# THE LEGAL IMITATION GAME: GENERATIVE AI'S INCOMPATIBILITY WITH CLINICAL LEGAL EDUCATION

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## INTRODUCTION

Legal practitioners are currently in the midst of a technological maelstrom. Generative artificial intelligence ("GenAI"), and specifically large language models (LLMs), are taking the legal world by storm, and GenAI evangelists

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and skeptics are furiously debating the potential impacts of the technology. Will the introduction of GenAI turn lawyers into "prompt engineers"?[1] Will it entirely eliminate the need for human lawyers, at least for certain repetitive legal tasks and work product?[2] Or are we living through yet another "Big Tech" hype cycle?[3]

Legal educators are engaged in a similar debate.[4] Many in the legal academy—in particular, clinicians and skills instructors who straddle both practice and pedagogy—are asking whether they should teach GenAI tools to law students, how they should teach these tools, and whether to allow students to use the technology in client casework or coursework.[5] These questions are further complicated by the rapid development and deployment of GenAI tools, which have created an atmosphere of not only overwhelming urgency but also perceived inevitability.[6] Legal educators are left between a rock and a hard place. On the one hand, legal employers are racing to embrace GenAI, putting pressure on educators to prepare students for any number of possible AI futures.[7] On the other hand, the technology is novel, uncertain, and risky.[8] Educators must choose between either speeding up to incorporate GenAI tools into their curricula without sufficient evidence and reasons to do so or slowing down to thoroughly understand, assess, and test these tools at the risk of undermining their students' employability in an unforgiving job market. All the while, technology vendors and platform providers are attempting to integrate GenAI into everything, including legal

1. *See* Stephanie Wilkins, *As AI Advances, Is Prompt Engineering the Next Crucial Legal Skill?*, LAW.COM (Apr. 25, 2023, 3:19 PM), https://www.law.com/legaltechnews/2023/04/25/as-ai-advances-is-prompt-engineering-the-next-crucial-legal-skill/?slreturn=20240020163932 [https://perma.cc/RD3V-3DYX]; Oguz A. Acar, *AI Prompt Engineering Isn't the Future*, HARV. BUS. REV. (June 6, 2023), https://hbr.org/2023/06/ai-prompt-engineering-isnt-the-future [https://perma.cc/XRM4-N9HZ].

2. *See* Jonathan H. Choi, Amy B. Monahan & Daniel Schwarcz, *Lawyering in the Age of Artificial Intelligence* 40–41 (Minn. Legal Stud. Research Paper No. 23-31, 2023), https://ssrn.com/abstract=4626276 [https://perma.cc/G2FT-LK2A].

3. *See, e.g.*, Angus Norton, *What Lessons from Past Technology Hype Cycles Can Be Applied to the Hype Around Artificial Intelligence (AI)?*, MEDIUM (Sept. 1, 2023), https://medium.com/@angusnorton/what-lessons-from-past-technology-hype-cycles-can-be-applied-to-the-hype-around-artificial-b26db57a11c8 [https://perma.cc/5QWR-Z6ZG].

4. *See, e.g.*, Karen Sloan, *Some Law Professors Fear ChatGPT's Rise as Others See Opportunity*, REUTERS (Jan. 10, 2023, 7:19 PM), https://www.reuters.com/legal/legalindustry/some-law-professors-fear-chatgpts-rise-others-see-opportunity-2023-01-10 [https://perma.cc/76NV-G3SX].

5. *See id.*

6. *See, e.g.*, Michael Dorf, *Is Resistance to AI in the Law School Classroom Futile?*, JUSTIA: VERDICT (July 19, 2023), https://verdict.justia.com/2023/07/19/is-resistance-to-ai-in-the-law-school-classroom-futile [https://perma.cc/UHB8-EHRG].

7. *See* Sam Skolnik, *Big Law's AI Jobs Lay Foundation for Tech's Wider Use at Firms*, BLOOMBERG L. (Nov. 7, 2023, 5:15 AM), https://news.bloomberglaw.com/business-and-practice/big-laws-ai-jobs-lay-foundation-for-techs-wider-use-at-firms [https://perma.cc/M35X-S6A2]; *see also* LEXISNEXIS, INTERNATIONAL LEGAL GENERATIVE AI REPORT 7–8 (2023), https://www.lexisnexis.com/pdf/lexisplus/international-legal-generative-ai-report.pdf [https://perma.cc/TJ4X-S3NG].

8. *See* Lina M. Khan, Opinion, *Lina Khan: We Must Regulate A.I. Here's How.*, N.Y. TIMES (May 3, 2023), https://www.nytimes.com/2023/05/03/opinion/ai-lina-khan-ftc-technology.html [https://perma.cc/CY4K-QKKQ].

research, writing, and practice tools.[9] They are directly marketing these products to students,[10] often, in our experience, with little consultation with the legal academy and without an agreed-upon framework for evaluating risk or utility.

So how should those of us in the field of legal education proceed? To answer this question, we must examine the tangible student learning opportunities that we are hoping to create and evaluate whether, where, and how integrating GenAI into law school curricula might help or hinder those opportunities.

In this Essay, we briefly describe key aspects of the technology that are particularly relevant to, and raise particular risks for, its potential use by lawyers and law students. We then identify three foundational goals of clinical legal education that provide useful frameworks for evaluating technological tools like GenAI: (1) practice readiness, (2) justice readiness, and (3) client-centered lawyering. First is "practice readiness," which is about ensuring that students have the baseline abilities, knowledge, and skills to practice law upon graduation.[11] Second is "justice readiness," a concept proposed by Professor Jane Aiken, which is about teaching law students to critically assess the social and political implications of legal work and the legal system, as well as making space for students to confront systemic injustices and the role of lawyers in perpetuating them.[12] Third is "client-centered lawyering," which at its root is about client empowerment and autonomy, teaching students to recognize the power imbalances present in the attorney-client relationship and the importance of ensuring client agency in decision-making.[13] Although these are by no means the only goals of clinical education, they provide key perspectives and criteria for GenAI assessment.

Finally, we examine whether GenAI is pedagogically compatible with each of these three goals. We conclude that although GenAI does present some de minimis learning opportunities for practice readiness, it is largely incompatible with justice readiness and client-centered lawyering, especially when considering the serious concerns that the development, deployment, and use of GenAI raise for those clinical programs with public interest missions.

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9. *See, e.g.*, Carolyn Bach, *LexisNexis Rolls Out Free Access to Lexis+ AI for Law Students*, LEXISNEXIS: INSIGHTS (Jan. 12, 2024), https://www.lexisnexis.com/community/insights/legal/b/product-features/posts/lexisnexis-rolls-out-free-access-to-lexis-ai-for-law-students [https://perma.cc/Q9XL-NRNH].

10. *See id.*

11. *See infra* Part II; *see also, e.g.*, Margaret Martin Barry, *Practice Ready: Are We There Yet?*, 32 B.C. J.L. & SOC. JUST. 247, 249 (2012).

12. *See infra* Part III; *see also, e.g.*, Jane H. Aiken, *The Clinical Mission of Justice Readiness*, 32 B.C. J.L. & SOC. JUST. 231, 233–34 (2012).

13. *See infra* Part IV; *see also, e.g.*, Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501, 504 (1990).

