TAKING INTEGRITY RISKS SERIOUSLY

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INTRODUCTION

Shortly before sociopolitical debates consumed the nation's universities last year, higher education's most vexatious problem appeared to be pervasive academic integrity violations.[1] Numerous elite scholars had found

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1. Ayana Archie, *Stanford President Resigns After Fallout from Falsified Data in His Scholarship*, NPR, https://www.npr.org/2023/07/19/1188828810/stanford-university-president-resigns [https://perma.cc/TMC4-KMWY] (July 20, 2023, 6:36 PM); Josh Moody, *When Presidents Plagiarize*, INSIDE HIGHER ED (Jan. 12, 2024), https://www.insidehighered.com/news/governance/executive-leadership/2024/01/12/when-college-presidents-plagiarize [https://perma.cc/9P6K-HUTY] (cataloging a series of resignations by college presidents in response to plagiarism allegations over the past decade).

themselves on the receiving end of a potpourri of integrity accusations, ranging from complex frauds to old-fashioned plagiarism.[2]

Some of the worst allegations had emerged from the nation's most elite institutions of higher learning. In 2022, Marc Tessier-Lavigne, Stanford University's then-President, was accused of overseeing a lab that had produced manipulated visual images in publications dating back to 1999.[3] Tessier-Lavigne reportedly was neither aware of nor complicit in his lab's manipulations; nevertheless, Stanford University released a detailed report that described multiple problems in several published studies, which ultimately induced Tessier-Lavigne to request their full or partial retraction.[4] Tessier-Lavigne resigned his presidency on the day of the report's release.[5]

During roughly the same period, Francesca Gino, a celebrated behavioral psychologist and Harvard Business School professor, experienced what can only be described as a precipitous downfall.[6] Three professors and a team of anonymous researchers alleged numerous instances of data manipulation in respect to four papers coauthored by Gino.[7] The three professors filed a complaint with Harvard Business School in 2021 and then published their findings on their website, "Data Colada."[8] Like Tessier-Lavigne, Gino became the target of a school-sponsored investigation and report.[9] That

2. *See infra* Part I.

3. Jocelyn Kaiser, *Stanford President to Step Down Despite Probe Exonerating Him of Research Misconduct*, SCIENCE (July 19, 2023, 1:00 PM), https://www.science.org/content/article/stanford-president-to-step-down-despite-probe-exonerating-him-of-research-misconduct [https://perma.cc/N5QR-6J6Z] (reciting an investigatory report's conclusion that Tessier-Lavigne failed to "decisively and forthrightly correct mistakes in the scientific record").

4. Stephanie Saul, *Stanford President Will Resign After Report Found Flaws in His Research*, N.Y. TIMES (July 19, 2023), https://www.nytimes.com/2023/07/19/us/stanford-president-resigns-tessier-lavigne.html [https://perma.cc/T2VM-MG72].

5. Despite this setback, Tessier-Lavigne is now the CEO of a biopharmaceutical startup. *See* Allie Skalnik, *Tessier-Lavigne Leads New AI Biopharma Startup*, STANFORD DAILY (Apr. 24, 2024, 12:55 AM), https://stanforddaily.com/2024/04/24/tessier-lavigne-leads-new-ai-biopharma-startup/ [https://perma.cc/4NZT-DFHA].

6. *See* Kristy Bleizeffer, *The Rise & Fall of a Harvard Business School Superstar*, POETS&QUANTS (June 26, 2023), https://poetsandquants.com/2023/06/26/the-rise-fall-of-a-harvard-business-school-superstar/?pq-category=business-school-news&pq-category-2=mba [https://perma.cc/RC26-6DGS]. On the ways in which Gino's violations impacted other researchers, see Daniel Engber, *The Business-School Scandal That Just Keeps Getting Bigger*, ATLANTIC (Nov. 19. 2024), https://www.theatlantic.com/magazine/archive/2025/01/business-school-fraud-research/680669/ [https://perma.cc/7U42-8G8N].

7. *See* Bleizeffer, *supra* note 6.

8. *See id.* For detailed allegations made on the Data Colada website, see Uri Simonsohn, Leif Nelson & Joseph Simmons, *Data Falsificada (Part 1): "Clusterfake"*, DATA COLADA (June 17, 2023), https://datacolada.org/109 [https://perma.cc/MQ7M-8K8P]; Uri Simonsohn, Leif Nelson & Joseph Simmons, *Data Falsificada (Part 2): "My Class Year Is Harvard"*, DATA COLADA (June 20, 2023), https://datacolada.org/110 [https://perma.cc/W7MM-49RR]; Uri Simonsohn, Leif Nelson & Joseph Simmons, *Data Falsificada (Part 3): "The Cheaters Are Out of Order"*, DATA COLADA (June 23, 2023), https://datacolada.org/111 [https://perma.cc/63SK-M34T]; Uri Simonsohn, Leif Nelson & Joseph Simmons, *Data Falsificada (Part 4): "Forgetting the Words"*, DATA COLADA (June 30, 2023), https://datacolada.org/112 [https://perma.cc/84L2-MSAX].

9. *See* Bleizeffer, *supra* note 6.

report not only confirmed weaknesses in the cited works, but also assigned Gino responsibility for their deficiencies.[10] Harvard Business School's dean would eventually place Gino on unpaid administrative leave and initiate proceedings to strip her of tenure and terminate her employment.[11] In response, Gino sued Harvard Business School and her three accusers in a twenty-five million dollar defamation suit.[12] Although her claims against the three professors were eventually dismissed, her claim against Harvard was left partially intact.[13]

These high-profile vignettes are notable for several reasons. *First*, they occurred within elite and extremely well-resourced institutions. *Second*, they featured scholars who had reached the pinnacles of their respective careers. *Third*, their downfall came about not because of a standard peer review process, but rather because of a series of accusations lodged primarily by individuals outside their respective schools.[14] Together, both scenarios depict pervasive weaknesses in higher education's scholarly self-monitoring function.

Could a similar scandal emerge within the legal academy? At first glance, the chances seem slim. On many levels, legal scholarship stands apart from its social- and hard-science analogs.[15] Law professors, the majority of whom are still lawyers and not solely PhDs by training, publish their papers primarily in student-edited law reviews.[16] Most law school faculties generate

10. TERESA AMABILE, ROBERT KAPLAN & SHAWN COE, HARVARD BUS. SCH., FINAL REPORT OF INVESTIGATION COMMITTEE CONCERNING ALLEGATIONS AGAINST PROFESSOR FRANCESCA GINO – CASE R121-001, at 1, 19, 22, 26, 36, 39 (2023), https://datacolada.org/wp-content/uploads/Harvard-Report-on-Gino.pdf [https://perma.cc/UYP4-CWCL] (reproduced at the Data Colada website).

11. The report found, by a preponderance of evidence, that "Professor Gino significantly departed from accepted practices of the relevant research community and committed research misconduct intentionally, knowingly, or recklessly." *Id*. at 1; *see* Engber, *supra* note 6 (regarding administrative proceedings).

12. Kyle Baek & Benjamin Isaac, *Harvard Business School Prof. Sued Researchers for Alleging Data Manipulation. Experts Worry It Silences Critics*, HARV. CRIMSON (Mar. 29, 2024), https://www.thecrimson.com/article/2024/3/29/gino-lawsuit-critics/ [https://perma.cc/UUZ7-4E4A].

