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*Inns of Court:  
Generative Artificial Intelligence and the  
Practice of Law*

John Frank Weaver | November 1, 2023

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# Overview

- What is Generative AI?
- Lawyers, Clients, and Generative AI
- Future of AI and the Law
- Access to Justice

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# *What is Artificial Intelligence?*

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# Artificial Intelligence: Technology that recreates some part of human intelligence and decision making

**Generative AI: A type of artificial intelligence that generates text, images, sound, video or other content in response to prompts.**

**Generative AI applications are trained on data and continue to learn from data that is given to them (*i.e.*, the prompts users provide).**

# Where Does the Data Come From?

- Internet / Project Gutenberg
- LLaMA (Large Language Model Meta AI)
  - 170,000 Books
  - 1/3 fiction, 2/3 non-fiction
  - 30,000+ titles from Penguin Random House
  - Authors include Stephen King, Margaret Atwood, Jonathan Franzen, and L. Ron Hubbard

# Generative AI Examples/Demonstrations

- ChatGPT
- Bard
- Dall-E

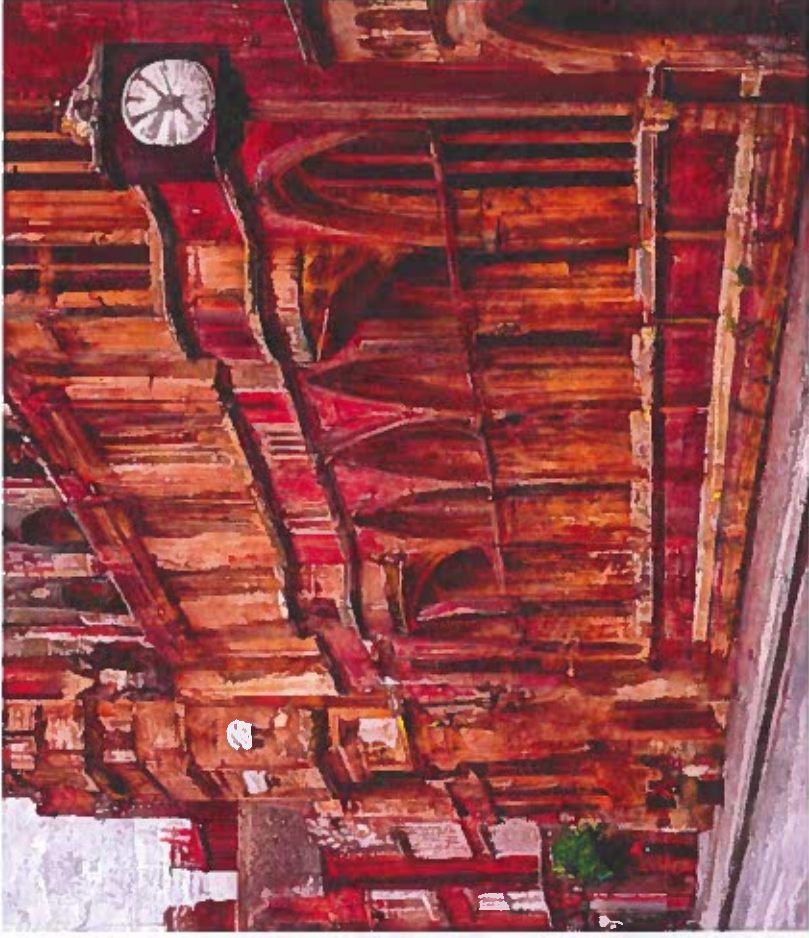




“new hampshire state capitol building painted in the style of picasso”



“new hampshire’s old man on the mountain painted in the style of Rembrandt”



“oil painting of inns of court”



# *Common Uses*

- Letters, emails, and other communications
- Research
- Articles and marketing materials



# *Letters, Emails and Other Communications*



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# *Letters, Emails and Other Communications*

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# *Letters, Emails and Other Communications*

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# Research



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# *Research*

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# *Research*

## **ChatGPT Falsely Identified....**

- **Mayor in Australia as having been convicted of corporate bribery**
- **Cartoonist in NYC as a plagiarist**
- **Law professor as having been accused of sexual misconduct**

# *Diligence*

## **The Sad Story of Steven A. Schwartz**



# *Articles and Marketing*



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# *Articles and Marketing*

**Prompt:** 100 words on the importance of consideration in a contract

**ChatGPT:**

Consideration is a fundamental aspect of a contract, serving as the cornerstone of mutual obligations and fairness between parties. It refers to something of value that each party provides in exchange for the promises made in the contract. Consideration ensures that there is a give-and-take relationship, preventing one-sided agreements and promoting a sense of balance. It signifies the intent of both parties to be bound by the terms of the contract and establishes legal enforceability. Without consideration, a contract lacks validity and may be deemed unenforceable. It promotes accountability, encourages negotiation, and ensures that both parties receive something of value, fostering trust and reliability in business transactions.

# Articles and Marketing

**Prompt:** 100 words on the importance of consideration in a contract

Bard:

Consideration is an essential element of a contract. It is what each party gives up in exchange for the other party's promises. Without consideration, a contract is not enforceable. There are two types of consideration: executory and executed. Executory consideration is a promise to do something in the future. Executed consideration is something that has already been done. Consideration does not have to be of equal value. It only needs to be something of value to each party. For example, if you agree to sell your car to me for \$1,000, the \$1,000 is the consideration that I give you, and the car is the consideration that you give me. Consideration is important because it ensures that both parties are getting something out of the contract. Without consideration, one party could simply make a promise and then not keep it. This would be unfair to the other party, who would have relied on the promise. If you are considering entering into a contract, it is important to make sure that there is consideration on both sides. This will help to ensure that the contract is enforceable and that both parties are protected.



# *AI Use Policy*

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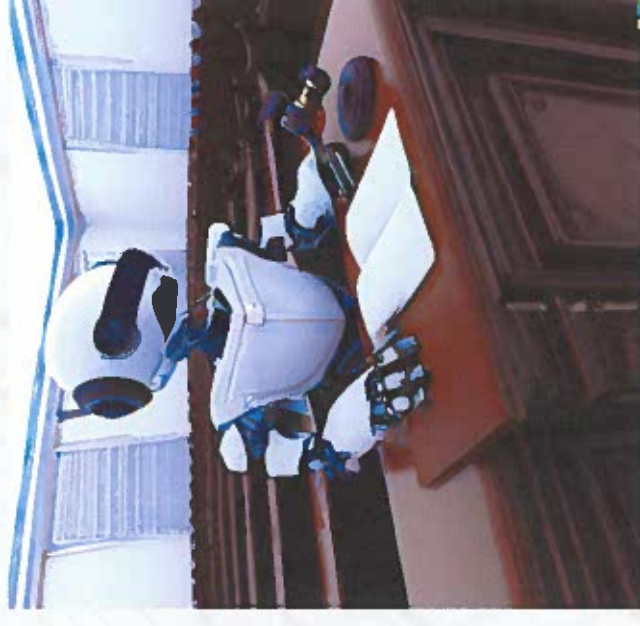
*The Future of AI and the Law*

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# *Future Uses of AI*

- Firm-Specific Generative AI
- External Generative AI for Lawyers



# *Practical Concerns and Planning for the Future*

- Intellectual Property
- Transparency
- Strategy, Policies, and Training
- Deepfakes

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*Access to Justice*

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# *Unauthorized Practice of Law*

## **DoNotPay**

- Founder Joshua Browder tried to organize a marketing stunt earlier: a pro se litigant would wear an ear piece in court and receive real-time advice from DoNotPay's AI application
- He has offered \$1 million to anyone willing to wear the ear piece and use its “robot lawyer” before the Supreme Court

# *Unauthorized Practice of Law...??*

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*Thank you!*

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John Weaver is the chair of McLane Middleton's Artificial Intelligence Practice Group and a nationally recognized voice in the field of artificial intelligence law. His practice includes conducting risk assessments of AI systems, advising clients concerning AI policies and best practices, and counseling clients regarding emerging legal and practical issues in AI. John also serves on the steering committee for the American Bar Association's Artificial Intelligence & Robotics National Institute. He is the author of *Robots Are People Too: How Siri, Google Car, and Artificial Intelligence Will Force Us to Change Our Laws*, a contributing writer at *Slate* focusing on legal issues implicated by AI and autonomous devices, and a member of the board of editors of *The Journal of Robotics, Artificial Intelligence & Law*.



# Is disclosure and certification of the use of generative AI really necessary?

BY MAURA R. GROSSMAN, PAUL W. GRIMM & DANIEL G. BROWN\*

**THE NEWS ABOUNDS WITH ARTICLES ON THE PROMISES — AND PERILS — OF GENERATIVE AI (GENAI) APPLICATIONS** like ChatGPT, which create text or other content based on patterns learned from their training input. Depending on the writer's perspective, the future appears to be either utopian or dystopian in nature. But, as is usually the case, the truth falls somewhere in between: GenAI is a tool that has both benefits and risks. And regardless of one's viewpoint, the genie is already out of the bottle. GenAI applications are in widespread use, and billions of dollars are being invested in further development of this technology. The legal profession is not immune from these developments. Lawyers are already using GenAI for research and drafting purposes, and vendors are incorporating GenAI into eDiscovery tools as well. Its uses will only continue to proliferate.

Increasingly, judges are issuing individual standing orders that require litigants to disclose their use of GenAI and to submit certifications about their efforts to verify the accuracy of factual representations and case authority cited when using GenAI. Judges unquestionably have the inherent authority to issue orders and

guidelines governing what parties can do in the cases pending before them, but little guidance has been offered on the use of GenAI in the justice system. While the impulse underlying the imposition of these standing orders is understandable — even commendable — real disadvantages can result. For example, some orders have been vague and ambiguous about the technologies they cover. Others have been overly broad — sweeping into their scope AI applications that do not produce final work product and that do not suffer from GenAI's propensity to "hallucinate" and generate erroneous output. Such orders can also infringe on attorney work product and may discourage the use of technology that might oth-

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While the impulse underlying the imposition of these standing orders is understandable — even commendable — real disadvantages can result.

erwise increase access to justice and reduce costs. And given the speed with which judges are issuing these orders, there has been a lack of consistency, which only adds to confusion and imposes additional burdens and costs on litigants who must — on pain of being sanctioned — make sure they know whether such an order governs and, if so, to adhere to it.

In this article, we outline what led to this judicial response, describe the various standing orders issued thus far, outline some of the concerns they raise, and discuss the technical issues and solutions currently available or on the horizon. Finally, we propose what we believe to be a better alternative: public notice and/or consistent, court-wide rules that are enacted following publication and public comment.

## The Shot Heard 'Round the World: The Botched GenAI Filing

Alarms went off on May 27, 2023, when *The New York Times* reported that a court had issued an Order to Show Cause why plaintiff's counsel should not be sanctioned for papers they filed in opposition to a motion to dismiss<sup>1</sup> that were "replete with citations to non-existent cases."<sup>2</sup> The court asserted that "[s]ix of the submitted cases [in ▶

the opposition papers] appear[ed] to be bogus judicial decisions with bogus quotes and bogus internal citations.”<sup>3</sup> It turned out that one of the attorneys in question had used ChatGPT to perform legal research, “a source that ha[d] revealed itself to be unreliable.”<sup>4</sup>

In the immediate aftermath, several courts proactively issued standing orders to prevent such events in their own courtrooms. Just three days later, on May 30, 2023, Judge Brantley Starr of the U.S. District Court for the Northern District of Texas was the first to issue such a standing order.<sup>5</sup> He requires attorneys and pro se litigants appearing before him to file — on appearance in his court — a certificate indicating whether any portion of their filings would be drafted using GenAI tools. The standing order states in relevant part:

All attorneys and pro se litigants appearing before the Court must, together with their notice of appearance, file on the docket a certificate attesting either that no portion of any filing will be drafted by generative artificial intelligence (such as ChatGPT, Harvey.AI, or Google Bard) or that any language drafted by generative artificial intelligence will be checked for accuracy, using print reporters or traditional legal databases, by a human being. . . . Any party believing a platform has the requisite accuracy and reliability for legal briefing may move for leave and explain why. Accordingly, the Court will strike any filing from a party who fails to file a certificate on the docket attesting that they have read the Court’s judge-specific requirements and understand that they will be held responsible under Rule 11 for the

The solution proposed — a mosaic of inconsistent, individual standing orders — is not the best means to solve the problem, especially when existing rules can address the conduct at issue, and other institutions are better positioned to develop a more nuanced response.

contents of any filing that they sign and submit to the Court, regardless of whether generative artificial intelligence drafted any portion of that filing.

A week later, on June 6, 2023, Judge Michael M. Baylson of the U.S. District Court for the Eastern District of Pennsylvania issued an order requiring attorneys and pro se litigants to disclose the use of AI in drafting pleadings.<sup>6</sup> His order, however, was not limited to GenAI tools; rather, it referenced AI tools in general. His standing order stated:

If any attorney for a party, or a pro se party has used Artificial

Intelligence (“AI”) in the preparation of any complaint, answer, motion, brief, or other paper filed with the Court, and assigned to Judge Michael M. Baylson, **MUST**, in a clear and plain factual statement, disclose that AI has been used in any way in the filing, and **CERTIFY**, that each and every citation to the law or the record in the paper, has been verified as accurate.<sup>7</sup>

Two days after that, on June 8, 2023, Magistrate Judge Gabriel A. Fuentes of the U.S. District Court for the Northern District of Illinois revised his standing order for civil cases,<sup>8</sup> to provide the following:

The Court has adopted a new requirement in the fast-growing and fast-changing area of generative artificial intelligence (“AI”) and its use in the practice of law. The requirement is as follows: Any party using any generative AI tool to conduct legal research or to draft documents for filing with the Court must disclose in the filing that AI was used, with the disclosure including the specific AI tool and the manner in which it was used. Further, Rule 11 of the Federal Rules of Civil Procedure continues to apply, and the Court will continue to construe all filings as a certification by the person signing the filed document and after a reasonable inquiry, of the matters set forth in the rule, including but not limited to those in Rule 11(b) (2). . . . Just as the Court did before the advent of AI as a tool for legal research and drafting, the Court will continue to presume that the Rule 11 certification is a representation by filers, as living, breathing, thinking human beings, that they

themselves have read and analyzed all cited authorities to ensure that such authorities exist and that the filings comply with Rule 11(b)(2).

On the same day, Judge Stephen Alexander Vaden of the U.S. Court of International Trade issued a standing order<sup>9</sup> not only requiring the disclosure of any GenAI program used for drafting but also requiring a representation that the use of such an application had not resulted in the disclosure of confidential or proprietary information to any unauthorized party. The relevant language of his order provides that:

Because generative artificial intelligence programs challenge the Court's ability to protect confidential and business proprietary information from access by unauthorized parties, it is hereby:

**ORDERED** that any submission in a case assigned to Judge Vaden that contains text drafted with the assistance of a generative artificial intelligence program on the basis of natural language prompts, including but not limited to ChatGPT and Google Bard, must be accompanied by:

(1) A disclosure that identifies the program used and the specific portions of text that have been so drafted;

(2) A certification that the use of such program has not resulted in the disclosure of any confidential business proprietary information to any unauthorized party; and it is further

**ORDERED** that, following the filing of such notice, any party may file with the Court any motion provided for by statute or the Rules of the Court of International Trade seeking any relief the

party believes the facts disclosed warrant.<sup>10</sup>

Not long thereafter, several Canadian courts followed suit. On June 23, 2023, the Court of King's Bench of Manitoba issued a *Practice Direction on the Use of Artificial Intelligence in Court Submissions*, advising that "when artificial intelligence has been used in the preparation of materials filed with the court, the materials must indicate how artificial intelligence was used."<sup>11</sup> Three days later, the Supreme Court of Yukon issued *Practice Direction General-29 on the Use of Artificial Intelligence Tools*,<sup>12</sup> which directed that "if any counsel or party relies on artificial intelligence (such as ChatGPT or any other artificial intelligence platform) for their legal research or submission in any matter and in any form before the Court, they must advise the Court of the tool used and for what purpose." Law360 Canada has reported that the Supreme Court of Canada "is among the courts mulling whether and what practice direction to issue to counsel and litigants about the use of artificial intelligence (AI) tools in the preparation of Supreme Court materials."<sup>13</sup>

### Bringing Cannons to a Sword Fight: Are the Courts Overreacting?

We can certainly appreciate why courts throughout North America reacted swiftly and decisively to the GenAI mishap in the Southern District of New York — which, regrettably, was repeated again in a filing in the Tenth Court of Appeals in Waco, Texas, where an appellate brief contained "fabricated and non-existent citations."<sup>14</sup> No judge wants to discover that "[n]one of the three published cases cited actually exist in [a] [r]eporter," and that "[e]ach citation provide[d] the reader a jump-

cite into the body of a different case that ha[d] nothing to do with the proposition"<sup>15</sup> for which it was cited. But, we suggest that the solution proposed — a mosaic of inconsistent, individual standing orders — is not the best means to solve the problem, especially when existing rules can address the conduct at issue, and other institutions are better positioned to develop a more nuanced response.

We do not believe the courts that issued standing orders and practice directives intended to sow chaos or hamper innovation, but the result has been a lack of clarity and greater fear. Many different GenAI and other AI technologies exist, and some orders are not explicit about which technology use must be reported. For example, if a lawyer drafts a brief and uses Grammarly<sup>16</sup> to edit and revise their prose, does this need to be disclosed? Many online legal research databases already employ AI features for natural-language querying.<sup>17</sup> Must the use of such tools be reported, even though there is no risk of fake citations? And at what point does this reporting requirement begin to infringe on attorney work product and legal strategy?