## I. THE LEGAL IMITATION GAME BEGINS

In 1950, iconic computer scientist Alan Turing first proposed a test to determine whether a computer could imitate human behavior with sufficient "intelligence" to deceive a discerning human judge who asked it questions.[14] The goal of the test was not for the computer to provide the correct answers but rather for its answers merely to resemble human answers—to imitate the appearance of human thinking rather than to produce actual thinking.[15] Turing therefore called his test "The Imitation Game."[16]

Today, as explained below, the legal profession is playing a similar game with GenAI, raising two significant pedagogical and ethical risks: (1) the risk that AI outputs will appear to imitate competent and ethical human lawyering but ultimately fall short of the real thing and (2) the risk that AI users will suffer from automation bias—the presumption that AI outputs are by nature accurate.

As to the risk of imitation, it is important to recognize that GenAI systems like ChatGPT or CoCounsel have a single objective: recognizing patterns in data to simulate human language and interaction.[17] The key here is *simulation*—the imitation of a thing as opposed to the thing itself: accurate and competent legal outputs.[18] In his groundbreaking 1950 paper describing *The Imitation Game*, Turing noted that this preference for imitation over accuracy is a feature of AI and not a bug, as one of the challenges in convincing humans that machines can think is that their answers to human questions may be too accurate:

> It is claimed that the interrogator could distinguish the machine from the man simply by setting them a number of problems in arithmetic. The machine would be unmasked because of its deadly accuracy. The reply to this is simple. The machine (programmed for playing the game) would not attempt to give the *right* answers to the arithmetic problems. It would deliberately introduce mistakes in a manner calculated to confuse the interrogator.[19]

In other words, producing errors becomes a tactical mechanism for AI to "sound" more human.[20] Or as the science fiction writer Ted Chiang noted in his *New Yorker* essay on the subject, this means that our interactions with such tools provide, at best, a blurry or distorted reflection of "reality" that is

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14. A. M. Turing, *Computing Machinery and Intelligence*, 59 MIND 433, 433–42 (1950).
15. *See id.* at 433–435.
16. *Id.*
17. *See* Emily M. Bender, Timnit Gebru, Angelina McMillan-Major & Shmargaret Shmitchell, *On the Dangers of Stochastic Parrots: Can Language Models Be Too Big?:* 🦜, *in* FACCT '21: PROCEEDINGS OF THE 2021 ACM CONFERENCE ON FAIRNESS, ACCOUNTABILITY, AND TRANSPARENCY 610, 616–17 (2021), https://dl.acm.org/doi/pdf/10.1145/3442188.3445922 [https://perma.cc/UE4B-5W9Q] ("LMs are not performing natural language understanding (NLU), and only have success in tasks that can be approached by manipulating linguistic form.").
18. Turing, *supra* note 14, at 435. *See generally* JEAN BAUDRILLARD, SIMULACRA AND SIMULATION (1981).
19. Turing, *supra* note 14, at 448 (emphasis in original).
20. *See id.*

both fascinating and entertaining without necessarily being accurate, ethical, or useful.[21] Much like lawyers who feel compelled or pressured to agree with their clients and/or downplay unfavorable analyses, these systems are purposely built to provide responses that please us by imitating the responses we are most likely to believe.[22] Even if those responses are speculative or wrong, GenAI neural network architecture may calculate that wrong answers are more likely to pass as human conversation than correct ones.[23] This, in part, is the reason why they produce "hallucinated" citations.[24] Lawyers are often desperately searching for the "perfect" case to defeat an opponent or reassure their client. That desperation drives their prompts, in turn driving GenAI's responses.[25] To the system, a hallucinated answer is better than no answer at all.

Unlike most other legal research or educational tools, GenAI is not optimized to help humans become better lawyers—it is optimized to imitate how a human lawyer, good or bad, might respond.[26] Its goal is to feign intelligence and convince as many users as possible that it knows and understands things.[27] Although it sometimes uses accurate and insightful language, that accuracy and insight is a mere side product employed toward the ultimate goal: successful performance.[28] This is similar to the goal of many magicians—to convince us that they can bend the rules of physics and perform amazing feats, despite our knowledge that they cannot. To do so, magicians often will demonstrate that the laws of physics still exist by inviting an audience member up to the stage to test their equipment in order to lower our skepticism and encourage us to believe in the subsequent illusion. GenAI is designed to push us to accept that it has capacities and authorities beyond our knowledge and understanding—and that is exactly why it is so risky to use.

In addition, GenAI leverages automation bias to convince audiences that these programs understand complex concepts and contain knowledge, when in fact they rarely have the capacity to do either.[29] Automation bias is part of a long history of the Human Computer Interaction (HCI) field in computer science and concerns situations in which human audiences are convinced to believe the outputs of automated systems because those systems appear to be

21. Ted Chiang, *ChatGPT Is a Blurry JPEG of the Web*, NEW YORKER (Feb. 9, 2023), https://www.newyorker.com/tech/annals-of-technology/chatgpt-is-a-blurry-jpeg-of-the-web [https://perma.cc/3NWF-DN8Z].

22. *See* Bender et al., *supra* note 17, at 616–17.

23. *See id.*

24. *See, e.g.*, Mata v. Avianca, Inc., No. 22-CV-1461, 2023 WL 4114965, at *1 (S.D.N.Y. June 22, 2023) (sanctioning attorneys who submitted hallucinated "judicial opinions with fake quotes and citations created by" ChatGPT).

25. Bender et al., *supra* note 17, at 616–17.

26. *See id.* at 618.

27. *See id.*

28. *See id.* at 617–18.

29. *See id.* at 611 ("Furthermore, the tendency of human interlocutors to impute meaning where there is none can mislead both NLP researchers and the general public into taking synthetic text as meaningful.").

more objective and lacking the biases of humans.[30] In reality, they were created by the very humans who have the biases the audience seeks to avoid.[31] A famous case of this was when Professor Joseph Weizenbaum, an early AI pioneer, created "ELIZA," the first chatbot, in 1964.[32] ELIZA shocked Professor Weizenbaum himself when he saw how quickly many users would believe that ELIZA really was a remote psychologist providing them with qualified mental health information via a text interface, even though it was merely scripted code designed to mirror user responses.[33] We see similar "automation bias" problems with misinformation online and automated decision-making in areas such as criminal justice, health care, education, and employment.[34]

So, what does this mean in terms of legal education? It means that law students who seek answers to legal problems from GenAI may very well ask legal questions in their prompts and believe, due to automation bias, that they are receiving high-quality responses.[35] But the truth is that we can never know. Although law students and lawyers can verify the text of a specific case or statute, there is no existing mechanism for auditing or interrogating the logic behind GenAI responses.[36] Much like the magician, they never reveal their secrets.

AI today is no closer to understanding lawyering than Professor Weizenbaum's ELIZA was to understanding human psychology in 1964. Yet, like ELIZA, it might well pretend to engage with legal issues to convince law students and practicing lawyers that it can. Thus, GenAI tools may imitate some basic forms of human lawyering, but they provide only surface-level learning experiences for students while raising serious ethical concerns.[37] As we discuss below, this leaves GenAI tools generally incompatible with the goals of clinical and, more broadly, legal education.

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30. *See id.* at 616.