13. Kyle Baek, *Judge Dismisses Francesca Gino's Defamation Charges Against Harvard*, HARV. CRIMSON (Sept. 12, 2024), https://www.thecrimson.com/article/2024/9/12/judge-dismisses-gino-lawsuit-defamation-charges/ [https://perma.cc/KN5Y-VF6F]. The court left intact Gino's claim that Harvard had failed to properly apply its own disciplinary policies and procedures. *Id.*

14. *See infra* Part I. On the weaknesses of peer review, see Wolfgang Stroebe, Tom Postmes & Russell Spears, *Scientific Misconduct and the Myth of Self-Correction in Science*, 7 PERSPS. ON PSYCH. SCI. 670, 677 (2012) ("[P]eer reviewers are . . . not very successful in uncovering scientific fraud.").

15. On the ways in which law reviews diverge from the rest of the academy, see Barry Friedman, *Fixing Law Reviews*, 67 DUKE L.J. 1297, 1305–06 (2018) (noting that law reviews are different in that they are published and edited by students, lack systemic peer review, lack anonymity, and permit multiple simultaneous submissions).

16. For a helpful overview of problems with student-edited law reviews, see Friedman, *supra* note 15, at 1305–24. For a student-centered critique, see Kevin Frazier, *The Law Review Revolution*, 30 VA. J. SOC. POL'Y & L. 150 (2023).

less empirical work than those in other fields.[17] And the pressure on law professors—either to publish or to secure outside grants—remains, in many instances, weaker than in other disciplines.[18]

Nevertheless, it would be an error for law schools to complacently ignore their integrity risks. Academic integrity violations feature the familiar hallmarks of fraud, the crime that lies at the bottom of so many organizational failures.[19] And, like most frauds, integrity violations can be linked to fraud's three causal factors: opportunity, pressure, and rationalizations. These three building blocks comprise the criminological framework widely known as the "fraud triangle."[20] The triangle, in turn, helps us to understand the antisocial behavior that fuels white-collar crime.[21]

If pressure, opportunity, and rationalizations are fraud's precursors, then the legal academy would be well advised to pay them greater attention. Even

17. On the growth of empirical scholarship within the legal academy, see generally Shari Seidman Diamond, *Empirical Legal Scholarship: Observations on Moving Forward*, 113 NW. U. L. REV. 1229 (2019); Michael Heise, *The Past, Present, and Future of Empirical Legal Scholarship: Judicial Decision Making and the New Empiricism*, 2002 U. ILL. L. REV. 819, 824–25 (observing increase in empirical legal scholarship despite its "overwhelming exception to a general rule favoring nonempirical research").

18. "Tenure-track law professors . . . get paid, relatively speaking, a lot of money, more than most university professors and . . . do not teach a lot, compared to their counterparts in other departments, and many do not research, write, or publish a lot." Eli Wald, *A Liberal Theory of Legal Education*, 75 ALA. L. REV. 563, 583 (2024). On the pressure to publish and secure outside grants in other disciplines, see James M. DuBois, Emily E. Anderson, John Chibnall, Kelly Carroll, Tyler Gibb, Chiji Ogbuka & Timothy Rubbelke, *Understanding Research Misconduct: A Comparative Analysis of 120 Cases of Professional Wrongdoing*, 20 ACCOUNTABILITY RSCH. 320, 334 (2013) (finding that researchers who engaged in wrongdoing "report[ed] pressure to publish and obtain grant funding").

19. Outside the legal academy, several scholars have explored the connection between academic misconduct and theories of organizational misconduct. *See, e.g.*, Daniel Birks & Joseph Clare, *Linking Artificial Intelligence Facilitated Academic Misconduct to Existing Prevention Frameworks*, INT'L J. FOR EDUC. INTEGRITY, Oct. 2023, at 4–6 (theories of crime); Serge P.J.M. Horbach, Eric Breit, Willem Halffman & Svenn-Erik Mamelund, *On the Willingness to Report and the Consequences of Reporting Research Misconduct: The Role of Power Relations*, 26 SCI. & ENG'G ETHICS 1595, 1598 (2020) (organizational misconduct).

20. *See* Elizabeth Pollman, *Private Company Lies*, 109 GEO. L.J. 353, 378 (2020) ("The widely adopted framework known as the 'fraud triangle' identifies three main factors behind workplace fraud: (1) pressure, (2) opportunity, and (3) rationalization."). On the triangle's history and relationship to Donald Cressey's work on embezzlers, see W. Steve Albrecht, *Fraud in Government Entities: The Perpetrators and the Types of Fraud*, 7 GOV'T FIN. REV. 27, 27 (1991) (coining term), and Leandra Lederman, *The Fraud Triangle and Tax Evasion*, 106 IOWA L. REV. 1153, 1156–58, 1182–92 (2021) (applying concept to tax fraud and evasion). *See generally* DONALD R. CRESSEY, OTHER PEOPLE'S MONEY: A STUDY IN THE SOCIAL PSYCHOLOGY OF EMBEZZLEMENT (1953) (deriving explanations for embezzlers' wrongdoing). Two scholars expanded the fraud triangle to a diamond to include an individual's *capability* to engage in fraud, which includes the wrongdoer's intelligence, personality, and taste for risk. Dana R. Hermanson & David T. Wolfe, *The Fraud Diamond: Considering the Four Elements of Fraud*, CPA J. (Dec. 2004), http://archives.cpajournal.com/2004/1204/essentials/p38.htm [https://perma.cc/3ZE9-QFU2].

21. On the definitional debate over "white-collar crime," see MIRIAM H. BAER, MYTHS & MISUNDERSTANDINGS IN WHITE-COLLAR CRIME 39–43 (2023). *See generally* Susan P. Shapiro, *Collaring the Crime, Not the Criminal: Reconsidering the Concept of White-Collar Crime*, 55 AM. SOCIO. REV. 346 (1990) (arguing that white-collar crimes are violations best described by their use of deceit and consequent violations of trust).

if law schools have traditionally enjoyed structural advantages in avoiding certain types of wrongdoing, those advantages may eventually ebb. Moreover, due to a legacy of uncoordinated and weak enforcement, law schools may find themselves *more* prone to certain types of academic wrongdoing, especially in the wake of new technologies such as generative artificial intelligence (AI).[22]

The Gino and Tessier-Lavigne scandals exemplify data fraud and manipulation. Scholars can, however, transgress rules in many other ways; they can fail to disclose conflicts of interest, plagiarize work, recycle their own work without sufficient acknowledgement, or falsely portray a machine's work as their own. Collectively, these behaviors threaten legal academia's mission to disseminate and advance knowledge. Accordingly, as emerging technologies inspire reflection about the future practice of law, law professors should be particularly attentive to how new technologies may impact legal scholarship and its integrity risks.

The rest of this Essay unfolds as follows. Part I taxonomizes academic misconduct, focusing in particular on the behaviors that overlap the federal government's definition of "research misconduct."[23] Part II examines the legal academy's relative strengths and weaknesses in addressing integrity violations. Finally, drawing on lessons from the corporate compliance field, Part III proposes several reforms.

