

Best Practices for Disclosure and Citation When Using Artificial Intelligence Tools

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This Article is intended to be a best practices guide for disclosing the use of artificial intelligence tools in legal writing. The Article focuses on using artificial intelligence tools that aid in drafting textual material, specifically in law review articles and law school courses. The Article's approach to disclosure and citation is intended to be a starting point for authors, institutions, and academic communities to tailor based on their own established norms and philosophies. Throughout the entire Article, the Author has used ChatGPT to provide examples of how artificial intelligence tools can be used in writing and how the output of artificial intelligence tools can be expressed in text, including examples of how that use and text should be disclosed and cited. The Article will also include policies for professors to use in their classrooms and journals to use in their submission guidelines.

Keywords: artificial intelligence, writing assistants, artificial intelligence tools, artificial intelligence citation, artificial intelligence disclosure, ChatGPT

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INTRODUCTION

Artificial intelligence tools (“AI” and “AI Tool(s)”) ¹ are increasingly being used in various fields, including law, to improve research, enhance understanding of complex concepts, and assist in writing. ² In many (but not all) cases, the use of AI Tools can significantly improve efficiency and quality, so the use of these AI Tools should be encouraged across all disciplines. ³ At the same time, it is typically good practice to disclose or cite the use of these AI Tools to ensure transparency, accountability, and trust. ⁴

This Article intends to provide a framework for properly disclosing and citing the use of AI Tools when creating written content. The creation of written content includes a wide range of tasks such as generating new content, adding nuance to already existing content by offering language suggestions, suggesting grammar and

¹ “AI Tools” include a broad category of applications that use AI to assist or augment the writing process. AI Tool capabilities include content generation, language suggestions, paraphrasing, summarization, and style transfer, among others. Assisted by ChatGPT, OpenAI, Jan. 9, 2023 Version, author interacted on Jan. 11, 2023 (prompt: “Define the scope of ‘AI Tools’ for writing.”). Various AI Tools exist in the market, but some popular AI Tools used in writing are Grammarly, Jasper, Bing AI, NotionAI, and ChatGPT. For examples of specific use cases of these kinds of AI Tools, including various prompt ideas, see Mark L. Shope, *The AI Writing Assistant Handbook for Law* (Mar. 13, 2023) (unpublished manuscript), <https://ssrn.com/abstract=4364693>.

² Assisted by ChatGPT, OpenAI, Jan. 9, 2023 Version, author interacted on Jan. 11, 2023 (prompt: “Define the scope of ‘AI Tools’ for writing.”). For a short discussion on ChatGPT and its use in law, see Paul Riermaier, *ChatGPT and the Law: ChatGPT and Other AI Technologies in the Study and Practice of Law*, UNIV. PA. CAREY L. SCH. (Feb. 6, 2023), <https://www.law.upenn.edu/live/news/15538-chatgpt-and-the-law> [<https://perma.cc/GA49-CW5U>] (“ChatGPT is a type of artificial intelligence called a language model. It is trained on a large dataset of text, such as books and articles, to understand and generate human language. When given a prompt, it uses patterns it has learned from the training data to generate a response.”).

³ Assisted by ChatGPT, OpenAI, Jan. 9, 2023 Version, author interacted on Jan. 11, 2023 (prompt: “Define the scope of ‘AI Tools’ for writing.”).

⁴ Assisted by ChatGPT, OpenAI, Dec. 15, 2022 Version, author interacted on Jan. 8, 2023 (prompt: “Describe why the use of artificial intelligence tools requires disclosure or citation.”).

style improvements, providing alternative ways of phrasing based on a desired tone, and so on.⁵ These AI Tools are often referred to as “writing assistants” due to the aid they provide in the writing process.⁶ The Author acknowledges that there are different perspectives on the use of AI-generated text in various fields, and thus the suggested approaches in this Article include a large degree of flexibility.⁷ The Author has used ChatGPT throughout the entire Article to provide examples of how AI Tools can be used in writing and how the output of AI Tools can be expressed in text, including examples of how that use and text should be disclosed and cited. The Article aims to provide guidance and best practices in using AI-generated text in academic writing.⁸ The Article also aims to further the discussion about the use

⁵ Assisted by ChatGPT, OpenAI, Jan. 9, 2023 Version, author interacted on Jan. 11, 2023 (prompt: “Define the scope of ‘AI Tools’ for writing.”); *see also* Ethan Mollick, *ChatGPT Is a Tipping Point for AI*, HARV. BUS. REV. (Dec. 14, 2022), <https://hbr.org/2022/12/chatgpt-is-a-tipping-point-for-ai> [<https://perma.cc/WT7C-FQEG>] (“Overall, the use of AI in writing will greatly benefit businesses by allowing them to produce more written materials in less time.”).