31. *See id.* ("We find that the mix of human biases and seemingly coherent language heightens the potential for automation bias, deliberate misuse, and amplification of a hegemonic worldview.").

32. *See* JOSEPH WEIZENBAUM, COMPUTER POWER AND HUMAN REASON: FROM JUDGMENT TO CALCULATION 2–3 (1976).

33. *See id.* at 3–7.

34. *See, e.g.*, Kathleen L. Mosier, Linda J. Skitka & Susan T. Heers, *Automation Bias, Accountability, and Verification Behaviors*, 40 PROC. HUM. FACTORS & ERGONOMICS SOC'Y ANN. MEETING 204, 204 (1996); Chris Snijders, Rianne Conijn, Evie de Fouw & Kilian van Berlo, *Humans and Algorithms Detecting Fake News: Effects of Individual and Contextual Confidence on Trust in Algorithmic Advice*, 39 INT'L J. HUM.-COMPUT. INTERACTION 1483, 1483–84 (2023); Ales Zavrsnik, *Algorithmic Justice: Algorithms and Big Data in Criminal Justice Settings*, 18(5) EUR. J. CRIMINOLOGY 623, 623–25 (2021); Cordula Kupfer, Rita Prassi, Jurgen Fleis, Christine Malin, Stefan Thalmann & Bettina Kubicek, *Check the Box! How to Deal with Automation Bias in AI-Based Personnel Selection*, FRONTIERS PSYCH., Apr. 2023, at 2–3.

35. *See* Bender et al., *supra* note 17, at 616.

36. *See id.* at 617 (noting that errors in LLM outputs can be pernicious "for being largely invisible to both the direct user of the system and any indirect stakeholders about whom decisions are being made").

37. *See infra* Parts II.B, III.B.

## II. PRACTICE READINESS

### *A. The Goal of Practice Readiness*

Practice readiness is often considered the traditional goal of clinical legal education, and perhaps the one most commonly recognized outside of the legal academy.[38] Scholars have traced the notion of practice readiness to the clinical legal movement of the 1960s and 1970s.[39] In opposition to the perception that law schools historically failed their graduates by offering little in the way of practical training, practice readiness came to prominence as a call to provide law students with the experiences and skills that they need to adequately and ethically serve their clients when they graduate.[40]

Despite its longstanding and widespread use in clinical literature, law school promotional materials, and bar association debates,[41] practice readiness is largely undefined in its particulars, sometimes criticized as "more slogan than idea."[42] Nevertheless, some high-level benchmarks have emerged for evaluating the types of experiences and skills that help train practice-ready graduates. The American Bar Association (ABA), for example, outlines expected learning outcomes for law students in its Standards and Rules of Procedure for Approval of Law Schools, Standard 302:

> (a) Knowledge and understanding of substantive and procedural law;
>
> (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context;
>
> (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and
>
> (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.[43]

More specifically, in its interpretation of the standard, the ABA states that "professional skills" may include "interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation."[44]

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38. *See* Robert J. Condlin, *"Practice Ready Graduates": A Millennialist Fantasy*, 31 TOURO L. REV. 75, 75–76 (2014).

39. *See id.* at 76.

40. *See id.* at 81–84.

41. *See* Barry, *supra* note 11, at 248.

42. Condlin, *supra* note 38, at 80, 86–90; *see also* Barry, *supra* note 11, at 247 (arguing that law schools should reimagine their curricula far beyond clinical offerings to produce practice-ready graduates).

43. AM. BAR ASS'N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2023–2024, Standard 302 (2023).

44. *Id.* Interpretation 302-1. In Standard 304, the ABA further requires that experiential courses "integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302." *Id.* Standard 304.

In another recent prominent effort to define and refine practice readiness, the Institute for the Advancement of the American Legal System (IAALS) conducted fifty focus groups of new lawyers and supervisors of new lawyers "to gather data about the knowledge and skills new lawyers need to practice competently."[45] The study suggested that "minimum competence consists of 12 interlocking components—or 'building blocks'"[46]:

> [1] The ability to act professionally and in accordance with the rules of professional conduct;
>
> [2] An understanding of legal processes and sources of law;
>
> [3] An understanding of threshold concepts in many subjects;
>
> [4] The ability to interpret legal materials;
>
> [5] The ability to interact effectively with clients;
>
> [6] The ability to identify legal issues;
>
> [7] The ability to conduct research;
>
> [8] The ability to communicate as a lawyer;
>
> [9] The ability to see the "big picture" of client matters;
>
> [10] The ability to manage a law-related workload responsibly;
>
> [11] The ability to cope with the stresses of legal practice; and
>
> [12] The ability to pursue self-directed learning.[47]

Against this backdrop, scholars have debated how emerging legal technologies impact what it means to be practice ready. There is growing recognition that practice readiness today includes some level of technical training in, or at least an understanding of, the technologies that attorneys use to serve their clients.[48] The ABA and multiple states have now explicitly incorporated an expanded duty of technological competence into their rules of professional conduct, advising lawyers to "keep abreast of changes in the

45. DEBORAH JONES MERRITT & LOGAN CORNETT, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., BUILDING A BETTER BAR: THE TWELVE BUILDING BLOCKS OF MINIMUM COMPETENCE 3 (2020), https://iaals.du.edu/sites/default/files/documents/publications/building_a_better_bar.pdf [https://perma.cc/NUJ2-L2ZA].

46. *Id.*

47. *Id.*

48. *See, e.g.*, Andrew C. Budzinski, *Clinics, the Cloud, and Protecting Client Data in the Age of Remote Lawyering*, 29 CLINICAL L. REV. 201, 203 (2023); Sarah R. Boonin & Luz E. Herrera, *From Pandemic to Pedagogy: Teaching the Technology of Lawyering in Law Clinics*, 68 WASH. U. J.L. & POL'Y 109, 112–21 (2022); Anthony Volini, *A Perspective on Technology Education for Law Students*, 36 SANTA CLARA HIGH TECH. L.J. 33, 37–38 (2020); Brittany Stringfellow Otey, *Millennials, Technology, and Professional Responsibility: Training a New Generation in Technological Professionalism*, 37 J. LEGAL PROF. 199, 224–44 (2013); Michele Pistone & Warren Binford, *Use of Technology in Teaching*, *in* BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 136 (Deborah Maranville, Lisa Radtke Bliss, Carolyn Wilkes Kaas & Antoinette Sedillo López eds., 2015).

law and its practice, including the benefits and risks associated with relevant technology."[49]

### *B. GenAI Is Minimally Compatible with Practice Readiness*

GenAI raises new questions as to what it means for law students to be practice ready and what that means in turn for clinicians committed to the goal of practice readiness. Although the technology is fast evolving and its impact on legal practice remains uncertain, current GenAI tools do not appear to have much to offer in the way of practice readiness.