I. A TAXONOMY OF INTEGRITY VIOLATIONS

"A basic responsibility of the community of higher education in the United States is to refine, extend, and transmit knowledge. As members of that community, law professors share with their colleagues in the other disciplines the obligation to discharge that responsibility."[24]

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22. I am referring to those systems that rely on large language models (LLMs) to "recognize, summarize, translate, predict and generate text and other content based on knowledge gained from massive datasets." Matthew R. Gaske, *Regulation Priorities for Artificial Intelligence Foundation Models*, 26 VAND. J. ENT. & TECH. L. 1, 3 (2023) (quoting Angie Lee, *What are Large Language Models Used For?*, NVIDIA (Jan 26, 2023), https://blogs.nvidia.com/blog/what-are-large-language-models-used-for/ [https://perma.cc/Y4YD-3A7H]).

23. *See* NICHOLAS H. STENECK, OFF. OF RSCH. INTEGRITY, U.S. DEP'T OF HEALTH & HUM. SERVS., INTRODUCTION TO THE RESPONSIBLE CONDUCT OF RESEARCH 20–21 (2007), https://ori.hhs.gov/sites/default/files/2018-04/rcrintro.pdf [https://perma.cc/FP5W-7C82]. The Office of Science and Technology Policy defines "research misconduct" as "fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results." 10 C.F.R. § 733.3 (2024). The U.S. National Science Foundation (NSF) has adopted identical language. 45 C.F.R. § 689.1(a) (2024); *see also* Horbach et al., *supra* note 19, at 1597 (distinguishing "clear-cut" types of misconduct from fuzzier "questionable research practices"). There are, to be sure, many other behaviors that scholars and students find unethical. *See* David B. Resnik, *Is It Time to Revise the Definition of Research Misconduct?*, 26 ACCOUNTABILITY RSCH. 123, 127 (2019) (describing "misbehaviors that are detrimental to science" but for which consensus among scientists is lacking).

24. *Law Professors in the Discharge of Ethical and Professional Responsibilities, AALS Handbook: Statement of Good Practices*, ASS'N AM. L. SCHS., https://www.aals.org/about/handbook/good-practices/ethics/ [https://perma.cc/9CMG-5NCP] (May 24, 2024) (emphasis added).

As is the case in other academic fields, there exist many ways for law professors to violate their responsibility to "refine, extend, and transmit knowledge."[25] This part sets forth a brief taxonomy of scholarly wrongdoing and assesses its relevance to legal scholarship.

A. Undisclosed Conflicts of Interest

Imagine a professor conducts a behavioral study and announces those results in a law review article. The writing is the professor's own, the results are straightforwardly reported, and the paper properly cites and quotes relevant literature. The only problem, learned some time after the study's publication, is that it was partially or fully funded by a private entity financially interested in the study's outcome.

The above scenario is what is commonly referred to as an undisclosed conflict of interest.[26] Scholarly publications can alleviate such issues by seeking disclosures from their authors, but not every publication does so, and not every author complies. When nondisclosed funding eventually becomes public, critics pounce.[27]

To be clear, there is nothing per se wrong with seeking funding from an outside source. Indeed, all law professors effectively receive funding from their home institutions insofar as a law school pays a specific research stipend, provides year-round library and database access, and funds professorial travel and conference budgets. But of course, all of this is more or less known, and the law professor effectively conveys this information by adding the institution's name to the byline and dagger footnote.

Real problems arise, however, when a study's funder remains undisclosed. It is not that the funding stream falsifies the results, but rather, that the relationship increases the amount of skepticism with which the reader might approach those results. The information is accordingly material to the reader, even if the funding plays no formal role in the author's actual analysis, research, or writing.

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25. *Id.*

26. On the emergence of financial conflicts of interests and their negative impacts on clinical research, see Susan P. Shapiro, *Bushwhacking the Ethical High Road: Conflicts of Interest in the Practice of Law and Real Life*, 28 L. & SOC. INQUIRY 87, 212–15 (2003) (describing the ways in which "fundamental academic values" compete with "the interests of those who pay the research tab").

27. For a helpful example from the medical research field, see Resnik, *supra* note 23, at 127–28 (discussing a former chief medical officer who failed to disclose millions of dollars he received from pharmaceutical and health care companies). Closer to home, Exxon's partial funding of certain studies was obliquely criticized and referenced by the U.S. Supreme Court in *Exxon Shipping Co. v. Baker*. *See* 554 U.S. 471, 501 n.17 (2007); *see also* Lee Epstein & Charles E. Clarke, Jr., *Academic Integrity and Legal Scholarship in the Wake of* Exxon Shipping, *Footnote 17*, 21 STAN L. & POL'Y REV. 101 (2010) (recounting episode). Whereas the studies' *authors* openly acknowledged Exxon's funding, Exxon itself declined to mention its funding in its appellate briefs citing the studies. Alan Zarembo, *Funding Studies to Suit Need*, L.A. TIMES (Dec. 3, 2003, 12:00 AM), https://www.latimes.com/nation/la-na-valdez3-2003dec03-story.html [https://perma.cc/RKD4-JK4U]. On the broader problems of "hired-gun research," see Shireen A. Barday, Note, *Punitive Damages, Remunerated Research, and the Legal Profession*, 61 STAN. L. REV. 711, 712–13 (2008).

There is at least one good reason to perceive this as a lesser issue for law schools. For many scholars, the funding for their scholarship largely begins and ends with the law school's operating budget.[28] If a nondisclosed conflict impacts legal academic scholarship, it is most likely to do so when professors rely on private funding, namely when they engage in costly empirical research.[29] Accordingly, conflicts of interest in legal scholarship will fall primarily within a relatively narrow and recognizable band.

Private funding, therefore, need not be an intractable problem, provided publishers adopt a universal and standardized practice of soliciting and publicizing conflict-of-interest declarations. Student-edited law reviews apparently have been slow to embrace such a standardized rule,[30] but this likely reflects a lack of coordination rather than a deliberate rejection.

B. Plagiarism (of Others and Self)

Oxford University's policy defines plagiarism as:

> Presenting work or ideas from another source as your own, with or without consent of the original author, by incorporating it into your work without full acknowledgement. All published and unpublished material, whether in manuscript, printed or electronic form, is covered under this definition, as is the use of material generated wholly or in part through use of artificial intelligence . . . . Plagiarism can also include re-using your own work without citation.[31]

Unlike the undisclosed conflict of interest, plagiarism potentially impacts all legal scholarship, regardless of its funding source.

Plagiarism covers quite a bit of ground. It can include the verbatim copying of someone else's writing, the paraphrasing of work with a mere citation when the work should in fact be quoted, and the wholesale recycling of one's work without proper attribution.[32]

It can also be understood as causing several harms. When Archie uses Betty's language and ideas in his writing without attribution, he engages in several wrongs. *First*, he is taking Betty's work and failing to "pay" her for

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28. Barday, supra note 27, at 713 (finding that "[a]s many as half" of the "5.5% of law review articles" that acknowledged funding came from university donors).

29. "[T]o conduct empirical research, scholars often require funding: they may need to acquire a particular data set, field a survey, hire interviewers, and so on." Lee Epstein & Gary King, *Building an Infrastructure for Empirical Research in the Law*, 53 J. LEGAL EDUC. 311, 316 (2003); *see id.* (articulating suggestions for law schools seeking to increase the field of empirical legal scholarship). For more on the funding sources of legal empirical research, see Heise, *supra* note 17, at 825 (citing two examples).

30. Jason Chin, Kathryn Zeiler, Natali Dilevski, Alex O. Holcombe, Rosemary Gatfield-Jeffries, Ruby Bishop, Simine Vazire & Sarah Schiavone, *The Transparency of Quantitative Empirical Legal Research Published in Highly Ranked Journals (2018-2020): An Observational Study*, F1000RESEARCH, Mar. 7, 2024, at 1, 15 (reporting that only 11 percent of the articles collected included conflict of interest statements, and most of that group were found in faculty-edited journals).

