

ASSESSING LEGAL WRITING SKILLS IN THE NEXTGEN & AI WORLD

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Memos and briefs covered in feedback. Live grading with students watching their professor read and react in real time to what they have submitted. When we think about assessing our students' writing, these are the hallmarks of legal writing pedagogy. Quizzes and exams are the stuff of casebook colleagues; to the extent they “work” for legal writing, quizzes and exam are reserved for research and citation assessment.

Given the convergence of rapidly developing generative artificial intelligence tools and the looming implementation of the NextGen Bar, it may be time to rethink whether the gold standard of assessment and feedback used by most legal writing professors is sufficient in assessing student skills. Or, rather, it may be time to rethink whether other means of assessment can serve a beneficial function in teaching legal writing. First, this essay examines the rapidly changing state of legal practice. A major impetus for this change is the advent and accessibility of generative artificial intelligence tools. Ignoring AI² is not an option. Assessment in light of AI may require changes to our well-worn practices. Second, this essay takes into account that the way applicants are assessed to

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² This essay uses AI to refer to generative artificial intelligence, which employs large language models (LLMs) to predict text. In very simplified terms, LLMs are a form of predictive text—analyzing vast amounts of data to determine the most likely pattern of text to satisfy a particular prompt. For more on the development of LLMs, see Harry Surden, *ChatGPT, AI Large Language Models, and Law*, 92 *Fordham L. Rev.* 1941 (2024), available at <https://scholar.law.colorado.edu/faculty-articles/1639>.

determine whether they should be admitted to the bar is changing. The NextGen Bar proposes to move away from an emphasis on memorization and towards an assessment of skills relevant to legal practice. While current assessment methods likely prepare students for practice, other forms of assessment may provide greater preparation for the newly formatted bar exam. Finally, this essay evaluates our current assessment practices and offers suggestions for how additional assessment may be incorporated.

AI and Legal Practice

AI is already a part of legal practice. As of January 2024, nearly half of Am100 firms stated that they subscribed to some form of AI designed for legal practice.³ An October 2024 study found that 79% of legal professionals are using AI in their practice.⁴ And, the number continues to grow. The development of AI tools in legal databases such as LexisNexis and Westlaw have meant that they are integrated in resources that attorneys and law students have comfort and familiarity with. Additionally, tools like Spellbook are prevalent in the drafting context. Even law professors are tempted with AI tools designed to assist with the law review writing process.⁵

However, the concerns related to the use of AI in practice are apparent. Most people have heard about or read stories about attorneys using AI without checking the cases—only to have the courts find that those submissions contained hallucinations (made-up information).⁶ Both current attorneys and law students worry that AI will replace the work of attorneys in legal practice.⁷ Additionally, access to AI tools is impossible to police. Non-law-specific AI is easily accessible through any

³ Justin Henry, *We Asked Every Am Law 100 Law Firm How They're Using Gen AI. Here's What We Learned*, *The American Lawyer* (Jan. 29, 2024), <https://www.law.com/americanlawyer/2024/01/29/we-asked-every-am-law-100-firm-how-theyre-using-gen-ai-heres-what-we-learned/?sreturn=20241112174141>.

⁴ *The Future of Artificial Intelligence in the Legal Industry*, Clio, <https://www.clio.com/guides/ai-legal-trends/> (accessed Jan. 1, 2025).

⁵ Claudius Scholar and Scholar Sift are examples of scholarship focused tools.

⁶ See Matthew Dahl et al., *Hallucinating Law: Legal Mistakes with Large Language Models are Pervasive*, Stanford University: Human-Centered Artificial Intelligence (Jan. 11, 2024), <https://hai.stanford.edu/news/hallucinating-law-legal-mistakes-large-language-models-are-pervasive>.

⁷ Niels Martin Brochner, *Will AI Replace Lawyers?*, *Forbes* (May 25, 2023), <https://www.forbes.com/councils/forbestechcouncil/2023/05/25/will-ai-replace-lawyers/>.

web browser, and it is likely that current law students already access them. AI tools on LexisNexis and Westlaw are already or will soon be made available on all law school accounts. The reality is that both law students and legal practitioners are already working in a world where AI is a part of law practice—it's our job to teach in that world.

If surveyed, most (if not all) legal writing faculty would likely agree that to use AI ethically and effectively, law students and attorneys need to be competent in their own writing skills. They must understand how to both create and evaluate legal writing in order to effectively prompt and evaluate AI-generated text. This underscores the need for faculty to be able to assess students' mastery of the skills underlying their written product, which also begs the question—are summative assessments of student writing (e.g., via a memo or brief) the best way to assess mastery of analytical writing skills?

