regarding the implications ChatGPT may have on the study of law.²⁰ Tammy Pettinato Oltz notes that ChatGPT can assist law professors in the performance of "service-related" tasks like the preparation of letters of recommendation, speaker introductions and faculty bios, as well as "teaching-related" tasks like drafting exam questions, syllabi, and handouts.²¹ Oltz notes that while ChatGPT is more effective at the "service-related" tasks, it "still showed some potential for reducing faculty workload" on the teaching-related tasks.²² Margaret Ryznar describes the potential for students to use ChatGPT to generate exam answers, and discusses measures that may be employed to reduce the potential for cheating.²³ Taking things further, several law professors at the University of Minnesota tested exam questions against ChatGPT, finding that the language model was able to pass the final exam in four classes, although its exam grades averaged at C+.²⁴ Brian Frye, with the help of ChatGPT, explores the ethical and intellectual implications of ChatGPT, including whether ChatGPT use in academic writing constitutes plagiarism.²⁵

This essay is most concerned with the implications of language models for teaching legal writing to law students. On the pedagogical side, calls are beginning to circulate for professors to confront this technology. From a high level, there seem to be several developing themes, with a fair number of commentators urging that

conversation-with-a-chief-data-officer-at-the-intercontinental-exchange/?sh=e1e262413132 [https://perma.cc/5QZR-KMQD] (arguing that labeling technology like Apple's Siri as AI is misleading because it confuses programmed responses to questions with the intelligent process of generating insights and reaching one's own conclusions).

²⁰ See, e.g., Aspen Leading Edge, *supra* note 8 (discussing ChatGPT and other forms of AI and how they may affect the teaching of legal writing); *Legal Education's Next Generation: Embracing Online, ChatGPT and Technology in Pedagogy and Practice*, <https://acrobat.adobe.com/link/track?uri=urn%3Aaaid%3Aasc%3AUS%3A6bb63446-5639-30b2-905b-c56d5828bb85&viewer%21megaVerb=group-discover> [https://perma.cc/8UKL-THW7] (announcing a conference regarding the use of technology, including ChatGPT, in the teaching and practice of law).

²¹ Oltz, *supra* note 8 at 221.

²² *Id.* at 219.

²³ See Margaret Ryznar, *Exams in the Time of ChatGPT*, 80 WASH. & LEE L. REV. ONLINE 305, 308-318 (2023), <https://scholarlycommons.law.wlu.edu/wlulr-online/vol80/iss5/3/> [https://perma.cc/DV4V-QMS9].

²⁴ See generally Jonathan H. Choi et al., *ChatGPT Goes to Law School*, 71 J. LEGAL EDU. 387, 387 (2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4335905 [https://perma.cc/PUP3-7WTN].

²⁵ Brian L. Frye & ChatGPT, *Should Using an AI Text Generator to Produce Academic Writing Be Plagiarism?*, 33 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 947, 960 (2023). (In response to this query, ChatGPT warns that a text generator's output "may be considered plagiarism").

professors at least acknowledge the existence of legal models and spend some time discussing its implications for legal practice, and another line of commentary taking a stronger stance and urging the use of language models by legal writing professors.²⁶ At least one school—Berkeley—has developed guidelines for the use of language models by students, providing that they may be used “to conduct research or correct grammar” but not to complete assignments or in a manner that “constitutes plagiarism.”²⁷ This policy prohibits using a language model to draft classwork that is then reworded before submission.²⁸ Professors at Berkeley, however, have the discretion to deviate from the policy “if they provide written notice to students in advance.”²⁹

Some institutions are eager to embrace language model technology. Arizona State University announced in July 2023 that applicants to the law school were “permitted to use generative artificial intelligence (AI) in the preparation of their application and certify that the information they submit is accurate, beginning in August 2023.”³⁰ In its announcement of the policy, the school stated that its decision was made in light of the evolving practice of law:

The use of large language model (LLM) tools such as ChatGPT, Google Bard and others has accelerated in the past year. Its use is also prevalent in the legal field. In our mission to educate and prepare the next generation of lawyers and leaders, law schools also need to embrace the use of technology such as AI with a comprehensive approach.

“Our law school is driven by an innovative mindset. By embracing emerging technologies, and teaching students the ethical responsibilities associated with technology, we will enhance legal education and break down barriers that may exist for prospective students. By incorporating generative AI into our curriculum, we prepare students for their future careers across all disciplines,” says Willard H. Pedrick Dean and Regents Professor of Law Stacy Leeds.³¹

Arizona State also noted that it would be “teaching several courses that examine the legal, policy, and ethical issues relating to AI in the legal field, including studying the safety, privacy, security, accountability, discrimination, regulation, liability, and rights of AI systems.”³² It is unclear whether legal writing coursework is included in

²⁶ See Stephanie Francis Ward, *Can ChatGPT Help Law Students Learn to Write Better?*, A.B.A. J. (Mar. 6, 2023, 8:38 AM), <https://www.abajournal.com/web/article/can-chatgpt-help-law-students-learn-to-write-better> [<https://perma.cc/3BAM-DQGA>].

²⁷ Karen Sloan, *University of California Berkeley Law School Rolls Out AI Policy Ahead of Final Exams*, REUTERS (Apr. 20, 2023, 3:28 PM), <https://www.reuters.com/legal/transactional/u-california-berkeley-law-school-rolls-out-ai-policy-ahead-final-exams-2023-04-20/> [<https://perma.cc/AX4Z-CSBQ>].

²⁸ *Id.*

²⁹ *Id.*

³⁰ *ASU Law to Permit Use of Generative AI in Applications*, ARIZ. STATE UNIV. SANDRA DAY O’CONNOR COLL. OF L. (July 27, 2023), <https://law.asu.edu/newsroom/asu-law-permit-use-generative-ai-applications> [<https://perma.cc/H3EJ-8EPF>].

³¹ *Id.*

³² *Id.*

this list of courses.³³

Law professors also advocate the use of language models in teaching law students.³⁴ Joseph Regalia, a professor at the University of Las Vegas William S. Boyd School of Law, argues that ChatGPT can improve the quality of student writing by “suggesting appropriate language, proposing alternative phrasings, and providing contextually relevant citations.”³⁵ He suggests that professors implement ChatGPT to provide feedback on samples of their writing, by having students submit writing samples to ChatGPT, which may then “provide feedback on structure, coherence, citation style, and overall persuasiveness.”³⁶ He further suggests that professors use ChatGPT to generate samples of different styles of legal writing.³⁷

Regalia isn’t alone in recommending that ChatGPT can assist students in learning legal writing.³⁸ Joseph Landau and Ron Lazebnik write that “AI holds immense potential to revolutionize our administration, pedagogy, programming, and research,” and propose a host of options for incorporating the use of language models into law school teaching.³⁹ Fiona Maguire suggests that ChatGPT can be used for a number of purposes, including generating synonyms for terms and suggesting citations.⁴⁰ Michael Dorf doesn’t urge the immediate adoption of language models, but he does present AI integration into law school teaching as a likely outcome if the technology ends up becoming well-integrated into the practice of law.⁴¹

Some schools are already incorporating this technology into their legal writing lessons.⁴² Other law schools provide advice on how to use language models through

³³ *See id.*

³⁴ *See* Slauck, *supra* note 12.

³⁵ Regalia, *supra* note 8 at 26.

³⁶ *Id.* at 29.

³⁷ *Id.*

³⁸ *See* Marjan Ajevski et al., *ChatGPT and the Future of Legal Education and Practice*, 57 THE L. TEACHER 352, 360 (2023) (discussing how language models may be incorporated into teaching law students).

³⁹ Joseph Landau & Ron Lazebnik, *Law Schools Must Embrace AI*, NAT’L L. J. (July 10, 2023, 11:00 AM), <https://www.law.com/nationallawjournal/2023/07/10/needs-edit-law-schools-must-embrace-ai/> [<https://perma.cc/6SBM-DEWU>].

⁴⁰ *See* Fiona Maguire, *How Law Students Can Use ChatGPT (Ethically)*, B.C. L.: IMPACT (Mar. 30, 2023), <https://bclawimpact.org/2023/03/30/how-law-students-can-use-chatgpt-ethically/> [<https://perma.cc/7332-VXUY>].

⁴¹ *See* Michael C. Dorf, *Is Resistance to AI In the Law School Classroom Futile?*, VERDICT (July 19, 2023), <https://verdict.justia.com/2023/07/19/is-resistance-to-ai-in-the-law-school-classroom-futile> [<https://perma.cc/HMB3-WSRV>].