31. *Plagiarism*, OXFORD UNIV., https://www.ox.ac.uk/students/academic/guidance/skills/plagiarism [https://perma.cc/HH34-VHJE] (last visited Feb. 14, 2025).

32. *Id.*

it by providing appropriate quotations and citations (an admittedly cheap price). Hence, he has engaged in a form of intellectual theft.[33]

Second, when he submits a plagiarized piece, Archie deceives the journal publishing his work by claiming the work is (a) his and (b) novel.[34] This last point is particularly important. Law review editors famously prefer novel and "cutting edge" scholarship.[35] An article comprised primarily of lifted material is anything but cutting edge or novel. Thus, Archie's plagiarism—depending on its scope and degree—deprives a law review publication of its ability to control a highly valuable and limited resource: its publication slot.

Before moving on, we should note that many academic policies—like Oxford's—also ban *self*-plagiarism, wherein Archie lifts work from his previously published piece and places it in a newer, unpublished piece.[36] To be sure, Archie has not "stolen" language from himself. But he has, depending on the circumstances, misled a new publisher (quite possibly, a student-edited law review) by inaccurately portraying his work as new and original.[37]

Whether this recycling can be deemed a "fraud" likely hinges on how much work Archie has reused. A couple of sentences are likely immaterial and their usage may well be inadvertent. On the other hand, copying and pasting several pages of work verbatim is hardly an accident.

There is an additional issue: by recycling his work without attribution, Archie deprives the original publisher of the citation credit it would receive were he to properly cite and quote his previous work. Putting aside the question as to who "owns" the text,[38] there is an ethical question embedded in this behavior, particularly when the recycled work finds its way from a less-celebrated law review into a more elite one. To be clear, no one expects a scholar to quote a previous publication solely for its most basic, uncontroverted claims.[39] Such a rule would perversely require massive

33. Admittedly, not everyone concurs in this view. *See, e.g.*, Brian L. Frye, *Plagiarize This Paper*, 60 IDEA 294, 297 (2020) (arguing that attribution rules should be "voluntary, not mandatory").

34. This account assumes that Archie's behavior is conscious and deliberate. For arguments to the contrary, see Christopher Buccafusco, *There's No Such Thing as Independent Creation, and It's a Good Thing, Too*, 64 WM. & MARY L. REV. 1617, 1644 (2023) (citing literature indicating that "[p]eople do, in fact, exhibit cryptomnesia, where they are unable to recall whether they created something themselves or borrowed it from another source").

35. *See, e.g.*, Ryan Scoville, *The Ethics of Baiting and Switching in Law Review Submissions*, 101 MARQ. L. REV. 1075 (2018) (criticizing the process by which professors overstate the novelty of their claims at the submission stage and then moderate those claims once an article has been accepted for publication).

36. *See supra* note 31 and accompanying text.

37. *See* Gregory Scott Crespi, *Prepublication Publications*, 76 SMU L. REV. F. 28, 29 (2023) ("Academic journals generally seek to publish only original work, rather than unknowingly republishing pieces that have appeared elsewhere in essentially the same form."); *see also* Josh Blackman, *Self-Plagiarism*, 45 FLA. ST. U. L. REV. 641, 646 (2018) (acknowledging that self-plagiarism is often perceived through a fraud lens).

38. Professor Josh Blackman discusses at length the potential copyright issues arising out of a scholar's recycling of substantial blocks of text. *See* Blackman, *supra* note 37, at 647–50.

39. Many defenses of "self-plagiarism" take issue with the concept for this and similar reasons. *See id.* at 652 ("[W]hen a scholar focuses on a specific area of law or writes several

recitations of the authors' previous work and could easily appear self-promoting. Nor would we expect authors to quote a previous piece's footnote that contained the standard cases that establish a given rule of law; in most instances, a direct citation to the cases should be sufficient. But surely, there exist situations in which an author's recycling extends beyond these boundaries. When the recycling is material and reflects an intent to deceive, it morphs into an integrity risk; at that point, it becomes an issue for the academy.

C. Passing Off: Work by Humans, Work by Machines

Scholars violate well-understood rules and norms when they falsely portray someone else's work as their own. The passing-off paradigm becomes more complicated, however, when the underlying work has been accomplished by a machine as opposed to another human being. The advent of artificial intelligence all but assures that faculties will debate this question in years to come.

Three legal scholars recently attempted to demonstrate AI's scholarly potential in an article they published in the *Southern Methodist University Law Review Forum*.[40] The piece was conceived by the human authors, who then used (and reported on) a series of prompts submitted to ChatGPT to construct a detailed outline based on a title and abstract.[41] Once the outline was set, they then asked ChatGPT to draft language for several of the subsections, which they then read and edited (and footnoted and checked for plagiarism issues).[42] In the spirit of fairness and full disclosure, the (human) authors invited ChatGPT to be their coauthor, but the machine demurred.[43]

AI programs have been widely available to legal scholars for a relatively short time. It is impossible to say with confidence which uses the academy will eventually consider appropriate and which will be verboten. Nevertheless, one can see how AI's use triggers crystal-clear integrity violations in some instances and more diffuse intuitions of unfairness in others.

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articles on the same topic, it becomes essential to write about the same history over and over and over again."); *see also* Stephen M. Bainbridge, *Self-Plagiarism?: Or Splat?: A Problem?*, PROFESSORBAINBRIDGE.COM (Nov. 28, 2005), https://www.professorbainbridge.com/professorbainbridgecom/2005/11/self-plagiarism-or-splat-a-problem.html [https://perma.cc/HJY7-2UG5].

40. Bill Tomlinson, Andrew W. Torrance & Rebecca W. Black, *ChatGPT and Works Scholarly: Best Practices and Legal Pitfalls in Writing with AI*, 76 SMU L. REV. F. 108 (2023). For additional thoughts on "coauthoring" with AI, see Hadar Y. Jabotinsky & Roee Sarel, *Co-authoring with an AI?: Ethical Dilemmas and Artificial Intelligence*, 56 ARIZ. ST. L.J. 187 (2024).

41. *See* Tomlinson et al., *supra* note 40, at 117–21.

42. *See id.* at 122–25.

43. *Id.* at 109 n.1. Professor Brian Frye engaged in a separate conversation with ChatGPT and published his results as a coauthor. *See* Brian Frye & ChatGPT, *Should Using an AI Text Generator to Produce Academic Writing Be Plagiarism?*, 33 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 946 (2023).

For example, if a scholar's use of AI results in the publication of another author's prose without proper attribution, the resulting publication may well violate a school's antiplagiarism policy. By the same token, if using an AI program causes a scholar to make baldly false claims due to AI's penchant for "hallucinations," the professor will rightly be criticized for their negligence.[44]

Let us assume, for now, that future versions of AI are able to avoid hallucinations and ameliorate plagiarism concerns. How should we feel about the professor who openly relies on AI to write a section of a paper, or perhaps write *all* of a paper, albeit in response to detailed prompts and editing?

Let me offer three possible reasons why an institution and its faculty might perceive such behavior as undesirable.

