

TEACHING AROUND GENERATIVE AI PLAGIARISM RISKS

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Much has been written and said about generative AI's potential uses and misuses by lawyers and law students in the past year. This essay does not rehash the many ongoing discourses about whether, how, and to what extent, generative AI (GenAI) can be used for and taught in legal writing courses. Rather, this essay is written under the assumption that, at least to some extent early on in the law school experience, some professors don't want 1L legal writing students using GenAI to draft legal memoranda and briefs for them. As the American Bar Association's Formal Ethics Opinion 512 warns, it is important to develop human lawyerly intelligence first before engaging in and being able to assess artificial intelligence."² Despite the need for law students to develop that requisite lawyer intelligence required to meaningfully assess the value of any given AI-generated legal analysis, however, Lexis AI+ is now widely available to law students from their first month in school. That widespread access to GenAI may have its benefits, but not without also posing significant dangers of new AI-aided opportunities for plagiarism.

This essay begins by detailing the difficulty of catching elusive AI-generated plagiarism, as recently documented and discussed by a number of commentators. It then offers some potential solutions—not in the form of how to catch AI-generated plagiarism (a problem currently without a

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² ABA Comm. on Pro. Resp., Formal Op. 512 (July 29, 2024) (providing guidance on ethical generative AI use).

good solution)—but rather, how to teach around it by modifying curriculum and scoring approaches.

The AI Plagiarism Problem

Assuming circumstances in which a law professor does not want their law students to use GenAI to create a draft a legal memorandum or brief, what can be done about the potential for AI-generated plagiarism in legal writing assignments?

The answer is tricky because AI-generated plagiarism is quite difficult, if not impossible, to catch. Recent studies have documented how TurnItIn and similar tools have not yet produced a sufficiently failproof way to catch AI plagiarism.

For example, the Medium article “*AI Detector 'Outsmarted' by AI Humanizer Software*” describes how AI-generated “humanizer” software, designed to circumvent AI detection, can mimic the human voice, making it nearly impossible to catch AI-generated plagiarism.³ Documenting problems with both false positives and negatives by detection software, the article quotes what is generally viewed as the primary AI detection tool, TurnItIn, as itself conceding that its AI-detection tools “may not be entirely dependable.”⁴

The problem of TurnItIn’s record of false positives in screening for AI-generated writing has some particularly troubling ramifications in various contexts. For example, one article documents TurnItIn’s tendency to flag Grammarly-assisted writing as AI-generated potential plagiarism,⁵ which could disincentivize well-meaning students from double-checking their grammar before turning in a memo or brief. Even more disturbing are studies demonstrating that TurnItIn is more likely to issue “false positives” to the writing of non-native English speakers, incorrectly identifying their writing as AI-generated.⁶ Those findings are deeply

³ Joey Geller, *Is Turnitin AI Detector Accurate? Testing How Reliable Is Turnitin*, Medium (Apr. 24, 2024), available at <https://medium.com/@JoeyGeller/is-turnitin-ai-detector-accurate-testing-how-reliable-is-turnitin-cb4f6a1d93f4>.

⁴ *Id.* (citations omitted).

⁵ Jason Kieffer, *Grammarly Flagged as AI Plagiarism Poses Risks to Students*, The Pine Log (Mar. 28, 2024), https://www.thepinelog.com/news/article_c1329dd0-ed24-11ee-b37a-73d9baa3010b.html.

⁶ See Andrew Meyers, *AI-Detectors Biased Against Non-Native English Writers* (May 15, 2023), Stanford Univ. Inst for Human-Centered Artificial Intelligence, <https://hai.stanford.edu/news/ai-detectors-biased-against-non-native-english-writers>.

disconcerting because they demonstrate the discriminatory effects that an attempt to monitor AI-generated cheating could entail.