⁴² *See* Stephanie Francis Ward, *Some Law Schools Already Are Using ChatGPT to Teach Legal Research and Writing*, A.B.A. J. (June 1, 2023, 3:15 AM), <https://www.abajournal.com/magazine/article/some-law-schools-already-are-using-chatgpt-to-teach-legal-research-and-writing> [<https://perma.cc/FT4W-5SB8>].

their law libraries.⁴³ Stephen Embry argues that as much as language models may raise concerns over exam answers and original work, the technology must be considered in light of law schools' overall goal of preparing students to be lawyers.⁴⁴ Embry argues that if lawyers will use ChatGPT in practice, then law schools should teach them to use it effectively, as schools must teach students to use the tools they will use as practicing attorneys.⁴⁵

How are language models used in practice? An initial check suggests that things are off to a rough start. In a high profile incident in May 2023, an attorney submitted court filings “that cited six nonexistent cases invented by” ChatGPT, which he had relied on to “help write” those filings.⁴⁶ At a hearing the court held after learning of the false citations, the attorney who had used ChatGPT to create the brief admitted that he didn't realize the program could make up authorities.⁴⁷ The court expressed concern and puzzlement, noting that the case citations led nowhere, and pointing out that the ChatGPT-generated fact patterns were “legal gibberish.”⁴⁸ The court ultimately fined the lawyers and their firms \$5,000, stating that they had a duty to ensure the accuracy of their filings and that they failed to do so.⁴⁹ The case made national news and drew attention to the phenomenon of “hallucinations”—case citations and facts that language models claim to be true that are, in fact, completely

⁴³ See, e.g., *ChatGPT and Bing Chat Generative AI Legal Research Guide*, UNIV. OF ARIZ. JAMES E. ROGERS COLL. OF L., DANIEL F. CRACCHIOLO L. LIBRARY, <https://law-arizona.libguides.com/c.php?g=1301273&p=9569972> [<https://perma.cc/U8XU-GTGT>] (last visited Dec. 18, 2023) (describing how ChatGPT can be used to draft sample pleadings, motions, and contracts, and providing examples of prompts and responses); *Remote Teaching/Learning Technologies: Law Faculty Guide to AI, ChatGPT, and Similar Technologies*, OKLA. CITY UNIV. SCH. OF L., CHICKASAW NATION L. LIBRARY (Sept. 25, 2023, 3:08 PM), <https://libguides.okcu.edu/c.php?g=1169555&p=9542372> [<https://perma.cc/L47R-3H58>] (describing language models and listing tasks these models can complete).

⁴⁴ Stephen Embry, *Should ChatGPT Be in Law School?*, TECHLAW CROSSROADS (Mar. 17, 2023), <https://www.techlawcrossroads.com/2023/03/should-chatgpt-be-in-law-school/> [<https://perma.cc/H8NJ-ZX6K>].

⁴⁵ *Id.*

⁴⁶ Jon Brodtkin, *Lawyer Cited 6 Fake Cases Made Up by ChatGPT; Judge Calls it “Unprecedented”*, ARS TECHNICA (May 30, 2023, 1:52 PM), <https://arstechnica.com/tech-policy/2023/05/lawyer-cited-6-fake-cases-made-up-by-chatgpt-judge-calls-it-unprecedented/> [<https://perma.cc/S3CG-APHB>].

⁴⁷ Benjamin Weiser & Nate Schweber, *The ChatGPT Lawyer Explains Himself*, N.Y. TIMES (June 8, 2023), <https://www.nytimes.com/2023/06/08/nyregion/lawyer-chatgpt-sanctions.html> [<https://perma.cc/TTX7-JN3A>].

⁴⁸ Larry Neumeister, *Lawyers Blame ChatGPT for Tricking Them Into Citing Bogus Past Cases in Court*, L.A. TIMES (June 9, 2023, 2:40 AM), <https://www.latimes.com/world-nation/story/2023-06-09/chatgpt-lawyers-cite-bogus-case-law> [<https://perma.cc/HUV8-ADJT>].

⁴⁹ Dan Milmo, *Two US Lawyers Fined for Submitting Fake Court Citations from ChatGPT*, THE GUARDIAN (June 23, 2023, 5:14 AM), <https://www.theguardian.com/technology/2023/jun/23/two-us-lawyers-fined-submitting-fake-court-citations-chatgpt> [<https://perma.cc/G7A3-K4N4>].

made up.⁵⁰ In the wake of these proceedings, at least two firms announced that they had “barred the use of ChatGPT,” citing “questions about legal precision and the security of clients’ confidential data.”⁵¹

This incident was a confluence of both flawed language model output and a failure of attorneys to realize the basic nature of the tool they were using. But there are other concerns over language models that may not dissipate even if the models’ output becomes more convincing and accurate. Worry over “hallucinations” in authority citations shouldn’t be limited to citations alone, as language models generate text based on training data, and issues with that data, or incomplete contextual information may all result in nonsensical output that fails to correspond to reality.⁵² Language models aren’t fact-checkers—they are pattern recognition devices, and therefore may produce assertions of fact with no basis in reality because these assertions are similar to patterns in the models’ training data.⁵³ Fake citations are simply one easily identifiable instance of this. These include the danger of a language model site being hacked (and thereby revealing potentially privileged or case-sensitive input prompts) and the danger of breaching privilege obligations by submitting client-specific information to a third-party language model.⁵⁴

⁵⁰ Lance Eliot, *Lawyers Getting Tripped Up by Generative AI Such As ChatGPT But Who Really Is to Blame, Asks AI Ethics and AI Law*, FORBES (May 29, 2023, 8:00 AM), <https://www.forbes.com/sites/lanceeliot/2023/05/29/lawyers-getting-tripped-up-by-generative-ai-such-as-chatgpt-but-who-really-is-to-blame-asks-ai-ethics-and-ai-law/?sh=17fbf3893212> [<https://perma.cc/84BG-C5JZ>].

⁵¹ Skye Witley, *ChatGPT Tempts Big Law Despite AI Accuracy, Privacy Worries*, BLOOMBERG (June 1, 2023, 10:39 AM), <https://news.bloomberglaw.com/privacy-and-data-security/chatgpt-tempts-big-law-despite-ai-accuracy-data-privacy-worries> [<https://perma.cc/7WK8-K66G>] (noting Squire Patton Boggs LLP’s and Mintz, Levin, Cohn, Ferris, Glovsky and Popeo P.C.’s decisions to bar the use of ChatGPT).

⁵² See Adrian Tam, *A Gentle Introduction to Hallucinations in Large Language Models*, MACHINE LEARNING MASTERY (July 20, 2023), <https://machinelearningmastery.com/a-gentle-introduction-to-hallucinations-in-large-language-models/#:~:text=In%20the%20context%20of%20LLMs,from%20the%20prompt%20you%20provided> [<https://perma.cc/6HV9-9WLD>].

⁵³ See Sai Anirudh Athaluri et al., *Exploring the Boundaries of Reality: Investigating the Phenomenon of Artificial Intelligence Hallucination in Scientific Writing Through ChatGPT References*, 15 CUREUS 1, 4 (2023) (noting that “AI hallucination usually occurs due to adversarial examples such as varied input data that confound the AI systems into misclassifying and misinterpreting them resulting in inappropriate and hallucinating output”); Vipula Rawte et al., *A Survey of Hallucination in “Large” Foundation Models*, ARXIV *1 (Sept. 12, 2023), <https://arxiv.org/pdf/2309.05922.pdf> [<https://perma.cc/2GUU-D6ZD>] (noting that hallucinations in models, including language models, arise “due to the model’s ability to generate plausible-sounding text based on patterns it has learned from its training data, even if the generated content does not align with reality”).

⁵⁴ See Sharon D. Nelson, John W. Simek, & Michael C. Maschke, *Beware of Ethical Perils When Using Generative AI!*, 46 WYO. LAWYER 28, 30-31 (2023). See also Jonathan Grabb, *Lawyers and AI:*

Despite these risks, many commentators urge lawyers to at least familiarize themselves with language models.⁵⁵ Christopher Shattuck suggests that language models can “significantly streamline content generation and editing,” as well as summarizing text and suggesting edits—although he warns that users “should remove any confidential information before placing the text into ChatGPT or a similar tool.”⁵⁶ Robert Kovacev suggests that an attorney’s ethical duty of competence requires an understanding of ChatGPT, both as a potential tool for practice and, more subtly, as a tool that may end up leading clients astray when they attempt to use it themselves.⁵⁷ Kovacev acknowledges the limits of language models, but has some suggestions for how practicing attorneys may use a language model like ChatGPT:

So long as no reliance is placed on the accuracy of the contents, it can supplement an attorney’s practice. For example, it can identify a starting point for research on a particular issue. It can provide a pithy summary for a lengthy document. It can assist in overcoming writer’s block. For nonsubstantive written materials for marketing purposes, it can be a useful timesaver. So long as actual legal analysis is performed by the actual human lawyer, and that lawyer personally verifies the accuracy of any factual statements and legal authorities provided by ChatGPT, there would seem to be little obstacle to using the technology to supplement a legal practice.⁵⁸

While even the most advanced current versions of language models may not be suited to draft much more than the first draft of motions or other documents, the technology continues to improve and may become more effective as time goes on.⁵⁹ Some commentators suggest that language models are already pretty close to producing output comparable to that of experienced attorneys.⁶⁰ Others are even more confident about the power of language models—although some of their

How Lawyers’ Use of Artificial Intelligence Could Implicate the Rules of Professional Conduct, FLA. BAR NEWS (Apr. 2023), <https://www.floridabar.org/the-florida-bar-news/lawyers-and-ai-how-lawyers-use-of-artificial-intelligence-could-implicate-the-rules-of-professional-conduct/> [<https://perma.cc/ARS6-HCBJ>] (“[I]t is unclear whether sharing information with an AI program would be discoverable and would waive claims of attorney-client privilege.”)