⁶ *See, e.g.*, Shane Barker, *AI Writing Assistants: Are They Worth Using In 2022?*, FORBES: LEADERSHIP (June 24, 2022), <https://www.forbes.com/sites/forbescoachescouncil/2022/06/24/ai-writing-assistants-are-they-worth-using-in-2022/> [<https://perma.cc/J784-ZNJK>] (discussing what AI writing assistants are and what they are capable of doing).

⁷ *See generally* Laura Illia, Elanor Colleoni & Stelios Zyglidopoulos, *Ethical Implications of Text Generation in the Age of Artificial Intelligence*, 32 BUS. ETHICS, ENV'T & RESP. 201 (2023) (discussing the ethical implications of AI-generated text).

⁸ This entire paragraph was rewritten by ChatGPT, with copy editing, additions, and reversions by the Author. This kind of language suggestion and paraphrasing would typically not require citation. The general disclosure at the beginning of an article would typically be sufficient to cover this kind of use of an AI Tool. The ChatGPT output was a result of two separate but similar prompts, highlighting the iterative process of utilizing ChatGPT to obtain a range of desired suggestions. The most recent prompt offered to ChatGPT was “[a]dd detail to this text: This article aims to provide a general framework for disclosure and citation when utilizing AI Tools that assist in drafting textual material. ‘Drafting material’ in this sense can mean content generation, suggesting language, suggesting grammar and style changes, suggesting ways of paraphrasing, etc. Sometimes generally referred to as a ‘writing assistant.’ The Author recognizes that philosophies regarding the treatment of AI-generated text vary across disciplines. Flexibility related to the approach to this topic is inherent in the approaches taken in this article. Throughout

of AI Tools in academic writing. Writing this Article has been a process of learning and discovery that the Author hopes to share with the legal academic community.

Indeed, not all situations require disclosure or citation.⁹ For example, when prompted to describe why the use of AI Tools does not require disclosure or citation, ChatGPT responded:

[I]f the use of AI tools is not relevant to the results or conclusions of the work in question, it may not be necessary to disclose or cite the use of these tools. In such cases, the focus of the work should be on the results and conclusions, rather than the tools used to produce them. Additionally, if the use of AI tools is common practice in a particular field and is not considered to be a significant contribution, it may not be necessary to disclose or cite the use of these tools. However, this will depend on the specific circumstances and the norms of the field in question.¹⁰

the article, the author will attempt to use the various ways AI Tools can be used and expressed in text.”

⁹ There may be settings where the general disclosure and citation of AI Tools may not be necessary (such as in contract drafting, patent applications, brief writing, judicial opinions, grant writing, emails, marketing material, etc.). This Article does not address those situations specifically, but these guidelines can be used to inform the approach to those settings. For a discussion of ideas surrounding attribution, see the iconic article: Brian L. Frye, *Plagiarize This Paper*, 60 IDEA: INTELL. PROP. L.R. 294, 297 (2020) (“Attributing ideas should be voluntary, not mandatory. Academics should provide citations because they are helpful to readers, not because they are an obligatory form of obeisance. We should encourage people to attribute ideas whenever helpful and appropriate, but we should refuse to recognize the self-interested and unreasonable claims of those who seek to enforce plagiarism norms for their own sake and in their own interests.”).

¹⁰ Created by ChatGPT, OpenAI, Dec. 15, 2022 Version, author interacted on Jan. 8, 2023 (prompt: “Describe why the use of artificial intelligence tools does not require disclosure or citation.”).

Authors, institutions, and academic communities are therefore advised to develop and define policies for author disclosure, citation, or both based on their own established norms and philosophies.¹¹

The Author is not suggesting that failing to disclose or cite to the use of an AI Tool according to the conventions offered in this Article amounts to any kind of academic dishonesty. Discussions of plagiarism, “AIgiarism,” whether an AI Tool can be a co-author, and whether outputs from AI Tools are considered “ideas” that are worthy of attribution are important but are beyond the scope of this Article.¹² The Author encourages readers to be bold in their use of AI Tools in their studies, professional practice, and writing because these AI Tools will undoubtedly continue to transform the legal field in profound ways.¹³

The Article will proceed with specific suggestions of citation and disclosure when utilizing AI Tools, starting with general disclosure then moving to more specific footnote citations. The Article will then proceed with a discussion of

¹¹ These policies relating to AI Tools should live among all other policies, such as those relating to authorship, research integrity, open access, duplicate publications, translations, competing interests, experimental animals and human participants, etc. *See, e.g.*, Submission Guidelines, NATURE PORTFOLIO, <https://www.nature.com/srep/author-instructions/submission-guidelines> [<https://perma.cc/9NZJ-2S6Y>] (listing publication policies for authors).