Evangelists may argue that GenAI "prompt engineering"[50] is the future of legal practice and thus should be recognized as a new skill that law students need to learn to be practice ready.[51] There are obvious reasons to believe that GenAI will lead to further automation of certain segments of the legal profession and certain legal services—processes that have been ongoing for quite some time[52]—and this will require legal practitioners to continue adapting to best serve their clients. If GenAI tools as they presently operate become a routine aspect of legal practice, perhaps prompt engineering becomes a skill that many lawyers feel as though they must learn in order to compete in the legal market or competently represent their clients.[53]

Yet this possibility does not on its own demand a reimagining of a clinical curriculum committed to training practice-ready graduates. There are plenty of experiences and skills that clinical programs do not emphasize or prioritize and many useful or popular technologies that are widely employed in legal practice but are not systematically taught in law schools.[54] Often, it is not necessary or even advisable to formally teach specific technologies, in part because different legal employers rely on, and different legal settings call for, different technologies, and in part because students can be expected to learn

49. MODEL RULES OF PRO. CONDUCT r. 1.1 cmt. 8 (AM. BAR ASS'N 2020); *see also, e.g.*, N.Y. STATE BAR ASS'N RULES OF PRO. CONDUCT r. 1.1 cmt. 8 (2022). New York recently mandated new Continuing Legal Education coursework in cybersecurity, privacy, and data protection. N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.2(h) (2023).

50. *What Is Prompt Engineering?*, IBM, https://www.ibm.com/topics/prompt-engineering [https://perma.cc/M9EB-H29E] (last visited Mar. 3, 2024).

51. *See, e.g.*, Andrew M. Perlman, *The Implications of ChatGPT for Legal Services and Society* 21 n.6 (Suffolk Univ. L. Sch. Research Paper No. 22-14, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4294197 [https://perma.cc/U6R4-L6CE] ("So-called prompt engineering is likely to become increasingly important in various professional settings."). *But see, e.g.*, Ian Rodgers, John Armour & Mari Sako, *How Technology Is (or Is Not) Transforming Law Firms*, 19 ANN. REV. L. & SOC. SCI. 299, 311 (2023) (explaining that the nature and extent of technology's future impact on lawyers is still unknown, but noting that "[t]echnology has not yet ushered the end of law firms as we know them today").

52. *See, e.g.*, Frank Pasquale & Glyn Cashwell, *Four Futures of Legal Automation*, 63 UCLA L. REV. DISCOURSE 26, 28 (2015).

53. *See* Daniel Schwarcz & Jonathan H. Choi, Essay, *AI Tools for Lawyers: A Practical Guide*, 108 MINN. L. REV. HEADNOTES 1, 3 (2023).

54. The ABA explicitly acknowledges that law schools should "determine[]" for themselves which "professional skills" to teach their students. AM. BAR ASS'N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2023–2024, Interpretation 302-1 (2023).

them independently or receive training in them later in their careers.[55] Moreover, there are already signs that prompt engineering is headed for obsolescence.[56] All of this leads us to conclude that the teaching of prompt engineering for prompt engineering's sake may very well be a waste of the limited time that clinicians have with their students.

The question still remains, however, whether the use of current GenAI tools can significantly assist students in learning other important skills or knowledge that are considered minimum baselines for legal practice. At the moment, we do not believe so. These authors have not seen compelling evidence, for example, that learning to engineer "good" prompts and review GenAI outputs translates to material gains in the traditional domains of practice readiness, whether they be any of the "professional skills" contemplated by the ABA[57] or the twelve "building blocks" proposed by the IAALS.[58]

Evangelists are excited by GenAI's potential to improve the speed of everyday tasks like legal research and writing and to produce simulacra of legal work product.[59] But helping law students learn to become more efficient does not automatically help them learn to become—or how to be—lawyers. Even if students can use GenAI tools to produce quality and quick outputs that outwardly meet the standards of legal competence, it is not clear what students can genuinely learn about practicing law through the process of using them. A student who passively prompts a GenAI tool to output a legal brief does not necessarily learn the "legal analysis and reasoning," "problem-solving," or written communication skills that go into producing such a brief, let alone the lessons to be drawn from iteratively drafting and discussing it with colleagues.[60] They are not honing their "ability to interpret legal materials" or "identify legal issues."[61] From this perspective, GenAI

55. *See, e.g.*, Justin Henry, *Norton Rose, Hogan Lovells, Other Global Law Firms Join Gen AI Training Consortium*, LAW.COM (Oct. 4, 2023, 11:20 AM), https://www.law.com/americanlawyer/2023/10/04/norton-rose-hogan-lovells-9-other-global-law-firms-join-gen-ai-training-consortium [https://perma.cc/3DTC-29UJ].

56. *See, e.g.*, Drew Harwell, *Tech's Hottest New Job: AI Whisperer. No Coding Required.*, WASH. POST (Feb. 25, 2023, 7:00 AM), https://www.washingtonpost.com/technology/2023/02/25/prompt-engineers-techs-next-big-job [https://perma.cc/H967-2CJX] (quoting scholars discussing reasons to be skeptical that "you need to be a specialized AI whisperer" and comparing "prompt engineers to the 'search specialists' in the early days of Google who advertised secret techniques to find the perfect results—and who, as time passed and public adoption increased, became almost entirely obsolete").

57. *See* AM. BAR ASS'N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2023–2024, Standard 302 (2023).

58. *See* MERRITT & CORNETT, *supra* note 45, at 3.

59. *See, e.g.*, John Bliss, Teaching Law in the Age of Generative AI 39–42 (Jan. 2, 2024) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4682456 [https://perma.cc/W5RR-BHWQ].

60. *See* AM. BAR ASS'N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2023–2024, Standard 302 (2023); Karen Sloan, *AI Improves Legal Writing Speed, Not Quality–Study*, REUTERS (Nov. 8, 2023, 2:33 PM), https://www.reuters.com/legal/transactional/ai-improves-legal-writing-speed-not-quality-study-2023-11-08 [https://perma.cc/B2KW-YUYW].

61. MERRITT & CORNETT, *supra* note 45, at 3.

use may in fact stifle a student's intellectual and professional growth rather than foster it.

To be sure, many students have started turning to GenAI tools as study or research aids in seemingly productive ways. Prompting a GenAI tool for a case summary or restatement of law arguably can deepen students' "knowledge and understanding of substantive and procedural law,"[62] their "understanding of legal processes and sources of law,"[63] and their "understanding of threshold concepts in many subjects."[64] In doing so, though, they are using GenAI tools just as they would any other reference material at their disposal, from casebooks and hornbooks to Westlaw and Wikipedia. This limited pedagogical compatibility between GenAI and practice readiness does not suggest to us that the technology merits special attention or consideration from law school clinics.

## III. JUSTICE READINESS

### *A. The Goal of Justice Readiness*

The concept of justice readiness seeks to expand the goals of clinical pedagogy beyond the value-neutral skills instruction of practice readiness, at least as traditionally conceived.[65] Aiken writes forcefully against the ways in which legal education inculcates the "'hired gun' approach to what it means to be a lawyer."[66] "Clinics must teach skills," of course, "but they should also challenge the conception of law inculcated by law schools. . . [and] work toward inspiring students to bring about a more just society with their legal skills."[67] A clinician committed to justice readiness is a "provocateur for justice" who "actively imbues her students with a lifelong learning about justice, prompts them to name injustice, to recognize the role they may play in the perpetuation of injustice and to work toward a legal solution to that injustice."[68] Preparing students to be justice ready can be particularly helpful in providing them with a foundation to engage in various modes of lawyering focused on "empowering those without power

62. AM. BAR ASS'N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2023–2024, Standard 302 (2023).

63. MERRITT & CORNETT, *supra* note 45, at 3.

64. *Id.*

65. *See* Jane H. Aiken, *Provocateurs for Justice*, 7 CLINICAL L. REV. 287, 289 (2001); Aiken, *supra* note 12, at 231–32.