⁵⁵ See, e.g., Sherry Levin Wallach, *The Importance of Embracing and Understanding Advances in Technology*, 95 N.Y. STATE BAR J. 6, 6 (2023) (arguing that the changes that language models may cause can be addressed “most efficiently by educating ourselves on the issues”).

⁵⁶ Christopher C. Shattuck, *AI and Emerging Technology Can Increase Law Practice Efficiencies*, 96 WIS. LAWYER 47, 48–49 (2023).

⁵⁷ Kovacev, *supra* note 5.

⁵⁸ *Id.*

⁵⁹ See Ronald M. Sandgrund, *Who Can Write a Better Brief: Chat AI or a Recent Law School Graduate?*, 52 COLO. LAWYER 24, 27–28 (2023) (interviewing a law professor, Harry Surden, who notes the continuing improvement of language model technology and describes the latest iteration of ChatGPT as “capable of producing a good first draft of a legal motion,” although it would need to be double-checked by attorneys).

⁶⁰ See Jenna Greene, *Will ChatGPT Make Lawyers Obsolete? (Hint: Be Afraid)*, REUTERS (Dec. 9, 2022, 1:33 PM), <https://www.reuters.com/legal/transactional/will-chatgpt-make-lawyers-obsolete-hint-be-afraid-2022-12-09/> [<https://perma.cc/EP94-BF7N>].

claims may be overblown.⁶¹

A common theme throughout this commentary is that students and attorneys should be made aware of language models and their capabilities. While commentators acknowledge some pitfalls of language model use, they continue to urge that attorneys take advantage of the technology's strengths. Those in the field of legal education are beginning to suggest that students be made aware of language models, with some commentators going further and advocating the active use of language model technology in teaching legal writing.

Before going further into whether this enthusiasm for language models is justified, a brief detour into plagiarism is warranted. The next section turns to plagiarism and argues that, contrary to common expectations, plagiarism is not always a bad thing. In fact, it is so ingrained in legal practice that engaging in certain tasks without some form of plagiarism may constitute borderline malpractice.

II. PLAGIARISM: A DETOUR

A. Prohibiting Plagiarism

"Plagiarism" is generally a dirty word. From an early age, students are taught that copying others' work and passing it off as their own is dishonest, unethical, and lazy.⁶² Plagiarism is the subject of interdisciplinary and international criticism.⁶³

⁶¹ See Margaret Minister, *The Right Generative AI Is a Legal Professional's Friend, Not a Foe*, 42 LEGAL MGMT. 26, 27 (2023) (claiming that "[w]hen trained on your contract database, the algorithm learns a company's risk tolerance, standard language and acceptable alternative terms" which then enables the technology "to identify untenable and risky clauses and recommend replacement language"). To determine whether ChatGPT had limitations, the author . . . asked ChatGPT. *Id.* at 26.

⁶² See generally Lee J. Lesisko, Robert D. Mauro, & Jane S. Sebelin, *Plagiarism: A Guide for K-12 Online Learners* (2018), <https://files.eric.ed.gov/fulltext/ED608766.pdf> [<https://perma.cc/KYP9-X3MB>].

⁶³ See, e.g., Showkat Ahmad Dar et. al., *Plagiarism is Unethical: So Be Original and Don't Plagiarize*, 3 CENTRAL ASIAN J. ARTS & DESIGN 21, 22 (2022) ("Plagiarism is claiming someone else's work as your own. Plagiarism is bad. At university, it's usually a fail. Plagiarism can get you expelled."); Rajesh Sinha et. al., *Plagiarism and Unethical Practices in Literature*, 57 INDIAN J. OPHTHALMOLOGY 481, 481 (2009) (conducting a literature review of literature in the medical and nursing fields regarding instances of plagiarism, arguments that plagiarism is unethical and dishonest, and strategies to address plagiarism); Adriana Tulus, *The Relationship Between Plagiarism and Morality*, SCIENTIA MORALITAS CONFERENCE PROCEEDINGS (Nov. 2020), <https://sciamoralitas.education/wp-content/uploads/2020/12/009AT.pdf> [<https://perma.cc/YA9C-C36G>] (arguing that plagiarism is morally reprehensible because it constitutes dishonesty, theft, and a violation of institutional norms); *What Is Plagiarism?*, UNIV. OF NEW SOUTH WALES SYDNEY, <https://www.student.unsw.edu.au/what-plagiarism> [<https://perma.cc/VF6U-VY7S>] (arguing that plagiarism is theft that benefits only the plagiarizer, and that plagiarism places others at risk who may rely on the purported knowledge or abilities of the plagiarizer). *But see* Stanley Fish, *Plagiarism Is Not a Big Moral Deal*, N.Y. TIMES (Aug. 9, 2010,

Criticism of plagiarism tends to be strong, casting it as both fundamentally immoral as well as widespread.⁶⁴

As for what plagiarism is—definitions vary. As discussed below, institutions tend to generate their own definitions of plagiarism, and may do so in a manner that incorporates a wide range of activities. In the literature, definitions vary as well, with Audrey Wolfson Latourette writing that “no universal understanding exists with respect to plagiarism” and that it “encompasses a variety of permutations.”⁶⁵ Richard Posner suggests that instances of plagiarism must include copying of some prior work, deceitfulness or nondisclosure of the copying, and reliance by the reader on the work to the extent that the reader would have acted differently had he or she known the work was copied.⁶⁶ Posner acknowledges, however, that this may not encompass all definitions of plagiarism—particularly those in the academic space where a student purchases a paper from a paper mill and submits it as their own work.⁶⁷ Terri LeClercq proposes a “working definition of academic plagiarism” that may account for this practice (and potentially for language model use as well) which defines the term as “taking the literary property of another without attribution, passing it off as one’s own, and reaping from its use the unearned benefit from an academic institution.”⁶⁸ LeClercq argues that “[f]ailure to attribute is key to plagiarism.”⁶⁹

Plagiarism has been a concern in law schools for decades.⁷⁰ In 2003, the Legal Writing Institute (LWI) surveyed more than 120 law schools and found that many of them “mention[ed] plagiarism only in a general Honor Code” and expressed concern that “plagiarism definitions [and penalties] are inconsistent and even contradictory from school to school.”⁷¹ As a result, the LWI prepared a brochure for law schools

9:00 PM), <https://archive.nytimes.com/opinionator.blogs.nytimes.com/2010/08/09/plagiarism-is-not-a-big-moral-deal/> [<https://perma.cc/Z6NG-32U9>] (arguing that rules against plagiarism are human constructions and lacking in philosophical basis, although acknowledging that those who plagiarize (and are caught) will face professional consequences).

⁶⁴ See Julianne East, *Judging Plagiarism: A Problem of Morality and Convention*, 59 *Higher Educ.* 69, 70 (2010).

⁶⁵ Audrey Wolfson Latourette, *Plagiarism: Legal and Ethical Implications for the University*, 37 *J. COLL. & UNIV. L.* 1, 15 (2010).

⁶⁶ RICHARD A. POSNER, *THE LITTLE BOOK OF PLAGIARISM* 19-20 (1st ed. 2007)

⁶⁷ *Id.* at 33.

⁶⁸ Terri LeClercq, *Failure to Teach: Due Process and Law School Plagiarism*, 49 *J. LEGAL EDUC.* 236, 244 (1999).

⁶⁹ *Id.* at 245.

⁷⁰ See generally Kristin Gerdy, *Law Student Plagiarism: Why It Happens, Where It’s Found, and How to Find It*, 2004 *BYU EDU. & L.J.* 431 (2004) (discussing forms of plagiarism by law students and what motivates plagiarism in the law school setting).