Moreover, the landscape of potentially reportable GenAI applications is constantly changing. Most search engines<sup>18</sup> and word-processing systems,<sup>19</sup> for example, will soon embed the use of large language models (LLMs), a type of GenAI trained on massive data sets to recognize, translate, predict, or generate text in a human-like fashion. Rules of civil procedure should be technology-neutral and should not have to be revised with the introduction of each new technological development. No one can predict what the legal technology environment will look like two years from now, but ▶

the use of GenAI will almost surely be ubiquitous.

The legal profession is already sufficiently risk averse and technologically backward. These orders will impede innovation and chill the use of technology that could not only enable unrepresented parties to access the justice system, but also reduce the time and cost for those who can afford representation. We need a solution better tailored to the problem.

But first, it may be worth taking some time to better understand the problem itself. Below we briefly discuss the history of and technology underlying GenAI tools. The interested reader is referred to our forthcoming article, *The GPT Judge: Justice in a Generative AI World*,<sup>20</sup> for more detail.

### Friend or Foe?: The Origins and Perils of GenAI

GenAI systems use deep-learning algorithms based on neural networks<sup>21</sup> to model written language, speech, music, or other pattern-based media. Typically, these systems are trained on vast collections of human-generated material — typically scraped from the internet — and then generate new work using the properties identified in the training dataset. GenAI systems can also be tuned to specific tasks. For example, one can fine-tune an AI model on the available artwork of a single artist and then generate thousands of new works in that style, potentially flooding the market with synthetic competition. Or the fine-tuning can be to a particular goal. One could, for example, train an LLM to write newspaper editorials from a particular political perspective. Some researchers and commercial entities have already developed special-purpose GenAI for conducting legal research or generating legal pleadings.<sup>22</sup>

The reason why ChatGPT 3.5 consistently correctly associates *Obergefell v. Hodges* with the topic of same-gender marriage is because the case is repeatedly mentioned in thousands of sentences about that subject in its training data, but citations to less well-known cases are less likely to be properly cited.

Recent technological advances have allowed much faster training of these models, as has the availability of larger training datasets, which explains what has appeared to be this technology's sudden emergence. In fact, ChatGPT, which incorporates OpenAI's GPT 3.5 model, is simply the latest in a series of generative pre-trained (GPT) LLMs that were introduced in early 2018.<sup>23</sup> Similarly, visual models like Dall-E 2, Midjourney, and Stable Diffusion are built upon previous models dating back to the early 2010s. Perhaps the primary reason for the recent emergence of so many such models is commercial: Corporations like Microsoft, Google,

OpenAI, and Meta are all trying to claim market dominance and have been rushing GenAI products to market.

From the perspective of the courts, the most important new developments in GenAI are LLM-based tools that, in response to a prompt, can generate text to fulfill the demands of that prompt. For example, a litigant might request that a tool "draft a complaint about a neighbor's noisy dog," or "find me a dog-noise case from Tennessee." Respectively, these tools will respond with a fully written complaint, or text that appears akin to a case citation.

Such instruments have the potential to exponentially expand efficiency and access to justice by reducing the time and expertise necessary to research and draft court filings. However, the goal of these LLMs is neither accuracy nor logical forms of argument per se, and they can be quite confident in presenting misinformation such that inaccuracies or fake case citations may nevertheless appear convincing. We address each challenge in turn.

### How Does GenAI Sabotage the Truth?

One basic goal of GenAI is to model a style or a genre, like writing new poems in the style of Walt Whitman, or creating a satisfying werewolf romance story. These systems were not designed with accuracy as a goal, and they were not meant to engage in logical reasoning. Indeed, their primary purpose was to create new content. GPT methods sample from a probability distribution of relevant words and phrases, and while there may be some bias toward truthful results — to the extent the truth is more common among the sources from which GenAI draws — the model itself is unable to separate fact from fiction.<sup>24</sup> Newer LLMs attempt to create more

trustworthy content, but building in accurate citations and proper legal reasoning is a tall order.

This inability becomes especially problematic when one attempts to perform legal research using GenAI tools not built for that purpose. ChatGPT 3.5 routinely cites irrelevant or nonexistent cases, alongside relevant or real ones, because it is trying to fit the pattern of how one writes about the law; it is not necessarily trying to tell a true story. For example, in response to the prompt “find me a dog-noise case from Tennessee,” ChatGPT 3.5 provided a response that claimed to be based on a Tennessee dog-noise case but actually miscited to a 2018 Texas Supreme Court medical-malpractice case (*Benge MD PLLC v. Williams*, Case No. 14-1057 (Tex. 2018)). And, when asked to write about the *Benge* case in the style of a newspaper article, ChatGPT 3.5 continued this incorrect pattern (“In a recent legal ruling, the Tennessee Court of Appeals addressed a contentious dispute between neighbors over incessant dog barking. The case of *Benge v. Williams* shed light on the complex issue of noise nuisances caused by pets and their potential impact on neighbors’ quiet enjoyment of their property.”).

The phenomenon at issue here, referred to as AI “hallucinations,” is to be expected of LLMs; indeed, many consider it a feature rather than a bug. Recall that the training goal of LLMs is to emulate the textual style of the training dataset. Adding the word “not” or removing “only,” for example, does not much change the overall fluency and apparent reasonableness of an LLM-generated sentence — but obviously can change the legal meaning dramatically. Similarly, a sentence in a GenAI-drafted legal brief may still fit the general structure of the text upon which the model was trained, regard-

less of whether the citations found in it are related to the subject. The reason why ChatGPT 3.5 consistently correctly associates *Obergefell v. Hodges*<sup>25</sup> with the topic of same-gender marriage is because the case is repeatedly mentioned in thousands of sentences about that subject in its training data, but citations to less well-known cases are less likely to be properly cited.<sup>26</sup> Even cases referenced in Wikipedia articles (such as Judge Grimm’s *Mancia v. Mayflower Textile Services Co.* opinion),<sup>27</sup> can be misconstrued by ChatGPT 3.5. It claims that briefs citing that opinion focus on overtime pay and labor standards (the overall subject of *Mancia*), when, in fact, Judge Grimm’s ruling focused on the parties’ failure to cooperatively engage in the discovery process in violation of Fed. R. Civ. P. 26(g), the proposition for which the case has frequently been cited.

Newer or more purpose-built GenAI systems may eventually ameliorate this concern. For example, they can be trained to detect when a user is seeking a case citation and add a verification step to ensure valid and appropriate output. Also, as mentioned earlier, GenAI systems are now being built specifically for the purpose of legal research. For the time being, however, pro se filers will likely not have access — and may never have access — to the paid databases and specialized technologies used by lawyers and will instead turn to free, general-purpose GenAI systems (like ChatGPT 3.5).

### Why Is GenAI so Good at Camouflage?

GenAI is hard to detect because its creators’ primary goal was to develop a tool that would model the style of ordinary language, and because the models on which GenAI is based have quickly gotten better and massively more

complex. In particular, GenAI systems are now trained on larger and larger datasets — of largely unknown provenance — which include many different types of writing, languages, and levels of fluency. Training datasets typically include publicly available news sources, Wikipedia articles, government documents, Reddit posts, and much more. Since this training data includes many different styles of writing, the models learn the common and distinctive patterns of these various forms, and, on the surface, can convincingly mimic human-generated content.<sup>28</sup>

GenAI systems also make use of humans to identify when they create unconvincing (or unacceptable) outputs. This approach, Reinforcement Learning with Human Feedback (RLHF), allows the parameters of the model — a special kind of variable set during the training process — to be tuned so that it will create more believable (or acceptable) outcomes. A similar approach, Generative Adversarial Network (GAN), mimics a game between two AI participants. One GAN player generates new material, and then another attempts to discern what is fake and what is authentic by giving mathematical feedback to the generator, which updates and improves its output. This iterative process continues until the generator no longer improves. The better the distinguisher gets, the better the content generator gets, which explains why GenAI content can be hard to distinguish from human-generated content.<sup>29</sup> Some automated tools have sought to identify whether certain text is the output of an LLM or a human. LLMs often provide text that is more “unsurprising,” in a mathematical sense, than text generated by humans (that is, the individual words in sentences are each, on average, more likely to occur in text written by

humans). This property can be used to detect AI-generated text.<sup>30</sup> However, in a recent experiment, one such tool incorrectly identified text written by nonnative English-speaking students (NNES) as having been crafted by GenAI. The smaller vocabularies and simpler sentence structure used by the NNES were flagged as hallmarks of AI generation.<sup>31</sup> Even OpenAI, the private company responsible for the creation of ChatGPT, recently withdrew its ChatGPT detection tool (GPTZero) for lack of accuracy.<sup>32</sup>

Other detection innovations have been suggested — for example, watermarking (i.e., hiding an invisible identifying marker in GenAI-produced text) that could allow one to later search for such an indicator in the text. However, since most LLMs do not watermark their output, one could simply use such an LLM as the last step in the creation process, asking the unmarked LLM to paraphrase the output of the watermarked LLM.<sup>33</sup> The fact is, those intent on mischief will always find ways to circumvent watermarks. Unfortunately, the arms race between content creators and detectors will continue, with no reason to believe that the typically less well-resourced content detectors will win.

### Is There a Sufficient Arsenal of Weapons?: Existing Tools for Judges

#### *Federal Rule of Civil Procedure 11*

Part of our concern about the use of individual standing orders to regulate GenAI usage is that they impose on parties and litigants obligations that already apply under existing rules of civil practice and procedure and/or ethical obligations presently imposed on lawyers by state rules of professional responsibility. Most notably,

Rule 11 requires that all pleadings, motions, and other papers filed in civil cases be signed by a lawyer or, if the party is not represented by counsel, by the party themselves, and that signature carries with it certain assurances — assurances that render many of the recently AI-focused standing orders redundant.

Failure to sign a pleading obligates the court to strike the filing unless the omission is “promptly corrected after being called to the attorney’s or party’s attention.”<sup>34</sup> The individual’s signature on the pleading makes several specific representations to the court — namely, that “whether by signing, filing, submitting, or later advocating” what the pleading discusses, the “attorney or unrepresented party certifies that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,”<sup>35</sup> that (1) it is not being presented for any improper purpose, like “to harass, cause unnecessary delay, or needlessly increase the cost of litigation”; (2) claims, defense, and legal contentions are “warranted by existing law or by a nonfrivolous argument for extending, modifying or reversing existing law or for establishing new law”; (3) “the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery”; and (4) “the denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on belief or a lack of information.”<sup>36</sup>

Lawyers or pro se litigants who blindly rely on factual contentions taken from GenAI applications or who rely on — without independently confirming — cases cited by such applications clearly have failed to conduct a

reasonable inquiry, are filing a pleading that likely will cause unnecessary delay or increase litigation costs, are stating facts not based on existing law, and are presenting factual arguments without evidentiary support. The consequences of violating Rule 11 can be severe. A court may sanction any lawyer, law firm, or party that violated the rule or is responsible for it having been violated.

Thus, the standing orders described above appear to be redundant. If the consequences of failing to comply with Rule 11 do not adequately deter the conduct that courts have criticized regarding the use of GenAI, it is hard to imagine what additional deterrence a judge’s individual standing order would lend.

#### *Federal Rule of Civil Procedure 26(g)*

On its face, Rule 11 applies only to pleadings, motions, and other “papers” and is inapplicable to discovery.<sup>37</sup> But this does not mean that there are no procedural impediments to a lawyer improperly using GenAI during the discovery phase of a civil case. Indeed, Rule 26(g)(1), which applies to “disclosures and discovery requests, responses, and objections,” in civil cases also requires that every discovery-related disclosure, request, response, or objection must be signed by an attorney or party, if unrepresented.

As with Rule 11, the Rule 26(g)(1) signature “certifies that to the best of the person’s knowledge, information, and belief formed after a reasonable inquiry” that: the disclosure is complete and correct as of the time it was made; and that a discovery request, response, or objection is (a) consistent with the discovery rules and warranted by existing law (or a nonfrivolous argument for extending, modifying, or reversing existing



law, or establishing new law), (b) is not interposed for an improper purpose (such as harassing an opponent, imposing unnecessary delay, or needlessly increasing the cost of litigation), and (c) is neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, the amount in controversy in the case, and the importance of the issues at stake in the litigation.<sup>38</sup> If a party or attorney omits the required signature, the opposing counsel or party is under no duty to act on the discovery matter until it is signed, and the court must strike the unsigned discovery material unless the signature is promptly supplied when called to the attention of the lawyer or party. If a certification violates Rule 26(g), the offending lawyer and or party may be sanctioned.<sup>39</sup>

Accordingly, lawyers or parties who violate Rules 11 and 26(g) in connection with their use of GenAI in civil litigation are already subject to sanctions that can be strong medicine — depending on the extent of the violation — regardless of whether the presiding judge has issued their own standing order concerning the use of GenAI. Moreover, if widespread public humiliation over being sanctioned by a court for committing this kind of error is insufficient disincentive, the Rules of Professional Conduct also impose independent ethical obligations to refrain from the types of misconduct that have led courts to adopt standing orders prohibiting or regulating the use of GenAI applications.

***American Bar Association Model Rules of Professional Conduct 1.1 Comment [8], 3.3, and 1.6 (and Their State-Law Equivalents)***

All attorneys are required to be licensed by the states or provinces in

Lawyers or parties who violate Rules 11 and 26(g) in connection with their use of GenAI in civil litigation are already subject to sanctions that can be strong medicine — depending on the extent of the violation — regardless of whether the presiding judge has issued their own standing order concerning the use of GenAI.

which they practice, and each jurisdiction has adopted rules of professional conduct that lawyers must follow, lest they be sanctioned or have their license suspended or revoked. In addition, almost all (at least in the U.S.) follow or are guided by the American Bar Association's (ABA's) Model Rules of Professional Conduct. Three of the Model Rules impose ethical duties relevant to the improper use of GenAI.

Model Rule 1.1 requires lawyers to provide clients with competent representation, which "requires . . . legal knowledge, skill, thoroughness, and

[reasonably necessary] preparation."<sup>40</sup> Comment [8] to Rule 1.1 provides that, "[t]o maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology."<sup>41</sup> GenAI is clearly a relevant technology to the practice of law today, and lawyers must understand its strengths and weaknesses to provide competent representation.

Model Rule 3.3 imposes an ethical obligation to demonstrate candor to courts and other tribunals and prohibits "mak[ing] a false statement of fact or law . . . or fail[ing] to correct a false statement of material fact or law previously made."<sup>42</sup> Citing nonexistent case law or misrepresenting the holdings of a case is making a false statement to a court. It does not matter if GenAI told you so.

Model Rule 1.6 prohibits lawyers from "reveal[ing] information relating to the representation of a client" without obtaining informed consent.<sup>43</sup> Entering confidential client information into a publicly available, third-party chatbot is inconsistent with this duty.

A lawyer who does not adequately understand the risks inherent in using GenAI, and who fails to independently verify the accuracy of factual matters and/or legal authority obtained from GenAI, has failed to represent their client competently. Moreover, a lawyer who uses factual information or legal authority obtained from GenAI in a pleading without independently confirming its accuracy fails to adhere to the obligation of candor to the court if those representations turn out to be false. Similarly, a lawyer who discloses information about the representation of a client to prompt a search using GenAI, without first having explained ►

the risks and obtained consent, has failed to properly maintain confidentiality. To the extent the jurisdiction in question has adopted these model rules — or even the gist of them — none of these duties is likely to require a separate certification.

A judge who determines that a lawyer has used GenAI in a manner failing to conform with their ethical duties can refer the lawyer to the relevant licensing authority, and that body will likely initiate an ethics investigation that could result in sanctions, up to and including loss of their license to practice. Therefore, lawyers who engage in GenAI-associated misconduct risk more than the wrath of a single judge — they put their ability to practice law at risk. Bar associations and law societies should provide guidance and education to their members and remove this burden from individual judges.

Viewed both individually and collectively, existing rules of civil practice and procedure and ethical codes of conduct already provide adequate deterrence to the misuse of GenAI in litigation, and, if violated, provide sanctions that are at least as severe — if not more so — than can be imposed for failing to comply with a court's individual standing order.

### **An Olive Branch: Public Notice and/or Local Rules**

We believe that individualized standing orders are unnecessary, create unintended confusion, impose unnecessary burden and cost, and deter the legitimate use of GenAI applications that could increase productivity and access to justice. We do not, however, suggest that judges and courts should sit by idly and avoid engaging with issues regarding the use of GenAI in the justice system. Rather, if district

courts feel the need to address this issue, they can issue local rules that apply court-wide.<sup>44</sup> A well-crafted local rule governing the use of GenAI tools, adopted after publication and public comment, is more likely to address definitional and scope issues in a nuanced way and expose any unintended adverse consequences.

