

RETAINING CRITICAL THINKING: PREPARING FOR THE TRANSITION FROM TRADITIONAL LEGAL RESEARCH TO GENAI RESEARCH

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While learning and performing legal research, students not only gain proficiency in tasks like navigating secondary sources or locating annotations, but they also simultaneously practice a number of “ancillary skills” that have broader applicability, such as issue spotting and analogical reasoning. The advent of generative AI-powered legal research platforms like CoCounsel and Lexis+ AI (hereinafter “Legal GenAI”) promises to significantly reduce the amount of time lawyers and law students spend performing research.² How, then, will students develop these ancillary skills? This essay encourages legal research and writing professors to identify the ancillary skills their students have been learning through traditional legal research instruction and to make intentional choices about whether and how to teach these skills as students transition to Legal GenAI research.

This essay intentionally does not address two significant questions. First, it does not address whether legal research and writing professors *should* embrace Legal GenAI. It instead operates under the assumption

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² CoCounsel entered the legal market in March 2023 and Lexis+ AI in May 2023. Lexis+ AI is already available to law students, and CoCounsel is scheduled to become available to the academic legal market in January 2025. For more on both platforms, *see generally* Adam Allen Bent, *Large Language Models: AI’s Legal Revolution*, 44 Pace L. Rev. 91 (2023).

that adoption of Legal GenAI research tools is inevitable.³ Second, it does not comment on the quality of Legal GenAI research as compared to traditional research.⁴ Instead, this essay focuses just on the ancillary skills students obtain or refine as they learn legal research using traditional methods versus using Legal GenAI.

1. Identifying Ancillary Skills: A Terms and Connectors Lesson

The following terms and connectors lesson illustrates how students learn ancillary skills as part of learning legal research. Different legal research lessons will teach different ancillary skills than the ones identified below; this sample simply serves as a vehicle for exploring how legal research and writing faculty can identify and address ancillary skills.

A Sample Terms and Connectors Lesson. Imagine a professor presents the following research hypothetical to students:

A judge dismissed Plaintiff's case in the Central District of California after Plaintiff's counsel failed to appear first at a scheduling conference and later at the order to show cause hearing about the failure to appear. One month later, Plaintiff filed a motion to vacate the dismissal under FRCP60(b)(1), arguing that the attorney's failure to appear constituted excusable neglect because a paralegal was responsible for

³ In a 2024 white paper on e-discovery published by Everlaw, 34% of respondents indicated they were using (non-research specific) generative AI in their legal practice and over 50% of respondents had a “somewhat positive” or “positive” impression of generative AI. Everlaw, 2024 Ediscovery Innovation Report 10, 15. A study by LexisNexis Legal & Professional also found that, as of January 2024, 90% of surveyed legal executives from Fortune 1000 companies expected Generative AI usage to increase in the next five years, with 45% of survey respondents indicating they were already using Generative AI in some capacity for their legal work. Press Release, LexisNexis, New Survey Data from LexisNexis Points to Seismic Shifts in Law Firm Business Models and Corporate Legal Expectations Due to Generative AI (Jan. 31, 2024), <https://perma.cc/GZ7E-5BU7>.

⁴ Little research has been done comparing GenAI Legal Research outcomes with traditional legal research outcomes, but one study, “the first preregistered empirical evaluation of AI-driven legal research tools,” found that, while Legal GenAI “hallucinations are reduced relative to general-purpose chatbots . . . the AI research tools made by LexisNexis and Thomson Reuters each hallucinate more than 17% of the time.” Marun Vagesh et al., *Hallucination-Free? Assessing the Reliability of Leading AI Legal Research Tools*, J. Empirical Legal Stud. (forthcoming 2024); see also Paul D. Callister, *Generative AI Large Language Models and Researching the Law*, 53 SPG Brief 18 (2024) (providing samples and critiques of legal issues researched using Legal GenAI), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4927675.

miscalendaring both the scheduling conference and the order to show cause hearing. You represent Defendant.

Students perform preliminary research before class, which includes using secondary sources, reading the Federal Rules of Civil Procedure, and looking at annotations. In class, the professor uses the hypothetical to teach terms and connectors searching. In this scenario, an initial brainstorming session on keywords likely involves students suggesting the following terms:

- FRCP 60
- Paralegal
- Miscalendaring
- Dismissal
- Scheduling Conference
- Excusable Neglect

Next, the professor digs into each of these terms with the students and, through discussion, students arrive at new ideas about each of these terms:

- **FRCP 60** – The professor reminds students of the secondary sources they ideally read and located before class. These sources state that the standard for assessing excusable neglect under Federal Rule of Civil Procedure 60 is the same standard used for evaluating excusable neglect under two other procedural rules—Federal Rule of Appellate Procedure 4 and Bankruptcy Rule 9006. Students realize that they can analogize to decisions relating to any of these three procedural rules and should not narrowly search for FRCP 60 cases alone.
- **Dismissal** – As they are asked to think more about these procedural rules, students see that all three are specific to dismissals. Students discuss whether they should simply search the term “dismissal” near “excusable neglect” or if they should additionally include the specific procedural rules as search terms. Though they will unlikely articulate it as such, they begin to think about ideas of recall versus precision.