66. Aiken, *supra* note 65, at 293.

67. Aiken, *supra* note 12, at 236; *see also* Deborah N. Archer, *Open to Justice: The Importance of Student Selection Decisions in Law School Clinics*, 24 CLINICAL L. REV. 1, 16–17 (2017) ("While clinics teach lawyering skills such as interviewing, counseling and negotiation, and expose students to legal ethics issues in context, clinics also guide students to their own personal understanding of the social responsibilities of lawyers and issues of social justice and equality.").

68. *See* Aiken, *supra* note 65, at 288.

and fighting for justice and equality," including political lawyering, rebellious lawyering, community lawyering, and movement lawyering.[69]

Justice readiness encourages clinicians to "pull[] back the curtain and dethrone[] neutrality" by teaching students "how to reflect on their experience, place it in a social justice context, glimpse the strong relationship between knowledge, culture and power, and recognize the role they play in either unearthing hierarchical and oppressive systems of power or challenging such structures."[70] To do this, according to Aiken, clinicians must first engage students in effective critical thinking that transcends "the idea that there is a right and wrong answer to every legal problem."[71] Lifting this veil reveals "the role values play in the justice system."[72]

Rather than allow students to "feel powerless" or incapacitated by law's inherent uncertainty,[73] however, clinicians should inspire students to seize upon that uncertainty, "assert [their] own values," and "become proactive in shaping legal disputes with an eye toward social justice."[74] Clinicians committed to justice readiness should "communicate the importance of social justice, the opportunity to make a difference that [a] law degree creates, and the responsibility that [students] bear as lawyers for the delivery of justice in our society."[75]

As Professor Deborah Archer notes, "[t]he primary tool" that Aiken "promotes to help students achieve justice readiness is 'disorienting moments' where students have experiences that surprise them because the experience challenges the student's established way of viewing the world."[76] Clinicians must create the conditions that allow for students to experience these disorienting moments: "To find these disorienting moments, clinical professors must engage students in a moral and ethical discourse about the choices they make during . . . representation, and help them become more able to identify injustice."[77]

Moments of disorientation and critical reflection can manifest in a variety of contexts. As an example, Aiken suggests selecting "cases that require

69. Deborah N. Archer, *Political Lawyering for the 21st Century*, 96 DENV. L. REV. 399, 417, 435–36 (2019); *see also* Archer, *supra* note 67, at 16–19.

70. Aiken, *supra* note 65, at 289.

71. *Id.* at 290–91 (arguing that "there are very few or no absolute answers to legal problems").

72. *Id.* at 295.

73. *Id.* at 291.

74. *Id.* at 291, 294 ("In the final stage of a lawyer's development toward 'justice readiness,' the lawyer demonstrates an appreciation for context, understands that legal decision-making reflects the value system in which it operates, and can adapt, evaluate, and support her own analysis.").

75. *Id.* at 306.

76. Archer, *supra* note 67, at 18 (citing Jane Harris Aiken, *Clients as Teachers*, 16 WASH. U. J.L. & POL'Y 81, 85 (2004)); *see also* Aiken, *supra* note 12, at 241–46.

77. Archer, *supra* note 67, at 18. Professor Amanda Levendowski further argues that clinicians' work to foster disorienting moments need not be limited to client representation and proposes methods for incorporating such moments into the teaching of doctrine through the clinic seminar. Amanda Levendowski, *Teaching Doctrine for Justice Readiness*, 29 CLINICAL L. REV. 111, 119–20 (2022).

creative solutions to clients' problems"—cases in which "there is no 'outside authority' from which to draw a remedy" and thus "may force the student to draw from her own knowledge base and to draw connections based on context."[78] Through such critical reflection, students can begin to learn how they may be able to act as "agents of change," rather than "agents of stasis."[79]

### *B. GenAI Is Largely Incompatible with Justice Readiness*

GenAI triggers acute cultural, ethical, political, and social concerns that appear wholly incompatible with the clinical mission of justice readiness. On one level, legal GenAI tools pose risks to our justice system, including worsening the already unequal access to legal information and services.[80] Public interest lawyers and scholars have long fought to break down barriers to access.[81] Evangelists now argue that the expediency of GenAI tools can help democratize the availability of legal information and increase the scale of legal services.[82] In reality, GenAI will likely undermine these efforts.[83] The capital investment needed to develop GenAI systems, which ranges into the billions of dollars,[84] means that only a handful of powerful and wealthy corporations will be able to provide GenAI tools for legal uses, all of which are also proprietary as to the data sources used to train or fine-tune their models. There are no low-cost or transparent alternatives. Nor is there likely to be one any time soon. To the extent that we teach our students to use and rely on GenAI tools, we further concentrate legal information in the hands of a select few gatekeepers, replicating the legal information asymmetries wrought by previous advances in technology.[85]

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78. Aiken, *supra* note 65, at 294.

79. Aiken, *supra* note 12, at 235.

80. *See* Maura R. Grossman, Paul W. Grimm, Daniel G. Brown & Molly (Yiming) Xu, *The GPTJudge: Justice in a Generative AI World*, 23 DUKE L. & TECH. REV. 1, 24 (2023).

81. *See, e.g.*, Georgia v. Public.Resource.Org, Inc., 140 S. Ct. 1498, 1505–06 (2020) (holding that official annotations of Georgia law are uncopyrightable in a lawsuit brought by a "nonprofit dedicated to facilitating public access to government records and legal materials"); S.C. State Conf. of NAACP v. Kohn, No. 22-01007, 2023 WL 144447, at *1 (D.S.C. Jan. 10, 2023) (concluding that the public has a right to access an online database of legal filings in South Carolina state court in a lawsuit brought by the state's National Association for the Advancement of Colored People conference); Drew Simshaw, *Toward National Regulation of Legal Technology: A Path Forward for Access to Justice*, 92 FORDHAM L. REV. 1, 11–22 (2023).

82. *See, e.g.*, Vince Beiser, *AI & the Law . . . & What It Means for Legal Education & Lawyers*, GEO. L. (Jan. 2, 2024), https://www.law.georgetown.edu/news/ai-the-law-what-it-means-for-legal-education-lawyers/ [https://perma.cc/C3HW-UTXW].

83. *See* Natalie Byrom, *AI Risks Deepening Unequal Access to Legal Information*, FIN. TIMES (July 17, 2023), https://www.ft.com/content/2aba82c0-a24b-4b5f-82d9-eed72d2b1011 [https://perma.cc/PH82-X7SW].

84. *See* Jonathan Vanian & Kif Leswing, *ChatGPT and Generative AI Are Booming, but the Costs Can Be Extraordinary*, CNBC, https://www.cnbc.com/2023/03/13/chatgpt-and-generative-ai-are-booming-but-at-a-very-expensive-price.html [https://perma.cc/DGR7-M8KY] (Apr. 17, 2023, 2:09 AM).