There is certainly no harm in individual judges including in their standing orders a *warning* to litigants about the risks inherent in using GenAI and the consequences of misrepresentations to the court. But, as mentioned earlier, sufficient deterrence may already exist. For the benefit of pro se litigants, in particular, courts can give notice to the public in general (e.g., on their websites) that the use of GenAI tools in connection with court filings must be consistent with the obligation to verify the accuracy of factual and legal representations, including validating all citations, and explain the potential sanctions for failure to do so. Additionally, we see no problem with requiring pro se litigants to disclose whether they have had any GenAI assistance in drafting their court filings. This would be similar to the mandates already imposed by certain state and local bar ethics committees that require either an attorney who has provided assistance to a party in drafting a court filing, but who has not entered an appearance as counsel for that party, to disclose to the court the assistance they provided, or for the pro se litigant to disclose that they received assistance in drafting the filing.<sup>45</sup>

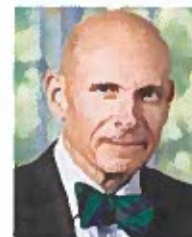
It is evident that the use of AI applications — and GenAI in particular — will be increasingly common in the court system. However, we urge caution and restraint in imposing additional disclosure and certifica-

tion obligations — particularly when the scope of such requirements may be overbroad or ambiguous — which impose unnecessary and inconsistent burdens on litigants. It is possible, in this instance, that honey may work better than vinegar.



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<sup>44</sup> Grossman and Brown's work is funded, in part, by the National Science and Engineering Council of Canada (NSERC). The authors wish to acknowledge Jason R. Baron and Amy Sellars for their thoughtful comments on a draft of this article. The views expressed in this article are the authors' own and do not necessarily reflect the opinions of the institutions with which they are affiliated.

<sup>45</sup> Benjamin Weiser, *Here's What Happens When Your Lawyer Uses ChatGPT*, N.Y. TIMES (May 27, 2023), <https://www.nytimes.com/2023/05/27/>

- nyregion/avianca-airline-lawsuit-chatgpt.html. Order to Show Cause, *Mata v. Avianca, Inc.*, No. 22-cv-1461 (PKC) [S.D.N.Y. May 4, 2023], 2023 WL 3696209 at \*1.
- id.*
- Weiser, *supra*, note 1 (internal quotation removed).
- See, JUDGE SPECIFIC REQUIREMENTS, Mandatory Certification Regarding Generative Artificial Intelligence (JUDGE BRANTLEY STARR, May 30, 2023), <https://www.txnd.uscourts.gov/judge/judge-brantley-starr>.
- Standing Order Re: Artificial Intelligence (“AI”) Cases Assigned to Judge Baylson (E.D. Pa. 2023), <https://www.paed.uscourts.gov/documents/standord/Standing%20Order%20Re%20Artificial%20Intelligence%206.6.pdf>.
- id.* (emphases in original).
- Standing Order for Civil Cases Before Magistrate Judge Fuentes (N.D. Ill. 2023), [https://www.ilnd.uscourts.gov/\\_assets/\\_documents/\\_forms/\\_judges/Fuentes/Standing%20Order%20For%20Civil%20Cases%20Before%20Judge%20Fuentes%20rev%27d%205-31-23%20\(002\).pdf](https://www.ilnd.uscourts.gov/_assets/_documents/_forms/_judges/Fuentes/Standing%20Order%20For%20Civil%20Cases%20Before%20Judge%20Fuentes%20rev%27d%205-31-23%20(002).pdf).
- Stephen Alexander Vaden, J., Order on Artificial Intelligence (Ct. Int’l. Trade 2023), <https://www.cit.uscourts.gov/sites/cit/files/Order%20on%20Artificial%20Intelligence.pdf>.
- id.* (emphases in original).
- See [https://www.manitobacourts.mb.ca/site/assets/files/2045/practice\\_direction\\_-\\_use\\_of\\_artificial\\_intelligence\\_in\\_court\\_submissions.pdf](https://www.manitobacourts.mb.ca/site/assets/files/2045/practice_direction_-_use_of_artificial_intelligence_in_court_submissions.pdf).
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- Ex Parte Allen Michael Lee*, No. 10-22-00281-CR at 2 (10th Ct. App. TX July 19, 2023), 2023 WL 4624777 at \*1.
- See GRAMMARLY, <https://www.grammarly.com/> (last visited Aug. 21, 2023) (“generative AI writing assistant”).
- See, e.g., *Westlaw Edge*, THOMPSON REUTERS, <https://legal.thomsonreuters.com/en/products/westlaw-edge> (last visited Aug. 21, 2023) (“powered by AI-enhanced capabilities that can help you research more effectively and be more strategic”).
- See, e.g., Will Knight, *Google Just Added Generative AI to Search*, WIRED (May 18, 2023 1:59 PM), <https://www.wired.com/story/google-io-just-added-generative-ai-to-search/>.
- See, e.g., Jared Spataro, *Introducing Microsoft 365 Copilot – Your Copilot for Work*, OFFICIAL MICROSOFT BLOG (Mar. 16, 2023), <https://blogs.microsoft.com/blog/2023/03/16/introducing-microsoft-365-copilot-your-copilot-for-work/>.
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- Deep learning consists of a series of machine-learning algorithms made up of multiple layers: an input layer, one or more hidden layers, and an output layer. The method is referred to as “deep learning” because, unlike previous approaches, one layer can feed its output to the next layer. Each layer processes data in a manner inspired by the human brain, using interconnected nodes, hence the reason why they are often referred to as “neural networks.”
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- Konstantinos I. Roumeliotis and Nikolaos D. Tselikas, *ChatGPT and Open-AI Models: A Preliminary Review*, 15 FUTURE INTERNET, no. 6, 2023, at 192, <https://doi.org/10.3390/fi15060192>.
- Matthew Hillier, *Why Does ChatGPT Generate Fake News References?*, TECHE (20 February, 2023), <https://teche.mq.edu.au/2023/02/why-does-chatgpt-generate-fake-references/>.
- 576 U.S. 644 (2015).
- Another limitation of GenAI has to do with the date on which training of the system ceased. For example, ChatGPT 3.5 had a cutoff date of September 2021, so it cannot possibly cite to more recent cases. While newer, purpose-built tools will have more up-to-date cutoffs, unless the training is continually refreshed, there will always be issues involving (in)completeness.
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- For further reading about GANs and RLHFs, see generally Jason Brownlee, *A Gentle Introduction to Generative Adversarial Networks (GANs)*, MACHINE LEARNING MASTERY (July 19, 2019), <https://machinelearningmastery.com/what-are-generative-adversarial-networks-gans/>; Alex McFarland, *What is Reinforcement Learning from Human Feedback (RLHF)*, UNITE.AI (March 29, 2023), <https://www.unite.ai/what-is-reinforcement-learning-from-human-feedback-rlhf/>; Zhang Ze Yu et al., *Fine-tuning Language Models with Generative Adversarial Feedback*, CORNELL UNIV. ARXIV:2305.06176 [CS.CL], <https://doi.org/10.48550/arXiv.2305.06176>.
- However, AI-to-human text converters can now take AI-generated text and add variety, uniqueness, and complexity to the content to bypass AI content detectors. See, e.g., *AI to Human Text Converter*, PARAPHRASING TOOL, <https://paraphrasingtool.ai/ai-content-bypass-tool/> (last visited Aug. 23, 2023).
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- FED. R. CIV. P. 11(b).
- FED. R. CIV. P. 11(b)(1)–(4).
- FED. R. CIV. P. 11(a), (d) (“[Rule 11] does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37 [which deal with discovery].”)
- FED. R. CIV. P. 26(g)(1).
- FED. R. CIV. P. 26(g)(3).
- MODEL CODE OF PROF. CONDUCT r. 1.1 (AM. BAR ASS’N 2020).
- MODEL CODE OF PROF. CONDUCT r. 1.1 cmt. [8] (AM. BAR ASS’N 2020).
- MODEL CODE OF PROF. CONDUCT r. 3.3(a)(1) (AM. BAR ASS’N 2020).
- MODEL CODE OF PROF. CONDUCT r. 1.6(a) (AM. BAR ASS’N 2020).
- See 28 U.S.C. § 2071(b) (“Any rule prescribed by a court, other than the Supreme Court, under subsection (a) shall be prescribed only after giving appropriate public notice and an opportunity for comment.”); FED. R. CIV. P. 83(a)(1) (“After giving public notice and an opportunity for comment, a district court, acting by a majority of its district judges, may adopt and amend rules governing its practice.”).
- See ABA Comm. on Ethics & Pro. Resp., Formal Op. 07-446, at 1–2, nn.4–5 (2007) (finding no unethical conduct for lawyers providing legal assistance to pro se litigants without disclosing the nature of their assistance).



Please tell me about promissory estoppel



Promissory estoppel is a legal doctrine that prevents a person from reneging on a promise or commitment when the other party has reasonably relied on that promise to their detriment. In essence, it enforces promises that may not be legally binding contracts because there is no formal consideration (something of value exchanged) to support the promise.

The key elements of promissory estoppel typically include:

1. **A clear and definite promise:** There must be an explicit promise, assurance, or commitment made by one party to another. This promise can be verbal, written, or even implied from the circumstances.
2. **Reasonable reliance:** The promisee (the person to whom the promise is made) must have reasonably relied on the promise. This reliance could involve taking action or refraining from taking action based on the promise.
3. **Substantial detriment:** The promisee must have suffered a substantial detriment as a result of their reliance on the promise. This means that they must have incurred some significant harm or loss, such as financial losses, significant inconvenience, or a change in position, because of their reliance on the promise.
4. **Injustice:** It would be unjust to allow the promisor (the person who made the promise) to go back on their promise, given the reliance and detriment suffered by the promisee.

Promissory estoppel is a legal doctrine often invoked when there is no formal contract or when a contract lacks consideration, which is a common requirement for contract enforceability. It is used to prevent unfairness and to hold individuals or entities accountable

Tell me more about promissory estoppel.  Can you provide another legal example?  contract but  Regenerate

enforces the promise itself. Courts typically use this doctrine to grant relief in situations

Send a message

AS

Can you please provide three cases regarding promissory estoppel



Certainly, here are three well-known cases that involve the application of promissory estoppel:

1. **Hoffman v. Red Owl Stores, Inc. (1965):**

In this case, a franchisor (Red Owl Stores) made verbal promises to a franchisee (Hoffman) regarding the sale of a grocery store. Red Owl assured Hoffman that he would have the opportunity to operate the store for the rest of his working life. Based on these promises, Hoffman invested significant time and money into the store. However, Red Owl later decided to terminate the franchise agreement. The court found in favor of Hoffman, applying the doctrine of promissory estoppel, stating that Red Owl's promises had induced Hoffman's substantial reliance, and it would be unjust to allow Red Owl to renege on those promises.

2. **Feinberg v. Pfeiffer Co. (1959):**

In this case, an employer (Pfeiffer Co.) promised an employee (Feinberg) a pension for life after he retired. Feinberg relied on this promise when he decided to retire early. However, the company later tried to reduce the pension benefits. The court applied promissory estoppel, finding that the promise to provide a lifetime pension constituted a clear and unequivocal promise. Feinberg had relied on this promise by retiring, and it would be unjust to permit the employer to break their commitment.

3. **Ricketts v. Scothorn (1898):**

In this historic case, a grandfather (Scothorn) promised his granddaughter (Ricketts) a certain sum of money in exchange for her quitting her job and coming to live with him. Ricketts relied on this promise, left her job, and moved in with her grandfather. After his death, the estate refused to fulfill the promise. The court applied promissory estoppel, recognizing that Ricketts had relied to her detriment on the promise, and it would be unfair

Tell me more about promissory estoppel.  Can you provide another legal example?

 Regenerate

----- This chat is not meant to be used for legal advice. -----

Send a message

AS

Can you please provide the full case citations



Certainly, here are the full case citations for the three cases involving promissory estoppel:



1. **Hoffman v. Red Owl Stores, Inc. (1965)**

- Citation: Hoffman v. Red Owl Stores, Inc., 26 Wis.2d 683, 133 N.W.2d 267 (1965)

2. **Feinberg v. Pfeiffer Co. (1959)**

- Citation: Feinberg v. Pfeiffer Co., 168 Ohio St. 527, 156 N.E.2d 157 (1959)

3. **Ricketts v. Scothorn (1898)**

- Citation: Ricketts v. Scothorn, 45 Neb. 1, 63 N.W. 146 (1898)

These full case citations will help you find the complete legal opinions and details of these cases in legal databases and references.



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- Disposition
- Case Summary
- Headnotes

🔍 Search Terms

# ⚠️ Hoffman v. Red Owl Stores, Inc.

📄 Copy Citation

Syllabus

Supreme Court of Wisconsin  
February 5, 1965, Argued ; March 2, 1965, Decided  
No Number in Original

## Reporter

26 Wis. 2d 683 \* | 133 N.W.2d 267 \*\* | 1965 Wisc. LEXIS 1026 \*\*\*

Counsel  
Judges  
Opinion

Hoffman and wife, Plaintiffs, v. Red Owl Stores, Inc., and another, Defendants [Two appeals]

**Subsequent History:** [\*\*\*] Motion for Rehearing Denied, with Costs, on April 27, 1965.

**Prior History:** Appeal from an order of the Circuit Court for Outagamie County: Andrew W. Parnell, Circuit Judge.

**Disposition:** *By the Court.* -- Order affirmed. Because of the cross appeal, plaintiffs shall be limited to taxing but two thirds of their costs.

Footnotes

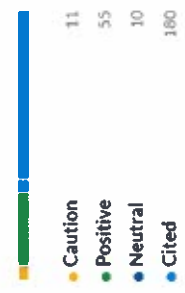
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Disposition  
Case Summary

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Syllabus

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Judges  
Opinion

Info Notes

# ▲ **Senvisky v. Truscon Steel Div. of Republic Steel Corp.**

[Copy Citation](#)

Supreme Court of Ohio  
February 25, 1959, Decided  
No. 35466

## Reporter

168 Ohio St. 523 \* | 156 N.E.2d 724 \*\* | 1959 Ohio LEXIS 666 \*\*\* | 7 Ohio Op. 2d 390

SENVISKY, APPELLEE, v. TRUSCON STEEL DIVISION OF THE REPUBLIC STEEL CORPORATION, APPELLANT

Prior History: [\*\*\*] APPEAL from the Court of Appeals for Mahoning County.

Disposition: *Judgment reversed.*

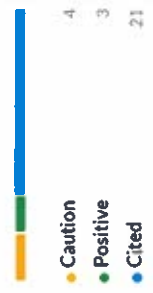
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Table Summary



# ▲ **Clearwater Bank v. Kurkowski**

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Disposition

📄 **Copy Citation**

Supreme Court of Nebraska  
May 1, 1895, Filed  
No. 5928.

Counsel

Judges  
Opinion

## Reporter

45 Neb. 1 \* 63 N.W. 133 \*\* | 1895 Neb. LEXIS 151 \*\*\*

CLEARWATER BANK v. MARTIN KURKONSKI

**Prior History:** [\*\*\*1] ERROR from the district court of Antelope county. Tried below before ALLEN, J.

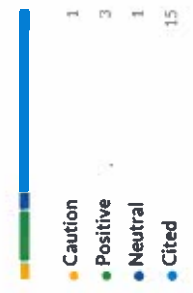
**Disposition:** AFFIRMED.

## Core Terms

▲ **Caution** Why?

No subsequent appellate history.

**Citing Decisions** 19



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**NE Supreme Court Cases from 1871**

Related Content  
Q Find references to this case

AS

Please provide the accurate citations for *Feinberg v. Pfeiffer Co.* (1959) and *Ricketts v. Scothorn* (1898)



I apologize for the earlier inaccuracies. It seems that there was a mistake in the case citations I provided. After further research, I was unable to locate specific cases titled "*Feinberg v. Pfeiffer Co.* (1959)" and "*Ricketts v. Scothorn* (1898)." These cases may not exist under those specific names or may not be widely recognized.

If you have specific questions or are looking for cases related to promissory estoppel or other legal topics, please let me know, and I'll do my best to provide accurate and relevant information.



AS

Are *Feinberg v. Pfeiffer Co. (1959)* and *Ricketts v. Scothorn (1898)* not real cases?



I apologize for the confusion in my previous responses. You are correct; I provided inaccurate information regarding those case names. To the best of my knowledge, there are no real legal cases with the names "*Feinberg v. Pfeiffer Co. (1959)*" and "*Ricketts v. Scothorn (1898)*." I apologize for any confusion or inconvenience my previous responses may have caused.

If you have any other questions or need information on different legal cases or topics, please feel free to ask, and I'll provide accurate and relevant information.



[This is an early working draft. Any comments are appreciated.]

## AI TOOLS FOR LAWYERS: A PRACTICAL GUIDE

Daniel Schwarcz & Jonathan H. Choi\*

Draft: March 30, 2023

*Abstract: This Article provides lawyers and law students with practical and specific guidance on how to effectively use AI large language models (LLMs), like GPT-4, Bing Chat, and Bard, in legal research and writing. Focusing on GPT-4 – the most advanced LLM that is widely available at the time of this writing – it emphasizes that lawyers can use traditional legal skills to refine and verify LLM legal analysis. In the process, lawyers and law students can effectively turn freely-available LLMs into highly productive personal legal assistants.*

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## INTRODUCTION

New artificial intelligence tools like GPT-4, Bing Chat, and Bard are poised to revolutionize the practice of law. Predictions abound that these large language models (LLMs)<sup>1</sup> will enable lawyers to better perform myriad legal research and writing tasks, such as drafting memos, briefs, contracts, and wills.<sup>2</sup> Betting that these predictions will prove accurate, numerous entrepreneurs are racing to develop new AI-assisted legal tools,<sup>3</sup> law firms have announced efforts to explore how best to integrate AI into their work,<sup>4</sup> and law professors have developed AI-based techniques to help aid with legal decision-making.<sup>5</sup>

The potential for LLMs to transform legal practice is already evident in the capacity of these models to pass, and even excel on, various legal exams. Most notably, GPT-4 – which OpenAI released in March of 2023 – scored in the 90th percentile on the Uniform Bar Examination, including both multiple choice questions and open-ended Multistate essay questions.<sup>6</sup> Similarly,

<sup>1</sup> Large Language Models are often abbreviated as LLMs, a confusing acronym for many lawyers, who associate “LLM” with a masters degree from a law school.