Vanderbilt University issued a public statement commenting on these and other problems, and explaining why it no longer uses TurnItIn or similar AI-detection tools to try to identify AI-generated plagiarism.⁷ Other problems noted by Vanderbilt in its statement include accuracy issues, the rapidly changing and evolving nature of the elusive GenAI plagiarism problem, and the inability to trace TurnItIn's footsteps, since TurnItIn doesn't disclose how it flags AI-generated writing.⁸

A Teaching Solution

Without reliable means of catching AI-generated plagiarism, the solution to the problem of such plagiarism's elusiveness, and even inevitability, is not to waste efforts fruitlessly attempting to catch AI-generated plagiarism, but rather, to teach around it. The remainder of this essay describes some adjustments that can be made to writing assignments and other formative assessments, as well as to scoring rubrics and grading weight allocations (including those I have made in my own legal writing courses), in response to GenAI developments.

In its statement titled "*Guidance on AI Detection and Why We're Disabling TurnItIn's AI Detector*," Vanderbilt did not stop at detailing the problem with TurnItIn's ineffectiveness in catching AI-generated plagiarism; it also offered some suggestions:

- "reformatting assignments to mitigate any concerns about AI usage";
- using in-class writing assignments;
- "requiring students to write about specific topics discussed in class"; and
- "focusing on current issues that AI tools are not trained on."

⁷ Michael Coley, *Guidance on AI Detection and Why We're Disabling Turnitin's AI Detector*, Vanderbilt Univ. (Aug. 16, 2023), <https://www.vanderbilt.edu/brightspace/2023/08/16/guidance-on-ai-detection-and-why-were-disabling-turnitins-ai-detector/>.

⁸ *Id.*

Vanderbilt also refers to the Center for Teaching Excellence at the University of Kansas for a resource called “Adapting your course to artificial intelligence.”⁹

The University of Kansas’s Center for Teaching Excellence, in turn, sets forth even more specific guidance:

- Create assignments in which students start with ChatGPT and then have discussions about strengths and weaknesses.
- Have students compare the output from AI writing platforms, critique that output, and then create strategies for building on it and improving it.
- Use multistep, scaffolded assignments with feedback and revision opportunities.
- Emphasize assignment dimensions that are (currently) difficult for AI: synthesis, student voice and opinions.
- Use project-based learning.¹⁰

Approaches in Teaching Writing

Heeding these suggestions and warnings, I have adjusted my legal writing teaching approach, both as to types of assignments I use and how I score them. After performing a number of my own assessments of GenAI in the past year (focusing on Lexis+ AI, as the equivalent Westlaw legal drafting product was not yet available), I identified which types of formative assessments, and portions thereof, students were most likely to successfully use GenAI to draft, and which AI was less likely to pass for as student writing. With that information, I made assessment-related adjustments to (1) writing assignments, (2) other formative assessments and assignments, and (3) scoring, rubrics, and grading.

First, as to writing assignments, I now assign more in-class and even group writing projects, working under the assumption that AI-generated plagiarism is more likely to occur when neither the professor

⁹ Vanderbilt Statement, *supra* note 7.

¹⁰ *Adapting Your Course to Artificial Intelligence*, Univ. Kan. Ctr. for Teaching Excellence, <https://cte.ku.edu/adapting-classes-artificial-intelligence-era> (bullets added).

nor classmates are in the room (as other students are Honor Code-bound to report any observed cheating). For out-of-class writing assignments—including memos and briefs in my legal writing class and student notes in my upper-level elective—the assignments now take a scaffolding approach. Instead of just having students turn in a good draft and then a final draft, I now also assign more graded research and outline projects. Through those assignments, I require students to turn in outlines of every written memorandum, to be able to walk me through the outlines, and to discuss the pieces of a writing assignment in detail in class. For open-universe memos and briefs, in addition to assigning more outlining and class-time and one-on-one presentation of their problem analyses, I include more graded research assignments and oral presentation of research leading up to the memo or brief.

Each of these additional graded scaffolding steps can help ensure that what the student is producing in the end is not a written product that was generated artificially, but rather, is a product resulting from several observable steps of organization, analysis, and research, explained by the student in various steps leading up to the final assignment.

Second, I have added and made adjustments to the non-writing assignments in my legal writing curriculum. I have increased the number of formative, in-class assessments, including more thorough in-class discussions of synthesis and analogical reasoning problems, more polling games and quizzes, and extra in-class research and citation exercises. In part to make students less tempted to cheat, I also assign a variation of a peer review exercise in which students “peer review” GenAI itself. Students receive a detailed grading rubric mirroring the one I use to score them, and they score the AI+ produced version of a previously completed memo they are intimately familiar with. So far, the GenAI-produced version has yet to receive a grade above a C.