¹² Margaret A. Boden, *Creativity and Artificial Intelligence*, 103 A.I. 347, 347 (1998) (discussing how AI can “create new ideas . . . by producing novel combinations of familiar ideas; by exploring the potential of conceptual spaces; and by making transformations that enable the generation of previously impossible ideas”). In the law, there are many conversations relating to this in the patent field. *See, e.g.*, *Thaler v. Vidal*, 43 F.4th 1207, 1209 (Fed. Cir. 2022) (rejecting patent application with AI named as inventor).

¹³ *See* Gonzalo (Sal) Torres, *Leveling the Playing Field: Legal Technology Requires Retooling Legal Skill Sets to Stay in the Game*, U.S.F. L. REV. F. (May 6, 2022), <https://usfblogs.usfca.edu/lawreview/2022/05/06/leveling-the-playing-field-legal-technology-requires-retooling-legal-skill-sets-to-stay-in-the-game/> [<https://perma.cc/D7VK-M8KE>].

policies that law reviews and other scholarly journals can use to craft their own approaches to the use of AI Tools. The Article will conclude with examples of policies that professors can use to address the use of AI Tools in their classrooms.

I. CITATION AND DISCLOSURE

This section will discuss citation and disclosure in two senses: (1) general disclosure and (2) specific footnote citations (which includes classifications, introductory signals, prompts, short forms, and subsequent citations). In general, when using an AI Tool in your writing, it is a best practice to insert a disclosure at the beginning of the writing. No further citation is necessary in subsequent footnotes, unless the author finds it necessary for transparency, accountability, and trust, or the author finds it necessary based on frequency of use, quantity of use, clarity, or highlighting the text as a focal point for analysis.¹⁴ The text generated by an AI Tool does not require utilizing quotation marks unless the purpose is to highlight or bring attention to that text as coming from a particular AI Tool. For example, if you are using an algorithmic grammar and style tool and that tool suggests that you rearrange a sentence such that it is written in a more appropriate voice, you typically do not need to quote the rearranged or new language.¹⁵ The

¹⁴ These, and other factors, should be considered as a whole when deciding whether to cite in subsequent footnotes. There are no bright lines in this domain, and the Author does not take a position as to what percentage of use or wordcount is necessary to implicate these disclosure and citation guidelines.

¹⁵ A general disclosure at the beginning of the article would be advisable for these types of interactions. In addition, there may be exceptions to this approach based on a professor's policy in a classroom setting. For example, the professor may require detailed citations when using AI Tools in all situations.

same would be true for a response that an AI Tool makes given a particular prompt. For example, a previous paragraph in this Article was rewritten with the assistance of an AI Tool.¹⁶ In this situation, you would most likely not need to quote the outputted language or even need to cite to the AI Tool that you used. On the other hand, if you need to highlight how ChatGPT suggested certain language based on a given prompt, then the use of quotations would be appropriate.¹⁷ If you use an AI Tool to summarize an article, case, or other material, it is generally not necessary to cite the use of the AI Tool, and the general disclosure at the beginning of the article will be sufficient. If an author does choose to disclose or cite the use of an AI Tool, the author should use the appropriate citation format illustrated below.

A. GENERAL DISCLOSURE

The following is an example of a general disclosure that can be placed in the author biographical information section, typically in the first footnote of the

¹⁶ See *supra* note 8 and accompanying text.

¹⁷ For an example of this use, see Eran Kahana, *Generative AI: Its Impact on AI Legal Advice and AI Computational Law Apps*, STAN. L. SCH. BLOGS (Jan. 10, 2023), <https://law.stanford.edu/2023/01/10/generative-ai-its-impact-on-ai-legal-advice-and-ai-computational-law-apps/> [<https://perma.cc/P2UD-JN7Z>] (“As I set out to write this post, I decided to run the following query through ChatGPT: ‘Can you provide legal advice?’ It responded with: ‘AI can be used to assist with legal research and document analysis, but it is not currently capable of providing legal advice on its own. Providing legal advice requires a deep understanding of the law and its application to specific situations, as well as the ability to evaluate the risks and potential outcomes of different courses of action. This is a complex task that requires knowledge and judgment that can only be provided by a trained and licensed legal professional. AI can be used to assist with tasks such as searching through legal documents and identifying relevant cases, but it cannot replace the expertise and judgment of a human lawyer. In the future, it is possible that AI may be able to assist with more complex tasks, such as predicting the outcomes of legal cases, but it is unlikely that AI will be able to fully replace human lawyers in the near future.’”).

article.¹⁸ This information could also be placed in the acknowledgments section or the author contributions statement.

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You may also specify the kind of AI Tool you used in general without naming the AI Tool. For example, if you use a commercial tool that utilizes algorithms to make grammar and style suggestions, you may disclose as follows:

*Associate Professor of Law, National Yang Ming Chiao Tung University School of Law (markshope@nycu.edu.tw). The author utilized the helpful suggestions of an algorithmic editing tool that makes grammar and style suggestions while drafting this article.