⁷¹ See LEGAL WRITING INST., *Law School Plagiarism v. Proper Attribution 2* (2003), [https://www---staging-mp6ykpkm7cbbg.us.platform.sh/sites/default/files/policy%20\(1\).pdf](https://www---staging-mp6ykpkm7cbbg.us.platform.sh/sites/default/files/policy%20(1).pdf) [<https://perma.cc/ERM5-H9ZM>].

that proposed a uniform definition of plagiarism as well as potential sanctions, including failing grades, suspension, expulsion, and public reprimand.⁷²

Today, numerous law schools take a tough stance against plagiarism. Plagiarism on class assignments and drafts “can result in suspension or expulsion” at Boston University School of Law.⁷³ The University of Georgia School of Law labels plagiarism as “the submission of another’s work as one’s own,” provides examples, including the “use of another’s organizational scheme without acknowledgment of that use in a footnote or endnote,” as well as unattributed paraphrasing, and requires potential sanctions including expulsion, suspension, and other penalties.⁷⁴ New York University Law School defines plagiarism as “presenting others’ work without adequate acknowledgment of its source, as though it were one’s own,” and penalizes plagiarism with sanctions including “expulsion, suspension, grade reduction . . . and a statement of censure placed in the student’s file.”⁷⁵

Robin Hansen and Alexandra Anderson argue that plagiarism bans in law schools are warranted for several reasons:

First, when law students plagiarize, this means that students are not learning by doing their law school assignments, undermining law school’s pedagogical function. Second, it means that they are unfairly competing for grades among their peers, working against key university values such as honesty and merit. Third, it means that they are not fulfilling in good faith their responsibilities as university students, putting into question their ability to later serve the public in good faith as lawyers with professional responsibility.⁷⁶

Some law schools explicitly call out the use of language models as plagiarism. University of California, Los Angeles (UCLA) School of Law’s plagiarism policy prohibits “submitting written work drafted or edited in any way by an artificial intelligence (AI) content generator (including but not limited to OpenAI’s ChatGPT, Microsoft’s Bing AI Chatbot, and Google’s Bard), without the prior and explicit approval by the instructor.”⁷⁷ A law student who uses language models in an unauthorized fashion is subject to disciplinary proceedings, the incident is noted in

⁷² *Id.* at 2–3.

⁷³ *BU School of Law Plagiarism Policy*, B.U. SCH. OF L. (2022), <https://www.bu.edu/law/about/offices/graduate-international-programs/llm-student-resources/plagiarism-policy/> [<https://perma.cc/US6F-S3MA>].

⁷⁴ *Faculty Policy on Plagiarism*, UNIV. OF GA. SCH. OF L., <https://www.law.uga.edu/faculty-policy-plagiarism> [<https://perma.cc/43VX-QU64>] (last visited Dec. 18, 2023).

⁷⁵ *New York University School of Law Policies for Formal Student Discipline and Informal Resolution of Concerns or Complaints*, N.Y.U. L. (2023), <https://www.law.nyu.edu/academicservices/academic-policies/disciplinary-procedures> [<https://perma.cc/BL4R-CC7J>].

⁷⁶ Robin F. Hansen & Alexandra Anderson, *Law Student Plagiarism: Contemporary Challenges and Responses*, 64 J. LEGAL EDUC. 416, 421 (2015).

⁷⁷ UCLA Student Affairs Office, *Academic Standards and Related Procedures – J.D.*, § XIV.B (Nov, 3, 2023), <https://libguides.law.ucla.edu/c.php?g=843027&p=6028682> [<https://perma.cc/3GC3-PLJG>].

the student's file, and it is reported to state bar examiners.⁷⁸ The inclusive nature of this prohibition leads one to wonder whether text-prediction software such as that used in the spellcheck and autocorrect features of modern word processing programs runs afoul of this prohibition as well.

B. Plagiarism in Practice

Plagiarism in legal practice is a whole different ballgame. Judges often lift from party submissions or rely upon initial drafts prepared by their clerks without attributing the original writers.⁷⁹ Attorneys may submit filings to court prepared, in whole or in part, by associates who may or may not be on the brief.⁸⁰ In preparing legal briefs or documents, attorneys often copy from prior work or templates.⁸¹ Plagiarism in practice is part of a deeper tradition of reusing identical language in similar documents and cases—a practice in which attorneys and courts engage, and which has continued “since time immemorial.”⁸² As Betsy Brand Six notes, “[l]awyers have long been in the business of ‘borrowing’ the words of others.”⁸³ Attorneys rely on the language contained in statutes or cases to construct legal arguments, as well as prior versions of contracts, wills, or motions to avoid reinventing the wheel in every new matter.⁸⁴

Even certain bar entities recognize the practical reality of plagiarism in legal briefing. In a 2018 committee report, the New York City Bar issued a formal opinion acknowledging the difference between legal briefs and other types of writing:

Although, as detailed below, courts have invoked Rule 8.4(c) to discipline lawyers who plagiarize in academic settings, we recognize that litigation filings serve a different purpose. Unlike academic papers (or writing samples), which purport to reflect the author's original work and analysis, legal briefs are submitted to present an argument on behalf of a client, and their value derives from their persuasiveness, not from their originality of thought or expression. A lawyer's signature on a brief is not a representation of authorship, much less of sole authorship, but rather a commitment to take responsibility for the contentions in the brief and an implied representation that the brief is not frivolous. For these reasons, we conclude that copying from other writings without attribution in a litigation filing is not per se deceptive and therefore is

⁷⁸ *Id.*

⁷⁹ See Douglas R. Richmond, *Unoriginal Sin: The Problem of Judicial Plagiarism*, 45 ARIZ. ST. L.J. 1077, 1099 (2014).

⁸⁰ See N.Y. City Bar, Formal Op. 2018-3 (2018).

⁸¹ See Holly Barker, “Plagiarism” Common in Brief-Writing, But When is it Too Much?, BLOOMBERG L. (Oct. 25, 2022, 10:59 AM), <https://news.bloomberglaw.com/litigation/plagiarism-common-in-brief-writing-but-when-is-it-too-much> [<https://perma.cc/GC6C-63YT>] (discussing plagiarism practices in litigation).

⁸² Josh Blackman, *Self-Plagiarism*, 45 FLA. STATE UNIV. L. REV. 641, 644 (2018).

⁸³ Betsy Brand Six, *Effectively Adapting the Words of Others*, 92 KAN. BAR J. 12, 12 (2023).

⁸⁴ *Id.*

not a per se violation of Rule 8.4(c).⁸⁵

While plagiarism in practice is widespread, it isn't entirely without controversy. Even though copying in briefs is so widespread it is the standard, courts call out instances of copying when they can find them. Andrew Carter notes that there is a "persistent body of case law in which courts publicly rebuke attorneys for plagiarism in a submitted brief," and that courts frequently "label the practice as 'unprofessional,' 'obnoxious,' 'dishonest,' 'reprehensible,' 'wholly intolerable,' and completely unacceptable.'"⁸⁶

In *In re Burghoff*, for example, a Bankruptcy Court found that an attorney for the defendant in an adversary proceeding had copied seventeen pages of his brief verbatim from an article written by attorneys from a different firm, and had not "acknowledge[d] or cite[d]" the article in his brief.⁸⁷ While the attorney had added an introduction, one page of argument, and a conclusion, the rest of the brief was identical to the content of "the Article with slight variations in [the] formatting of the type that result when material is copied from one electronic document into another," and except for deletion of passages that were contrary to the attorney's position.⁸⁸ The court concluded that the attorney had violated Iowa's rules of professional conduct—specifically Rule 32:8.4, which prohibits "conduct involving dishonesty, fraud, deceit, or misrepresentation."⁸⁹ The court held that plagiarism was "a form of misrepresentation."⁹⁰ The court sanctioned the attorney by ordering him to complete a continuing legal education course on professional responsibility.⁹¹ It noted that while it could order disgorgement of fees unreasonably billed for writing a brief consisting of copied material, the attorney had already indicated that he had waived collection of those fees.⁹²

Also in Iowa, the Iowa Supreme Court evaluated a plagiarism case arising from an ethical violation complaint that an attorney "plagiarized from a treatise and submitted his plagiarized work to the court as his own" in a post-trial brief.⁹³ The court analogized this copying to the practice of ghost-writing, in which "attorney[s] author[] [pleadings] for a pro se litigant who then . . . submits the court document[s] to the court] as [their] own"—a practice the court described as "widely condemned as unethical and a 'deliberate evasion of the responsibilities imposed on

⁸⁵ N.Y. City Bar, *supra* note 80.

⁸⁶ Andrew M. Carter, *The Case for Plagiarism*, 9 U.C. IRVINE L. REV. 531, 533 (2019) (citation omitted).