Third, I have adjusted both the rubric and scoring of pieces of individual assignments and to the overall allocation of grading percentages for each assignment as a whole. I now accord more weight than I previously did to those assignments and parts of assignments that are less likely to be created by GenAI.

For example, as to overall allocations of grade percentages by type of assignments, I now accord less weight than I previously did to out-of-class writing exercises and more weight than before to the additional assessment exercises and assignments explained above, including outlining and research written assignments and oral presentations.

I also adjusted my rubrics for individual graded writing assignments by according less weight than before to those parts of an assignment that are more likely to be AI-generated and more weight to those that GenAI is not good at (yet). After running a number of memo and brief assignments through the Lexis AI+ platform, for example, I have concluded that, while AI+ is effective at turning a pretty phrase and describing rules, it is comparatively not as good at the following:

- Analogical reasoning through explicit case comparisons
- Following formatting instructions required by a professor (for memos) or court rules (for briefs)
- Deep issue statements
- Identifying the most relevant facts, whether in a problem for analogical reasoning and other legal analysis
- Citing the most binding or pertinent authorities and
- Providing the most accurate Bluebook cite (including a complete lack of pinpoint citations, or pincites).

Consequently, as illustrated by the chart at the end of this essay, in this AI world, I now allocate fewer points in my grading rubric to writing fluency and rule recitation, and more to the other aspects of memo or brief drafting that GenAI is less likely to successfully mimic as student writing. Furthermore, with pinpoint citations being essential for tracing a case explanation to its source, and the part of the citation that GenAI does not currently provide in its drafts, I award additional points on a rubric just for pinpoints.

Conclusion

Ultimately, my adopted methods of teaching around the GenAI plagiarism problem may or may not work for others. I have no data to prove its effectiveness insofar as accurately and appropriately awarding the work produced by students, as opposed to by GenAI. What I do know,

though, is that the very process of taking a step back to re-evaluate my legal writing teaching approach in light of evolving AI technology, and creating additional formative assessments that capture the more dynamic, interactive, in-class and face-to-face aspects of the pedagogical process has made me a more flexible, rigorous, and overall better teacher.

I may not catch all AI-generated plagiarism in my writing assignments. And the world of AI-threat-inspired, creative innovations is a constantly evolving learning and growing process. Teaching in the time of GenAI is not for the faint of heart. But that's one thing we will always have that AI does not: the hearts of committed and passionate teachers.

EXAMPLE PRE-and POST+AI+ GRADING RUBRICS FOR (First Graded, Closed Universe) MEMO ASSIGNMENTS
(w/detailed rubric descriptions deleted for sake of space)

CALIFORNIA WESTERN
SCHOOL OF LAW | San Diego

Pre-AI+					Post-AI+				
Criteria	Excellent	Good	Needs Work	Total Possible Points	Criteria	Excellent	Good	Needs Work	Total Possible Points
Organization	2	1.5	.5	2	Organization	3	2	1	3
Statement of Facts	2	1.5	.5	2	Statement of Facts	2	1.5	.5	2
Discussion Intro	2	1.5	.5	2	Discussion Intro	3	2	1	3
IREAC Issue & Rules Sections	6	4.5	2	6	IREAC Issue & Rules Sections	3	2	1	2
Explanation/Example Sections	6	4.5	2	6	Explanation/Example Sections	8	6	2	8
Analysis/Application Sections	6	4.5	2	6	Analysis/Application Sections	8	6	2	8
IREAC & Final Conclusions	2	1.5	.5	2	IREAC & Final Conclusions	2	1.5	.5	2
Writing (Grammar, Fluency, Clarity, Proofing)	8	6	2	8	Writing (Grammar, Fluency, Clarity, Proofing)	4	3	1.5	4
Citation	6	4.5	2	6	<u>Pincites</u>	4	3	1.5	4
					Other Citation	3	2	1	3

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