First, an academic institution might feel deprived of the labor it expected of a professor in exchange for a summer stipend or grant. Thus, an institution might complain, "We gave you $10,000 on the assumption you would spend eight weeks working on your scholarly pursuits. Instead, you spent three weeks feeding prompts to AI and the remaining five taking a cooking class." This is admittedly an exaggeration of what an institution might say, but its less risible version still lacks merit. As Professor Eli Wald observes, there *is* no "academic timekeeping" requirement for professors; institutions often have little idea how much time professors spend on specific projects throughout the summer or academic year.[45] They could, of course, alter their policies in response to this issue, but until that moment, they likely have little recourse.

An institution (and its faculty) might instead say, "We hired *you* to research and speak on matters of importance to your field. We granted *you* a position of intellectual authority based on our analysis of *your* work and that work assumes *you* wrote the body of your papers, not some smart machine." This second claim outpaces the first; law schools *do* take pains to determine responsibility for coauthored pieces, particularly in regard to appointments, promotion, and tenure.

At the same time, it is also well known that scholars rely on student research assistants to jump-start their papers at the front end, and on student law review editors to polish their work at the back end. Standards here are admittedly murky. Still, most would agree that above the line *authors* are responsible for generating the paper's text and core ideas, and that research assistants and editors should provide no more than interstitial and technical assistance. One might infer from this background norm that AI should undertake no more "work" than the ordinary research assistant or editor. Not

44. Then again, it is quite possible that a law review's student editors will catch the mistake and remedy it, thereby raising several of the issues discussed in Part II.B.

45. Eli Wald, *A Thought Experiment About the Academic "Billable" Hour or Law Professors' Work Habits*, 101 MARQ. L. REV. 991, 991 (2018). Professor Wald argues for the adoption of academic timekeeping requirements, but only for their diagnostic uses. *See id.* at 998–99 (arguing that timekeeping could generate aggregate "best practices" knowledge).

a bad start, but we would still need to figure out what that amount of "work" entails.

Consider one additional wrinkle. Student editors and research assistants are students; accordingly they are vulnerable to exploitation by a more powerful professor. AI, by contrast, does not raise the same concerns. Nevertheless, many professors will feel differently about a paper that is the product of human ingenuity than one that is the end result of a really good prompt-and-editing partnership. The concept of materiality does some nice work here. Do I care whether someone used an AI product to locate supporting authority for their claims? Not really. Would my view of a *paper's assertions* change if I knew that it was coauthored with AI? I probably would want to see the (human) author's prompts. Would my assessment of an author's skills as a writer and legal scholar shift if I learned that they had coauthored all of their scholarship with AI? It likely would. To the extent legal scholarship reflects a choice of language and the considered construction of paragraphs and narrative, legal academics may care quite a bit whether a publication was written primarily by a machine and edited by a human, or was instead written by a human and then polished by a machine. These are issues the legal academy will need to hash out over time.

D. Data Fraud and Manipulation

Up until now, I have described integrity violations that harm others, but do not necessarily impair scholarship's accuracy. A plagiarized paper can still be correct in its underlying assertions and analysis, as can a paper partially or even wholly written by AI.

Data fraud and manipulation are different, as they produce inaccurate information and conclusions, which in turn can become the basis for harmful policies and laws.[46] Moreover, data fraud and manipulation can go unnoticed (or unproven) for years. Their detection requires the expertise of peer academics and often the well-informed whistleblowing of a coworker or research assistant.[47]

The Tessier-Lavigne and Gino scandals aptly demonstrate these problems. In neither of these two cases did the standard peer review process interdict wrongdoing prior to publication. Instead, outside scholars brought attention to the papers' failings,[48] and the universities in question eventually assembled extensive reviews undertaken by independent committees.[49] Given the relative youthfulness of the empirical legal research subfield, as well as the fact that student law review editors are, in most cases, less skilled in judging empirical methods than professional academics, we should be

46. *See* Stroebe et al., *supra* note 14, at 670–71 (citing the infamous discredited autism study that caused parents to question the safety of vaccines).

47. *See id.* at 680 (discussing the reasons why scientific fraud is difficult to detect).

48. *See* Kaiser, *supra* note 3; Bleizeffer, *supra* note 6.

49. *See* Kaiser, *supra* note 3.

even more concerned that legal scholarship's data irregularities will fly deep under the radar, only to cause major problems at some later point.[50]

II. ASSESSING THE LEGAL ACADEMY'S VULNERABILITIES

Part I describes a series of academic integrity violations. Part II focuses more directly on the legal academy and its specific vulnerabilities to those violations. It does so first by inquiring how well the academy has defined the line between appropriate and inappropriate behavior, and then by considering its enforcement infrastructure and its norms.

A. Definition

The legal academy's success in adequately defining its integrity violations is an uneven story. Plagiarism, for example, is a well-known violation. It carries serious consequences, up to and including the stripping of one's tenure. One will encounter no difficulty locating a school's antiplagiarism language in faculty handbooks and school websites.

But even among scholars, there exist different viewpoints.[51] Scholars do not agree, for example, on self-plagiarism.[52] Nor do they share identical views on the proper consequences for unintentionally copying someone else's language, especially when the amount of copying is marginal or unrelated to a paper's core argument.[53]

However strongly the legal academy adheres to the belief that our ideas and language should include proper citation and quotations to ourselves and others, there do seem to be divergences of opinion on plagiarism's outer boundaries and its proper consequences.[54] One cannot help but wonder if the problem lies in the binary way plagiarism is approached in most texts, implying that one is either guilty (or not) of violating an antiplagiarism rule.

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50. "[T]he average quality of empirical studies published in student-edited law reviews is undoubtedly lower than those published in peer-reviewed journals . . . . Student editors are eager to publish empirical work, but too often lack the expertise to ensure that they publish only high-quality, replicable studies." Kathryn Zeiler, *The Future of Empirical Legal Scholarship: Where Might We Go from Here?*, 66 J. LEGAL EDUC. 78, 78 (2016).

51. For a broad attack on antiplagiarism rules and norms, see Frye, *supra* note 33, at 297 (arguing that plagiarism norms "are primarily an extra-legal, inefficient, and illegitimate way for academics to claim property rights in the public domain").

52. Some have argued that they should be able to reuse certain boilerplate phrases or concepts within larger papers that break new ground. *See* Bainbridge, *supra* note 39. Others contend that the concept is simply a misnomer. *See* Peter L. Bonate, Editorial, *Thoughts on Plagiarism and the Case Against Claudine Gay*, 51 J. PHARMACOKINETICS & PHARMACODYNAMICS 1, 3 (2024) ("[W]e are really concerned with stealing another's intellectual property, i.e., ideas, words, etc. Whether you republish yourself is not in the spirit of what we are genuinely interested in—stealing from others."); *id.* at 4.

53. Some of the debate over Dr. Claudine Gay, Harvard's previous president, reflects this uncertainty.

54. For a helpful discussion of these problems, see Douglas J. Cumming, Sofia Johan & Robert S. Reardon, *Crowdfunding and Intellectual Property*, 22 COLO. TECH. L.J. 215, 229 (2024) (discussing "grey area[s] of intellectual overlap" that further complicate claims of misattribution).

In reality, the offense differs according to its context, and the umbrella term itself covers a wealth of violations.[55] In the same way state codes subdivide "homicide" into different crimes according to their accompanying mens rea, university codes would be better served by subdividing and grading different instances of academic copying.[56]

For AI, the rules are even fuzzier. Many schools are just now playing catch-up and developing policies for their current and prospective students.[57] For faculty, there will be a need to acknowledge AI's potential benefits while also recognizing its integrity risks. Few scholars will defend AI-embedded hallucinations or plagiarism. Beyond those bright lines, however, consensus will break down. Moreover, because AI is itself a new technology, viewpoints might polarize along generational lines.