⁸⁷ *In re Burghoff*, 374 B.R. 681, 683 (Bankr. N.D. Iowa 2007).

⁸⁸ *Id.* at 683-84.

⁸⁹ *Id.* at 684-86.

⁹⁰ *Id.*

⁹¹ *Id.* at 686-87.

⁹² *Id.* at 687.

⁹³ Iowa Sup. Ct. Bd. of Prof'l Ethics & Conduct v. Lane, 642 N.W.2d 296, 298-99 (Iowa 2002).

attorneys.”⁹⁴ From here, the Court reasoned that “[p]lagiarism itself is unethical,” and involves deceit, which in turn undermines the legal profession, which relies on honesty.⁹⁵

Additionally, Carol Bast and Linda Samuels critique plagiarism in practice—suggesting that judges ought “to disclose the source of any material copied from the attorneys” and even suggesting that “the plagiarism standard for practitioners should move closer to that for original scholarship[.]” since “clients have the right to know the source of the attorney’s work.”⁹⁶ Bast and Samuels, however, do not elaborate on the basis for this client need, nor do they confront potential objections regarding the efficiency costs of purely original legal work.⁹⁷

Bast and Samuels may be concerned with instances where plagiarism in practice veers into dishonest overbilling of clients. An attorney who drafts a contract or motion that would normally take ten hours of time to prepare from scratch may feel tempted to bill for that full amount of time—even if plagiarism allowed the attorney to complete the task in only one hour. But to the extent that this constitutes misconduct, it’s not because the attorney is engaging in plagiarism. Instead, the attorney’s behavior warrants condemnation because the attorney is engaged in dishonest billing practices. Had the attorney billed for the actual amount of time taken to draft the contract or motion, the objection would lose its force.

C. *Support for Plagiarism in Legal Academia*

In response to these cases and concerns, some scholars have become more explicit in their support for plagiarism. In his article *The Case for Plagiarism*, Andrew Carter argues that:

[S]imply put, plagiarism saves time and money. Provided plagiarized materials are properly contextualized and edited, the plagiarizing attorney can take less time to produce effective written advocacy. The existence of brief banks at many firms—from which associates are encouraged to plagiarize—is perhaps the best evidence of this economic efficiency. The brief banks exist, of course, because plagiarizing from earlier work saves the firm and its clients’ time and money. Judicial efforts to promote a thick norm against plagiarism, then, stifle wider distribution of important economic efficiencies.⁹⁸

Carter further argues that the cost-saving benefits of plagiarism “find[] most salience with attorneys who serve under-resourced clients,” and as many Americans are unable to find the money to pay for the time needed to write “an original brief

⁹⁴ *Id.* at 299 (citation omitted) (quoting *Johnson v. Bd. of Cty. Comm’rs*, 868 F. Supp. 1226, 1231 (D. Colo. 1994)).

⁹⁵ *Id.* at 300.

⁹⁶ Carol M. Bast & Linda B. Samuels, *Plagiarism and Legal Scholarship in the Age of Information Sharing: The Need for Intellectual Honesty*, 57 *CATH. U. L. REV.* 777, 810 (2008).

⁹⁷ *See generally id.*

⁹⁸ Carter, *supra* note 86 (citation omitted).

from scratch.”⁹⁹ Accordingly, Carter argues, “a rule against plagiarism exacts a social cost” borne most acutely by some of society’s most vulnerable.¹⁰⁰ And concerns over attribution and even copyright are simply less acute in the context of a court proceeding, where materials are not so much expressive as they are technical and filed for their legal effect.¹⁰¹

Brian Frye and Megan Boyd make similar points in the context of legal education, arguing that legal education should acknowledge this reality and stop treating plagiarism as a universal wrong.¹⁰² At the outset, they argue that “[a]s a practicing lawyer, if you aren’t plagiarizing, you’re committing malpractice.”¹⁰³ They then go into detail regarding the myriad examples of plagiarism in practice, ranging from the use of “treatises and form contract books” that are meant to be copied, the use of “previously filed documents” that they and other attorneys prepare, and using form documents when preparing new documents.¹⁰⁴ Frye and Boyd argue that plagiarism is ethically required when doing so will benefit clients—for example, when an attorney faces the choice between completing a filing in one hour by copying and modifying a prior filing, or spending twenty hours writing the filing from scratch.¹⁰⁵ Still, there are skills one must employ when plagiarizing, including recognition of what original documents are “relevant and effective,” in light of a client’s present needs.¹⁰⁶

Frye and Boyd argue that “[l]egal writing professors are tasked with teaching law students the practical writing skills they will need as practicing lawyers,” but that these “professors fail to teach law students how to plagiarize effectively,” even though it is a skill they will need in practice.¹⁰⁷ This failing, they argue, originates in uniform prohibitions on plagiarism in academic contexts.¹⁰⁸ To best prepare students for practice, Frye and Boyd advocate “plagiarism pedagogy,” which familiarizes students with the existence of plagiarism in practice, the existence of brief banks in firms, and the need to learn skills to know when and how to plagiarize effectively.¹⁰⁹

Frye and Boyd’s claims of uniform academic condemnation of plagiarism and a failure to teach may be slightly overstated to the extent that these skills may be taught and encouraged in clinical settings. Their focus is on legal writing classes,

⁹⁹ *Id.* at 537–38.

¹⁰⁰ *Id.* at 538.

¹⁰¹ *See id.* at 551–54.

¹⁰² *See generally* Boyd & Frye, *supra* note 11.

¹⁰³ *Id.* at 1.

¹⁰⁴ *Id.* at 3.

¹⁰⁵ *Id.* at 4.

¹⁰⁶ *Id.* at 5.

¹⁰⁷ *Id.* at 2.

¹⁰⁸ *Id.* at 2, 15–16.

¹⁰⁹ *Id.* at 21–22.

rather than clinics, which are often more reflective of real-world practice and taught by professors with extensive past (and, often, ongoing) practice experience.¹¹⁰ Professors in the clinical setting, by virtue of their experience, are likely familiar with the widespread plagiarism throughout legal practice, and it wouldn't be surprising if those professors teach their students similar techniques in the context of representing actual or simulated clients. While this essay does not make any empirical claims about plagiarism education in law school clinics, it may well be the case that law students are exposed to plagiarism techniques in these classes.

Still, Frye and Boyd are right to focus on legal writing courses, which make up the foundation of many law students' legal writing skills and which may be the closest thing to practical experience law students have should they forego clinical opportunities.¹¹¹ Outright support for plagiarism pedagogy still seems limited, despite the arguments Frye and Boyd advance, and despite the practical reality of plagiarism in practice.¹¹² This lack of support is curious in light of discussions over language models and their adoption in teaching. Indeed, a deeper dive into these discussions suggests that those advocating for language model adoption while continuing to condemn plagiarism are taking inconsistent positions.

III. LANGUAGE MODEL PEDAGOGY? PLAGIARISM PEDAGOGY? WHY NOT BOTH?

This section lays out the arguments for incorporating language models into legal writing education in law school. In doing so, I demonstrate that many of these arguments overlap with those made in support of incorporating plagiarism into legal writing education. Those in favor of teaching with language models should therefore seriously consider incorporating plagiarism into the legal writing curriculum as well. Moreover, when considered alongside plagiarism, language models begin to seem less groundbreaking and effective. Instead, language models are a less-predictable means of accomplishing outcomes plagiarism has achieved for decades.¹¹³ Those singing the praises of language models and how these models will change the nature of legal practice may wish to reconsider their position after taking plagiarism into account.

¹¹⁰ See Minna J. Kotkin, *Reconsidering Role Assumption in Clinical Education*, 19 N.M. L. REV. 185, 185–87 (1989) (noting, but also critiquing, the standard model of law school clinics as requiring students to take on the role of an attorney); Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 FORDHAM L. REV. 1929, 1934–36 (2002) (describing clinical legal education and what students take away from learning in a clinical setting).

¹¹¹ See, e.g., Jessica L. Clark, *Grades Matter; Legal Writing Grades Matter Most*, 32 MISS. COLL. L. REV. 375, 413 (2014) (“[L]egal writing courses are the linchpin of legal education, especially in the first-year curriculum.”); Lucia Ann Silecchia, *Designing and Teaching Advanced Legal Research and Writing Courses*, 33 DUQ. L. REV. 203, 204–05 (1995).

¹¹² See *supra* Section II.A.

¹¹³ See *infra* Section III.B.