<sup>2</sup> See, e.g., Ashley Binetti Armstrong, *Who’s Afraid of ChatGPT? An Examination of ChatGPT’s Implications for Legal Writing* (Jan. 26, 2023) (on file with Social Science Research Network); Stephanie Wilkins, *ChatGPT Is Impressive, But Can (and Should) It Be Used in Legal?*, LegalTech News (Dec. 15, 2022), <https://www.law.com/legaltechnews/2022/12/15/chatgpt-is-impressive-but-can-and-should-it-be-used-in-legal/?slreturn=20230223101453>; Zhongxiang Sun, *A Short Survey of Viewing Large Language Models in Legal Aspect* (Mar. 17, 2023) (on file with Cornell University arXiv); W. Bradley Wendel, *The Promise and Limitations of Artificial Intelligence in the Practice of Law*, 72 Okla. L. Rev. 21 (2019).

<sup>3</sup> To take just one of many examples, the firm Casetext recently launched a product known as CoCounsel. According to the firm’s promotional materials, “CoCounsel does document review, legal research memos, deposition preparation, and contract analysis in minutes—with results you can trust.” See Casetext, *The Legal AI You’ve Been Waiting For*, Casetext, <https://casetext.com/cocounsel/>.

<sup>4</sup> E.g., Kate Beioley & Cristina Criddle, *Allen & Overy Introduces AI Chatbot to Lawyers in Search of Efficiencies*, FINANCIAL TIMES (Feb. 15, 2023), <https://www.ft.com/content/baf68476-5b7e-4078-9b3e-ddf710a6e2>; Emily Hinkley, *Misco de Reya Is Hiring an “Engineer” to Explore How Its Lawyers Can Use ChatGPT*, Legal Cheek (Feb. 16, 2023, 8:35:00 AM), <https://www.legalcheek.com/2023/02/mishcon-de-reya-is-hiring-an-engineer-to-explore-how-its-lawyers-can-use-chatgpt>.

<sup>5</sup> E.g., Jonathan H. Choi, *Measuring Clarity in Legal Text*, 91 U. CHI. L. REV. (forthcoming 2024); Corinna Coupette, et al., *Measuring Law Over Time: A Network Analytical Framework with an Application to Statutes and Regulations in the United States and Germany*, 9 FRONTS. PHYS. (May 2021).

<sup>6</sup> Daniel Martin Katz et al., *GPT-4 Passes the Bar Exam*, (Mar. 15, 2023) (on file with

ChatGPT, an earlier GPT model that OpenAI released in late 2022, passed four different law school final exams at a top law school with no human intervention.<sup>7</sup>

To be sure, AIs cannot yet replace human lawyers.<sup>8</sup> For one thing, they too often make mistakes, or “hallucinate.”<sup>9</sup> More importantly, LLMs typically do not have access to the nuanced facts implicated in real-world legal problems.<sup>10</sup> Nor do AI models that are broadly available like GPT-4 reliably have the dual capacity to identify and access the latest versions of the legal source materials that shape the proper interpretation of these facts, such as governing caselaw, statutory text, or administrative codes.<sup>11</sup>

Nonetheless, the remarkable capacity of LLMs to quickly and cheaply produce high-quality legal analysis with limited human intervention means that human lawyers can likely use this technology to substantially enhance the efficiency and quality of their efforts.<sup>12</sup> Lawyers and legal educators who refuse to recognize the possibility will, we therefore predict, ultimately be replaced by those who do.<sup>13</sup>

As of yet, however, there is limited publicly-available guidance about how lawyers can use widely-available LLMs like GPT-4 and Bing Chat efficiently and ethically in the context of typical legal research and writing

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Social Science Research Network)

<sup>7</sup> See Jonathan H. Choi, Kristin E. Hickman, Amy B. Monahan, & Daniel Schwarcz, *ChatGPT Goes to Law School*, 72 J. LEG. ED. (forthcoming 2023).

<sup>8</sup> See *id.*; See, e.g., Jenna Greene, *Will ChatGPT Make Lawyers Obsolete? (Hint: Be Afraid)*, Reuters (Dec. 9, 2022, 1:33:00 PM) <https://www.reuters.com/legal/transactional/will-chatgpt-make-lawyers-obsolete-hint-be-afraid-2022-12-09/>.

<sup>9</sup> See, e.g., Hussam Alkaissi & Samy I. McFarlane, *Artificial Hallucinations in ChatGPT: Implications in Scientific Writing*, 15 CURIUS J. MED. SCI. (forthcoming 2023), at <https://assets.cureus.com/uploads/editorial/pdf/138667/20230219-28928-6kcyip.pdf>.

<sup>10</sup> Choi, Hickman, Monahan, & Schwarcz, *supra* note 7.

<sup>11</sup> Notably, tools like CoCounsel seek to provide precisely this functionality by linking an LLM model like GPT-4 to a search engine that allows it to access case law and other legal source material.

<sup>12</sup> Choi, Hickman, Monahan, & Schwarcz, *supra* note 7.

<sup>13</sup> See Jason Pohl, *From Tort Law to Cheating, What is ChatGPT's Future in Higher Education?*, Berkeley News (Mar. 13, 2023), <https://news.berkeley.edu/2023/03/21/from-tort-law-to-cheating-what-is-chatgpts-future-in-higher-education/> (noting that several Berkeley Law professors are encouraging their students to use AI tools because that is where the future of lawyering will be).

tasks.<sup>14</sup> This Article offers a first effort to provide such guidance.<sup>15</sup> In doing so, we of course recognize that sensible techniques for deploying LLMs will vary depending on innumerable factors, including legal context and the specific LLMs that are available. Nonetheless, this article endeavors to develop generalizable strategies for using LLMs to analyze caselaw and draft legal analyses of real-world legal problems based on that caselaw. In doing so, we focus on the GPT-4 LLM, which is the most advanced such model that is broadly available at the time of this writing.

Ultimately, the Article highlights how lawyers seeking to use LLMs to improve the efficiency and quality of their work must repurpose traditional legal skills to prompt and confirm the output of LLMs. Starting with prompting, the Article illustrates how lawyers can and should prompt LLMs by engaging them in dialogue.<sup>16</sup> By systematically asking LLMs follow up questions that break down the AI's legal analysis into constituent parts and refine its articulation of legal principles to fit the needs of the questioner, lawyers can quickly produce high-quality legal writing. Moving from prompting to confirming, the Article shows how lawyers can use AIs in ways that allow for verification of claims based directly on the relevant source material. More specifically, by requiring AIs to cite and quote from specific source material that the lawyer directly provides to the AI, lawyers can verify an AI's claims in much the same way that they would cite-check human work product.<sup>17</sup>

The remainder of the Article is structured as follows. Part I begins by

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<sup>14</sup> *But see Joseph Regalia, ChatGPT and Legal Writing: The Perfect Union?* (Feb. 26, 2023) (on file with Social Science Research Network). We choose to focus our analysis on these two LLMs, with a particular focus on GPT-4. GPT-4 is an unambiguous improvement over prior GPT models like ChatGPT Version 3.5 in terms of the sophistication of its analysis, and it thus better reflects the future capacities of LLMs as compared to ChatGPT. See Ruby Chen, *GPT-4*, OpenAI (Mar. 14, 2023), <https://openai.com/research/gpt-4> (Although "in a casual conversation, the distinction between GPT-3.5 and GPT-4 can be subtle," the "difference comes out when the complexity of the task reaches a sufficient threshold—GPT-4 is more reliable, creative, and able to handle much more nuanced instructions than GPT-3.5.").

<sup>15</sup> Recent papers have started to emerge offering guidance for how GPT models can be used to teach other fields, like economics. See Tyler Cowen & Alexander T. Tabarrok, *How to Learn and Teach Economics with Large Language Models, Including GPT* (March 17, 2023) (on file with Social Science Research Network). A number of recent papers systematically explore how GPT models can be used by programmers. See, e.g., Nigar M. Shafiq Surameery, & Mohammed Y. Shakor, *Use Chat GPT to Solve Programming Bugs*, 3 INT'L J. INFO. TECH. & COMPUT. ENG'G., Dec. 2022-Jan. 2023.

<sup>16</sup> See generally JT Dillion, *Paper Chase and the Socratic Method of Teaching Law*, 30 J. LEGAL EDUC. 529 (1979-1980); Orin S. Kerr, *The Decline of the Socratic Method at Harvard*, 78 NEB. L. REV. 113 (1999).

<sup>17</sup> See generally, Jonathan Mermin, *Remaking Law Review*, 56 RUTGERS L. REV. 603 (2003-2004).

providing general advice for using LLMs, which we then apply to specific legal problems in the following Parts. Part II describes and illustrates techniques for using LLMs to identify and understand legal source material, with an emphasis on caselaw. Part III transitions from analysis of caselaw to legal writing, describing specific techniques that lawyers can use to produce initial drafts of legal texts with the assistance of AIs like GPT-4. It also considers the ethical elements of this practice, suggesting that in most legal settings it is indeed appropriate for lawyers to use AI-generated text in legal filings and similar legal documents. Finally, Part IV explores various potential extensions, such as using LLMs to draft contracts and to edit first-drafts of legal writing.

### I. GENERAL PROMPT-ENGINEERING STRATEGIES

The quickest route to proficiency with LLMs is the same route to Carnegie Hall: practice, practice, practice. In addition to the specific strategies described above, lawyers can learn about GPT-4's and Bing Chat's strengths and limitations through experimentation. The authors have used GPT-4 to write first drafts of administrative documents; to suggest dinner recipes; to find fun vacation activities; to write computer code; and more. In experimenting with the capabilities of AI language models in any domain, what follows are some general tips to keep in mind.<sup>18</sup>

#### A. Provide Details

Perhaps the most common mistake made by new users of LLMs is to provide insufficient detail. Search engines have conditioned us to provide narrowly targeted search queries, and many people's first instinct is to translate these narrow queries into LLM prompts. Fight that instinct! LLMs can accommodate extraordinary levels of details, and the more elaborate the prompt, the more you specify your goals, your expected output, the tone of the output, and the considerations the LLM should keep in mind, the better

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<sup>18</sup> We do not claim credit for inventing these general prompt engineering tips, which have been covered extensively elsewhere. *E.g.*, Dils, *How to Use ChatGPT: Advanced Prompt Engineering*, WGMI Media (Jan. 31, 2023), <https://wgmimedia.com/how-to-use-chatgpt-advanced-prompt-engineering/>; Cowen & Tabarok *supra* note 15. Users seeking inspiration for the kinds of things LLMs can do can find lists of interesting prompts online—for example, *Awesome ChatGPT Prompts*, GitHub, <https://github.com/f/awesome-chatgpt-prompts/#readme>. Prompt engineering has gained in importance as a way for companies to adapt LLMs to specific purposes without costly fine-tuning. *E.g.*, Alan D. Thompson, *Microsoft Bing Chat (Sydney/GPT-4)*, Life Architect (Feb. 22, 2023), [https://lifearchitect.ai/bing-chat/?utm\\_source=substack&utm\\_medium=email](https://lifearchitect.ai/bing-chat/?utm_source=substack&utm_medium=email) (quoting the prompts used to convert GPT's base model into Bing Chat).



the results.

For example, LLM performance can exhibit surprising improvement when the model is asked to respond in the voice of a specific expert. Section II.A below gives an example where GPT-4 hallucinates an incorrect answer to a question about a case; however, it gives the correct answer when the prompt asks about the case “as Harvard Law School professor Cass Sunstein might analyze it.”<sup>19</sup> (Different famous lawyers produce different results; try experimenting with a mix of practicing lawyers, judges, and academics.) Additional detail and specific examples of the kind of output that would be most helpful will generally produce better results. For example, instead of asking GPT-4 simply to proofread a document, ask it to “apply principles from Strunk and White’s ‘Elements of Style’”<sup>20</sup> to proofread a document.

### *B. Iterate*

A second revolutionary feature of LLMs is the ability to hold sustained conversations. Again conditioned by decades of search engine use, many people initially try to craft a single perfect prompt to elicit the response they want from the LLM. This is unnecessary; it’s possible, and indeed desirable, to steer the LLM by providing follow-ups to its initial response. If its answer is inadequate or not quite what you wanted, tell it that it failed and why. If the response was good but more detail would be helpful, indicate that as well.

Many of the specific examples that follow apply the concept of iteration. After establishing general legal context for an LLM using an initial query, lawyers can probe relevant aspects of particular cases and use the LLM to produce specific desired results. Most classic legal research tools, like Westlaw or even Google, act as oracles that produce a single result. LLMs like GPT-4 and Bing Chat are more like ordinary conversational partners, and should be treated as such for best results.

### *C. Think Step by Step*

As suggested above, LLM responses are heavily dependent on specific content of the prompt. One of the most important recent discoveries about LLMs has been that users can significantly improve the quality of responses *merely by asking it to reason step by step*. This method, known as “chain-of-thought prompting,” has been widely adopted among LLM users, including

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<sup>19</sup> Cowen & Tabarrok, *supra* note 15, at 9.

<sup>20</sup> New York Times, *Bard Fork + How to Talk So Chatbots Will Listen*, NY TIMES (Mar. 24, 2023), <https://www.nytimes.com/2023/03/24/podcasts/hard-fork-bard.html> (suggesting the Strunk and White prompt).

the designers of GPT-4.<sup>21</sup>

To use chain-of-thought prompting, simply add the phrase “think step by step”<sup>22</sup> to a prompt. Doing so has two benefits. First, it will elicit reasoning that the user can then check for quality. (And if the reasoning is deficient, the user then has the opportunity to correct it through the iterative process described above.) Second, simply asking the LLM to think step by step has been shown to improve the quality of the response, a result that is somewhat surprising and not yet well understood.<sup>23</sup>

## II. USING AIs TO ANALYZE POTENTIALLY RELEVANT CASES

Perhaps the most basic skill that most lawyers must possess in any common law system is to read and understand judicial opinions. It is for precisely this reason that much of the first year of law school is devoted to this task.<sup>24</sup> LLMs offer the potential to fundamentally alter the processes by which lawyers identify and understand caselaw. Part A, below, considers the former point, exploring how lawyers and law students can use LLMs to identify relevant cases relating to a specific legal problem. Part B then discusses strategies for using LLMs to efficiently and effectively understand caselaw. Although this Part focuses on caselaw, much of the analysis is equally applicable to other legal source material, such as statutes, regulations, or regulatory bulletins.

### A. Using AI to Identify Relevant Rules and Source Material

At present, AI tools like GPT-4 and Bing Chat have a significant capacity to help lawyers identify relevant legal rules governing specific legal issues. In many cases, Bing Chat is superior to GPT-4 for this purpose because it will provide specific citations to its source material and is not limited by a historical corpus of text, like GPT-4. However, GPT-4 can also be extremely useful for this purpose, particularly when it comes to prominent legal issues with clear source material.

GPT-4 excels at explaining legal rules governing well-known issues of federal law that feature prominently in the corpus of text on which it was trained. To illustrate, suppose a lawyer’s client is sued for defamation in connection with reporting they performed for a prominent newspaper, and

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<sup>21</sup> Chen, *supra* note 15 (suggesting that GPT-4’s performance can be augmented by chain-of-thought prompting).

<sup>22</sup> <https://openreview.net/forum?id=e2TBb5y0yFf>.

<sup>23</sup> <https://openreview.net/forum?id=e2TBb5y0yFf>.

<sup>24</sup> See Orin S Kerr., *How to Read a Legal Opinion: A Guide for New Law Students*, 11 GREEN BAG 51 (2007).

they are looking to brush up on the basic rules governing this area. A good first step would be to ask GPT-4 about the rules governing this issue, as illustrated below.

***When can a reporter be held liable for defamation?<sup>25</sup>***

Of course, while answers from GPT-4 such as those provided here (most such answers are provided in the footnotes), appear accurate, they cannot be trusted at face value. AIs have a well-known tendency to provide incorrect answers or even to hallucinate source material.<sup>26</sup> For this reason, it is essential that the lawyer employing this technique ask GPT-4 to identify the relevant source material on which their answer is based.

***What legal source material do these rules come from?<sup>27</sup>***

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<sup>25</sup> GPT-4's response: *"I am not a lawyer, but I can provide you with some general information on this topic. A reporter can be held liable for defamation if they publish or broadcast false information that causes harm to someone's reputation. There are some key elements to consider when determining if a reporter can be held liable for defamation: 1. False statement: The reporter must have made a false statement of fact, not just an opinion or commentary. A true statement, even if harmful to someone's reputation, is generally not considered defamatory. 2. Identification: The defamatory statement must identify the person being defamed, either directly or indirectly. This could include using the person's name, image, or providing enough information that they can be identified by others. 3. Publication: The statement must be published or broadcast, meaning it has been communicated to a third party. This could be in a newspaper, online article, TV broadcast, or even social media. 4. Fault: The reporter must be at fault for publishing the false statement. In the case of private individuals, the standard is usually negligence, meaning the reporter failed to exercise reasonable care in verifying the information. For public officials or public figures, the standard is typically "actual malice," which means the reporter either knew the statement was false or acted with reckless disregard for the truth. 5. Damages: The person claiming defamation must prove that they suffered harm as a result of the false statement. This could include damage to their reputation, financial loss, or emotional distress. Laws regarding defamation can vary by jurisdiction, and there may be additional nuances and exceptions to consider. Anyone who believes they have been defamed should consult with a qualified attorney to understand their rights and potential remedies."*

<sup>26</sup> See Alkaissi & McFarlane, *supra* note 10.