The NextGen Bar

As of January 1, 2025, twenty-nine jurisdictions have adopted the NextGen bar, with the first of those jurisdictions beginning to administer the revamped exam in July 2026.⁸ The NextGen Bar holds itself out as focused on assessing skills that are essential for practicing attorneys.⁹ Chief among these skills is legal analysis.

In addition to multiple choice questions, the NextGen Bar will incorporate integrated question sets and performance tasks (described to be similar to the current Multistate Performance Test, or MPT). The integrated question sets will be based on a common fact scenario and will include a mix of multiple-choice questions. These integrated question sets will test both doctrinal knowledge and skills related to editing or drafting a legal document or client counsel and dispute resolution.¹⁰ These proposed changes suggest that skills typically taught in first-year legal writing classes may appear on not only the performance task section but also the integrated question sets. This means that the Bar Examiners

⁸ *NextGen (July 2026)*, Nat'l Council of Bar Exam'rs, <https://www.ncbex.org/exams/nextgen> (accessed on Jan. 1, 2025).

⁹ *About the NextGen Bar Exam*, Nat'l Council of Bar Exam'rs, <https://www.ncbex.org/exams/nextgen/about-nextgen> (accessed on Nov. 12, 2024).

¹⁰ *NextGen Bar Exam Sample Questions*, Nat'l Council of Bar Exam'rs, <https://www.ncbex.org/exams/nextgen/sample-questions> (accessed on Nov. 12, 2024).

will be assessing skills in prompts that require both short form and long form responses.

Reassessing How We Assess

In light of these changes, legal educators are in a kairic moment—an opportune time to reassess how we assess and determine what will best serve this generation of students.¹¹ One of the main methods for assessing student writing in first year legal writing courses is through a legal document—most often, an office memorandum or a persuasive brief.¹² These methods require the professor to rely on the document as a representation/manifestation of the student’s skills. However, if a student attempts to use AI to create the document, faculty may find it difficult to assess competency in foundational skills such as rule synthesis, analogical reasoning, and other analytical skills.

Rather than changing the entire structure of the legal writing curriculum, we could use additional types of assessment in combination with traditional forms of writing assignments to assess student mastery of skills applied to a written legal document.

Reflective Assessment

For many legal writing professors, reflective assessment will not be a new concept. Many faculty already include some type of reflection in their legal writing andragogy and most agree that there is great value in self-reflection for adult learners.¹³

Reflective assessment can be incorporated into a legal writing course in many ways. Some include journaling (a practice common for our clinical peers),¹⁴ directive questions that require self-assessment and explanation of why choices were made in writing a legal document, or

¹¹ For a more in-depth discussion of why this is an opportune moment to reassess assessment and how legal writing faculty may do that—particularly in terms of designing assessments that assess student knowledge in relation to learning outcomes, see Carolyn V. Williams, *Bracing for Impact: Revising Legal Writing Assessments Ahead of the Collision of Generative AI and the NextGen Bar Exam*, 28 *Legal Writing* 1 (2024).

¹² See Am. Bar Ass’n, *Legal Writing Sourcebook* 134 (J. Lyn Entrikin & Mary B. Trevor eds., 3d ed. 2020).

¹³ See Jason S. Palmer, “The millennials are coming!”: *Improving Self-Efficacy in Law Students Through Universal Design in Learning*, 63 *Clev. St. L. Rev.* 675 (2015).

¹⁴ See, e.g., J.P. “Sandy” Ogilvy, *The Use of Journals in Legal Education: A Tool for Reflection*, 3 *Clinical L. Rev.* 55 (1996).

reflection through example and explanation that requires students to identify skills concepts from an example and explain what was done well or could be improved.

Peer assessment may also be used to reflect on writing skills. In this context, determining whether a student has mastered a particular skill may require assessing the student's assessment of their peer's work product. In other words, the professor determines how well a student identified and commented on the skills they recognized in the other student's work.¹⁵

Quizzes and Exams

Incorporating quizzes or exams in a legal writing class may be another way to assess students' mastery of a skill and to provide timely feedback to students about that mastery. There are different types of questions that a professor may want to consider when designing a quiz or exam to assess skills. Some questions may be related to identification, for example can the student identify what part of the paradigm a portion of text is or can the student identify what makes writing good/bad or effective/ineffective. Other questions may be evaluative and demonstrative. These questions could determine, for example, whether the student can identify three problematic items in the writing and then make changes to resolve the issues. With a short answer question, the student can be asked to revise a small section of a document like a rule illustration or a statement of an analogical argument to improve upon the text they are given.

The following examples show questions that are designed to assess specific skills.

¹⁵ Williams, *supra* note 11, at 65-67.

- 1) To assess the student's ability to identify parts of the analytical paradigm.