- **Paralegal** – As students are pushed to articulate why it matters that a paralegal made the mistake in the hypothetical, they realize that any case where the mistake is made by someone *other than the attorney, court, or plaintiff* might be potentially analogous, with cases specifically involving paralegals or individuals in paralegal-like roles being the most persuasive.
- **Miscalendar**ing – Similarly, students realize they can think about the type of error more broadly as well. They may brainstorm other types of excusable errors.
- **Scheduling Conference** – In thinking more about the four factors evaluated when assessing excusable neglect (danger of prejudice to other party, length of delay, reason for delay, and whether the movant acted in good faith), which they learned from their prior secondary source research, the students realize that, although a scheduling conference was the root of the judge’s eventual decision to dismiss, the scheduling conference itself is not highly relevant to an inquiry about excusable neglect and that term should be excluded from a search.
- **Excusable Neglect** – Students may initially want to brainstorm synonyms for “excusable neglect” but eventually learn that this is a term of art.

After fleshing out these terms, determining which are unnecessary, which require synonyms, and which must be searched “as is,” students then discuss how to connect the words. They evaluate how helpful a case would be that required multiple concepts (an AND search) versus only some of the concepts (an OR search). They think about which concepts are required (AND) for effective analogy versus which ones are preferable but not necessary (OR). Finally, the students arrive at one or more useful searches to run. Once they run their searches, students are presented with a large number of cases to read through to find relevant legal authority.

Ancillary Skills Practiced in the Terms and Connectors Lesson.

In the hypothetical lesson, the primary learning objective focuses on effectively using terms and connectors to identify relevant case law.

However, outside of this stated learning objective, students learn other skills as well. As the time spent on traditional legal instruction decreases, those who teach research should systematically think through and articulate what these ancillary skills are. For example, as students brainstorm their keywords—thinking carefully about which to retain, which to reject, and which to search more broadly or narrowly—they are also issue spotting, applying law they have learned from secondary sources to their more specific research problem, and making decisions based on anticipated analogical reasoning.

After conducting their searches, students must then review the retrieved cases to determine their relevance. This skimming process fosters three additional skills. First, students simply become better at reading and understanding case law. This includes gaining familiarity with legal terminology and with the way courts analogize and persuade. It also includes gaining speed—being able to recognize relevant facts, holdings, and reasonings more quickly. Second, through immersion in legal writing, students pick up ideas that will help them become better writers. And finally, students practice their analytical skills by constantly comparing the cases they are reading to their hypothetical to determine relevance.

2. Finding New Ways to Teach Ancillary Skills

In my very preliminary exploration of Legal GenAI and the ways students use it, using Legal GenAI for legal research does not seem to develop ancillary skills in the same way or to the same extent as traditional research.⁵ In large part, this is because Legal GenAI is doing exactly what it promises to do—reducing the amount of time needed to perform research.⁶ Less time spent researching equals less time learning

⁵ Given the relatively recent availability of Legal GenAI to the academic market, my observations are based upon my review of a limited number of student research logs, when students were given the opportunity to research in both LexisAI and through traditional methods.

⁶ An April 2024 LexisNexis Press Release claimed Lexis+ AI enhancements would make research “faster” and more “efficient.” Press Release, LexisNexis, LexisNexis Launches Second-Generation Legal AI Assistant on Lexis+ AI (Apr. 23, 2024), <https://perma.cc/RD2G-QJLM>. An August 2024 Thomson Reuters press release similarly promised that CoCounsel 2.0 would “accelerate and streamline entire workflows.” Press Release, Thomson Reuters, Thomson Reuters Unveils

ancillary skills. In addition, however, the synthesized format of Legal GenAI search results seems to deter students from questioning what they have received or brainstorming additional search queries. As Paul Callister puts it, “[w]e will tend to believe generative AI because it is easier than assimilating and synthesizing the large volume of legal information that we confront.”⁷ Even students who want to verify the information summarized by Legal GenAI are likely to do it in a more cursory fashion, reading the cases directly cited by the Legal GenAI platform rather than looking broadly across the number of cases they would have encountered while performing a terms and connectors search.