<sup>27</sup> GPT-4's answer: *"These rules for defamation liability stem from a combination of common law principles and statutory law, which can vary depending on the jurisdiction. In the United States, the key legal sources for defamation law include: (1) Common law: Defamation has its roots in English common law, which is a body of law developed through court decisions over time. Many U.S. states have adopted and adapted these common law principles in their own legal systems, and state courts continue to refine and develop defamation law through their decisions. (2) State statutes: Some states have enacted statutory laws regarding defamation, which may define elements of defamation, set forth defenses or exceptions, or specify remedies and damages. These statutes can vary from state to state, and may modify or supplement common law principles. (3) U.S. Constitution: The First Amendment to the U.S. Constitution guarantees the right to freedom of speech and the*

Having in this case identified one particular case as a key source for the underlying rules (*New York Times Co. v. Sullivan*), GPT-4 is also very well suited to explain the case precisely because it is a prominent Supreme Court case.

***Summarize the holding in New York Times Co. v. Sullivan.*<sup>28</sup>**

By contrast, GPT-4 cannot be relied upon to explain more specific legal source material, especially questions on specific cases that may not have been included in the corpus on which it was trained. For example:

***Which opinion in U.S. v. Marshall, 908 F.2d 1312 (1990) reflected a pragmatic interpretive perspective and why?*<sup>29</sup>**

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*press, which places limits on defamation law. The landmark U.S. Supreme Court case New York Times Co. v. Sullivan (1964) established the "actual malice" standard for public officials, which was later extended to public figures in Curtis Publishing Co. v. Butts (1967). This higher standard of fault is intended to balance the need to protect individual reputations with the importance of free and open debate on matters of public concern. (4) Federal laws: While defamation law is primarily governed by state law, there are some federal laws that can impact defamation cases, such as the Communications Decency Act of 1996 (CDA). Section 230 of the CDA provides immunity to internet service providers and platforms from liability for defamatory content posted by third parties. It's important to note that defamation laws may differ in other countries, as they may have their own legal systems, constitutional protections, and statutes governing defamation."*

<sup>28</sup> GPT-4's answer: "*New York Times Co. v. Sullivan, 376 U.S. 254 (1964) was a landmark U.S. Supreme Court case that established important constitutional protections for freedom of speech and the press in defamation cases involving public officials. In this case, the Court held that a public official cannot recover damages for a defamatory statement relating to their official conduct unless they can prove the statement was made with "actual malice." The Court defined "actual malice" as knowledge that the statement was false or reckless disregard for whether it was false or not. The Court reasoned that such a high standard of fault was necessary to protect the constitutional guarantees of freedom of speech and the press, as well as to encourage robust and uninhibited debate on matters of public concern. By requiring public officials to prove actual malice, the Court sought to prevent defamation lawsuits from being used to silence or punish critics of government actions. New York Times Co. v. Sullivan significantly strengthened First Amendment protections in defamation cases and has had a lasting impact on U.S. defamation law. The "actual malice" standard has since been extended to cases involving public figures, as well as public officials."*

<sup>29</sup> GPT-4's answer: "*In U.S. v. Marshall, 908 F.2d 1312 (1990), also known as the "LSD blotter paper" case, the majority opinion written by Judge Frank H. Easterbrook reflected a pragmatic interpretive perspective....In contrast, the dissenting opinion by Judge Richard A. Posner took a more purposive approach, focusing on the purpose of the sentencing guidelines to punish based on the harm caused by the drug, not the weight of the carrier medium."*

Although GPT-4 indicates in its answer that Judge Easterbrook's opinion reflected a pragmatic perspective, the correct answer is that Judge Posner's opinion in the case was pragmatist.

Although the potential for this type of error in GPT-4's analysis is directly related to the specificity of the question asked, there is no way to know whether its answers are correct without performing independent legal research. This fact points to a significant advantage of Bing Chat over current versions of GPT-4 when it comes to scoping out an initial legal issue: Unlike GPT-4, Bing Chat<sup>30</sup> provides specific citations to its source material and is not limited by a historical corpus of text, like GPT-4. Perhaps for related reasons, Bing Chat not only provided an accurate answer to the question regarding *US v. Marshall* (at least on some attempts), but also cited its source material.<sup>31</sup> In particular, Bing's answer links to a 1991 U.S. Supreme Court case, *Chapman v. United States*.<sup>32</sup> A quick search for "Posner" in the opinion reveals several quotations from the opinion that confirm his pragmatist approach in *US v. Marshall*, such as Judge Posner's dissenting opinion in *United States v. Marshall* noted that "the severity of the sentences in LSD cases would be comparable to those in other drug cases only if the weight of the LSD carrier were disregarded."

### *B. Using AI to Analyze Relevant Caselaw*

AIs like GPT-4 can be very useful tools not only for identifying potentially relevant caselaw, but also for understanding it. Although there is no single correct approach to using GPT-4 for this purpose, one specific approach that can produce helpful results is detailed below. While these steps provide a good starting point for learning how to use GPT-4 to develop one's own practices and preferences, they are just that – a starting point.

#### 1. Using AI to Produce Case Summaries

AIs can often produce quick summaries of well-known cases simply through a direct query, as demonstrated by the example above involving *New York Times v. Sullivan*. In most cases, however, the best route to generating accurate case summaries is to copy and paste the entire text of a potentially

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<sup>30</sup> This and all subsequent Bing Chat conversations were conducted using the "Precise" setting.

<sup>31</sup> Bing Chat's response: "Judge Posner's dissenting opinion in *U.S. v. Marshall* reflected a pragmatic interpretive perspective. He noted that the severity of sentences in LSD cases would be comparable to those in other drug cases only if the weight of the LSD carrier were disregarded. [footnote]"

<sup>32</sup> *Chapman v. United States*, 500 U.S. 453 (1991), which Bing Chat found at <https://www.law.cornell.edu/supct/html/90-5744.ZD.html>.

relevant opinion into GPT-4 and ask it to state the holding of the case. At present, this approach is only feasible in GPT models like GPT-4 rather than Bing, as the latter has a query limit of only 2000 characters, which even the shortest legal opinions typically exceed.

To illustrate this approach, we asked GPT-4 to state the holding of one case, *Chipokas v. Hugg*, 477 N.W.2d 688 (1991), by using the following prompt:

***Identify the holding in the following case, which is quoted in full here: “[copy and paste text of Chipokas opinion, with no headnotes or other summary. Put the case in quotation marks so that GPT-4 can extract quotations from text in answering later questions].”***<sup>33</sup>

Notably, this synopsis of the case is substantially more readable and accurate than either the court-supplied synopsis<sup>34</sup> or the West headnotes to the case.<sup>35</sup>

In cases where the summary produced by GPT-4 piques a lawyer’s interest, lawyers may frequently find it helpful to instruct the AI to generate a slightly lengthier summary that goes into a bit more detail in the case.

***Provide a slightly more detailed summary of the case.***<sup>36</sup>

<sup>33</sup> GPT-4’s answer: “*The holding in this case is that the district court properly granted summary judgment in favor of the defendants, the Huggs, because (1) the “Proposal to Lease” was not a contract giving the parties enforceable rights, and (2) the plaintiff, Mr. Chipokas, could not recover on the theory of promissory estoppel as there was no clear and definite agreement between the parties.*”

<sup>34</sup> Here is the court-supplied synopsis: “Owner of commercial property sued for breach of oral lease, breach of written agreement to lease, and on theory of promissory estoppel. The District Court, Linn County, [L. Vern Robinson](#), J., granted summary judgment for prospective tenants asserting that no enforceable contract was ever reached. Owner of premises appealed. The Court of Appeals, [Hayden](#), J., held that: (1) proposal to lease was not final binding lease agreement enforceable by parties, but merely preliminary negotiations, and (2) owner was not induced to act by proposal to lease or surrounding circumstances so as to permit owner to recover against prospective tenants on basis of promissory estoppel.”

<sup>35</sup> Here is the text of the two headnotes: (1) “Proposal to lease was not final binding contract giving owner of premises enforceable rights in commercial lease, but was merely preliminary negotiations, where at least three contract terms were not resolved and agreed upon.” (2) “Owner of premises was not induced to act by proposal for commercial lease agreement or surrounding circumstances so as to permit owner to recover on theory of promissory estoppel as against prospective tenant, where language of proposal to lease was decidedly conditional, not definite, and some details were left for future negotiation.”

<sup>36</sup> GPT-4’s answer: “*In this case, Mr. Chipokas, a commercial property owner, sued the Huggs for breach of an oral lease, breach of a written agreement to lease, and on the theory of promissory estoppel. The parties had signed a “Proposal to Lease,” which explicitly stated it was “conditional upon a final lease acceptable to both Lessee and Lessor and the plans and specifications also acceptable to both parties.” However, the parties couldn’t agree on*

At present, one meaningful complication to this first simple step is that many cases are too long to be entered into the query box of GPT-4; the “context length” – or length of the prompt plus the maximum number of words in the completion – is currently approximately 4000 for the GPT-4 model currently accessible through ChatGPT Plus.<sup>37</sup> While this limit will likely increase in the long term (GPT-4’s full token limit available to some API users is approximately 32,000 words, longer than many novels and more than 50 full-length pages), there are workarounds that can be used to process longer cases in the meantime. One simple, though sometimes cumbersome (depending on the length of the case), solution is to ask the AI to summarize each of the constituent parts of an opinion in a series of questions contained within a single chat. When employing this approach, it’s important to use natural section breaks in the opinion so that no meaning is lost across queries. Moreover, it’s a good practice to specifically tell GPT-4 that you are asking it to summarize multiple parts of a case; after summarizing the individual portions of the case, GPT-4 can then be asked to summarize the entire case. The following queries work well to accomplish these goals:

***(1) Summarize Part I of the following case, [Case Name], which is contained here: “[copy and paste text of first ~2000 words of opinion only, with no headnotes or other summary. Put the case in quotation marks so that GPT-4 can extract quotations from text in answering later questions].”***

***(2) Summarize Part II of [Case Name], which is contained here: “[copy and paste text of second portion of opinion, constituting no more than ~2000 words.***

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*certain terms, and the forty-paragraph lease agreement was never signed. The district court granted summary judgment in favor of the defendants (the Huggs) because the “Proposal to Lease” was not a contract giving the parties enforceable rights, and promissory estoppel did not apply as there was no clear and definite agreement between the parties. Mr. Chipokas appealed the decision. The appellate court affirmed the district court’s decision. It agreed that the “Proposal to Lease” was not a contract but merely a proposal, and therefore, it did not give the parties enforceable rights. The court also rejected Mr. Chipokas’s claim that the proposal to lease was enforceable as a mutually binding obligation to negotiate in good faith, as this issue had not been raised at the district court level. Additionally, the court found that Mr. Chipokas could not recover on the theory of promissory estoppel because there was no clear and definite agreement between the parties. The “Proposal to Lease” was conditional and left some details for future negotiation. Given these undisputed facts, the court concluded that it was unreasonable to find Mr. Chipokas was induced to act by the proposal to lease or surrounding circumstances.”*

<sup>37</sup> See Joshua J., *What is the Difference Between the GPT-4 Models?*, Open AI, <https://help.openai.com/en/articles/7127966-what-is-the-difference-between-the-gpt-4-models>.

***(3) Now summarize all of [Case Name] based on both Part I and Part II.***

## 2. Using AI to Probe Relevance of Cases

In some cases, one or even multiple case summaries produced by GPT-4 will make clear the importance or relevance of a case to a desired legal task. In these instances, the next step will almost always be to read or skim the opinion directly to get a basic sense of its structure and analysis, and then to move to Step 3.

But in some cases, a summary produced by an AI may not clarify whether a case is likely to be helpful in completing an underlying legal task. In these cases, a user can effectively use GPT-4 to probe relevance quickly by engaging it in dialogue.

To illustrate, suppose a young lawyer has been tasked with writing a memo on the application of promissory estoppel in the context of preliminary assurances by one party that induced reliance by the other party. Such a lawyer might review the summary of *Chipokas* produced by GPT-4 and be uncertain about the extent to which *Chipokas* focused on promissory estoppel. GPT-4 is a perfect tool to get a quick answer to this type of question without having to review the case directly. To accomplish this, it will often be easiest and most accurate to ask GPT-4 to elaborate on the specific portion within its summary that is of potential interest. And in many cases, the easiest way to do this is to copy and paste the portion of the AI's answer that is of greatest potential interest and ask the AI to expand on that analysis.

***Summarize the court's promissory estoppel analysis and explain why the court found that there was no clear and definite agreement that the plaintiff could rely upon to his detriment.<sup>38</sup>***

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<sup>38</sup> GPT-4's answer: "The court's promissory estoppel analysis focused on determining whether there was a clear and definite agreement between the parties, which is one of the required elements for promissory estoppel to apply. The elements of promissory estoppel are: (1) a clear and definite agreement, (2) proof the party seeking to enforce the agreement reasonably relied upon it to their detriment, and (3) a finding that equity supports enforcement of the agreement. In this case, the court found that the "Proposal to Lease" was not a clear and definite agreement, as it was conditional and some details were left for future negotiation. The language of the proposal stated it was "conditional upon a final lease acceptable to both Lessee and Lessor and plans and specifications also acceptable to both parties." The court reasoned that, given these undisputed facts, it was unreasonable to find that *Chipokas* was induced to act by the proposal to lease or surrounding circumstances. Although *Chipokas* may have sought a written commitment to lease the property, he did not get one. As a result, the court concluded that the first element of promissory estoppel, a clear and definite agreement, was not satisfied. Therefore, promissory estoppel did not apply, and the court affirmed the district court's decision."



In sum, GPT-4 and similar AIs can be an extremely useful tool for quickly establishing how relevant caselaw may be to a particular legal topic and for developing a solid understanding of the basic parameters of the case.

### 3. Using AI to Develop a Deep Understanding of Caselaw

Once a lawyer concludes that a case is indeed relevant to a specific legal task, the next step is generally for them to read, or at least skim, the case, using AI-produced summaries like those produced above as a guide. By contrast, relying solely on the AI to explain a relevant case without at least quickly reviewing the text of the opinion directly is a dangerous practice. Even the very best current models are known to “hallucinate” incorrect facts or law, as mentioned above, making it imprudent to rely on them without double-checking.

There is no single formula for how to use LLM models like GPT-4 to better understand and evaluate cases: GPT-4 can answer virtually any question that the user may have about the case. One good starting point, however, is to structure questions to GPT-4 regarding a case to parallel the basic structure of a 1L case brief: by asking the AI to identify the relevant issues, rules, and application of those rules to the facts.

In doing so, a best practice is to ask GPT-4 to quote the relevant language from the opinion it relies upon in its answer to any question. In doing so, the user is essentially asking GPT-4 to provide citations with pincites for its answers to any questions so that those answers can be substantiated by the user, much as a cite checker might do for any legal opinion.

#### a. Identifying and Expanding on Relevant Rules Used by Court

One natural first step in using an LLM to develop a deeper understanding of a case is to ask it to identify the rule or rules that the case uses. As applied to *Chipokas*, for instance, a user might ask what rule the court uses to determine when assurances by one party can form the basis of a promissory estoppel claim by another party. The user can ask the AI directly for this rule and ask the AI to substantiate its rule by quoting directly from the case:

***What rule does the court use to determine whether the proposal to lease was enforceable under the doctrine of promissory estoppel? Quote directly from the case excerpted above in your answer.<sup>39</sup>***

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<sup>39</sup> GPT-4’s answer: “The court used the elements of promissory estoppel to determine whether the proposal to lease was enforceable under the doctrine. The court quoted the elements of promissory estoppel from a previous case, *Citizens First National Bank of Storm*

In many instances, users can iteratively ask more questions to elicit further details about the key rules that a court deployed in an opinion. Here, for instance, the AI indicated that one key question for purposes of the *Chipokas* case's promissory estoppel was whether a clear and definite agreement existed. The user might therefore ask what specific guidance the court gives on identifying a clear and definite agreement:

***What specific guidance does the court give regarding when a clear and definite agreement exists? Quote directly from the case excerpted above in your answer.<sup>40</sup>***

b. Understanding how the Court Applied the Rule to the Facts

After having used GPT-4 to better understand the relevant legal rules at play in a case, a lawyer can continue to use the AI to understand how the court applied those rules to the facts. Once again, a good strategy for accomplishing this is to use in follow up questions snippets from the language that GPT-4 provided in prior answers so that the relationship among different questions is clear.

***Why does the court conclude that there was no clear and definite agreement reached by the parties, and therefore, the plaintiff cannot satisfy the first element of promissory estoppel? Quote directly from the case excerpted above in your answer.<sup>41</sup>***

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*Lake v. Turin*: "The elements of promissory estoppel are: (1) a clear and definite agreement, (2) proof the party seeking to enforce the agreement reasonably relied upon it to his detriment, and (3) a finding that equity supports enforcement of the agreement."