Question 1	2 pts
<p>In short, Ms. Lohan has a minimal likelihood of proving harm when she took no action to notify Rockstar of the misuse until now and her widely reported legal issues could negate claims of reputational harm or major misrepresentation.</p>	
<p>What section of the analytical paradigm (CRAC) does this statement represent?</p>	
<p><input type="radio"/> Rule Statement (R1)</p>	
<p><input type="radio"/> Rule explanation (R2)</p>	
<p><input type="radio"/> Analysis (A1 or A2)</p>	
<p><input type="radio"/> Opening Conclusion (first C of CRAC)</p>	

- 2) To assess the student's ability to recognize a particular manner or substantive style convention for presenting a portion of the analytical paradigm.

Question 6	2 pts
<p>Like in <i>Canas v. Bay Entertainment</i> where the court determined that a right of publicity claim could be brought in Arizona based on the use of private information without consent for commercial purposes. <i>Canas v. Bay Entertainment, LLC</i>, 498 P.3d 1082, 1085-86 (Ariz. Ct. App. 2021).</p>	
<p>True or False. This R2 (rule illustration/explanation) starts with a rule-based thesis sentence.</p>	
<p><input type="radio"/> True</p>	
<p><input type="radio"/> False</p>	

- 3) To assess a specific contract drafting skill in a very discrete section of the contract.

☰ Question

BACKGROUND

Whereas, the Artist wishes to obtain advice, guidance, counsel and direction in the development and advancement of the Artist's career as musician, recording and performing artist and in such new and different areas as the Artist's artistic talents can be developed and exploited; and

Whereas, the Manager, by reason of the Manager's contacts, experience, resources and background, is qualified to render such advice, guidance, counsel and direction to Artist;

Redraft these recitals in plain language.

Another benefit to using a quiz is to provide instant feedback to a student, as demonstrated below:

Answers:

True

Comments, if the student chooses this answer:

This is false. A rule-based thesis sentence focuses on asserting something about what does or does not satisfy a rule. This is a case-based thesis sentence. It describes what happened in a specific case rather than focusing on the rule being illustrated.

False

Comments, if the student chooses this answer:

This is false. A rule-based thesis sentence focuses on asserting something about what does or does not satisfy a rule. This is a case-based thesis sentence. It describes what happened in a specific case rather than focusing on the rule being illustrated.

... ...

A quiz or exam format for assessment has a variety of potential benefits but may also present some challenges. Some have been mentioned earlier, but a more complete list of benefits and challenges is set out below.

Potential benefits include the following:

- The professor can design questions to simulate the Integrated Question Sets of NextGen Bar (to help prepare students for that exam);

- The professor can provide students with feedback faster (possibly immediately) than traditional feedback on memos or briefs;
- Students can refer to a quiz as a guide for future assignments;
- A quiz can be a tool to train students to be evaluative about good/bad writing (which will be helpful as students begin to incorporate AI tools in their practice);
- A quiz has the potential to identify student issues on a micro-level because skills may be assessed discretely;
- A quiz can be designed to be more simple or more complex based on course needs (e.g., the timing of the quiz within the semester or assessing knowledge around a newly introduced concept v. a concept that has been practiced and should be mastered);
- Quizzes can be interspersed throughout the semester—even while students are writing a longer assignment—and the feedback gained the process can be used to improve those longer writing assignments; and
- The professor can invest less time grading (particularly with multiple choice questions or short answer questions).

Potential challenges should also be considered:

- Quizzes and exams may take more time to create (and probably while the professor is still creating a writing assignment as well);
- Feedback on quizzes and exams is not holistic, meaning the professor may still need to grade skills within the context of a longer writing assignment;
- A student may be able to identify skills but not execute them (i.e., the student performs well on a quiz where skills are disaggregated but is unable to execute all the skills in context);
- Quizzes and exams can raise administrative concerns such as accommodations (e.g., time limits, format or presentation of the quiz or exam); and
- The timing and location of quizzes and exams must balance dedicating class time against unauthorized use of AI (i.e., is it proctored in class—which will alleviate concerns about using AI tools or is it taken at home where it may be more difficult to determine if the student is working independently?).

Conclusion

The landscape of law practice is changing. Presently, those changes include the rise of AI tools and the looming implementation of the NextGen Bar exam. However, it is likely that we will continue to see changes in law practice as technology and the needs of legal practice rapidly advance. By taking the time to reassess our traditional methods of assessment, we can evaluate whether there are better or additional ways that we can help ensure that our students are developing and mastering the skills they need to be successful in practice. This will also help us to keep abreast of changes that arise in the future and allow us to think flexibly about assessment, so we can more readily adapt to those changes.