Finally, you may find it helpful to clarify that you did not use any AI Tools in an article. For example:

*Associate Professor of Law, National Yang Ming Chiao Tung University School of Law (markshope@nycu.edu.tw). The author did not use any artificial intelligence tools to create or assist in the creation of any of the content in this article.

¹⁸ Jonathan I. Tietz & W. Nicholson Price II, *Acknowledgments As a Window Into Legal Academia*, 98 WASH. U. L. REV. 307, 319 (2020) (“The [biographical] footnote does three things. First, it identifies the author: their title, institutional affiliation, background, and the like. Second, it identifies the author’s network: acknowledgments of people the author believes helped with the paper or wants to thank for some reason. And third, it provides a space for any upfront notes or caveats about the paper or its ideas.”).

B. FOOTNOTE CITATIONS

Again, the use of a general disclosure at the beginning of the article is recommended when utilizing an AI Tool in your writing. With certain exceptions, no further citation to the use of an AI Tool is necessary in subsequent footnotes. If an author finds it necessary to add footnote citations when utilizing the output of an AI Tool, the following conventions should be followed. Authors, institutions, and academic communities should tailor their approach based on their own established norms and philosophies.

II. Citation Manual Classification

In general, AI Tools used for drafting text should be considered unpublished material (or not formally published material), similar to unpublished material under Rule 17.2 “Unpublished Materials” in *The Bluebook: A Uniform System of Citation*.¹⁹ There could be several arguments for this proposition, but for purposes of citation, the AI Tool is considered an intermediary step in the author’s creative process, rather than the final product.²⁰ Interactions with AI Tools could be considered a kind of unpublished interview with a non-human that assists the author and stimulates the author’s creative process.²¹ Although this material is used to

¹⁹ THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. 17.2, at 169–172 (Columbia L. Rev. Ass’n et al. eds., 21st ed. 2020).

²⁰ Assisted by ChatGPT, OpenAI, Dec. 15, 2022 Version, author interacted on Jan. 7, 2023 (prompt: “Provide general support for the following proposition: AI Tools used for drafting text should be considered an intermediate step in the drafting process.”).

²¹ See Nantheera Anantrasirichai & David Bull, *Artificial Intelligence in the Creative Industries: A Review*, 55 A.I. REV. 589, 639 (July 2, 2022), <https://link.springer.com/article/10.1007/s10462-021-10039-7> [<https://perma.cc/7UDF-ZR9H>]

assist the author in the author's process of writing, it is not itself considered published (or even publishable) material.²² Furthermore, during the writing process, the interactions with AI Tools are iterative and usually include copy editing, reversions, and additions by the author; it is through this interaction and creative process that the text becomes the author's and features the author's conclusions.²³ Therefore, the general rule should be to cite the material as if it is unpublished. This status as unpublished material is only a suggested status. Authors, institutions, and academic communities should develop their own philosophies towards the status of AI Tools.²⁴ Manuals such as the Bluebook could, for example, sidestep taking a position on the status of AI Tools at all by creating a new rule altogether. A separate section in citation manuals addressing AI Tools will likely be a better way to approach this issue.

When disclosing or citing an AI Tool, authors should include, as much as possible, the following:

(providing a review of AI technologies and their application in creative industries and noting that “for creative applications, technological developments will, for some time yet, remain human-centric—designed to augment, rather than replace, human creativity”).

²² Assisted by ChatGPT, OpenAI, Dec. 15, 2022 Version, author interacted on Jan. 7, 2023 (prompt: “Provide general support for the following proposition: AI Tools used for drafting text should be considered an intermediate step in the drafting process.”).

²³ This iterative cycle of interacting with ChatGPT (interaction, copy editing, reversion, addition, interaction) was definitely part of the creation process experienced by the Author in the current Article. The Author has also discovered that ChatGPT is good at generating content to further the Author's inspiration, but the Author often finds the output of an AI Tool incomplete or disagrees altogether with the output. This, however, can also be valuable for the creative process.

²⁴ The Author reserves the right to change the Author's view about the status of AI Tools for citation purposes. As technologies progress, so do the Author's ideas surrounding these technologies.

[Introductory signal] the name of the tool, its creator, its version or build number, and the name or title of the human who interacted with the tool followed by the date of the interaction.

This would look like the following:

Assisted by ChatGPT, OpenAI, Dec. 15, 2022 Version, author interacted on Jan. 8, 2023.

III. Introductory Signals

The citation should include one of two introductory signals that indicate the extent to which the AI Tool was used: “Assisted by” or “Created by.”²⁵ Introductory signals used to indicate the use of AI Tools should be in regular text (compared to italics) in order to distinguish them from supportive, comparative, contradictory, or background introductory signals.²⁶

The use of the introductory signal “Assisted by” indicates that the text has undergone some amount of paraphrasing by the author, contains copy editing, and may still contain some significant word-for-word usage of the AI Tool.