<sup>40</sup> GPT-4's answer: "The court gives guidance on what constitutes a clear and definite agreement under promissory estoppel. As stated in the excerpt: "A clear understanding by the promisor that the promisee was seeking an assurance upon which he could rely and without which he would not act." The court also cites the Restatement (Second) of Contracts § 90, which defines an agreement for purposes of promissory estoppel as "[a] promise which the promisor should reasonably expect to induce action... on the part of the promisee."

<sup>41</sup> Once again, GPT-4's answer is superb: it clearly and accurately identifies the precise facts that the court highlighted in its analysis applying the rule: *The court concludes that there was no clear and definite agreement reached by the parties based on the language of the proposal to lease and the surrounding circumstances. The court states: "Whether we focus solely on the words of the proposal or consider its meaning in the surrounding circumstances, we are unable to find a clear and definite agreement the Huggs would reasonably understand to induce action. The language of the proposal to lease was decidedly conditional, not definite. The 'entire proposal [was] conditional upon a final lease acceptable to both Lessee and Lessor and plans and specifications also acceptable to both parties.' Some details in the proposal were left for future negotiation." Therefore, the court concludes that the first element of promissory estoppel is not satisfied because there was no*

Further questioning can dig still more deeply into this analysis. For instance, while GPT-4 made clear in its first answer that it was important to the *Chipokas* court that “some details in the proposal were left for future negotiation,” it did not specify what those details were. This may simply reflect the court’s own lack of specificity on point, or it may reflect GPT-4’s effort to summarize facts that could well be important to the user in assessing their own hypothetical scenario. A simple follow up question can clarify:

***What specific details in the proposal were left for future negotiation such that they indicated that the proposal was not a final agreement, but rather a preliminary negotiation. Quote directly from the case excerpted above in your answer.<sup>42</sup>***

Here, a warning is in order: forcing GPT-4 to quote directly from the case allows the user to cite check the AI’s answers to ensure that they are accurate. But, in some cases GPT-4 may indicate that there is no relevant text; unfortunately, there is no way to confidently know whether that answer is accurate, and in some cases it may not be. To illustrate, in some iterations of the above line of questioning, ChatGPT produced a very different, and seemingly contradictory, answer to the question of what specific details were left for negotiation, such as the following: “*The court does not specify what details were left for further negotiation.*” Thus, users must be extremely wary of answers that cannot be substantiated by GPT-4 with specific excerpts from the text, including such claims that there is no relevant text within the opinion.

So far, GPT-4 has identified and explained two types of arguments that the court uses to conclude there was no clear and definite promise: (i) the explicit language of the proposal to lease, and (ii) the fact that some details of the lease agreement were left for further discussion. Any good questioner will want to know whether there were any other factors that were relevant to the court in concluding that there was no clear and definite agreement in the case. In doing so, it is again advisable to use the same exact phrases that have been used in prior questions with the AI, and even to make clear to the AI how your question is meant to relate to prior parts of the discussion:

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*clear and definite agreement reached by the parties.*

<sup>42</sup> GPT-4’s answer: “*The specific elements of the lease that were not resolved between the parties were whether the lease should contain an indemnity provision, a provision requiring the tenant to pay for building repairs, and a provision giving the landlord a lien over the tenants’ property on the premises. As stated in the excerpt: “Most items were acceptable to all parties; however, three were not. The unacceptable items included whether the lease should contain an indemnity provision, a provision requiring the tenant to pay for building repairs, and a provision giving the landlord a lien over the tenants’ property on the premises.”*

***Was the court's conclusion that there was no clear and definite promise influenced by any factors other than the two you're already highlighted: (i) the explicit language of the proposal to lease, and (ii) the fact that the final lease agreement was not signed in part because of three specific areas of disagreement governing indemnity, repairs, and a lien? Quote directly from the case excerpted above in your answer.<sup>43</sup>***

Rather than concluding the questioning here, the skilled questioner may review past questions to ensure that no potentially relevant issues or questions have been missed or to elaborate on any elements that were not fully explored. Reviewing GPT-4's answers so far, one notable question is whether the court's analysis in *Chipokas* focused exclusively on the first element of the promissory estoppel test (the existence of a clear and definite promise), or also noted the second element as well (reasonable reliance).

***Did the court's analysis rely solely on the first element of promissory estoppel (a clear and definite agreement), or did it also analyze the second element of promissory estoppel (proof the party seeking to enforce the agreement reasonably relied upon it to his detriment)? Quote directly from the case excerpted above in your answer.<sup>44</sup>***

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<sup>43</sup> Once again, GPT-4's answer is illuminating: "Yes, the court's conclusion that there was no clear and definite promise was influenced by additional factors beyond the explicit language of the proposal to lease and the three specific areas of disagreement. The court also considered the nature of the agreement, which is a commercial lease of real estate, typically found in writing with many details. The court explained that the subject matter needed a formal writing for its full expression, and the final details were not agreed upon, as evidenced by the unresolved issues and the conditional nature of the proposal to lease. Additionally, the court noted that the forty-paragraph lease agreement was prepared by Mr. Chipokas after the proposal to lease, which indicated that the parties intended to negotiate a formal written lease. Considering these factors, the court agreed with the district court's determination that the document was a proposal and not a contract giving the parties enforceable rights."

<sup>44</sup> GPT-4's answer: "The court's analysis primarily focused on the first element of promissory estoppel (a clear and definite agreement). However, it did briefly touch upon the second element (proof the party seeking to enforce the agreement reasonably relied upon it to his detriment). Here's a direct quote from the case: "Whether we focus solely on the words of the proposal or consider its meaning in the surrounding circumstances, we are unable to find a clear and definite agreement the Huggs would reasonably understand to induce action. The language of the proposal to lease was decidedly conditional, not definite. The "entire proposal [was] conditional upon a final lease acceptable to both Lessee and Lessor and plans and specifications also acceptable to both parties." Some details in the proposal were left for future negotiation." "Given these undisputed facts, it is unreasonable to find Mr. Chipokas was induced to act by the proposal to lease or surrounding circumstances. Mr. Chipokas may have sought a written commitment to lease the property, but he did not get

Having used GPT-4 to gain a deep appreciation for the *Chipokas* case, the questioner is likely to want to know what caselaw figured prominently in the court's analysis.

*What were the most important precedents that the court relied on in its promissory estoppel analysis? Quote directly from the case excerpted above in your answer.*<sup>45</sup>

### III. USING AI TO PRODUCE FIRST DRAFTS OF MEMOS AND BRIEFS

So far, the discussion has focused on using AIs to research and understand caselaw and other types of legal source material. But the power of LLMs goes much further than simply allowing lawyers to reliably understand such legal source material: AIs are capable of efficiently and persuasively applying this legal source material to specific real world legal problems. This Part therefore turns from tasks associated with researching and understanding legal source material to the more fundamental lawyerly task of applying legal rules to real-world problems. Before fully exploring this functionality of LLMs, however, Part A pauses to consider the ethical questions surrounding using AI in this fashion. Having laid out the ethical case for lawyers to make free use of LLM's work product in most types of legal materials, Part B transitions from the question of "whether" to "how," laying out various specific strategies for lawyers to make effective use of GPT-4 to produce legal memos and briefs.

#### A. Ethical Considerations

This use of LLMs described in Part I involves few ethical quandaries, as none of the output produced by the AI in researching and analyzing caselaw involves lawyers repurposing text produced by an LLM in work product that a user claims is their own. But when and under what circumstances may a lawyer use text produced by GPT-4 or a similar AI to help draft legal work product? This is a much thornier ethical question.

Using modern LLM tools to produce work product that is assigned to a

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one. Therefore, we affirm the district court on this issue."

<sup>45</sup> GPT-4's answer: "The court relied on several precedents in its promissory estoppel analysis, including the cases of *In re Estate of Graham*, 295 N.W.2d 414, 418-19 (Iowa 1980), *Johnson v. Pattison*, 185 N.W.2d 790, 795-97 (Iowa 1971), and *Miller v. Lawlor*, 245 Iowa 1144, 1151-57, 66 N.W.2d 267, 272-75 (1954). As stated in the excerpt: "The court in *Moeller* determined the first element was satisfied in *Miller and Pattison*. *Id.* at 889. The court found 'a clear understanding by the promisor that the promisee was seeking an assurance upon which he could rely and without which he would not act.' A similar finding could not be made in *Graham*."

student in a law school setting is plainly unethical unless the instructor has specifically allowed students to make this type of use of the technology. The instructor's purpose in that setting will typically be to test and develop students' own capacity to engage in legal research, writing, and analysis, rather than to see how well the student can use tools like GPT-4 to create the appearance that they have acquired these skills.<sup>46</sup> Using GPT-4 or similar tools to circumvent this learning and assessment process is just as unethical as any other form of cheating both because it undermines the core purposes of legal education and it allows some students who intentionally violate the rules to gain an unfair advantage over other students who comply with the rules.<sup>47</sup>

The ethical terrain becomes substantially muddier, however, with respect to the obligations of practicing lawyers. Unlike law students, the principal obligations of lawyers are to serve their clients.<sup>48</sup> While there are of course legal and ethical guardrails that constrain this objective, these guardrails generally involve risks associated with harming third parties or undermining the administration of justice.<sup>49</sup> None of these concerns are at play when it comes to practicing lawyers using text generated by GPT-4 in their own legal materials. Most notably, unlike traditional forms of plagiarism, no other person's or organization's own work is being repurposed by the user. To the contrary, all of the text generated by AIs like GPT-4 and Bing Chat is distinctive and has, in general, not been copied from any particular source at all, but instead has been generated by the AI in ways that resemble how a lawyer would generate new text on their own.

It follows that lawyers should not feel ethically constrained from using text generated by GPT-4 in legal work product such as briefs, memos, and contracts that are produced outside of the educational setting when doing so is in the interest of their clients. To the contrary, a plausible argument can be made that lawyers have an ethical obligation to affirmatively use these tools if doing so can allow them to more efficiently produce legal work product (saving the client money if they pay on an hourly basis) or use these tools to produce higher quality work product (increasing the chances that their legal work product will achieve the client's aims).<sup>50</sup> Not only can expanded use of

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<sup>46</sup> See Daniel Schwarcz & Dion Farganis, *The Impact of Individualized Feedback on Law Student Performance*, 67 J. LEGAL EDUC. 139 (2017).

<sup>47</sup> See Lori A. Roberts & Monica M. Todd, *Let's Be Honest about Law School Cheating: A Low-Tech Solution for a High-Tech Problem*, 52 AKRON L. REV. 1155 (2018).

<sup>48</sup> Renee Knake Jefferson, *Lawyer Ethics for Innovation*, 35 NOTRE DAME J.L. ETHICS & PUB. POL'Y 1 (2021); David Luban, *Fiduciary Legal Ethics, Zeal, and Moral Activism*, 33 Geo. J. Legal Ethics 275 (2020).

<sup>49</sup> See W Bradley Wendel, *Should Lawyers Be Loyal To Clients, the Law, or Both?*, 65 AM. J. JURIS. 19 (2020).

<sup>50</sup> Brian L. Frye, *Should Using an AI Text Generator to Produce Academic Writing Be*

AI tools like GPT-4 and Bing Chat serve the interests of lawyers' existing clients, but it can also plausibly help to expand the availability of legal services to lower-income individuals who have historically lacked the resources to pay for such legal services.<sup>51</sup>

Consistent with this analysis, lawyers have long used methods that mirror copying AI-generated text. In particular, lawyers routinely copy and paste legal text that they did not themselves produce when doing so (i) improves the efficiency/quality of their legal work product, and (ii) does not improperly appropriate text that was produced by another person or entity. The best example is the widespread practice of using preexisting contract forms as a starting point for crafting new contracts; not only is this practice tolerated, it is affirmatively taught and encouraged precisely because it is more efficient and effective than drafting each new contract from scratch, even if it does produce certain negative consequences.<sup>52</sup> Similarly, plaintiffs' lawyers often copy and paste old versions of complaints that they or someone else at their firm drafted to initiate new suits with similar facts and legal theories.<sup>53</sup> Even judges often copy and paste old language of their former opinions into new opinions when the context makes that language equally applicable, such as in the portion of a legal opinion laying out the standard of review on summary judgment.<sup>54</sup> Just as with a lawyer who uses text generated by GPT-4 in a legal document, each of these examples demonstrate the ethical appropriateness of lawyers using shortcuts that repurpose text that they did not produce when doing so does not intrude on the proprietary interests of others.<sup>55</sup>

For practicing lawyers, the main consideration in using AI models for lawyering will be confidentiality. At present, OpenAI and Microsoft's assurances about data security and confidentiality will be insufficient for many legal settings. Because the underlying technology is not yet fully understood, it's difficult for these companies to completely prevent bugs that

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*Plagiarism?*, 33 FORDHAM INTELL. PROP. MEDIA & ENT.L.J., (2022, forthcoming); Nicole Yamane, *Artificial Intelligence in the Legal Field and the Indispensable Human Element Legal Ethics Demands*, 33 GEO. J. LEGAL ETHICS 877 (2020).

<sup>51</sup> Some companies are betting on just this possibility, claiming that AI tools can allow individuals to circumvent the need to hire a lawyer entirely. See Josh Browder, *DoNotPay*. See also JJ Prescott, *Improving Access to Justice in State Courts with Platform Technology*, 70 VAND. L. REV. 1993 (2017).

<sup>52</sup> See, e.g., Mark Weidemaier, Robert Scott, & Mitu Gulati, *Origin Myths, Contracts, and the Hunt for Pari Passu*, 38 LAW & SOC. INQUIRY 72 (2013); Anna Gelper, Mitu Gulati & Jeromin Zettelmeyer, *If Boilerplate Could Talk: The Work of Standard Terms in Sovereign Bond Contracts* 44 LAW & SOC. INQUIRY 617 (2019); Robert E. Scott, Stephen J. Choi, & Mitu Gulati, *Revising Boilerplate: A Comparison of Private and Public Company Transactions*, 2020 WIS. L. REV. 629 (2020).

<sup>53</sup> See Marcus Alexander Gadson, *Stolen Plausibility*, 110 GEO. L.J. 291 (2022).

<sup>54</sup> HB Dixon Jr., *I Never Meta Data I Didn't Like*, 48 JUDGES J. 37 (2009).

<sup>55</sup> See Frye, *supra* note 35.

might reveal the content of user queries to other users.<sup>56</sup> Third-party companies integrating large language models, like Harvey,<sup>57</sup> provide greater assurances of confidentiality and may ultimately be the only way for practicing lawyers to use large language models when dealing with sensitive client information.

Finally, the very fact that lawyers can and should use tools like GPT-4 when doing so can allow them to better represent their clients means that law schools should think seriously about teaching law students how to perform this task.<sup>58</sup> That, in turn, means that law school instructors should increasingly allow students to use these tools in a subset of their legal research and writing assignments.

### *B. Mechanical Considerations in Using GPT-4 to Product First Drafts*

One simple way to use tools like GPT-4 to produce legal work product like memos and briefs is to copy and paste any useful materials that the AI has produced in the context of using it to evaluate a case, which is described in Part I. In certain legal writing settings, various answers provided by GPT-4 to the types of questions posed in Part I may prove useful. Indeed, legal briefs and memos often contain basic summaries of cases or elements of cases, particularly when there exists a small universe of potentially relevant cases.

But GPT-4 and similar AI tools have much more substantial power to help lawyers apply the law to facts rather than simply summarizing the law. To accomplish this, one useful approach is to employ a basic Issue-Rule-Application-Conclusion (IRAC) approach to questioning the AI.<sup>59</sup>

#### 1. Direct Evaluation of Fact Patterns for Legal Issues

One straight-forward but effective first step in producing a memo or similar work product evaluating a specific scenario is to describe the scenario with as much specificity as possible to GPT-4,<sup>60</sup> and then to ask it to evaluate

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<sup>56</sup> E.g., @sama, Twitter (Mar. 22, 2023, 3:16 PM), <https://twitter.com/sama/status/1638635717462200320> (discussing a bug that allowed some users to see the titles of other users' prompt histories).

<sup>57</sup> See Harvey, <https://www.harvey.ai/> (last visited Mar. 24, 2023).

<sup>58</sup> See Choi, Hickman, Monahan, & Schwarcz, *supra* note 8.

<sup>59</sup> Jeffrey Metzler, *The Importance of IRAC and Legal Writing*, 80 U. DET. MERCY L. REV. 501 (2002-2003).

<sup>60</sup> We asked GPT-4 to assume it represents Chris Smith, a professor whose sauce recipe has won several prizes at local fairs. Chris is approached by Don Venaleone, President of Kingpin Supermarkets, who tells Chris "I would like to make your sauce the feature product of the entrance displays in each of Kingpin Supermarkets' stores." After assuring Smith that



what legal issues the fact pattern raises:

***Evaluate what legal issues are raised by the following fact pattern:  
“[Insert fact pattern]”<sup>61</sup>***

With issue spotting in general, it is often helpful to evaluate a fact pattern for new issues multiple times. The same is true with AIs like GPT-4. For instance, asking GPT-4 this same question multiple times yields new

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his interest is genuine, Venaleone says “you will need to do a few things for this to work out” such as increasing his production capabilities and developing several variations of the sauce. Several weeks later, Cassandra Carlisle, Kingpin’s head merchandiser, contacts Smith. She asks for a rough estimate of Smith’s manufacturing costs and “for a tentative delivery date in early September when we can begin placing your product in Kingpin’s Iowa stores.” Once Smith provides a cost estimate, Carlisle states “we are working on documenting terms” but, in the meantime, “you should be preparing to make as much sauce as possible.” Smith then takes a sabbatical from his university job, secures a loan and production facility, develops two additional sauce recipes, and produces 15,000 bottles of sauce. However, Kingpin abandons any plan to carry Smith’s sauce in its stores without explanation.