Finally, with regard to data fraud, one doubts *any* legal scholar would champion the right to manipulate or fabricate data. Where we *will* see disagreement is on how much responsibility a single author bears for the data's integrity, especially when many authors are involved. But to even get to this point, we need to learn first that a violation has even occurred. As the following section demonstrates, that point is far from assured.

B. Enforcement

"Enforcement" is the embodiment of all mechanisms an authority uses to ensure its members' compliance with a given set of rules.[58] It consists of all external and internal constraints on behavior exerted by public and private organizations.[59] It includes everything from the detection of wrongdoing, up to and including its punishment and remediation.[60]

To an economist, enforcement reflects the aggregate formal and informal sanctions that impose a "cost" on an actor when they violates certain rules.[61] If the costs of those sanctions, modified by the probability of their

55. *See id.* at 230 (citing "the necessity for more explicit guidelines and robust systems to ensure intellectual integrity").

56. I have argued extensively for statutory gradation in white-collar crime. *See* Miriam H. Baer, *Sorting Out White-Collar Crime*, 97 TEX. L. REV. 225 (2018); BAER, *supra* note 21, at 180–205.

57. *See* Cecilia Ka Yuk Chan, *A Comprehensive AI Policy Education Framework for University Teaching and Learning*, INT'L J. EDUC. TECH. HIGHER EDUC., July 2023, at 3.

58. *See generally* A. Mitchell Polinsky & Steven Shavell, *The Economic Theory of Public Enforcement of Law*, 38 J. ECON. LITERATURE 45 (2000) (describing public enforcement mechanisms). On self-reporting and private enforcement by organizations, see *id.* at 66; see also Steven Shavell, *The Optimal Structure of Law Enforcement*, 36 J.L.& ECON. 255, 258–61 (1993) (analyzing differences between private and public enforcement and the "tableau" of enforcement mechanisms that might be applied).

59. On the ways in which a private organization's self-policing feeds into a public authority's enforcement efforts, see Robert Innes, *Violator Avoidance Activities and Self-Reporting in Optimal Law Enforcement*, 17 J.L. ECON. & ORG. 239, 239–40 (2001).

60. *Cf.* Veronica Root, *The Compliance Process*, 94 IND. L.J. 203, 219–28 (2019) (describing the compliance "process" as one that involves four separate stages of prevention, detection, investigation, and remediation).

61. *See, e.g.*, ROBERT D. COOTER & MICHAEL D. GILBERT, PUBLIC LAW AND ECONOMICS 461–63 (2022).

application, exceed the benefits of violating a given rule, a rational actor will desist from violating the rule.[62] Under those conditions, we say the actor has been *deterred*.[63]

The sanctions-multiplied-by-probability-of-punishment approach is, of course, a highly simplified model. We know from numerous studies that individuals are myopic, overly optimistic in their abilities to evade detection and punishment, and adaptable.[64] This last point is why deterrence is rarely absolute or stable. When a sufficient number of individuals develop detection-avoidance strategies, the governing authority must devise new enforcement techniques to meet their level of adaptation.[65]

One of the challenges for deterrence is that detection can be costly.[66] Particularly in large, complex organizations, detection will require intentional effort and substantial technical expertise. Accordingly, the probability of getting caught will remain relatively low even when an organization invests heavily in before-the-fact surveillance and after-the-fact investigation.[67]

To offset low probabilities of detection, the enforcer often imposes an inflated sanction.[68] In the academic context, this might translate into a harsh employment result—that is, a university might fire, rather than merely censure, a professor who engages in data fraud, which is inherently difficult to detect. However, for most scholars, termination and loss of tenure will be the most a school can credibly threaten, and even that will be a heavy and time-consuming lift.

Instead of imposing draconian sanctions, a regulator can instead invest in noticeable front-end surveillance.[69] Rational actors, after all, will go out of their way to avoid engaging in easily detected (and therefore easily punished) misconduct.[70] Moreover, to the extent *some* actors decide to violate the rules

62. "The conventional economic deterrence model identifies two key variables: the government sanction and the probability of detection." *See* Miriam H. Baer, *Law Enforcement's* Lochner, 105 MINN. L. REV. 1667, 1719 (2021).

63. "[T]he economic theory of criminal law posits that criminals will cease committing crimes when the net expected benefits from the crime are outweighed by their expected costs." Miriam H. Baer, *Linkage and the Deterrence of Corporate Fraud*, 94 VA. L. REV. 1295, 1302 (2008) (citing Gary S. Becker, *Crime and Punishment: An Economic Approach*, 76 J. POL. ECON. 169 (1968)).

64. See, e.g., Daniel S. Nagin, Robert M. Solow & Cynthia Lum, *Deterrence, Criminal Opportunities, and Police*, 53 CRIMINOLOGY 74, 75 (2015) ("Support for the deterrent effect of certainty of punishment . . . pertains almost exclusively to the certainty of apprehension.").

65. *See generally* Chris William Sanchirico, *Detection Avoidance*, 81 N.Y.U. L. REV. 1331 (2006). Professor Orin Kerr describes a similar type of phenomenon in the Fourth Amendment context. *See* Orin S. Kerr, *An Equilibrium-Adjustment Theory of the Fourth Amendment*, 125 HARV. L. REV. 476, 480 (2011) (explaining Supreme Court decisions as a form of "correction mechanism" to address changes in technology).

66. *See* Sanchirico, *supra* note 65, at 1353, 1392.

67. *See id.* at 1392.

68. *See id.* at 1338–40.

69. *See id.* at 1392–93.

70. This reflects enforcement's substitution effect: if enforcement makes one type of violation more detectable, it may cause wrongdoers to substitute a different type of violation. Tracey L. Meares, Neal Katyal & Dan Kahan, *Updating the Study of Punishment*, 56 STAN. L.

anyway, *other* actors may feel greater incentive to report that violation to the authorities. Still, surveillance carries numerous drawbacks. Some types of surveillance are more intrusive than others, and many will be perceived as overreach.

In the academic context, surveillance of *any* kind may be perceived as a threat to academic freedom. At institutions riven by factionalism, scholars may be rightfully worried that surveillance will become weaponized, or that bad actors will use surveillance as a cudgel to keep faculty gadflies in line. These concerns will be particularly acute when surveillance appears pretextual, arbitrary, or biased. In any of those cases, the institution's surveillance may backfire, causing a further erosion of the background norms that enhance compliance.[71]

There is another aspect of enforcement worth discussing, and that is the degree of coordination between those most likely to *detect* wrongdoing and those most able to *sanction* it. In many systems, detection and punishment work in tandem. For example, schoolchildren are often taught that police officers and prosecutors jointly investigate and prosecute wrongdoing. In the legal academic context, this relationship becomes untethered. For many types of research misconduct, the organizations most likely to *detect* integrity violations will be student-edited journals. At the same time, the institution best positioned to *sanction* a professor will be the scholar's home institution. The likelihood that a student editor's discovery of wrongdoing makes its way from a given law review to the author's home institution (much less the home institution's governing faculty) will be awfully low in all but the most sensational of cases.[72]

Consider the following scenario. Annie Author submits an article during a highly competitive submission cycle. Student Law Review accepts Annie Author's piece and begins editing it several months after its acceptance. During the editing process, a student editor identifies a significant amount of material that lacks proper attribution—as in a failure to quote another author's work. What would we expect most student editors to do? At a minimum, we would expect them to flag the material and direct the author to rewrite the passage. In more extreme cases, they might withdraw their offer to publish. Beyond that, it is doubtful that the editors perceive a clear path for reporting wrongdoing to Annie Author's home institution.