A. *Overlapping Arguments for Language Models and Plagiarism*

There are several arguments for the inclusion of language models in legal writing courses. One basic point is that students should have some familiarity with the technology so that they can better meet their ethical duties of competence when they are attorneys.¹¹⁴ Students should know the technology exists, have at least a basic understanding of how it works, and be aware that even if they are not using it, clients and opposing counsel may do so. Even if students aren't given assignments that involve language models, frank discussion of the technology will keep students from becoming blindsided when practicing and will give them a baseline level of knowledge that they may use to find additional resources and opportunities to use language model technology on their own.

But this same argument supports the inclusion of plagiarism among topics to discuss with legal writing students. Even if students are not given assignments that require them to learn how to plagiarize efficiently and effectively, they should be informed that plagiarism is something they will be expected to employ in practice. Whether they wish to become transactional attorneys expected to prepare contracts based on pre-existing templates and prior, similar cases, or litigators expected to rely on brief banks or other templates and exemplars, students should be aware early on that plagiarism pervades practice, so they are not blindsided as new attorneys.

Another argument in favor of actively teaching students to use language models relies on the assumption that language models will be used by those attorneys in practice.¹¹⁵ Accordingly, students must learn to use them early on so that they can do so effectively and avoid some of the pitfalls that have given the technology a bad name.¹¹⁶ These skills may include: (1) teaching students how to effectively input prompts so that they are able to get higher quality initial drafts; (2) teaching editing skills for language model output, including personalizing output for the facts of a particular case and editing phrasing and word choice to give the output a personalized voice; and (3) spotting and cite-checking authorities set forth in language model outputs in light of models' (current) tendency to generate fake cases and authorities.¹¹⁷ Rather than ignore the existence of language models or adopting a strategy of blanket condemnation of this technology's use, students should be taught that language models are tools they may use in practice and how to most effectively use these tools.

¹¹⁴ See Kovacev, *supra* note 5.

¹¹⁵ See, e.g., Jonathan H. Choi & Daniel Schwarcz, *AI Tools for Lawyers: A Practical Guide*, 108 MINN. L. REV. HEADNOTES 1, 39 (2023) (demonstrating how language models may be used by practicing attorneys).

¹¹⁶ See *id.* at 39.

¹¹⁷ See, e.g., Joe Regalia, *ChatGPT and Legal Writing: The Perfect Union?*, WRITE.LAW, <https://write.law/blog/chatgpt-and-legal-writing-the-perfect-union> (last visited Jan. 29, 2024) [<https://perma.cc/8GBV-3W6E>] (arguing for the use of language models in legal writing teaching and providing examples of how to teach students to use language models effectively).

And yet, another tool students will be expected to use in practice is plagiarism. As it turns out, the skills required to use language models effectively track fairly consistently onto the skills needed to plagiarize effectively. The three skill examples in the preceding paragraph, for example, can be applied just as easily in the plagiarism context: (1) teaching students how to effectively choose sources from which to copy by identifying their relevance and overlap with the present case; (2) teaching editing skills for original sources so that they can be personalized to the present case and not include inapplicable facts or party names; and (3) cite-checking authorities used in original materials to ensure that the citations are correct and remain good law.

Those writing on language models seem to recognize this—although they have yet to draw explicit connections to plagiarism pedagogy. Betsy Brand Six points out that attorneys tend to “borrow[.]’ the words of others,” both through the adaptation of statutes and cases, as well as the repurposing of old work product.¹¹⁸ Six highlights the skills involved in adapting pre-existing text or work product to a new case, including the initial task of determining what text is relevant, what aspects of it may be best used in the present case, and how the pre-existing text or template may be improved to apply to the present case.¹¹⁹ While this sounds similar to Bryan Frye and Megan Boyd’s arguments in favor of plagiarism pedagogy, Six makes these points in the context of a discussion on using language models in legal writing, suggesting that using this technology is yet another iteration of using the “skill of effectively adapting the words of others.”¹²⁰

This overlap in the reason to teach plagiarism and language models and the skills needed to succeed at both may not be surprising when one views language models through a lens of plagiarism. On a policy level, some schools already take this approach—recall UCLA Law’s ban on plagiarism that includes language model use in its definition of the term.¹²¹ But on a technological level, language models may be conceptualized as large-scale plagiarism machines—as their output is based on their systematic review of massive amounts of text, which is then used as the basis for the model’s output.¹²² This copying on a massive scale, with source material

¹¹⁸ Brand Six, *supra* note 83.

¹¹⁹ *Id.* at 12-13.

¹²⁰ *Id.* at 13.

¹²¹ UCLA Student Affairs Office, *supra* note 77.

¹²² See David Gewirtz, *How Does ChatGPT Actually Work?*, ZD NET (Sept. 20, 2023, 5:15 AM), <https://www.zdnet.com/article/how-does-chatgpt-work/> [<https://perma.cc/TT7G-WJDH>].

GPT-3 was trained on a dataset called WebText2, a library of over 45 terabytes of text data . . . This massive amount of data allowed ChatGPT to learn patterns and relationships between words and phrases in natural language at an unprecedented scale, which is one of the reasons why it is so effective at generating coherent and contextually relevant responses to user queries.

See also Jesse G. Meyer et al., *ChatGPT and Large Language Models in Academia: Opportunities and Challenges*, 16 BIODATA MINING (2023),

“training” the language model, which in turn produces output that is ultimately derived from that source material, could be conceptualized as a large-scale, automated form of plagiarism. After all, language model outputs generally do not cite the sources that went into training it to generate a particular form of response to a query.¹²³ The user of the language model, knowingly or unknowingly, operates and guides a model built on plagiarism.

To be sure, this characterization may be controversial. A lot goes into the algorithms that run language models, along with the choice of what training materials to select and how the model operates with those materials.¹²⁴ Is it plagiarism if there is simply enough technological complexity between the original writing and the model’s output? Is this meaningfully different from a person writing in a particular style or voice based on literature that person has previously consumed? These questions remain unresolved and do not meaningfully impact what legal writing professors should do.¹²⁵ If failure to provide attribution to sources is a core component of plagiarism, it may not be so hard a case to label students’ use of language model output without attribution to the model as plagiarism. Yet, if there is a case to be made that language models are indeed a large-scale form of plagiarism, those who urge their adoption in legal writing courses may well be encouraging plagiarism—whether they’re aware of it or not.

A final answer to this question is beyond the scope of this essay, though I’m inclined against labeling all language model use as plagiarism due to the complexity of these programs’ underlying machinations, including the use of a vast number of underlying sources and the recognition of patterns and trends among these sources. It seems that even if language models are not plagiarism, they still implicate questions over teaching of plagiarism due to the similar skills required to operate language models effectively and the need for students to be aware of writing methods their law schools may otherwise condemn. Plagiarism also remains relevant to those contemplating the use of language models in teaching and practice because it provides a comparison point for this new technology—a point to which I now turn.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10339472/> [https://perma.cc/3G7F-P3WH] (noting that language models like ChatGPT and Bard are “trained to construct textual utterances modeled after similar ones found in [their] training text given the prompt”).

¹²³ See *id.*; Terri LeClercq, *Failure to Teach: Due Process and Law School Plagiarism*, 49 J. LEGAL EDUC. 236, 245 (1999) (noting that failure to attribute is a key component of defining plagiarism).

¹²⁴ See Gewirtz, *supra* note 122.

¹²⁵ For whatever reason, many authors find it worthwhile or clever to posit the question over whether using ChatGPT is plagiarism to ChatGPT and to report on its output as though it is authoritative. See, e.g., UNIV. OF S. FLA. LIBR., *AI Tools and Resources* (Jan. 29, 2024 AM), <https://guides.lib.usf.edu/c.php?g=1315087&p=9678778> [https://perma.cc/2CN5-DYLP]; *Discussing Plagiarism With ChatGPT*, VIPER BLOG (Dec. 20, 2022), <https://blog.scanmyessay.com/2022/12/20/discussing-plagiarism-with-chatgpt/> [https://perma.cc/VM7P-ZERL].

B. *Who Needs Language Models When You Have Plagiarism?*

In the preceding section, I illustrated the overlap in arguments for teaching language models and plagiarism. The upshot is that those urging the use of language models in teaching legal writing should be making the same case for teaching plagiarism. In this subsection, I go further and argue that plagiarism should be given priority over language models in legal writing pedagogy.