<sup>61</sup> Here was GPT-4’s answer: *Based on the fact pattern presented, several legal issues may arise: (1) Breach of contract: Chris may argue that a contract was formed between him and Kingpin Supermarkets based on the oral agreement with Don Venaleone and the subsequent email exchanges with Cassandra Carlisle. The elements of a contract include offer, acceptance, consideration, and mutual assent to the terms. If Chris can establish the existence of a contract, he may argue that Kingpin breached the contract by changing the terms of their agreement in the September 2 email. (2) Promissory estoppel: If a court finds that no contract was formed, Chris may still have a claim for promissory estoppel. This doctrine applies when one party relies on the promise of another to their detriment, and it would be unjust not to enforce the promise. In this case, Chris relied on Don's promises and Cassandra's email communications, which led him to take significant financial risks and make substantial investments in his business. To succeed in a promissory estoppel claim, Chris would need to demonstrate that he reasonably relied on the promises made by Don and Cassandra, and that his reliance led to substantial detriment. (3) Fraudulent misrepresentation: Chris may argue that Don and/or Cassandra's statements amounted to fraudulent misrepresentation, which induced him to take significant financial risks. To succeed in a fraudulent misrepresentation claim, Chris would need to show that Don and/or Cassandra made false statements of material fact with the intent to deceive, that Chris reasonably relied on those statements, and that he suffered harm as a result. (4) Unjust enrichment: Chris may also consider pursuing a claim for unjust enrichment against Kingpin Supermarkets. Unjust enrichment occurs when one party benefits at the expense of another in circumstances where it would be unjust for the benefiting party to retain the benefit without compensating the other party. Chris may argue that Kingpin Supermarkets would be unjustly enriched if they do not compensate him for the financial risks and investments he made in reliance on their promises. It is important for Chris to consult with an attorney to discuss the specific facts and circumstances of his situation and determine the best course of action. The attorney may also identify other potential claims or defenses that may be available to Chris based on applicable state law and the specific terms of any written agreements between the parties.”*

promising legal theories, as the following answer from one such repeat query suggests.<sup>62</sup>

Notably, past studies have indicated that earlier GPT models (particularly ChatGPT) are not always effective at spotting relevant issues in fact patterns on law school exams.<sup>63</sup> In these studies, however, the AI was not first specifically directed to identify relevant legal issues.<sup>64</sup> As the above illustration suggests, however, GPT-4 can often do an admirable job of identifying potentially relevant legal issues when provided with complex fact patterns; in this case, GPT-4 identified all of the issues that we identified based on the fact pattern. Importantly, however, that does not mean every issue that GPT-4 identifies will be fruitful; to illustrate, GPT-4 was perhaps over-exuberant in identifying an unjust enrichment theory in the above fact pattern; this appears to be an implausible theory given that Kingpin did not retain any benefits in connection with its dealings with Smith.<sup>65</sup>

## 2. Direct Application of Rules to Facts for Specific Issues

Once an attorney focuses on a legal issue that they would like to further explore, GPT-4 provides a powerful tool for crafting written material that analyzes that issue based on relevant legal rules. Suppose that the lawyer in the above hypothetical wishes to evaluate the promissory estoppel claim raised by the above fact pattern. One good option for doing so would be to directly ask GPT-4 to perform this analysis. But a better approach is to directly supply GPT-4 with the relevant legal rules or source material, which can be identified using the techniques described in Part I, as the following example illustrates:

***Evaluate whether [party] has a good promissory estoppel claim. In doing so, assume that promissory estoppel would require [party] to show (1) a clear and definite agreement, (2) proof the party seeking to enforce the agreement reasonably relied upon it to his detriment,***

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<sup>62</sup> GPT-4's answer: "*Breach of the implied covenant of good faith and fair dealing: Chris could argue that Kingpin, Don Venaleone, and/or Cassandra Carlisle breached their duty to deal with him in good faith and act fairly when they changed the terms of the agreement without explanation or proper negotiation. If a court finds a breach of this duty, Chris might be able to recover damages.*"

<sup>63</sup> See Choi, Hickman, Monahan & Schwarcz, *supra* note 8.

<sup>64</sup> See *id.*

<sup>65</sup> Unjust enrichment generally requires that one party is unjustly benefited at the expense of another. See Peter Birks, *Unjust Enrichment and Wrongful Enrichment*, 79 TEX. L. REV. 1767 (2000-2001). That does not appear to be a plausible possibility based on the fact pattern because none of the specified facts indicate that Kingpin was enriched by Smith's actions.

*and (3) a finding that equity supports enforcement of the agreement.<sup>66</sup>*

As GPT-4 accurately indicates, one of the central questions raised by the fact pattern is whether the hypothetical parties ever did, in fact, reach a “clear and definite agreement.” As law professors teach their students, a good method for better understanding this issue is to consider the best arguments on each side of the issue, in the process highlighting the most important facts for each side. GPT-4 is very well positioned to supply these competing arguments:

*What is the best argument that [party 1] and [party 2] did indeed reach a clear and definite agreement for purposes of a promissory estoppel claim against [party 2]?<sup>67</sup>*

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<sup>66</sup> GPT-4’s answer: “Based on the fact pattern and the three elements required for a promissory estoppel claim, let’s analyze whether Chris has a strong case against Kingpin: (1) Clear and definite agreement: This element may be the most challenging for Chris to establish. Although Chris and Don Venaleone had a conversation where Don expressed his interest in featuring Chris’s sauce in Kingpin’s stores, the specifics of the arrangement were not detailed. The subsequent email exchanges also lacked clarity on the terms of the agreement. Kingpin might argue that their discussions were only preliminary negotiations and not a clear and definite agreement. However, Chris could argue that the details provided by Don and the subsequent email exchanges with Cassandra were enough to form a clear and definite understanding of the arrangement. (2) Reasonable reliance: Chris can likely demonstrate that he reasonably relied on Kingpin’s assurances. After the initial conversation with Don and the email exchanges with Cassandra, Chris took significant steps to prepare for large-scale production. He secured a sabbatical from his university, took out a loan, leased a building, purchased equipment, and hired a part-time production assistant. Chris’s actions suggest that he relied on the expectation that his sauce would be featured prominently in Kingpin’s stores, as indicated by their initial discussions. (3) Equity supports enforcement: Chris’s reliance on Kingpin’s assurances led him to invest substantial time, effort, and financial resources into preparing for the deal. He now faces the risk of significant financial losses due to the change in Kingpin’s plans. It could be argued that it would be inequitable for Kingpin to benefit from Chris’s efforts without honoring their initial understanding. Enforcing the agreement through promissory estoppel would prevent Kingpin from taking advantage of Chris’s reliance and placing him in a worse financial position. In conclusion, while Chris may face challenges in establishing a clear and definite agreement, he has a reasonable argument for promissory estoppel based on his reliance and the equities involved. However, the success of such a claim will depend on the specific facts and circumstances of the case, as well as the jurisdiction in which the claim is brought. It is essential for Chris to consult with an attorney to assess the strength of his promissory estoppel claim and determine the best course of action.

<sup>67</sup> GPT-4’s answer: “The best argument that Chris Smith and Kingpin reached a clear and definite agreement for purposes of a promissory estoppel claim against Kingpin is based on the totality of their interactions and communications, which could be construed as forming a sufficiently definite understanding of the arrangement. (1) The initial conversation between Chris and Don Venaleone: In their conversation, Don expressed a strong interest

Now the lawyer working on this matter can ask GPT-4 to supply the best argument on the other side of the ledger:

***What is the best argument that [party 1] and [party 2] did not reach a clear and definite agreement for purposes of a promissory estoppel claim against [party 2]?<sup>68</sup>***

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*in Chris's BBQ sauce and proposed that it be the feature product in Kingpin's Iowa stores' entrance displays. He outlined the steps Chris would need to take, such as increasing production capabilities and developing variations of the sauce. This conversation could be interpreted as the foundation of an agreement, with Don expressing Kingpin's intent to enter into a commercial relationship with Chris. (2) Subsequent email exchanges: Following the conversation, Chris and Cassandra, Kingpin's Head Merchandiser, exchanged several emails discussing the deal. Cassandra provided Chris with the contact information for Kingpin's distributor and requested an estimate of Chris's costs per bottle, as well as a tentative delivery date. In addition, Cassandra mentioned that they were working on documenting terms with Chris, which could be interpreted as further evidence of Kingpin's intention to solidify their arrangement. (3) Chris's actions based on the understanding: Chris took significant steps in reliance on the apparent agreement, including securing a sabbatical, obtaining a loan, leasing a building, purchasing equipment, and hiring a part-time production assistant. These actions demonstrate that Chris understood the arrangement with Kingpin to be definite and binding, and that he acted in accordance with that understanding. While the communications between the parties may lack some specifics, such as the exact quantity of sauce to be purchased or the precise terms of payment, the overall interactions suggest a mutual understanding of a commercial relationship between Chris and Kingpin. Chris could argue that, taken together, these communications and actions formed a clear and definite agreement, which is sufficient for a promissory estoppel claim..."*

<sup>68</sup> GPT-4's answer: "The best argument that Chris Smith and Kingpin did not reach a clear and definite agreement for purposes of a promissory estoppel claim against Kingpin would focus on the lack of specificity in the discussions and the absence of a formal written agreement. (1) Preliminary negotiations: Kingpin could argue that the conversation between Chris and Don Venaleone, as well as the subsequent email exchanges with Cassandra, were merely preliminary negotiations and not a binding agreement. They could assert that the discussions were intended to explore the possibility of a commercial relationship but were not meant to create a legally enforceable contract. (2) Lack of specific terms: The communications between Chris and Kingpin lacked specific terms, such as the exact quantity of sauce to be purchased, the price per bottle, the duration of the agreement, or the terms of payment. Kingpin could argue that the absence of these essential terms demonstrates that no clear and definite agreement was reached between the parties. (3) Absence of a formal written agreement: In the email exchanges, Cassandra mentioned that they were working on documenting terms with Chris, which could imply that Kingpin intended to formalize the agreement in writing. Kingpin could argue that the absence of a signed, written contract indicates that the parties had not yet reached a clear and definite agreement. They could further contend that Chris's reliance on their informal communications was unreasonable, given the expectation of a formal written agreement. (4) Unilateral action by Chris: Kingpin could argue that Chris's actions in preparing for large-scale production were taken unilaterally and without explicit confirmation of the arrangement from Kingpin. They could assert that Chris should have waited for a more definitive commitment before investing

Having laid out these two sides of the argument, the lawyer can now ask the AI to write an analysis of the legal issue based on whatever conclusion they believe is more plausible (if the assignment is a predictive memo) or based on their client's interests (if the assignment calls for advocacy). In doing so, the lawyer can not only ask the AI to make the best argument for their side, but also to explain why the arguments on the other side fall short:

***Write a portion of a legal brief rejecting the best arguments that [party 1] and [party 2] did not reach a clear and definite agreement for purposes of a promissory estoppel claim against [party 2].<sup>69</sup>***

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*significant resources into the venture. In conclusion, to argue that Chris Smith and Kingpin did not reach a clear and definite agreement for purposes of a promissory estoppel claim against Kingpin, the focus would be on the preliminary nature of the negotiations, the lack of specific terms in the discussions, the absence of a formal written agreement, and the unilateral actions taken by Chris. However, the strength of this argument would depend on the specific facts and circumstances, as well as the legal standards in the relevant jurisdiction.*

<sup>69</sup> GPT's result:

#### **I. ARGUMENT**

##### ***A. The Existence of a Clear and Definite Agreement Between Smith and Kingpin Supports Smith's Promissory Estoppel Claim***

*Kingpin contends that no clear and definite agreement was reached between the parties, a necessary element for Smith's promissory estoppel claim. However, this contention is without merit. The evidence demonstrates that Smith and Kingpin reached a clear and definite agreement based on the conversation between Smith and Don Venaleone, Kingpin's President, and subsequent communications with Cassandra Carlisle, Kingpin's Head Merchandiser.*

##### ***1. The Initial Conversation and Subsequent Communications Provide Evidence of a Clear and Definite Agreement***

*The conversation between Smith and Venaleone included an explicit expression of interest in making Smith's sauce the feature product in Kingpin's Iowa stores and a discussion about potentially taking it nationwide. Venaleone provided specific steps for Smith to follow, such as increasing production capabilities, developing variations of the sauce, and completing paperwork later. This level of detail and commitment demonstrates a clear understanding and agreement between the parties.*

*Subsequent email communications between Smith and Carlisle further support the existence of a clear and definite agreement. Carlisle provided Smith with the distributor's contact information, requested cost estimates and tentative delivery dates, and instructed Smith to prepare for increased production. These communications, taken together, show that the parties intended to be bound by their agreement, even if some details were left to be determined later.*

##### ***2. The Parties' Conduct Supports the Existence of a Clear and Definite Agreement***

*Both Smith's and Kingpin's actions following the initial conversation provide strong evidence of a clear and definite agreement. Smith relied on Kingpin's*

For any element of the argument that the lawyer thinks may be further capable of development, a simply prompt so requesting is effective:

***Further develop the section of your prior answer arguing that the Parties' Conduct Supports the Existence of a Clear and Definite Agreement.<sup>70</sup>***

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*promises and made significant investments in his business, such as obtaining a sabbatical, securing a loan, leasing a building, purchasing equipment, and hiring an employee. Kingpin provided Smith with contact information for the distributor and engaged in ongoing communications that affirmed the agreement and expectations for Smith's production capabilities.*

***3. The Absence of a Written Contract Does Not Preclude a Finding of a Clear and Definite Agreement***

*Kingpin argues that the lack of a written contract negates the existence of a clear and definite agreement. However, the doctrine of promissory estoppel does not require a written contract. Its purpose is to prevent injustice when one party reasonably relies on the promises of another party to their detriment. In this case, the oral agreement and subsequent email communications provided a clear and definite framework for the parties' arrangement, and Smith reasonably relied on Kingpin's promises to his significant detriment.*

*In conclusion, the evidence demonstrates that a clear and definite agreement existed between Smith and Kingpin. Smith's promissory estoppel claim is supported by the initial conversation between the parties, subsequent email communications, and the parties' conduct. The absence of a written contract does not negate the existence of a clear and definite agreement, and Smith's reliance on Kingpin's promises was reasonable. Therefore, this Court should reject Kingpin's argument that no clear and definite agreement was reached for purposes of Smith's promissory estoppel claim.*

<sup>70</sup> GPT-4's answer: *"The Parties' Conduct Supports the Existence of a Clear and Definite Agreement. Both Smith's and Kingpin's actions following the initial conversation provide strong evidence of a clear and definite agreement. The parties' conduct, viewed objectively, demonstrates that they understood and intended to be bound by their arrangement.*

***a. Smith's Actions Demonstrate Reasonable Reliance on the Agreement***

*Smith took numerous and substantial steps in reliance on the agreement with Kingpin, demonstrating his belief in the existence of a clear and definite agreement. These actions include:*

- *Obtaining a six-month sabbatical from his university position, which resulted in a reduction of his salary by 50%;*
- *Securing a \$125,000 loan, repayable over five years at 3% interest, and using the equity in his home as collateral;*
- *Leasing a portion of a building to increase production capabilities;*
- *Purchasing top-of-the-line equipment to manufacture and package the barbecue sauce;*
- *Developing two additional sauce variations, as requested by Kingpin;*
- *Producing a total of 15,000 bottles of the barbecue sauce in anticipation of fulfilling Kingpin's expectations; and*

### 3. Analogizing/Distinguishing Caselaw

By this point, the lawyer assigned to this task has already generated a significant amount of text that can be incorporated directly into a memorandum or brief. A key missing ingredient, however, involves the use of relevant caselaw to substantiate the argumentation. While Part I explored how to use AIs like GPT-4 to explore relevant caselaw, good legal argumentation will generally require explicit comparison to relevant cases. Once again, AIs like GPT-4 are powerful tools to produce first drafts of this type of material.

