Artificial Intelligence (AI) stands as a testament to human ingenuity, representing the pinnacle of our drive to create machines that can think. At its essence, AI is a branch of computer science dedicated to designing systems capable of mimicking human intelligence, deciphering patterns, understanding language, and making complex decisions. By exploring the nuances, challenges, and potential solutions, we can ensure that AI is effectively integrated into legal education while preserving the core values of the legal profession.

A significant advancement within AI is the emergence of Generative Artificial Intelligence (GAI). Unlike traditional models that simply process and analyze data, GAI can draft texts, design images, and even compose music. For law students, the applications of GAI are profound. This is a tool that not only aids in researching vast databases of texts but can also generate draft arguments or synthesize law summaries. Such capabilities can provide invaluable assistance, especially when grappling with complex legal principles or contemplating intricate arguments.

Within the venerable confines of law schools, the introduction of GAI also sparks a debate. While its potential to revolutionize legal research and drafting is undeniable, how do schools ensure that students maintain the rigorous analytical skills that are the cornerstone of legal education? As we stand at the start of this new era, institutions face the challenge of integrating this potent tool while preserving the sanctity and rigor of the legal profession.

Benefits of GAI in Legal Education

Generative AI presents law students with a dynamic toolkit that revolutionizes traditional approaches to legal education.[i] By helping generate novel approaches, amalgamating extensive case summaries, and offering potentially unique insights based on historical information, it can act as a catalyst for enhanced research, improved drafting precision, providing additional accessibility, helping non-native speakers, and refining strategic thinking. This advanced form of AI not only streamlines the exhaustive process of legal research but also provides students with a broader perspective, making legal principles more accessible and fostering a deeper understanding of intricate legal contexts. In essence, generative AI stands as a powerful ally, sounding board, and assistant, for elevating the capabilities of law students and preparing them for a tech-augmented legal landscape.

Challenges and Concerns

A considerable underlying problem with AI is the inherent bias built into them. All systems are only as good as their input data. With GAI, the responses similarly are only as good as, and heavily influenced by, the clarity and detailed nature of the input prompts. Anywhere along the line where bias is present, it will be multiplied only in its impact. Another concern is academic integrity and plagiarism, particularly in educational tasks and course-related
submissions. For law students, professors, and law schools, ensuring original authorship of final products is foundational to fairness and ethics. This is true not only because of the nature of law school and the competitive advantage unauthorized use of these tools would create but also because ensuring ethical and honest behavior is part of the lawyering educational process. While GAI tools are excellent tools to support student work, they cannot replace original responses.

Perhaps one of the biggest challenges to this new technology moving forward is the risk of overreliance. When regular use becomes prevalent, it can create challenges to critical thinking as it stands in the role of the legal thought process students need to experience. Law school in particular is perhaps less about the final disposition of an answer to a prompt, as it is about how the student gets there. The journey of learning how to attack issues and consider solutions not readily apparent may be seriously harmed. Some uses of AI may pose a greater risk of harm than others, and so the appetite for misuse should be taken into consideration when attempting to classify permissive use.

**Detecting Usage**

There is a growing list of AI-detecting software entering the market.[ii] These are intended to compare the submitted work against a database of generated responses. The thing is, these programs are far from perfect, and cannot be relied on as a sole detection method.[iii] Some things can be identified, but as technology advances, there is no way to be confident that even these methods will hold as effective.[iv] Some alternative approaches professors should consider include reviewing the unique writing styles of students. With time and exposure to multiple submissions, most students have a tone and unique voice that can be used as a reference. Another approach is to look for simplified and repetitive patterns. Repeating phrases or phrasing that appear in response to a prompt can be telltale signs of generative assistance (or maybe just a tired student repeating themselves). Lastly, following up with the student and asking questions and details about the process they used, and the contents of the submission, may also act to provide better insight.[v]

The race between the advancement of AI and the tools designed to detect its outputs is a lopsided one. Generative AI, with its rapid evolution and increasing sophistication, is outpacing the development of reliable detection software. While there are ongoing efforts to create systems that can identify content generated by AI, the current detection mechanisms often fall short, struggling to consistently discern between strictly human-generated and AI-assisted content. In the end, relying on flawed and unreliable software, that is in a constant arms race with the GAI itself, to identify GAI use, is not a plausible long-term solution.

**Drafting Policies**

To balance the competing demands of innovation and integrity, law school policymakers must adopt dynamic policies that are adaptable to the ever-changing landscape. This is of course,
easier said than done and committees assigned to this task should be a stable fixture moving forward in the yearly planning process. Concerns that are relevant today can be overcome with thoughtful and forward-thinking policies, but that doesn’t guarantee that they will be sufficient for the next leap, or the one after that. Three main areas that have to be considered and incorporated into any institutional policy dealing with artificial intelligence in legal education, are adaptability, distinguishing use type, and ensuring clarity.

**Importance of Adaptability**

The rapid pace of AI evolution is one of the biggest challenges facing policymakers who are trying to regulate its use by students. New tools and applications are constantly being developed, and it can be nearly impossible to keep track of, let alone anticipate the impact of, regular developments. This creates an environment where it is difficult to create policies that are simultaneously specific enough to address the perceived risks inherent in particular applications while remaining sufficiently generalized to apply to the widest pool of similar and derivative technologies.