The use of the introductory signal “Created by” indicates that the text was word-for-word what the AI Tool outputted, with no further paraphrasing or copy editing. Changes or deletions to the text should generally be indicated with brackets and ellipses.

²⁵ The approach to using an introductory signal is inspired by Rule 1.2 of the Bluebook. The Author suggests that the editors of citation manuals add a new section called “Signals for the Use of Artificial Intelligence Tools” to address these new introductory signals for the use of AI Tools.

²⁶ See THE BLUEBOOK, *supra* note 19, R. 1.2, at 62–64 (noting that introductory signals for supportive, comparative, contradictory, and background material are in italics); *Id.*, R. 2.1(d), at 69–70 (noting that introductory signals introducing citation sentences or clauses are in italics).

Introductory signals (including no signal) that indicate support, comparison, contradiction, or background material should typically be avoided. Indeed, directly citing to an AI Tool to support an assertion should typically be avoided. For example, support for the assertion “*Marbury v. Madison* was decided in 1803” would not be followed by a footnote citation to ChatGPT, even though ChatGPT would likely output the correct answer.²⁷

IV. User Prompts

A “prompt” in this sense refers to user instructions given to the specific AI Tool which elicits a detailed response.²⁸ You may quote the specific prompt or prompts presented to the AI Tool in a parenthetical at the end of the citation. When the input prompt is provided to readers, this will better help readers understand the context of the output. For example:

Assisted by ChatGPT, OpenAI, Dec. 15, 2022 Version, author interacted on Jan. 8, 2023 (prompt: “Draft a policy prohibiting the use of an artificial intelligence tool to directly create or assist in the creation of any material in class assignments.”).

In most circumstances, you do not need to keep an archive of the AI Tool interaction including any original language in your own files. You may find it prudent to keep an archive of the AI Tool interaction and any original language if you need a record

²⁷ The output was, “*Marbury v. Madison* was decided on February 24, 1803 by the Supreme Court of the United States.” Created by ChatGPT, OpenAI, Dec. 15, 2022 Version, author interacted on Jan. 10, 2023 (prompt: “When was marbury v madison decided?”).

²⁸ The crafting of effective prompts for AI Tools and the prompt/response collaboration between the user and the AI Tool is a developing artform in itself and beyond the scope of this Article.

of the exact results for research or other purposes where providing this language is necessary.²⁹

If the prompt provided to a particular AI Tool is too long, authors may summarize the prompt. For example, the prompt parenthetical may state, “prompted with question six from the July 2017 MEE, available on the NCBE website at <https://www.ncbex.org/exams/mee/preparing/>.”³⁰

It is preferable to refer to an AI Tool’s output as its “output” or “response,” rather than any other designation such as idea, opinion, assertion, viewpoint, or belief, as these designations could infer sentience, consciousness, or other “human” elements that may be distracting to some readers. The suggested focus should be on linguistic neutrality when describing AI Tool output, unless use of this specific language is necessary or desirable.

V. Short Form

The use of “*id.*” can be used when referring to a citation in a previous footnote, only when the interaction with the AI Tool is exactly the same. If there is any variation in the interaction (such as the date of interaction, the extent of interaction,

²⁹ The particular AI Tool’s policies should be consulted to understand the policy on archiving interactions. It is the Author’s experience that ChatGPT will respond with different (although similar) answers based on the exact same prompts that are entered in different sessions. For example, the Author entered the exact same prompt on different days and received different outputs. Therefore, it should be expected that other scholars will not obtain the same output based on a word-for-word prompt.

³⁰ Authors may also explain that there were multiple prompts or regenerated responses, highlighting the iterative nature of the AI Tool interaction.

etc.) or the previous footnote includes other sources, the full citation should be used. Other short forms, including the use of *supra*, should be avoided.

VI. Subsequent Citations

When citing an authority that has itself chosen to cite or disclose the use of an AI Tool, a “quoting” or “citing” parenthetical is not necessary.³¹ The idea is that the cited author has given the language legitimacy, authority, and reliability through the author’s use (and not the AI Tool). Thus, no extra level of recursion is necessary. If, however, the basis for the citation is to highlight that the other author used an AI Tool, a citation in this situation may be advisable and could look like this (to the extent the information is known):

[standard citation to source material], created by ChatGPT, OpenAI, Dec. 15, 2022 Version, [author name] interacted on Jan. 8, 2023 (prompt: “Describe why the use of artificial intelligence tools does not require disclosure or citation.”).