85. *See* SARAH LAMDAN, DATA CARTELS: THE COMPANIES THAT CONTROL AND MONOPOLIZE OUR INFORMATION 72–93 (2023) (describing the "legal research duopoly" of Lexis and Westlaw); Steven Lerner, *Microsoft Tightens Grip on Law Firms with Generative AI*, LAW360: PULSE (Sept. 25, 2023, 10:17 AM), https://www.law360.com/pulse/articles/17

GenAI also presents and perpetuates broader structural problems and harms beyond and outside of the legal system. As discussed above, the financial resources required to develop and maintain these tools risk entrenchment of large technology companies and their control over our daily lives.[86] These tools appropriate human creativity and our personal data, typically without consent or compensation.[87] Like other algorithmic tools, GenAI is trained on data that reflects human biases, pathologies, and historical discriminatory practices.[88] And these tools rely on the exploitation of natural resources[89] and precariously situated workers.[90]

GenAI systems depend on vast amounts of unsustainable mining around the globe, especially the voracious pursuit of lithium, cobalt, and other rare earth minerals.[91] Energy consumption is also an issue.[92] One estimate found

24917/microsoft-tightens-grip-on-law-firms-with-generative-ai [https://perma.cc/9RJP-3UB2].

86. *See* Daren Acemoglu & Simon Johnson, Opinion, *Big Tech Is Bad. Big A.I. Will Be Worse.*, N.Y. TIMES (June 9, 2023), https://www.nytimes.com/2023/06/09/opinion/ai-big-tech-microsoft-google-duopoly.html [https://perma.cc/24NN-4PTD].

87. *See* Miles Klee, *Zoom Is Using You to Train AI. So Will Everyone Else*, ROLLING STONE (Aug. 9, 2023), https://www.rollingstone.com/culture/culture-news/zoom-ai-personl-data-1234802844 [https://perma.cc/EJ62-JDGZ].

88. *See* Leonardo Nicoletti & Dina Bass, *Humans Are Biased. Generative AI Is Even Worse*, BLOOMBERG (June 9, 2023), https://www.bloomberg.com/graphics/2023-generative-ai-bias [https://perma.cc/3EXH-WGZB]. A vast number of scholars have written on the antidemocratic nature of legal algorithmic systems. A sample of key articles includes: Ngozi Okidegbe, *To Democratize Algorithms*, 69 UCLA L. REV. 1688 (2023); Vincent M. Southerland, *The Intersection of Race and Algorithmic Tools in the Criminal Legal System*, 80 MD. L. REV. 487 (2021); IFEOMA AJUNWA, THE QUANTIFIED WORKER: LAW AND TECHNOLOGY IN THE MODERN WORKSPACE (2023); Ari Ezra Waldman, *Gender Data in the Automated Administrative State*, 123 COLUM. L. REV. 2249 (2023); Danielle Keats Citron, *Technological Due Process*, 85 WASH. U. L. REV. 1249 (2008); FRANK PASQUALE, THE BLACK BOX SOCIETY: THE SECRET ALGORITHMS THAT CONTROL MONEY AND INFORMATION 6–8 (2015); JULIE E. COHEN, BETWEEN TRUTH AND POWER: THE LEGAL CONSTRUCTIONS OF INFORMATIONAL CAPITALISM (2019); Aziz Z. Huq, *Racial Equity in Algorithmic Criminal Justice*, 68 DUKE L.J. 1043 (2019); Sonia K. Katyal & Jessica Y. Jung, *The Gender Panopticon: AI, Gender, and Design Justice*, 68 UCLA L. REV. 692 (2021); Anupam Chander, *The Racist Algorithm?*, 115 MICH. L. REV. 1023 (2017); *see also* Bender et al., *supra* note 17, at 616–17.

89. *See* Melissa Heikkilä, *AI's Carbon Footprint Is Bigger than You Think*, MIT TECH. REV. (Dec. 5, 2023), https://www.technologyreview.com/2023/12/05/1084417/ais-carbon-footprint-is-bigger-than-you-think [https://perma.cc/N7WE-V49P].

90. *See, e.g.*, Rebecca Tan & Regine Cabato, *Behind the AI Boom, an Army of Overseas Workers in 'Digital Sweatshops'*, WASH. POST (Aug. 28, 2023, 2:00 AM), https://www.washingtonpost.com/world/2023/08/28/scale-ai-remotasks-philippines-artificial-intelligence [https://perma.cc/EFG5-TR22]; Josh Dzieza, *AI Is a Lot of Work*, VERGE (June 20, 2023, 8:05 AM), https://www.theverge.com/features/23764584/ai-artificial-intelligence-data-notation-labor-scale-surge-remotasks-openai-chatbots [https://perma.cc/6UPJ-RPLC]; Billy Perrigo, *Exclusive: OpenAI Used Kenyan Workers on Less than $2 Per Hour to Make ChatGPT Less Toxic*, TIME (Jan. 18, 2023, 7:00 AM), https://time.com/6247678/openai-chatgpt-kenya-workers [https://perma.cc/NE25-4X8N].

91. *See* KATE CRAWFORD, ATLAS OF AI: POWER, POLITICS, AND THE PLANETARY COSTS OF ARTIFICIAL INTELLIGENCE 30–34 (2021).

92. *See* SASHA LUCCIONI, TOWARDS MEASURING AND MITIGATING THE ENVIRONMENTAL IMPACTS OF LARGE LANGUAGE MODELS 6 (2023), https://cifar.ca/wp-content/uploa

that each AI-driven interaction uses more than ten times the energy used in a traditional web search.[93] Another found that ChatGPT costs the energy equivalent of 33,000 U.S. households per day.[94] As one study argued, the total electricity demand of our computational infrastructures could reach 20 percent of global electrical demand by 2030, from 1.5 percent today.[95]

GenAI systems similarly require enormous amounts of freshwater to cool their energy-intensive, heat-producing graphics processing units.[96] One study made a rough calculation that every exchange with ChatGPT of twenty-five to fifty questions is the equivalent of pouring out a half-liter of freshwater on the ground.[97] Google and Microsoft have also reported major spikes in their water usage—increases of 20 percent and 34 percent respectively in just one year.[98]

Unjust labor practices further serve to prop up GenAI systems. Recently, it was reported that OpenAI had hired Kenyan "click" workers for approximately one dollar an hour to remove toxic results from ChatGPT, such as sexually graphic materials and other explicit scenes.[99] The University of Oxford's Fairwork project, which studies the labor conditions for "cloudwork" platforms that support AI providers, has given many scores of less than three out of ten for fairness.[100]

Thus, LLMs are by their very nature "soldiers for the status quo."[101] In their accelerating and widespread development and deployment across the

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ds/2023/09/Towards-Measuring-and-Mitigating-the-Environmental-Impacts-of-Large-Language-Models.pdf [https://perma.cc/4LY6-QB8X]; *see also* Bender et al., *supra* note 17, at 612.

93. *See* Alex de Vries, *The Growing Energy Footprint of Artificial Intelligence*, JOULE, Oct. 2023, at 2.

94. Sarah McQuate, *Q&A: UW Researcher Discusses Just How Much Energy ChatGPT Uses*, UNIV. WASH., https://www.washington.edu/news/2023/07/27/how-much-energy-does-chatgpt-use/ [https://perma.cc/FF2J-NM2T] (Aug. 2, 2023).

95. Martijn Koot & Fons Wijnhoven, *Usage Impact on Data Center Electricity Needs: A System Dynamic Forecasting Model*, APPLIED ENERGY, Mar. 25, 2021, at 1–2.