The best way to accomplish this is to introduce the AI to a relevant case using the techniques described in Part I within the content of a Chat that has already asked the AI to consider a specific issue as applied to a specific case. In brief, the lawyer can first ask GPT to analyze a specific legal issue raised by a fact pattern, they can then ask GPT to analyze how a relevant case analyzes that same legal issue, and they can finally ask GPT to analogize and/or distinguish the base fact pattern to the case. To illustrate, consider the following set of questions, which merely build off of questions previously introduced above:

- 
- *Hiring a part-time production assistant at \$1,500 per month, terminable at will.*  
*These significant investments of time, money, and resources demonstrate that Smith reasonably relied on the promises made by Kingpin and viewed their arrangement as a clear and definite agreement.*
  - b. *Kingpin's Actions Reflect an Understanding of a Binding Arrangement*  
*Kingpin's conduct also supports the conclusion that a clear and definite agreement existed between the parties. Key actions taken by Kingpin include:*
    - *Sending Cassandra Carlisle, Kingpin's Head Merchandiser, to communicate with Smith and facilitate the arrangement;*
    - *Providing Smith with the contact information for Kingpin's preferred distributor, Larry Jones of ABC Food Distributing, to enable Smith to coordinate production and distribution;*
    - *Engaging in ongoing email communications with Smith, discussing cost estimates, tentative delivery dates, and expectations for increased production; and*
    - *Encouraging Smith to focus on preparing for the anticipated high demand for his barbecue sauce in Kingpin's stores.*

*These actions demonstrate that Kingpin, through its representatives, understood and intended to be bound by the arrangement with Smith.*

*In conclusion, the conduct of both Smith and Kingpin following their initial conversation strongly supports the existence of a clear and definite agreement. Smith's substantial investments and reliance on Kingpin's promises, as well as Kingpin's active facilitation and communication regarding the arrangement, indicate that the parties intended to be bound by their agreement.*

- (i) Evaluate what legal issues are raised by the following fact pattern: “[Insert fact Pattern]”**
- (ii) Evaluate whether [Party 1] and [Party 2] reached a clear and definite agreement for purposes of a promissory estoppel claim against [Party 2]?**
- (iii) Why does the court conclude that there was no clear and definite agreement reached by the parties in the following case [Insert full text of case, here Chiopokas].**
- (iv) Argue that the facts involving the [Party 1] case are analogous to the facts of Chipokas, such that a court should find that [Party 2] made no clear and definite agreement with [Party 1].**

So prompted, GPT-4’s argumentation is quite good, and serves as a wonderful starting point for further analogizing the two cases.<sup>71</sup> Not surprisingly at this point, GPT-4 also excels at distinguishing relevant cases when prompted to do so:

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<sup>71</sup> GPT-4’s answer: *In arguing that the facts involving the Chris Smith case are analogous to the facts of Chipokas, such that a court should find that Kingpin made no clear and definite agreement with Smith, we can draw several parallels between the two cases: (1) Preliminary negotiations: In both cases, the parties engaged in preliminary negotiations that did not result in a binding agreement. In Chipokas, the Proposal to Lease was found to be a preliminary negotiation document and not a binding lease agreement. Similarly, in the Chris Smith case, any discussions or correspondence between Smith and Kingpin could be considered as preliminary negotiations, rather than a finalized agreement. (2) Conditional or incomplete terms: Just as the Proposal to Lease in Chipokas was conditional upon a final lease acceptable to both parties, any terms discussed between Smith and Kingpin could also be considered conditional or incomplete. If Smith and Kingpin did not agree on all material terms or left certain aspects of their potential agreement open for further negotiation, then no clear and definite agreement could have been reached. (3) Lack of a formal written agreement: In Chipokas, the court emphasized the importance of a formal written agreement, as evidenced by the unsigned forty-paragraph lease agreement. In the Chris Smith case, if no formal written agreement was ever signed or finalized by both parties, it would support the argument that no clear and definite agreement was reached. (4) No clear understanding or inducement: In Chipokas, the court found that the parties did not have a clear understanding that the proposal was intended to create obligations upon which they could rely. Similarly, in the Chris Smith case, if there was no clear understanding or inducement between Smith and Kingpin regarding the expectations and obligations of their potential agreement, it would further support the argument that no clear and definite agreement was reached. (5) Promissory estoppel not applicable: Just as the court in Chipokas found that promissory estoppel did not apply due to the lack of a clear and definite agreement, the same reasoning could apply to the Chris Smith case. If the court finds that there was no clear and definite agreement between Smith and Kingpin, then promissory estoppel would not be applicable. By drawing these parallels between the Chris Smith case and Chipokas, we can argue that the court should find that Kingpin made no clear and definite agreement with Smith, similar to the conclusion reached in Chipokas.*



*Argue that the facts involving the [Party 1] case are distinguishable from the facts of Chipokas, such that a court should find that [Party 2] made a clear and definite agreement with [Party 1].<sup>72</sup>*

#### IV. EXTENSIONS

Although Parts I and II focus on lawyers' capacity to use LLMs with conducting caselaw research and drafting conventional types of litigation-oriented work product, LLMs of course have much broader potential to aid the work of lawyers. Below we briefly explore a number of extensions to the analysis above.

##### A. Using AI as an Editor

In addition to supplying lawyers with text that can be used in legal work

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<sup>72</sup> GPT-4's answer: "In arguing that the facts involving the Chris Smith case are distinguishable from the facts of Chipokas, such that a court should find that Kingpin made a clear and definite agreement with Smith, we can highlight several key differences between the two cases: (1) Nature of the agreement: In Chipokas, the dispute involved a commercial real estate lease, which typically requires a formal written agreement. In the Chris Smith case, depending on the nature of the agreement between Smith and Kingpin, the need for a formal written agreement might not be as crucial. If the parties' obligations and expectations are clearly defined in other forms of communication, such as emails or text messages, a court may find that a clear and definite agreement exists. 2. Agreement on material terms: Unlike in Chipokas, where the parties failed to agree on certain material terms, Smith and Kingpin may have reached an agreement on all material terms of their potential arrangement. If there is evidence demonstrating that both parties agreed on the essential elements of their agreement, this could support the argument that a clear and definite agreement was reached. 3. Reliance on the agreement: In Chipokas, the court found that there was no reasonable reliance by either party on the Proposal to Lease, as it was conditional and incomplete. In the Chris Smith case, if there is evidence showing that both Smith and Kingpin reasonably relied on their agreement and acted accordingly, this could support the existence of a clear and definite agreement. 4. Intent to be bound: The court in Chipokas found that the parties did not have the intention to be bound by the Proposal to Lease. In contrast, Smith and Kingpin may have expressed or demonstrated their intent to be bound by their agreement through their actions or communications. If the parties' conduct reflects a mutual understanding and commitment to their arrangement, a court may find that a clear and definite agreement exists. 5. Promissory estoppel applicability: If Smith can demonstrate that he reasonably relied on Kingpin's promise to his detriment, and that it would be unjust not to enforce the agreement, the doctrine of promissory estoppel might apply in the Chris Smith case. This would be unlike Chipokas, where the court found that promissory estoppel did not apply due to the lack of a clear and definite agreement. By highlighting these differences between the Chris Smith case and Chipokas, we can argue that the court should find that Kingpin made a clear and definite agreement with Smith, contrary to the conclusion reached in Chipokas."

product like memos and briefs, LLMs also can be usefully deployed to serve as an editor of initial drafts that lawyers have crafted.

### 1. Using LLMs to General Thesis Sentences

A fundamental principle of good legal writing is that each paragraph should start with a thesis sentence that clearly and concisely communicates to the reader the primary point of the paragraph. Yet many writers struggle to craft such thesis sentences, in part because they do not always know what their principal point is until after they draft a paragraph. LLMs like GPT-4 excel at producing thesis sentences with simple prompts like the following:

***Draft a single sentence that conveys the primary point of this paragraph: [insert paragraph].***<sup>73</sup>

### 2. Using LLMs to Improve Writing Flow and Remove Unnecessary Words

LLMs are also very well suited to improving hastily written text. This is because many of the virtues of effective legal writing are well understood, at least at a high level of generality: effective legal writing eschews unnecessary verbiage, makes clear how each sentence relates to the next, and prizes clarity and readability. These general virtues of legal writing provide the basis for helpful prompts designed to improve one's initial drafts:

***Rewrite the following paragraph to eliminate unnecessary words, clarify how each sentence relates to the prior sentence, and increase readability: [Insert your own paragraph].***<sup>74</sup>

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<sup>73</sup> As one example, we inputted this paragraph: "After his conversations with Kingpin Smith took significant steps to prepare for large-scale production of his sauce. He also took a sabbatical from his university position as a professor. Then, he took out a loan to help produce the sauce and leased a building. Then Smith purchased equipment to use to manufacture and package his sauce, and he developed several different variants of his traditional sauce recipe. He even hired a part time production assistant to help him with all of this. In other words, Smith reasonably relied on Kingpin's assurances in many ways." GPT-4's thesis sentence was: "*In response to Kingpin's assurances, Smith diligently prepared for large-scale sauce production by taking a sabbatical, securing a loan, leasing a facility, acquiring equipment, diversifying his recipe, and hiring a part-time assistant.*"

<sup>74</sup> GPT-4's answer: "*In response to Kingpin's assurances, Smith diligently prepared for large-scale sauce production. He took a sabbatical from his university position, secured a loan, and leased a facility. Subsequently, he acquired manufacturing and packaging equipment, diversified his traditional sauce recipe, and hired a part-time assistant. These actions exemplify Smith's reasonable reliance on Kingpin's assurances. Prior to meeting Kingpin, Smith was a dedicated professor, with sauce-making as a mere hobby. The opportunity to earn substantial income through Kingpin's collaboration motivated him to*

### B. Using AI to Produce Initial Contracts Drafts

GPT models are extremely well situated to help lawyers draft contracts. A good first step in pursuing this is to enter any deal terms into GPT directly, and then merely to direct GPT to produce first draft of a contract:

***Draft a contract that meets the following parameters: [Insert deal terms for contract]<sup>75</sup>***

*shift his focus, as he recognized his limited financial prospects from the sauce, which had only garnered a few local awards.*

<sup>75</sup> We instructed GPT-4 to suppose that after Smith's conversations with Kingpin, he decides to hire a food research company, Gourmet Design, Inc., to develop a hot and spicy variation of his recipe. We specified the following deal terms were specified in this example: 1) The hot and spicy sauce must be faithful to the original recipe; so they both have the same basic character. 2) The original recipe and the hot and spicy recipe must belong to Chris alone. 3) Employees at Gourmet Design who work on the recipe will never be assigned to work on another company's barbecue sauce to be sold anywhere in the he Upper Midwest within three years from the signing of the contract. (5) Gourmet Design must complete the recipe design and taste testing between six and eight months of the contract signing. (6) Gourmet Design will give up ownership rights in the Chris Smith hot and spicy barbecue sauce recipe. (7) Gourmet Design will surrender all design papers to Chris Smith, and will agree to keep the recipe confidential. GPT's result:

*This Contract for Recipe Development Services (the "Contract") is entered into on [Insert Date], by and between Chris Smith, an individual residing at [Address], Frozen Falls (hereinafter referred to as the "Client"), and Gourmet Design, Inc., a food research company incorporated under the laws of [State], with its principal place of business located at [Address], Big City (hereinafter referred to as the "Company").*

#### **RECITALS**

*WHEREAS, the Client is the owner of a family recipe for barbecue sauce (the "Original Recipe") and wishes to develop a hot and spicy variation of the Original Recipe (the "New Recipe");*

*WHEREAS, the Company is a food research company engaged in the business of creating and testing food recipes for various clients;*

*WHEREAS, the Client wishes to engage the Company to provide recipe design and testing services to develop the New Recipe, and the Company wishes to provide such services, subject to the terms and conditions set forth herein;*

*NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:*

#### **Services.**

*1.1 The Company shall provide recipe design and testing services to the Client for the purpose of developing the New Recipe, which shall be a hot and spicy variation of the Original Recipe.*

*1.2 The Company shall ensure that the New Recipe is faithful to the Original Recipe and retains its basic character.*

*1.3 The Company shall complete the recipe design and testing services within six (6) months from the date of signing this Contract.*

In cases where the lawyer has a past sample contract that they or their firm has used, or that is common in the industry, the lawyer can direct the AI to pattern the new contract on that precedent:

***Pattern the contract draft in this case on the following sample contract: [Insert precedent contract].***

These initial templates of a contract are, of course, a very good starting point. But they are only a starting point. Having produced an initial template of a contract, it is up to the lawyer to review it and to prompt GPT to expand on relevant elements and or to address additional issues that are not fully developed in the first draft. For instance, the initial template produced by

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*Payment.*

*2.1 The Client shall pay the Company a total fee of \$[Agreed Amount] for the recipe design and testing services provided under this Contract. The fee shall be payable in installments as follows: 50% upon signing of this Contract and 50% upon completion of the services.*

*Intellectual Property Rights.*

*3.1 All rights, title, and interest in and to the Original Recipe and the New Recipe, including but not limited to copyrights, patents, and trade secrets, shall belong solely and exclusively to the Client.*

*Confidentiality and Non-Disclosure.*

*4.1 The Company and its employees assigned to work on the New Recipe shall not disclose the Original Recipe or the New Recipe to any third party and shall maintain the confidentiality of such recipes during the term of this Contract and indefinitely thereafter.*

*4.2 Upon completion of the recipe design and testing services, the Company shall promptly deliver to the Client all design papers and any other materials related to the development of the New Recipe.*

*Non-Competition.*

*5.1 The Company agrees that the employees who work on the New Recipe shall not be assigned to work on any directly competing barbecue sauce to be sold in the Upper Midwest within two (2) years from the signing of this Contract.*

*Miscellaneous.*

*6.1 This Contract contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, and understandings, whether oral or written.*

*6.2 This Contract may be amended or modified only by a written instrument executed by both parties hereto.*

*6.3 This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.*

*6.4 This Contract shall be governed by and construed in accordance with the laws of the State of [Governing State].*

*IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date first above written.*

*Chris Smith (Client) Gourmet Design, Inc. (Company)*

By: \_\_\_\_\_ By:

GPT does not have any terms that provide clear incentives for the parties to produce a commercially successful product. It is therefore worthwhile for the lawyer to ask GPT to draft a clause that can be added to the contract that will provide financial incentives that will encourage the producing party to produce a commercially successful product:

***Draft an additional clause that will provide financial incentives for [Party One] to design [the product] so that it proves commercially successful.<sup>76</sup>***

Another capacity that GPT has is to identify and clarify the meaning of potentially ambiguous words within the contract. Once again, simply identifying that this is a core potential problem with contracts and asking GPT to rectify this problem is sufficient:

***Identify any potentially ambiguous terms in the contract language you've already produced and generate clarifying text that eliminates those ambiguities.<sup>77</sup>***

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<sup>76</sup> GPT-4's answer: *Financial Incentive for Commercial Success.*

7.1 In addition to the payment specified in Clause 2, the Client agrees to pay the Company a royalty as a financial incentive for the Company to design the New Recipe in a manner that contributes to its commercial success. The royalty shall be calculated as follows:

7.1.1 The Company shall be entitled to receive a royalty of [X%] of the gross revenue generated from the sales of the barbecue sauce using the New Recipe (the "Royalty"), subject to a maximum annual cap of \$[Y].

7.1.2 The Client shall provide the Company with quarterly sales reports within thirty (30) days following the end of each calendar quarter, which shall detail the gross revenue generated from the sales of the barbecue sauce using the New Recipe during that quarter.

7.1.3 The Client shall pay the Royalty due to the Company within forty-five (45) days following the end of each calendar quarter, based on the gross revenue reported in the sales reports provided under Clause 7.1.2.

7.2 The Royalty payment obligations under this Clause 7 shall commence on the first day of the calendar quarter following the completion of the recipe design and testing services and shall continue for a period of five (5) years.

7.3 The Company shall have the right to audit the Client's books and records relating to the sales of the barbecue sauce using the New Recipe, not more than once per calendar year, upon reasonable notice and during normal business hours, to verify the accuracy of the sales reports and the Royalty payments made under this Clause 7. Any discrepancies discovered during such audit shall be promptly rectified by the Client.

7.4 The payment of the Royalty under this Clause 7 shall not affect the ownership of the intellectual property rights in the Original Recipe and the New Recipe, which shall remain the property of the Client as provided in Clause 3.

<sup>77</sup> Upon reviewing the existing contract language, the following terms or clauses may potentially be ambiguous:

Clause 1.2: "faithful to the Original Recipe and retains its basic character"

These types of prompts to clarify ambiguities, or enhance parties' incentives for reliable performance, can of course be performed on any existing contract forms that lawyers have previously worked with. To accomplish this, merely input the text of an old contract form into GPT, and then ask GPT these questions with respect to the historic contract form.

#### CONCLUSION

There is little doubt that the power and capabilities of LLMs like GPT will continue to accelerate at breathtaking rates over the coming years. Lawyers and law schools that fail to adapt in response to these innovations not only fail to serve their clients as effectively as possible, but also accelerate their own potential obsolescence. This Article constitutes a first effort to demonstrate how simple prompts and thoughtful use of LLMs can radically transform and facilitate the role of attorneys.

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*To clarify this clause, the following text can be added:*

*1.2.1 For the purposes of this Contract, "faithful to the Original Recipe and retains its basic character" shall mean that the New Recipe shall maintain the core ingredients of the Original Recipe, including but not limited to the mild peppers, tomato base, vinegar, sugar, cinnamon, salt, pepper, and honey, while incorporating additional ingredients necessary to create a hot and spicy flavor profile.*

*Clause 5.1: "directly competing barbecue sauce"*

*To clarify this clause, the following text can be added:*

*5.1.1 For the purposes of this Contract, a "directly competing barbecue sauce" shall be defined as any barbecue sauce product developed by or on behalf of a third party that is intended for sale in the same product category, namely hot and spicy barbecue sauces, and that is positioned as a direct competitor to the barbecue sauce using the New Recipe in the marketplace, based on factors such as flavor, intended usage, target audience, and price point.*

*Clause 7.1.1: "gross revenue"*

*To clarify this clause, the following text can be added:*

*7.1.1.1 For the purposes of this Contract, "gross revenue" shall mean the total amount of revenue generated from the sales of the barbecue sauce using the New Recipe before deducting any expenses, discounts, returns, taxes, or fees.*

*By incorporating these clarifications, the contract language will be more precise and help to eliminate potential ambiguities.*