That Legal GenAI is changing the way students research is not intrinsically “bad.” Legal research methodology has always adapted to available technology.⁸ And if Legal GenAI can help students and lawyers find answers of similar quality in a much shorter time, its benefits likely outweigh its costs. Therefore, this essay does not suggest that legal research and writing professors respond to the loss of ancillary skills by refusing to teach or intentionally minimizing use of Legal GenAI. Rather, this essay encourages professors to recognize that, by offering a significant shortcut to research, Legal GenAI inevitably diminishes the time students spend developing important ancillary skills. In response, we should proactively identify the ancillary skills we have been “inadvertently” teaching so we can make intentional choices about whether we want to more directly invest in those skills.

Of course, one valid decision would be to forego certain ancillary skills. In fact, as Legal GenAI and generative AI generally become a more normalized part of legal practice, some ancillary skills may simultaneously become outdated or at least less relevant. Professors may decide to reduce time on these ancillary skills, just as many childhood educators have decided to cut cursive from K-12 curriculum in light of the prominence of computers.⁹ For instance, working with print secondary

CoCounsel 2.0; Supercharged GenAI Assistant Combines the Power of Google Cloud AI, OpenAI, and Thomson Reuters (Aug. 12, 2024), <https://perma.cc/74B6-B425>.

⁷ Callister, *supra* note 3, at 19.

⁸ For a look back at changes in legal research methodology through the turn of the century, see generally Alvin M. Podboy, *The Shifting Sands of Legal Research: Power to the People*, 31 Tex. Tech. L. Rev. 1167 (2000).

⁹ Since 2010, when the Common Core State Standards omitted cursive as a learning target, many schools have opted to forego cursive instruction as an unnecessary skill in light of current

sources helps students with ancillary skills related to issue spotting and indexing, but with the prominence of computer-assisted research, a professor could determine that gaining indexing skills is no longer valuable enough to factor in as an ancillary skill that needs practice. More controversially, because Legal GenAI is able to summarize cases, a professor may find that the ancillary skills gained from reading through large numbers of cases are also no longer valuable, as lawyers can depend upon case summaries rather than reading full cases in the future. On the other hand, professors may also decide that, while certain ancillary skills are important, they can be learned in other contexts, or at a slower pace, and therefore explicit coverage is not necessary. For example, a professor may believe that reading large numbers of cases is useful to a student and should not be replaced by Legal GenAI case summaries, but that the skill does not warrant additional, intentional coverage in legal research and writing class, as students will have opportunities to practice reading cases in clinics, internships, and other classes.

Professors may also choose to respond by taking the time saved on research and redirecting that time into more intentional exercises designed to teach the ancillary skills directly. Because many ancillary skills involve critical thinking—a competency that numerous law students are increasingly struggling to develop—I personally lean toward this approach for most ancillary skills.¹⁰ How this plays out in the classroom will differ depending on the individual professor’s choices as to whether and how to teach the skills. As an example, however, a professor might review the ancillary skills learned in the terms and connectors lessons and decide that two particular skills—analogy reasoning and issue

technology. However, there appears to be a recent recognition of some unforeseen losses as a result of this decision, which has led to a resurgence of cursive education. See Howard Bloom, *Learning Cursive in School, Long Scorned as Obsolete, Is Now the Law in California*, L.A. Times, Jan. 8, 2024; Drew Gilpin Faust, *Gen Z Never Learned to Read Cursive*, The Atlantic, Oct. 2022.

¹⁰ Gen Z (individuals born between 1995 to 2012) have been in law schools since roughly 2017. Olivia R. Smith Schlinck, *OK Zoomer: Teaching Legal Research to Gen Z*, 115 L. Libr. J. 269, 271-72 (2023). Research on Gen Z law students and undergraduates highlights that these students often face challenges with critical thinking due to their upbringing in a technology-driven, standardized testing environment. Laura P. Graham, *Generation Z Goes to Law School*, 41 U. Ark. Little Rock L. Rev. 29, 60 (2018) (discussing why “Gen Zers have access to enormous, almost unlimited amounts of information, but they do not know how to effectively sift through it or critically evaluate it.”).

spotting—deserve additional reinforcement in the absence of a terms and connectors lesson. That professor could reinforce analogical reasoning by spending time on extended brainstorming of keywords as a part of creating or evaluating Legal GenAI prompts. The professor could move issue spotting into the writing classroom by providing students with mock client intake forms or short mock deposition transcripts and requiring students to spot issues before being provided with a writing assignment involving the documents. Countless avenues, limited only by professor creativity, exist for shoring up ancillary skills.

3. Conclusion

This essay, like the presentation upon which it is based, invites the legal research and writing community to work together to identify ancillary skills students are learning in our classes, intentionally decide which skills are worth our efforts to continue teaching, and creatively impart those skills through other avenues.