96. Sam Meredith, *A "Thirsty" Generative AI Boom Poses a Growing Problem for Big Tech*, CNBC, https://www.cnbc.com/2023/12/06/water-why-a-thirsty-generative-ai-boom-poses-a-problem-for-big-tech.html [https://perma.cc/W846-EMYL] (Dec. 6, 2023, 6:15 AM).

97. *See* Pengfei Li, Jianyi Yang, Mohammad A. Islam & Shaolei Ren, Making AI Less "Thirsty": Uncovering and Addressing the Secret Water Footprint of AI Models 1 (Oct. 29, 2023) (unpublished manuscript), https://arxiv.org/pdf/2304.03271.pdf [https://perma.cc/QZ7G-T7U2].

98. Matt O'Brien, Hannah Fingerhut & The Associated Press, *A.I. Tools Fueled a 34% Spike in Microsoft's Water Consumption, and One City with Its Data Centers Is Concerned About the Effect on Residential Supply*, FORTUNE (Sept. 9, 2023, 11:01 AM), https://fortune.com/2023/09/09/ai-chatgpt-usage-fuels-spike-in-microsoft-water-consumption/ [https://perma.cc/SZ3J-ZN8D].

99. Alex Kantrowitz, *The Horrific Content a Kenyan Worker Had to See While Training ChatGPT*, SLATE (May 21, 2023, 5:40 AM), https://slate.com/technology/2023/05/openai-chatgpt-training-kenya-traumatic.html [https://perma.cc/47A9-PALH].

100. Press Release, Kelle Howson, Jonas C. L. Valente & Mark Graham, Oxford Internet Inst., New Fairwork Study Exposes the Precarious Working Conditions of Online Work Platforms (Aug. 24, 2022), https://www.oii.ox.ac.uk/news-events/new-fairwork-study-exposes-the-precarious-working-conditions-of-online-work-platforms/ [https://perma.cc/4EH9-2NSV].

101. Aiken, *supra* note 12, at 234.

legal system and elsewhere, they could potentially reinforce existing economic and power structures as well as the resulting injustices. In their outputs, far from being "vehicle[s] for justice," GenAI tools are stare decisis machines.[102] They consume, replicate, and make predictions based on existing data and depictions of the world, using data as precedent to produce endless variations of nothing more than what has come before.[103] In short, GenAI development and deployment may exacerbate existing injustices because their outputs may reflect them. If justice readiness requires us to "deviate from system-reinforcing behaviors,"[104] discouraging the teaching and use of legal GenAI tools may seem eminently reasonable, if not ethically and pedagogically imperative.

At the same time, justice readiness requires confronting the harsh realities of the law and legal practice, not shying away from them. With good reason, many clinicians may now wish to confront GenAI in a similar fashion and incorporate it into curricula in ways that are at least consistent with this pedagogical goal. Clinicians committed to justice readiness could press students to interrogate how these tools are built and operate,[105] to "pull[] back the curtain and dethrone[] [their] neutrality,"[106] to investigate the wide-ranging ethical implications that they pose for the justice system and society, and to recognize the role that lawyers who use these tools may play in causing or reinforcing harm—especially in situations in which they might consider using GenAI to be in a client's best interest. By prompting students "to tease out or hunt down assumptions"[107] that underlie GenAI and to engage in critical reflection and dialogue around its potential uses in legal practice, clinicians may even help lead students into disorienting moments around technology, power, and justice.

Indeed, clinicians so committed should not stand by as their students resign themselves to the inevitability of any particular GenAI future for the legal profession. We should help our students make informed, value-based, and justice-ready decisions about the technology and their own use of it.[108] But

102. *Id.* at 235.

103. *See* Dan Clark, Sam Learner, Irene de la Torre Arenas, Sam Joiner, Eade Hemingway, Oliver Hawkins & Madhumita Murgia, *Generative AI Exists Because of the Transformer*, FIN. TIMES (Sept. 12, 2023), https://ig.ft.com/generative-ai [https://perma.cc/M9MQ-ARFC].

104. Aiken, *supra* note 65, at 298.

105. The familiar "black box" problem, however, does mean that there are limits to just how much interrogation is possible here. *See, e.g.*, PASQUALE, *supra* note 88, at 6–8. Due to both corporate secrecy and technological opacity, we currently do not and cannot know much about GenAI tools, which poses a pedagogical impediment to exploring and understanding their true nature and full impact.

106. Aiken, *supra* note 65, at 288.

107. *Id.* at 298.

108. Proponents of critical legal research have been similarly examining, and exploring ways to address, the pathologies of prior and now-entrenched legal technologies like research databases long before GenAI. *See* Richard Delgado & Jean Stefancic, *Why Do We Tell the Same Stories?: Law Reform, Critical Librarianship, and the Triple Helix Dilemma*, 42 STAN. L. REV. 207, 208 (1989); Yasmin Sokkar Harker, *Invisible Hands and the Triple (Quadruple?) Helix Dilemma: Helping Students Free Their Minds*, 101 B.U. L. REV. ONLINE 17, 24 (2021); Priya Baskaran, *Searching for Justice: Incorporating Critical Legal Research into Clinic*

this work, and the learning opportunities that may flow from it, are achievable simply by teaching students about these tools. Integrating GenAI conversations and critique into justice-ready coursework does not necessarily require integrating GenAI use into client casework. It is not clear what more could be learned about justice readiness in contemporary legal practice by formally teaching students how to use GenAI tools as well. Thus, we believe that using GenAI tools in law school clinics would do little to serve the goal of training justice-ready graduates.

## IV. CLIENT-CENTERED LAWYERING

### *A. The Goal of Client-Centered Lawyering*

Following its inception in the 1970s, client-centered lawyering (CCL) has become a centerpiece of law school clinical education.[109] CCL arose in response to perceived flaws in the traditional lawyer-client relationship, which typically involved arms-length interactions, with clients remaining relatively passive after stating their ultimate goals.[110] CCL instead focuses on dynamically engaging with clients and offering them more autonomy and agency as a partner in the legal decision-making process.[111] To do so, CCL requires "a commitment to looking at problems from clients' perspectives, of seeing the diverse nature of the problems, and of making clients true partners in the resolution of their problems."[112]

Scholars have since debated and strengthened the concept of CCL by addressing perceived tensions within it.[113] For example, in her influential essay, *Am I My Client?: The Role Confusion of a Lawyer Activist*, Professor Nancy Polikoff explores what it means to work as a client-centered lawyer for political activists and members of vulnerable populations while also identifying with those movements and populations herself.[114] As part of this

*Seminar*, 30 CLINICAL L. REV. (forthcoming Spring 2024) (manuscript at 3–4) (on file with authors); Sarah Lamdan, *When Westlaw Fuels ICE Surveillance: Legal Ethics in the Era of Big Data Policing*, 43 N.Y.U. REV. L. & SOC. CHANGE 255, 284–91 (2019); Amanda Levendowski, Just Citation as Feminist Cyberlaw Praxis 9–13 (2023) (unpublished manuscript) (on file with authors) (proposing that critical legal research and critical citation practices can create disorienting moments).

109. *See* Dinerstein, *supra* note 13, at 504.

110. *See id.* at 517–18.