One must not forget the context of discussions over whether language models should be adopted in teaching legal writing or in the practice of law. These models seem to be highly powerful and potentially efficient—as they may lead to the output of at least rough drafts of briefs, agreements, and other work product in a short period of time.¹²⁶ This raises concerns over whether young attorneys will find themselves crowded out of a job market when their roles may be fulfilled by AI technology.¹²⁷ Much of the time, however, these comparisons seem to refer to an attorney attempting to write a brief, contract, letter, or summary from scratch (if they even contemplate how actual legal work is performed in the first place).¹²⁸

The net benefit added by using a language model is far less apparent when one considers the use of these models in a field where everyone is already plagiarizing. ChatGPT may produce a rough draft of a motion to dismiss far quicker than an attorney may be able to type up the motion by hand.¹²⁹ But that’s not what the attorney generally does. More often, the attorney goes to a firm’s brief bank, to a colleague who’s litigated a similar case, or to their own prior work on a similar case

¹²⁶ See generally Jonathan Choi et al., *Lawyering in the Age of Artificial Intelligence*, MINN. LEGAL STUD. (2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4626276 [<https://perma.cc/FD87-DGZQ>] (arguing, based on a comparison of law students’ work both with and without the assistance of ChatGPT, that language models help students write various basic legal documents faster).

¹²⁷ See Jonathan Wolf, *Do AI Large Language Models Like ChatGPT Make Law School Less Worth It As an Investment?*, ABOVE THE L.: AI LEGAL BEAT (July 5, 2023, 2:47 PM), <https://abovethelaw.com/2023/07/do-ai-large-language-models-like-chatgpt-make-law-school-less-worth-it-as-an-investment/> [<https://perma.cc/9A8X-D52Q>].

¹²⁸ See, e.g., Choi et al., *supra* note 126 (comparing only ChatGPT use to write legal materials with writing those materials without ChatGPT assistance, but not collecting information on what methods those writing the documents without ChatGPT employed); Marcin Fraćkiewicz, *The Impact of ChatGPT-4 on Legal Document Drafting and Editing*, TS2 (Apr. 12, 2023), <https://ts2.space/en/the-impact-of-chatgpt-4-on-legal-document-drafting-and-editing/#gsc.tab=0> [<https://perma.cc/U93B-WEJN>] (comparing the use of ChatGPT to the drafting of templates from scratch).

¹²⁹ See, e.g., Thomas Kearns & Michael Passarella, *ChatGPT and AI Will Advance Efficiencies in the Legal Industry*, BLOOMBERG L. (Feb. 10, 2023, 4:00 AM), <https://news.bloomberglaw.com/us-law-week/chatgpt-and-ai-will-advance-efficiencies-in-the-legal-industry> [<https://perma.cc/F4PV-GMX9>] (arguing that language models may be used to sift through documents and develop “a first draft of a complex agreement,” a task that would be “hugely beneficial to lawyers and clients” due to the time and money saved).

to identify a template for the motion.¹³⁰ From there, a great deal of the initial draft may already be done. Portions can be copied outright—such as a standard for review, which tends to depend only on the type of motion being filed rather than the facts of a particular case. Even argument sections may be constructed from prior templates quickly, especially in a firm that handles many cases in the same area of law, or in jurisdictions where there are few controlling authorities on a particular question of law. The portion of the brief which may need to be reconstructed more meticulously is the statement of facts. But this may not be something that a language model can readily construct given the intricacies of fact patterns and, perhaps even more importantly, the ethical perils of inputting client-specific information into a third-party language model.¹³¹

Plagiarizing not only lets one prepare an initial draft in a short period of time, but it also comes with a better pedigree than language models and is likely better suited for particular attorneys' needs.¹³² Language models in their current, powerful form are a relatively new piece of technology.¹³³ While they may develop further and improve in their capabilities, they still lack the time-tested reliability of good old fashioned plagiarism. Legal actors have been copying from each other for decades.¹³⁴ Any attorney with substantial brief-writing experience can give you time-tested techniques for finding templates and exemplars and what portions of briefs are easiest to adapt to new circumstances—lessons they've likely learned from more experienced attorneys who came before them.¹³⁵

A template from the right source is also likely to be a far more reliable source than output from a language model. A brief previously used by an attorney or others in that attorney's office is unlikely to contain the hallucinated authorities that currently characterize language model output.¹³⁶ For offices that specialize in a particular form of litigation, their library of prior briefs and templates may be extensive and contain examples well-suited for the present case, offering far stronger starting points than a language model's output.

Moreover, if an associate attorney is drafting a brief or letter to go out under a

¹³⁰ See Boyd & Frye, *supra* note 11 at 3.

¹³¹ See Michael C. Maschke et al., *Beware of Ethical Perils When Using Generative AI*, MD. STATE BAR ASS'N (Apr. 19, 2023), <https://www.msba.org/beware-of-ethical-perils-when-using-generative-ai/> [<https://perma.cc/8EXW-RFKH>]. See also Jonathan Grabb, *How Lawyers' Use of Artificial Intelligence Could Implicate the Rules of Professional Conduct*, FLA. BAR NEWS (Mar. 13, 2023), <https://www.floridabar.org/the-florida-bar-news/lawyers-and-ai-how-lawyers-use-of-artificial-intelligence-could-implicate-the-rules-of-professional-conduct/> [<https://perma.cc/2QQW-H68Y>] (“[I]t is unclear whether sharing information with an AI program would be discoverable and would waive claims of attorney-client privilege.”)

¹³² See *supra* Section II.B.

¹³³ See *supra* Section I.

¹³⁴ See Blackman, *supra* note 82.

¹³⁵ I'm an attorney with substantial brief-writing experience who is telling you this.

¹³⁶ Although it never hurts to cite-check them each time to avoid nitpicky mistakes.

partner's signature, that attorney would do well to use a prior brief or letter prepared (or at least signed) by that partner to ensure that they capture the partner's style and voice. Should that associate repeat this process for multiple attorneys, the associate will begin to have exposure to a variety of styles and begin to develop a style of his or her own. It remains unclear whether generating repeated briefs and letters with language models will have the same stylistic impact.

* * *

Language models are a notable new technology of which law students and attorneys should at least be aware of if for no other reason than to wreck one's adversary should that person rely on fake, inapplicable language model output in a brief. But those singing the praises of language models and urging their adoption in legal writing classes should take a step back and ask whether they ought to be taking the same approach with plagiarism. Urging the adoption of language models while continuing to condemn or ignore plagiarism seems inconsistent given the prevalence of plagiarism in actual practice, the overlap in skills needed to employ plagiarism effectively, and plagiarism's historical pedigree. Indeed, those applauding language models who critique or pay no heed to plagiarism appear to be more enamored of quirky new technology than teaching students those skills they will truly use as practicing attorneys.

IV. THE IMPORTANCE OF LEARNING THE BASICS

At this point, the reader may think I'm out for wholesale reform of the legal writing curriculum. Out with memos, down with briefs, and plagiarism all the way! This is not the case. This section serves as a disclaimer and clarification of the preceding points on plagiarism and language models. While learning these tools (and learning about the realities of practice more generally) are important, it is my view that these lessons are secondary to teaching students the basics of legal writing and research. Students should be taught to write briefs, memos, and letters from scratch so that they can learn about the writing process and become familiar with each component of the document.

To be clear: I am neither a legal writing professor, nor have I taught legal writing in the past. My perspective is that of a former civil litigator (and, for a while, deputy district attorney) who spent years writing briefs, discovery responses, letters, memos, and all manner of other exciting forms of legal work product. I take the perspective of a lawyer who's worked for small firms, bloated firms, and mid-sized firms. My work has ranged from the high-volume mills of insurance defense firms to the exciting unpredictability of high-profile litigation for private clients and businesses.

Much of this essay has referred to what attorneys do in practice when arguing for or against certain teaching practices. To be sure, the ultimate goal of legal writing is to train students to learn the writing techniques they will use as future

attorneys.¹³⁷ But sometimes the manner of teaching students must take a form other than that of practice. Students typically aren't thrust headlong into a firm-like experience from day one and asked to act and write like lawyers.¹³⁸ Instead, students often learn to write from the ground up—learning the elements of work product like memos and briefs, and then moving along to researching and writing these documents, often on matters of increasing complexity, as class assignments progress.¹³⁹ While some assignments—like those requiring students to draft and then rewrite single documents—may mirror how things go in practice, these assignments are chosen for their pedagogical benefits as well, such as ensuring that students receive commentary they can act upon before it is too late in the course.¹⁴⁰

While techniques like plagiarism and language models may be commonly used in practice, teaching students the fundamentals of legal writing—including requiring them to build certain documents from the ground up—may still impart valuable lessons.¹⁴¹ Learning what goes into a brief helps students become better able to hone the component parts of templates or language model drafts in their future work. And students must learn to become capable legal writers themselves so that they can be judges of good legal writing in the future. Otherwise, it is unclear how students are to judge between a good and a bad draft—whether it's produced by a colleague or a language model. To this end, whether one ends up adopting a legal writing pedagogy that incorporates plagiarism, language models, or other innovations, these methods should be incorporated alongside teaching the core skills of legal research and writing.