II. LAW REVIEW POLICY REGARDING THE USE OF ARTIFICIAL INTELLIGENCE TOOLS

Law reviews and other scholarly journals should recognize that the use of AI Tools in scholarly writing will only become more prevalent. Given this rapidly evolving landscape, law reviews should craft policies directed at the use of AI Tools that align with their journals’ philosophies. Law reviews should have wide latitude

³¹ Contrast this approach to using parentheticals (including “quoting” or “citing” designation) in rule 1.5 of the Bluebook. *See* THE BLUEBOOK, *supra* note 19, R. 1.5, at 65–66. The Author suggests that the editors of citation manuals add a new section called “Parentheticals for the Use of Artificial Intelligence Tools” to address the issue of parentheticals and subsequent citations with regard to material from AI Tools.

when crafting policies towards authors utilizing AI Tools that take into account the law review's mission, philosophies, history, and future direction.³²

Sample Policy³³

In order to ensure transparency, accountability, and trust between authors, the editors of [Law Review], and [Law Review's] readers, the [Law Review] has drafted this policy regarding the use of artificial intelligence tools (the "Policy"). This Policy is intended to aid authors who choose to interact with artificial intelligence tools in their writing process ("AI Tools") to properly document those interactions.

Definition of AI Tools: "AI Tools" include a broad category of applications that use artificial intelligence to assist or augment the writing process. Applications include content generation, language suggestions, paraphrasing, summarization, and style transfer, among others.

Disclosure of Interactions with AI Tools: Authors must disclose interaction information with AI Tools used in all submitted manuscripts. This information should be included with the author's biographical information and should include the name of the tool, its creator, its version or build number, and the dates of the interaction.

Citing Specific Interactions with AI Tools: Authors [must, should strive to] disclose specific interaction information with AI Tools used in all submitted manuscripts. This information should be cited as necessary throughout the article and include the name of the tool, its creator, its version or build number, the name or title of the human who interacted with the tool followed by the date of the interaction. An introductory signal "Assisted by" or "Created by" should be used. You may quote the specific prompt(s) given to the

³² For an example of such a policy, see *Clarification on Large Language Model Policy LLM*, INT'L CONF. ON MACH. LEARNING, <https://icml.cc/Conferences/2023/llm-policy> [<https://perma.cc/66W5-UVEG>] (last visited June 27, 2023).

³³ Assisted by ChatGPT, OpenAI, Jan. 9, 2023 Version, author interacted on Jan. 11–12, 2023 (prompts: "Draft a policy for scholarly journals directed at the use of AI Tools." and "Define the scope of 'AI Tools' for writing."). This policy was suggested by two different prompts presented to ChatGPT, with significant copy editing and further additions by the Author.

AI Tool in a parenthetical at the end of the citation. [For more information regarding disclosure and citation of AI Tools, authors should consult the article “Best Practices for Disclosure and Citation When Using Artificial Intelligence Tools” by Mark L. Shope.]

III. COURSE POLICY REGARDING THE USE OF ARTIFICIAL INTELLIGENCE TOOLS

AI Tools are, and should be, used by law school students in a variety of settings.³⁴ Based on the specific course and the professor’s pedagogical goals, the use of AI Tools may be used (indeed, required), banned, or restricted. In law school classes, AI Tools could be used in a number of settings, including summarizing cases,³⁵ assisting in drafting a wide variety of material in a variety of different contexts, drafting³⁶ or evaluating³⁷ answers, creating study material,³⁸ and drafting

³⁴ The assumption is that learning will improve if AI Tools are used in a pedagogically sound way. Furthermore, use of these kind of AI Tools could foster a better overall understanding of the legal and social impacts of AI Tools as a whole, informing a student’s career beyond law school.

³⁵ As an experiment, the Author presented the prompt “Summarize the case *Marbury v. Madison*.” to ChatGPT. ChatGPT, OpenAI, Jan. 9, 2023 Version, author interacted on Jan. 13, 2023. The output (which is omitted from this Article) appeared to be a compelling summary of *Marbury v. Madison*. ChatGPT’s response was not checked for accuracy but should be if users are going to rely on the output.

³⁶ As an experiment, the Author prompted ChatGPT with Question Six from the July 2022 Multistate Essay Examination (“MEE”), available at <https://www.nybarexam.org/examquestions/JULY22QA.pdf> [<https://perma.cc/33CM-J3WM>] (last visited June 27, 2023). ChatGPT, OpenAI, Jan. 9, 2023 Version, author interacted on Jan. 17, 2023. The output (which is omitted from this Article) appeared to be a compelling response to this question. ChatGPT’s response was not checked for accuracy but should be if users are going to rely on the output.

³⁷ As an experiment, the Author prompted ChatGPT to critique an example answer to Question One from the July 2022 MEE, available at <https://www.nybarexam.org/examquestions/JULY22QA.pdf> [<https://perma.cc/33CM-J3WM>] (last visited June 27, 2023). ChatGPT, OpenAI, Jan. 9, 2023 Version, author interacted on Jan. 17, 2023. The output (which is omitted from this Article) appeared to be a compelling critique to this example answer. ChatGPT’s response was not checked for accuracy but should be if users are going to rely on the output.