111. *See* DAVID A. BINDER & SUSAN C. PRICE, LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH 147–49 (1977); DAVID A. BINDER, PAUL BERGMAN & SUSAN C. PRICE, LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH xxi, 20–21 (1991).

112. David Binder, Paul Bergman & Susan Price, *Lawyers as Counselors: A Client-Centered Approach*, 35 N.Y.L. SCH. L. REV. 29, 29 (1990).

113. *See, e.g.*, Dinerstein, *supra* note 13 (conducting a fairly extensive audit of the criticisms of client-centered lawyering and finding the client-centered model largely effective); Stephen Ellmann, *Client-Centeredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers' Representation of Groups*, 78 VA. L. REV. 1103, 1110, 1171 (1992) (addressing the difficulties in applying a client-centered model in the movement lawyering context and arguing that the process of resolving conflicts and tensions can ultimately aid the collective mobilization efforts of the group).

114. *See generally* Nancy D. Polikoff, *Am I My Client?: The Role Confusion of a Lawyer Activist*, 31 HARV. C.R.-C.L. L. REV. 443 (1996).

exploration, she discusses many of the issues that arise with these identifications, both positive and negative, such as the "insider/outsider" dilemma.[115] As someone who is familiar with the values of a movement, Polikoff discusses how she is able to build trust with clients who share those values (being an "insider").[116] At the same time, as a lawyer who is expected to conform to the norms and rules of the legal profession, she has been forced into situations in which the disobedient actions and decisions of her clients pose a threat to her professional credibility, even though they align with her political objectives (being an "outsider").[117] Ultimately, Polikoff concludes that resolving such tensions requires explicitly recognizing and integrating them into her CCL approach.[118]

Critiques of bias and discrimination have also been instructive for improving the use of CCL in legal education. As Professor Michelle Jacobs argues, well-intentioned "race neutral" applications of CCL can often disserve clients of color by failing to adequately consider their culturally specific needs, especially when their lawyers do not share the same lived experience with the legal system.[119] This has helped highlight the importance of incorporating discussions of bias and discrimination into clinical education through mechanisms like cross-cultural training within the CCL framework.[120]

### *B. GenAI Is Pedagogically Incompatible with Client-Centered Lawyering*

As noted above, CCL requires a commitment from lawyers to see problems from clients' perspectives, including the diverse nature of the problems, and to make clients true partners in the resolution of their matter.[121] It also requires considering a range of socioeconomic contexts for client work, including bias, discrimination, and the connection between legal advocacy and greater movements for social change.[122] Although human lawyers and law students may never perfect these approaches, they can at least conceptualize them and aspire to learn how to pursue them as pedagogical goals. In other words, in our opinion, they can approach experiential education from a client-centered perspective by planning their approach, acting on it, and then reflecting on the results through the CCL lens. This can be done through a range of learning opportunities, skills, and

115. *See id.* at 448, 455.
116. *See id.* at 451–52.
117. *See id.* at 470 (concluding that client-centered counseling and participation in political decision-making cannot occur simultaneously and that it is of primary importance for lawyers to not blur the role between counselor and decision-maker).
118. *See id.* at 470–71.
119. *See* Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345, 348–49 (1997).
120. *See id.* at 405.
121. *See* Dinerstein, *supra* note 13.
122. *See supra* Part IV.A.

experiences centered around listening, dialog, empathy, and other human relational skills and traits.[123]

GenAI systems, on the other hand, teach away from CCL-oriented pedagogy. Rather than following the CCL model of dynamically engaging with clients as partners, in our experience using such tools, they instead imitate the traditional arm's length attorney-client relationship that CCL rejects. For example, when students prompt GenAI for the answer to a legal question, they remain relatively passive beyond stating the prompt. Conversely, we have seen that GenAI outputs are not dynamic interactions; rather they are static responses to each query without inquiry, dialog, feedback, or reflection. In our experience, GenAI systems make no attempt to ask the prompter for more information on how to see the problem from the client's point of view, how to understand the complex nature of the problem, or how to partner with the client on decisions or next steps. Nor do they provide any suggestions for how a lawyer or student attorney might do so. The prompter is also prohibited from gaining any insights into how GenAI systems determine what response to give, including any of the ideologies, logics, data, or sources of authority that the system relied on in doing so.[124] Like the black box of traditional lawyering, experience shows us that GenAI outputs and explanations are given didactically and often dogmatically with zero transparency. Authority is assumed. Certainty and confidence are projected. This is the opposite of the CCL approach.[125]

Moreover, as noted above, GenAI systems are optimized to simulate the appearance of human lawyering over the accuracy or adeptness of their outputs.[126] Thus, if a GenAI system calculates that a more traditional lawyering approach (one that frames clients as passive or uninvolved in legal decision-making) sounds more "human" than CCL-driven ones, it will take that approach in framing its output.[127]

GenAI systems also fail to engage with issues of subjectivity or systemic bias, such as those raised by Polikoff and Jacobs. Polikoff identifies tensions inherent to human social relationships, identities, and experiences.[128] GenAI systems are incapable of relating to these human experiences or the quandaries that they present.[129] Jacobs' concerns over racial bias are even more problematic for AI systems, which numerous scholars have shown contain inherent and problematic data based on myriad forms of

123. *See* Jacobs, *supra* note 119, at 353 n.39.

124. *See* Bender et al., *supra* note 17, at 617.

125. *See supra* Part IV.A.

126. *See* Bender et al., *supra* note 17, at 616–17.

127. This also runs the risk of failing clients by defining the lawyer's "job" too narrowly to encompass a set of tasks instead of holistic problem-solving. *See* Robert Eli Rosen, *Problem-Setting and Serving the Organizational Client: Legal Diagnosis and Professional Independence*, 56 U. MIA. L. REV. 179, 186–204 (2001) (noting how lawyers who define their "job" or "task" too narrowly run the risk of failing organizational clients, especially those who suffer from bureaucratic or political pathologies).

128. *See generally* Polikoff, *supra* note 114.

129. *See, e.g.*, WEIZENBAUM, *supra* note 32, at 5–6.

discrimination that no amount of cross-cultural training can correct.[130] Simply put, concepts such as seeing a problem from a certain perspective, understanding the diverse nature of a problem, or creating a true partnership are beyond the model of any GenAI system, making them incompatible with CCL.

## CONCLUSION

Law schools are not meant to train students to imitate lawyers—they are meant to train students to become lawyers. Although GenAI tools may be able to help students imitate some forms of human lawyering, it is unlikely that they can serve the educational goals of law schools and especially those of law school clinics. Unless and until GenAI evangelists can prove the pedagogical value and ethical integrity of these technologies, we will remain skeptical.

130. *See, e.g.*, Southerland, *supra* note 88; CRAWFORD, *supra* note 91, at 93–95, 103; RUHA BENJAMIN, RACE AFTER TECHNOLOGY: ABOLITIONIST TOOLS FOR THE NEW JIM CODE 93–96 (2019); Huq, *supra* note 88, at 1066; Joy Buolamwini & Timnit Gebru, *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification*, 81 PROC. MACH. LEARNING RSCH. 1, 1–2 (2018); SAFIYA UMOJA NOBLE, ALGORITHMS OF OPPRESSION: HOW SEARCH ENGINES REINFORCE RACISM 1–10 (2018).