To address this challenge, policies should be flexible enough to accommodate new technologies as they emerge and have built-in quick review and adjustment regularly. This will allow for tweaks as appropriate and in response to unanticipated impacts or new conditions and uses. For example, a policy that permits the use of large language models to generate draft responses for students’ initial use in formulating ideas may be appropriate today. However, it may need to become impermissible in the future if technologies become so sophisticated and capable of generating passing responses that they become indistinguishable from entirely self-generated work. In this situation, the policy would need to be updated to reflect the new realities. Adjusting where initial work is completed, such that access to technologies is ineffective, like in class, under timed conditions, and without previous access to prompts, may be necessary to combat this specific concern. That type of draconian approach though, has considerable drawbacks.

**Permissible and Impermissible Use**

Another challenge facing policy drafters in law schools is the very real need to distinguish between permissible versus impermissible use. To argue that no use of external support is permitted ever is not realistic. Not only is it simply unenforceable, but this approach also misses the point of ensuring students graduate practice-ready. Undoubtedly, they will need to integrate these same technologies as practicing attorneys. Many applications, such as spell-check and grammar check, are considered early versions of AI.[vi] It would be hard to find faculty arguing anything other than their use being not only permissible but strongly advised, if not required. However, other technologies, such as GAI that can create passing, albeit not well-performing, student-submitted work, when not properly credited and disclosed, may be considered impermissible.
There must be careful consideration of the risk/benefit of different uses and execution of tool integration before determining whether they are permissible or not. In many instances, it will be necessary to develop policies that limit or prohibit the use of named and individually identified applications, such as ChatGPT, or Bard. However, there is a real risk of being so limiting and even more so of confusion in intent for future applications. Generally, a better approach would be to create and deploy generalized policies that require AI use to be both disclosed and done responsibly and ethically. This then allows institutions to define those terms as appropriate with changes in faculty, student use, and even direction of growth in the field of AI.

**Ensuring Clarity and Transparency**

It is important to ensure that policies related to changing technologies and applications as they impact legal education are concise, comprehensive, and surgical in terminology; all while being easy to understand. Admittedly, this is not easy, but effective and thoughtful integration of such policies will work to prevent potential loopholes or future misinterpretations that allow students, or even faculty, to act in a way that is not in the intent of the policies. Wherever possible, examples should be integrated into the language, while ensuring those are not seen as enumerative, exclusive, or limiting. Rather they should be incorporated and identified as being presented to provide clarity and insight.

Central to this initiative will be fostering open communication among all stakeholders, including students, faculty, and the administration. By promoting transparent dialogue, everyone is well-informed, expectations are defined, and the best outcomes are pursued. These collaborative efforts not only uphold academic integrity but also prepare students for a legal landscape that is increasingly intertwined with AI tools. While drafting these policies, it becomes evident that the integration of AI into legal education is a complex endeavor that requires careful consideration. Striking a balance between maintaining academic rigor and embracing technological advancements is paramount. Law school rules and procedures must keep pace with technological progress while upholding principles of integrity, fairness, and academic excellence. Policies need to be created collaboratively, and not simply dictated.

**Evolving Policies in Tandem with AI**

Generative AI can revolutionize legal education in ways that are still not yet fully understood. Some common, current, uses and impacts include automation of repetitive tasks, personalization of learning support and approaches, as well as providing students with access to cutting-edge research, writing support, and ideas.[vii] The uses and positive impact these technologies have on students only grow daily. When creating new policies, participating faculty members need to consider the potential positive benefits both to individual students and to the institution of learning as a whole. It is easy to want to ban any new technology for fear of its abuse and impact, but that comes at the expense of how it can also be quite helpful. There is a
role to play for both faculty and students. Urging transparency and communication will impact how receptive all parties are to new policies.

As the realm of AI continually evolves and reshapes the boundaries of what's possible, so too must the policies within law schools. Striking a balance between safeguarding academic integrity and promoting technological innovation is crucial. As GAI technologies progress and transform the educational landscape, it's imperative that our guidelines and standards in legal education not remain static. Instead, policies should be dynamic, evolving in tandem with AI's advancements, ensuring that we harness its potential responsibly and effectively for the future of legal academia and practice. A good example of what this process can yield, in terms of a policy, can be seen by reviewing the Policy on Use of Generative Artificial Intelligence, in the Student Conduct and Academic Integrity portion of the Appalachian School of Law Student Handbook.[viii]


[iii] Geoffrey A. Fowler, "Detecting AI may be impossible. That’s a big problem for teachers," Washington Post, June 2, 2023 (highlighting the challenges faced by educational software companies, such as Turnitin's difficulty in distinguishing between human-generated content and content aided by AI models like ChatGPT).


[vi] Ruth Brooks, "The Role of Natural Language Processing in AI," York Online, [https://online.york.ac.uk/the-role-of-natural-language-processing-in-ai/].

[vii] e.g. Write.Law (“Whether you’re a law student or senior attorney – Write.law’s online courses, coaching, and live workshops will give you the tools you need to transform your writing.”)