³⁸ As an experiment, the Author presented the prompt “Give me the main points I need to know for federal question jurisdiction.” to ChatGPT. ChatGPT, OpenAI, Jan. 9, 2023 Version, author interacted on Jan. 13, 2023. The output (which is omitted from this Article) appeared to be a compelling outline of the main points to federal question jurisdiction. ChatGPT’s response was not checked for accuracy but should be if users are going to rely on the output.

questions;³⁹ and the list continually evolves.⁴⁰ Thoughtful and transparent approaches to the use of AI Tools in the classroom both by students and teachers should be encouraged to advance both teaching and learning. Below are examples of policies that professors can tailor for their specific classes.

A. PERMISSIVE USE

Professors may choose to allow the unfettered use of AI Tools in their classroom. In this situation, professors should understand that ChatGPT is a powerful AI Tool, and its use should be taken into consideration when evaluating expected outcomes. For example, some AI Tools are incredibly good at taking multiple-choice exams.⁴¹ If professors continue to use an online open book approach (including approving the use of ChatGPT by students), those professors

³⁹ As an experiment, the Author presented the prompt “Write a multiple choice question relating to UCC § 2-207. Additional Terms in Acceptance or Confirmation.” to ChatGPT. ChatGPT, OpenAI, Jan. 9, 2023 Version, author interacted on Jan. 13, 2023. The output (which is omitted from this Article) appeared to be a compelling multiple-choice question about U.C.C. § 2-207. ChatGPT’s response was not checked for accuracy but should be if users are going to rely on the output.

⁴⁰ Users should exhibit caution when using AI Tools. ChatGPT has been known to be incorrect, even according to its creators. *See Introducing ChatGPT*, OPENAI (Nov. 30, 2022), <https://openai.com/blog/chatgpt/> [<https://perma.cc/6W4L-F9TV>] (“ChatGPT sometimes writes plausible-sounding but incorrect or nonsensical answers.”). Users may also find it helpful to make use of a similarity report tool when using AI Tools to generate content.

⁴¹ *See, e.g.*, Michael J Bommarito II & Daniel Martin Katz, *GPT Takes the Bar Exam* (Dec. 29, 2022) (unpublished manuscript at 1), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4314839 (noting that “[d]espite the fact that humans with seven years of post-secondary education and exam specific training only answer 68% of [the Multistate Bar Examination] questions correct, TEXT-DAVINCI-003 is able to achieve a correct rate of 50.3% for best prompt and parameters and achieved passing scores in the Evidence and Torts sections.”); Daniel Martin Katz, Michael James Bommarito, Shang Gao & Pablo David Arredondo, *GPT-4 Passes the Bar Exam* (Mar. 15, 2023) (unpublished manuscript), <https://ssrn.com/abstract=4389233> (“Graded across the UBE components . . . GPT-4 scores approximately 297 points, significantly in excess of the passing threshold for all UBE jurisdictions.”).

may need to adjust the type of questions used for their final exam. This may require rethinking the type of assessment, and whether continued use of an open book format in an online setting would be appropriate.⁴²

If using an AI Tool is allowed and a student chooses to utilize that AI Tool, then that student should cite or disclose its use according to the conventions in this Article.

Example Policy⁴³

Students are encouraged to utilize AI Tools to enhance their understanding of course material and to assist in the creation of assignments. By utilizing AI Tools in their coursework, students will have the opportunity to gain valuable experience and understanding of this rapidly evolving technology and to learn how this technology can enhance the work of lawyers.

“AI Tools” for purposes of this policy include a broad category of applications that use artificial intelligence to assist or augment the writing process. Applications include content generation, language suggestions, paraphrasing, summarization, and style transfer, among others.

Students are still expected to complete all assignments to the best of their ability. The use of AI Tools should not be used as a substitute for a good faith completion of assignments. Students should cite the

⁴² See Sam Illingworth, *ChatGPT: Students Could Use AI to Cheat, but It's a Chance to Rethink Assessment Altogether*, THE CONVERSATION (Jan. 19, 2023, 7:08 AM), <https://theconversation.com/chatgpt-students-could-use-ai-to-cheat-but-its-a-chance-to-rethink-assessment-altogether-198019> [<https://perma.cc/3KGC-LA6J>]; Elliot Markowitz, *Instructors Need to Rethink Student Assessment Methods*, FIERCE EDUC. (Oct. 29, 2020, 10:00 AM), <https://www.fierceeducation.com/pedagogy/instructors-need-to-rethink-student-assessment-methods> [<https://perma.cc/9GWJ-9R6K>].

⁴³ Assisted by ChatGPT, OpenAI, Dec. 15, 2022 Version, author interacted on Jan. 7 and 11, 2023 (prompts: “Draft a policy encouraging students to use an artificial intelligence tool to assist in class assignments.” and “Define the scope of ‘AI Tools’ for writing.”). This policy was suggested by two different prompts presented to ChatGPT, with significant copy editing and further additions by the Author.

use of all AI Tools used in any assignment. Citations should include the name of the tool, its creator, its version or build number, and the name or title of the human who interacted with the tool followed by the date of the interaction.