¹³⁷ See Gerald Lebovits, *Legal Writing in the Practice-Ready Law School*, 85 N.Y. STATE BAR J. 72, 65 (2013) (“A legal-writing class isn't simply an isolated class in training skills. It ain't just grammar, neither. Legal writing teaches legal method, citing, organization, rhetoric, ethics, and professionalism. Legal writing teaches substantive law. Legal writing puts into practice what other teachers teach.”). See also Stephen Embry, *Should ChatGPT Be In Law School?*, TECHLAW CROSSROADS (Mar. 17, 2023), <https://www.techlawcrossroads.com/2023/03/should-chatgpt-be-in-law-school/> [<https://perma.cc/9SDS-7PMW>].

¹³⁸ *But see How to Get Away With Murder: Pilot* (ABC television broadcast Sept. 25, 2014) (in which first year criminal law students are selected to assist their law professor in her criminal legal practice).

¹³⁹ See, e.g., Lorraine Bannai et al., *Sailing Through Designing Memo Assignments*, 5 J. OF THE LEGAL WRITING INST. 193, 202-03 (1999) (describing the approach of increasing complexity with each legal writing assignment); Harold Anthony Lloyd, *Why Legal Writing is “Doctrinal” and More Importantly Profound*, 19 NEV. L.J. 729, 736 (2019) (describing a progression of legal writing assignments starting with reviewing a lease agreement and identifying a particular covenant, ranging up to an objective memo regarding the validity of a covenant in an alternate contract scenario).

¹⁴⁰ See Daniel L. Barnett, *Triage in the Trenches of the Legal Writing Course: The Theory and Methodology of Analytical Critique*, 38 UNIV. TOL. L. REV. 651, 656–57 (2007).

¹⁴¹ See John A. Lynch Jr., *The New Legal Writing Pedagogy: Is Our Pride and Joy a Hobble?*, 61 J. LEGAL EDUC. 231, 233 (2011) (describing the contemporary approach by legal writing professors in which they “substitute a focus on the process of creating a legal document rather than on the end product itself”).

CONCLUSION

It's a well-worn infomercial technique: an ad introducing a revolutionary new kitchen product, exercise machine, or cleaning spray shows the viewer the glorious world they will live in should they purchase the product. The future customer is assailed with rapid shots of near-ecstatic individuals cooking chicken with ease, showing off new muscles, and wiping away apocalyptic spills with a single swipe of a special new cloth towel. These utopian visions are contrasted with harrowing images of the recent past when these people had to make do without the product. Black-and-white footage shows these same people attempting to cook raw chicken in a microwave or over a pile of burning documents on the kitchen counter. Between tears, these unfortunate souls find themselves entangled in medieval-looking alternate exercise equipment and attempt to tackle a spilled gallon of milk with a single Kleenex. Such a dramatic juxtaposition fuels demand for the product. It suggests that the viewer needs to "Call Now!" to escape the black-and-white hellscape of their current existence—even if they are perfectly competent at cooking chicken, exercising, and cleaning up spills without a fancy new product.

We now see this technique replicated in much of the discourse about "generative AI," "large language models," and software employing this technology, such as ChatGPT. Consider those who argue that artificial intelligence will aid in legal research. According to them, the task of legal research "is a time-consuming and laborious process," as attorneys "must sift through large volumes of data to identify relevant cases and statutes."¹⁴² This conjures up the vision of an attorney buried in arcane tomes and treatises—perhaps wandering the dimly lit stacks of a vast law library in search of a hidden book containing the authority necessary for a brief. Not anymore. Now, attorneys "can use the chat-based interface to ask questions or seek guidance on complex legal issues, and the AI model will generate detailed responses based on its vast knowledge base."¹⁴³ Despite a few current hiccups, technologies like ChatGPT "promise to enormously enhance the speed and thoroughness of legal research in the future."¹⁴⁴ No more will attorneys need to proceed book-by-book through the endless stacks of their local law library!

Hang on a second. That's not how legal research without language models works. An attorney who needs to seek out authority doesn't need to sift through stacks of papers and books. That attorney, using a well-crafted set of search terms

¹⁴² 4 *Ways Law Firms Can Use ChatGPT*, VXT (May 16, 2023), <https://www.vxt.co.nz/post/4-ways-law-firms-can-use-chatgpt> [<https://perma.cc/X8UX-WW73>].

¹⁴³ TRESSLER & ASSOCIATES, *Enhancing Legal Efficiency: Harnessing the Power of Chat GPT in Law Firms*, <https://tresslerassociates.com/enhancing-legal-efficiency-harnessing-the-power-of-chat-gpt-in-law-firms/#:~:text=Chat%20GPT%20can%20significantly%20reduce,on%20its%20vast%20knowledge%20base> [<https://perma.cc/TMQ5-QVRK>] (last visited Feb. 6, 2023).

¹⁴⁴ Daniel Davis, *The Case of the Imaginary Yacht: Is ChatGPT the Future of Legal Research?*, DUNLAP, BENNETT & LUDWIG (Apr. 3, 2023), <https://www.dblawyers.com/is-chatgpt-the-future-of-legal-research/> [<https://perma.cc/LX99-BVF6>].

in a database like Westlaw or LexisNexis, starting with a relevant treatise, or even looking at the index of a set of statutes can easily identify relevant authorities for an efficient review. To be sure, algorithms and machine learning likely occur behind the scenes of search engines like Westlaw and Lexis.¹⁴⁵ But this isn't anything new, and it's not what proponents of language models seem to be referring to when they speak of technological revolutions.¹⁴⁶ Instead, it seems that those speaking of how ChatGPT and other language models will improve legal research are working from the false assumption that modern legal research is conducted in an inefficient and archaic manner.¹⁴⁷ The discourse portrays modern attorneys in a similar manner as those without the magical product in an infomercial: hapless rubes bumbling through a black-and-white world, aimlessly searching for authorities in randomly chosen books, writing every document from scratch, and counting down the days to disbarment. Perhaps some attorneys are like this,¹⁴⁸ but most, thankfully, are not.

To be sure, language models like ChatGPT, employed with proper training and care, may well increase a practicing attorney's effectiveness. These models may also serve as tools to edit and improve writing for clarity and tone—a feature that may be of use to both practitioners and students.¹⁴⁹ Between editing capabilities and producing serviceable first drafts, there may yet be a place in practice and pedagogy for language models.

Yet before proclaiming this technology as heralding in a revolution,¹⁵⁰ those who teach and practice must give proper due to plagiarism, the not-so-hidden secret of the legal profession that has carried the laboring oar thus far. While language models' ability to generate text at high speed in response to prompts certainly seems a step up when contrasted with drafting documents from scratch, that's simply not how things are done in most cases.¹⁵¹ Instead, language models' efficiency and reliability must be held up to the practical reality that attorneys are already copying from forms, templates, and the work of others. With this as the benchmark, language models' added-efficiency claims become more modest.

Additionally, those calling for the use of language models in legal writing courses ought to seriously consider incorporating lessons on plagiarism as well. The reasons

¹⁴⁵ See Bob Ambrogi, *Thomson Reuters Unveils Next Generation of Westlaw, Aiming to Make Legal Research Results More Precise*, LAW SITES (Sept. 14, 2022), <https://www.lawnext.com/2022/09/thomson-reuters-unveils-next-generation-of-westlaw-aiming-to-make-legal-research-results-more-precise.html> [<https://perma.cc/8EPG-RYL3>].

¹⁴⁶ See *supra* Section I.

¹⁴⁷ See *supra* Sections I, III.B.

¹⁴⁸ Opposing counsel in your current case, for example.

¹⁴⁹ See Regalia, *supra* note 117.

¹⁵⁰ See, e.g., Joseph Landau & Ron Lazebnik, *Law Schools Must Embrace AI*, NAT'L L. J. (July 10, 2023, 11:00 AM), <https://www.law.com/nationallawjournal/2023/07/10/needs-edit-law-schools-must-embrace-ai/> [<https://perma.cc/JLH9-3HSX>] (“AI holds immense potential to revolutionize our administration, pedagogy, programming, and research.”)

¹⁵¹ See generally Boyd & Frye, *supra* note 11.

LANGUAGE MODELS, PLAGIARISM, AND LEGAL WRITING

for incorporating language models—awareness of practice techniques and added efficiency—are equally, if not more applicable to teaching effective plagiarism skills to students. And the skills students must learn to use language models without running into common pitfalls—careful review, knowledge of what type of document is needed, and the ability to cite-check—are all skills that will make students more effective at employing plagiarism in practice as well.¹⁵² Accordingly, those who urge the adoption of language models, yet condemn the teaching of plagiarism, ought to take a step back and make sure they simply aren't getting caught up in the excitement of a new piece of technology.

¹⁵² See *supra* Section III.A.