REV. 1171, 1174 (2004); *see id.* at 1174–80 (explaining how substitution effects complicate deterrence efforts in criminal law); *see also* Neal Kumar Katyal, *Deterrence's Difficulty*, 95 MICH. L. REV. 2385, 2393 (1997) (explaining how crimes committed for profit, and even those of passion, can raise substitution effect issues).

71. Much of this tracks the procedural justice literature. *See generally* Tom R. Tyler, *Procedural Justice, Legitimacy, and the Effective Rule of Law*, 30 CRIME & JUST. 283 (2003); TOM R. TYLER, WHY PEOPLE OBEY THE LAW (1990).

72. Admittedly, this is less of a problem when an author publishes in their school's journal. However, in those cases, *other* issues can undermine student enforcement of authorial misconduct. *Cf.* Friedman, *supra* note 15, at 1316–17 (criticizing the structural nepotism that enables a professor's article to be chosen by their home school's law review for submission).

Notice the systemic issues underlying this scenario. We are effectively asking students to decide if and when law professors have violated academic integrity rules. Commentators have long questioned the legal academy's unique student-driven model for the production of legal knowledge.[73] They have queried whether second-year law students can reliably identify good scholarship.[74] They decry the morally cynical game that encourages professors to submit papers to far too many journals so they may "expedite" to more prestigious ones once they have an offer.[75] These are surely important issues. Nevertheless, widespread distaste with article *selection* ought not to eclipse deeper concerns with academic *integrity*.

No scholarly discipline worth its salt should rely on students to surveil its professors. And yet that is effectively what we have done by delegating a major chunk of our scholarly enterprise to student editors. We place students on the front lines of plagiarism, data fraud, and now AI, and we expect our student editors to grapple with these issues while also attending law school. And, to make life even more complicated, we delegate surveillance to students who, by their very position, are sure to turn over in eighteen to twenty-four months and take their institutional knowledge with them.[76] Thus, information is horizontally refracted among outside journals and home institutions, and it is also vertically truncated by time and the ordinary turnover of student journals. No compliance officer, commissioned to design a system of compliance would recommend, let alone devise, such a structure.

C. Norms

Even if our rules are fuzzy, and our enforcement systems structurally ineffective, we might reasonably conclude that the risks of wrongdoing are low because of the strong anti-cheating norms that prevail within the legal academy.

Scholars have long sought to understand the role that social norms play in securing compliance. Behavioral studies have demonstrated that individuals often follow rules even when detection and enforcement are low to nonexistent.[77]

When a society is governed by strong social norms, formal enforcement processes can afford to slack just a bit.[78] A society can theoretically reduce

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73. *See* Friedman, *supra* note 15, at 1305–24.

74. *Id.* at 1306–09.

75. *See id.* at 1313–14 (criticizing expedites as abusive). *See also* Paul Horwitz, Book Review, 63 J. LEGAL EDUC. 729, 735–36 (2014) (lamenting that law review articles are "stuffed" with "grandiloquent claims of novelty and importance" in order to impress "24-year-old gatekeepers").

76. *See* Friedman, *supra* note 15, at 1307 (citing turnover as a barrier for accumulating selection expertise).

77. *See* Jennifer Arlen & Lewis A. Kornhauser, *Battle for Our Souls: A Psychological Justification for Corporate and Individual Liability for Organizational Misconduct*, 2023 U. ILL. L. REV. 673, 688 nn.69–70 (citing studies); *see also* Cass R. Sunstein, *Social Norms and Social Roles*, 96 COLUM. L. REV. 903, 915–16 (1996).

78. According to Professors Jennifer H. Arlen and Lewis A. Kornhauser, this claim's "strong" version asserts that norms eliminate the need for *any* enforcement-based sanction;

its reliance on costly sanctions if it knows that some percentage of its citizens will follow the rules anyway.

There are many reasons to herald the legal academy's scholarly norms.[79] Ours is a relatively small, tightly-knit field. As lawyers, we have been trained in the basic rules of professional responsibility, which some (perhaps many) of us have drawn upon during even a short stint of legal practice. As professors, we care deeply about how we are viewed by our peers. Many of us also care deeply about our students—not just those who populate our specific schools, but students generally. And many of us venerate additional concepts, such as those of academic freedom and faculty governance. Academic integrity violations undermine all of these values; accordingly, one would expect many legal academics to strenuously avoid them, regardless of the likelihood of detection.

So far, so good. Strong norms impose internal constraints on wrongdoing that can positively offset gaps in formal enforcement. Still, there are reasons to worry. The legal academy is much larger than it once was, and size begets a weakening of norms.[80] Social norms have also been disrupted by COVID-19 and remote teaching,[81] and may be disrupted yet again by the advent of newer technologies. And finally, law schools themselves may come under greater productivity pressures if resources wane in the face of a shortfall in applicants or in response to legislative belt-tightening in politically polarized areas. If the economic differences between working for School A and School B grow wider, the mechanism bridging that gulf will often be a scholar's publication record. When the stakes for success heighten, those high stakes place pressure on social norms. Weakened norms, in turn, heighten and increase the academy's integrity risks.

III. PRESCRIPTIONS AND PROPOSALS

The preceding part produces the inescapable conclusion that the legal academy could do a better job enforcing its academic integrity risks. This final part turns to prescriptive remedies. The suggestions that follow are intended primarily as conversation starters. Together, they promote a common theme, which is that the legal academy should address these issues sooner rather than later.

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the weaker variant contends that strong social norms allow for a *reduced* sanction. *See* Arlen & Kornhauser, *supra* note 77, at 692–93. In this piece, I assume the weaker variant is in play.

79. "In academia, the reliance on the integrity of the scholarly community and the respect for the intellectual contributions of others often supersedes formal legal mechanisms." Cumming et al., *supra* note 54, at 229.

80. *See* Jack Crittenden, *Law School Faculties 40% Larger Than 10 Years Ago*, NAT'L JURIST (Mar. 9, 2010), https://nationaljurist.com/content/law-school-faculties-40-larger-10-years-ago/ [https://perma.cc/N29L-88WS].

81. *See, e.g.*, Jacob Hoofman & Elizabeth Secord, *The Effect of COVID-19 on Education*, 68 PEDIATRIC CLINICS N. AM. 1071, 1076–77 (2021).

A. Easy Fixes: Disclosures and Affirmations

The most easily implemented of reforms would be for law reviews to require all authors to make affirmations as of the moment they submit their articles for publication. A universalized declaration would be most effective, as it would become second nature to scholars and also be readily available to investigators when issues arise. One could imagine a "field" embedded in Scholastica that requires (1) all authors to disclose any funding beyond their home institution, (2) an affirmation that they have run an antiplagiarism software check, and (3) an additional affirmation that they have (or have not) relied on generative AI. The professor could further be asked to attach a copy of their antiplagiarism check, along with any explanatory materials regarding their use of AI.[82] Moreover, as anti-AI software becomes more accessible (and more reliable), editors could require authors to run and submit an "AI check" similar to the "antiplagiarism check" that many scholars already use.[83]

Some readers may respond that this proposal is unnecessary because many law reviews include attestations of originality in their publication agreements. That may be the case, but compliance is best improved through *universal* requirements, imposed at the moment of submission, that are *salient* and easily *verifiable*. The proposed reform is, therefore, valuable, as it requires a professor to submit an affirmation and plagiarism check to *all* of the law reviews from which the author seeks an answer and to do so at the moment of submission.