B. BANNED USE

Professors may choose to ban the use of AI Tools in their classroom for a variety of reasons, for example, if the professor has concerns over the accuracy of the output of a given AI Tool.⁴⁴

Example Policy⁴⁵

In order to promote academic cohesion and ensure that all students have an equal opportunity to succeed, the use of AI Tools to directly create or assist in the creation of any material in class assignments is strictly prohibited.

“AI Tools” for purposes of this policy include a broad category of applications that use artificial intelligence to assist or augment the writing process. Applications include content generation, language suggestions, paraphrasing, summarization, and style transfer, among others.

Students found to be using AI Tools to complete assignments or to generate any portion of the assignment will be subject to disciplinary action, including, but not limited to, failing the assignment, and/or failing the course.

⁴⁴ See Will Douglas Heaven, *Why Meta’s Latest Large Language Model Survived Only Three Days Online*, MIT TECH. REV. (Nov. 18, 2022), <https://www.technologyreview.com/2022/11/18/1063487/meta-large-language-model-ai-only-survived-three-days-gpt-3-science/> (“A fundamental problem with [Meta’s large language model, called Galactica] is that it is not able to distinguish truth from falsehood, a basic requirement for a language model designed to generate scientific text.”).

⁴⁵ Assisted by ChatGPT, OpenAI, Dec. 15, 2022 Version, author interacted on Jan. 7 and 11, 2023 (prompts: “Draft a policy prohibiting the use of an artificial intelligence tool to directly create or assist in the creation of any material in class assignments.” and “Define the scope of ‘AI Tools’ for writing.”). This policy was suggested by two different prompts presented to ChatGPT, with significant copy editing and further additions by the Author.

This policy applies to all course assignments, including, but not limited to, papers, reports, presentations, quizzes, and exams (“Class Assignments”). By submitting Class Assignments, students affirm that the work is their own and that they have not used any AI Tools to create or assist in the creation of the material.

C. RESTRICTED USE

Professors may choose to ban the use of some AI Tools but allow for others. For example, the professor may allow for a simple grammar and style tool such as Grammarly but ban all others. This approach recognizes that some AI Tools make pedagogical sense for a course but others may not.

Example Policy⁴⁶

By utilizing artificial intelligence tools in their coursework, students will have the opportunity to gain valuable experience and understanding of this rapidly evolving technology and to learn how this technology can enhance the work of lawyers. However, not all artificial intelligence tools align with the goals and pedagogical philosophies of this course. Therefore, not all artificial intelligence tools will be allowed in this course.

Students may only utilize the following type(s) of artificial intelligence tool(s) in this class: an algorithmic editing tool that makes grammar and style suggestions. For purposes of this policy, ChatGPT and similar technologies are not included as “an algorithmic editing tool that makes grammar and style suggestions.”

Students are still expected to complete all assignments to the best of their ability. The use of the artificial intelligence tools listed above should not be used as a substitute for a good faith completion of assignments.

⁴⁶ Assisted by ChatGPT, OpenAI, Dec. 15, 2022 Version, author interacted on Jan. 7, 2023 (prompt: “Draft a policy encouraging students to use an artificial intelligence tool to assist in class assignments.”). This policy was suggested by ChatGPT, with significant copy editing and further additions by the Author.

CONCLUSION

This Article has provided a best practices guide for disclosing the use of AI Tools in legal writing. The approach to disclosure and citation presented in this Article serves as a starting point for authors, institutions, and academic communities to tailor based on their own established norms and philosophies. The Article has provided examples of ways the output of AI Tools can be used and expressed in text, including examples of disclosure and citation. As the use of AI in legal writing becomes more prevalent, it is important to ensure that the use of AI Tools is transparent and that their output, if necessary, is properly attributed. By following the best practices outlined in this Article, authors and institutions can safeguard their legitimacy and further the goal of an ethical and responsible academic environment.⁴⁷

The Author would like to encourage readers once again to be bold in their use of AI Tools in any way they deem helpful to themselves and their community. The Author has discovered that through interacting with ChatGPT (interaction, followed by author copy editing, reversion, and addition, then repeating), the process of creation has taken a new and exciting turn. Even when the Author finds

⁴⁷ Assisted by ChatGPT, OpenAI, Jan. 9, 2023 Version, author interacted on Jan. 11, 2023 (prompt: “Draft a conclusion for an article with the following abstract: [this Article’s abstract omitted].”). With some copy editing and further additions by the Author, this entire paragraph was suggested by ChatGPT based on an earlier version of the Author’s abstract. Note that in general, introductions, abstracts, and conclusions do not need to be cited when using an AI Tool for assistance or creation.

the output of ChatGPT incomplete or disagrees altogether with the output, this process of reflecting on the output contributes to the creative process in valuable ways.