To be sure, professors could still add plagiarized or AI-generated materials at the postselection stage, and scholars will continue to publish work in books and book chapters. Still, if these disclosure-type activities became common enough, they might eventually become engrained in everyday practice, thereby reinforcing healthy academic norms. For that reason alone, the easy fix is a much welcome start.

B. The Heavier Lift: The Designated Research Integrity Officer

The more complicated reform draws on the field of organizational compliance, which has become an essential function of corporate governance.[84]

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82. Many peer reviewed publications already do something similar to this. *See* Bonate, *supra* note 52, at 3 ("Every manuscript submitted to Springer journals, including this one, has an iThenticate® plagiarism report automatically generated for it."). Dr. Peter Bonate notes anecdotally the report's proneness toward false positives, however. *Id.*

83. This aligns with the "best practices" outlined by other scholars on the use of AI. *See* Tomlinson et al., *supra* note 40, at 117.

84. *See, e.g.*, Stavros Gadinis & Amelia Miazad, *The Hidden Power of Compliance*, 103 MINN. L. REV. 2135, 2146 (2019); Sean J. Griffith, *Corporate Governance in an Era of Compliance*, 57 WM. & MARY L. REV. 2075, 2077 (2016); *see also* Miriam H. Baer, *Corporate Compliance's Achilles Heel*, 78 BUS. LAW. 791, 791 & n.1 (2023).

Universities already employ compliance officers, many of whom are lawyers. Nevertheless, it is doubtful how often those officers interact with their law faculty, much less follow the specific rules and norms of legal scholarship.

Law school administrations also often include Associate Deans of Research, but their jobs are hazily and variably defined and often include mentoring, marketing, and budgeting obligations that are inconsistent with a sustained compliance role.

The better analogy lies in graduate-level research institutions. Pursuant to federal law, any university that conducts research with funds from U.S. Public Health Service agencies (an umbrella of the National Institutes of Health) must take affirmative steps to address research misconduct,[85] usually undertaken by a Research Integrity Officer (RIO).[86] Within the university setting, the RIO serves as "prosecutor, judge, mediator, counselor, teacher, and regulatory manager."[87] At a university level, the RIO develops policies on research misconduct, conducts assessments, inquiries and (in some instances) investigations of misconduct, and often liaises with the university's general counsel and relevant regulatory agencies.[88]

Because the RIO may be tasked only with addressing federally funded "research misconduct," its jurisdiction is naturally limited. For that reason, one would not expect the university's RIO to be steeped in nonempirical legal scholarship. If we want to buttress the legal academy's research integrity, and if we want to widen oversight to doctrinal and theoretical scholarship, we should therefore develop *our own* source of integrity assurance.

Law school faculties need a common focal point to coordinate, develop, and reinforce norms and policies pertaining to scholarship.[89] To do this, we might create an internal Designated Research Integrity (DRI) officer within each accredited law school. One could imagine a rule that requires each law school to appoint a tenured faculty member as a DRI, enable that faculty member to receive confidential and anonymous reporting, and separately

85. *See* 42 C.F.R. § 93.101(e)(1) (2025); *id.* § 93.234 (defining research misconduct as "fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results"). Grants received from other agencies, such as the NSF, require similar compliance efforts. *See* NAT'L SCI. FOUND., PROPOSAL AND AWARD POLICIES AND PROCEDURES GUIDE, at IX-4 (2024), https://www.nsf.gov/policies/pappg/24-1/ch-9-recipient-standards [https://perma.cc/7A74-J5MQ] (requiring institutions to engage in "Responsible and Ethical Conduct of Research (RECR)," including the designation of one or more persons to verify compliance with the government's training and ethics rules).

86. *See* David E. Wright & Paige P. Schneider, *Training the Research Integrity Officers (RIO): The Federally Funded "RIO Boot Camps" Backward Design to Train for the Future*, 41 J. RSCH. ADMIN. 99, 99 (2010).

87. *Id.* at 100. The affirmative requirement to prevent research misconduct dates back to 1989. *Id.* at 101.

88. *See id.*

89. On the connections between focal point theory, compliance, and enforcement, see Richard H. McAdams & Janice Nadler, *Coordinating in the Shadow of the Law: Two Contextualized Tests of the Focal Point Theory of Legal Compliance*, 42 LAW & SOC'Y REV. 865, 866 (2008).

train the DRIs to respond to claims of suspected integrity violations. DRIs could also form a clearinghouse for emerging integrity issues.

Prior experience with the university-wide RIO position helpfully illuminates the challenges in developing this function. An "informal needs assessment" of first generation university RIOs found that they were often undertrained, isolated, and fearful of interacting with federal agencies they viewed as antagonists.[90] "[M]ost had never talked with another RIO, much less seen other RIOs' work, and so they had no opportunity to learn from their peers' successes and errors."[91] These weaknesses prompted the federal Office of Research Integrity to create numerous resources, including training "boot camps," introductory videos, and a dedicated set of pages on the government website that RIOs could access.[92]

Similar efforts (supported, perhaps, by either the American Bar Association or the Association of American Law Schools) would be required to support the law schools' DRI officers. First-generation DRI officers would likely spend their early years debating their authority and establishing internal procedures. An effective DRI would be a figure, respected and independent enough to fearlessly investigate allegations of misconduct, but also wise and temperate enough to protect academic freedom. It would be a difficult needle to thread, but it would encourage the legal academy to coordinate its thinking on academic integrity risks and to take those risks seriously.

Of course, there would be the very real difficulty of persuading a faculty member to accept such a weighty role. Indeed, one cannot imagine a faculty member accepting this role easily, and many professors would likely demand additional remuneration. That, in turn, might cause law schools to balk at the proposal's costs. But, as other organizations have learned the hard way, ignoring an integrity risk—and its attendant costs—does not make that risk magically disappear. One can either develop a compliance program *now* and expend the funds necessary to support it, or one can forego the investment and hope an explosion never occurs. As many former corporate officers can attest, "hope and prayers" have rarely stewarded an organization successfully through its emerging risks.[93]

CONCLUSION

If pressure, opportunity, and rationalizations breed fraud, law professors are as capable of research misconduct as anyone else. Even a single scandal has the capacity to injure the legal academy's reputation and legitimacy. For

90. *See* Wright & Schneider, *supra* note 86, at 103.

91. *Id.*

92. *See id.* at 102–03. *See generally* OFF. OF RSCH. INTEGRITY, ORI HANDBOOK FOR INSTITUTIONAL RESEARCH INTEGRITY OFFICERS, https://ori.hhs.gov/sites/default/files/rio_handbook.pdf [https://perma.cc/J5E2-RNEK].

93. *See* Brandon L. Garrett & Gregory Mitchell, *Testing Compliance*, 83 L. & CONTEMP. PROBS. 47, 48 (2020) (arguing that "hope-based" compliance "provides little hope for effective self-regulation").

those reasons, we should think creatively and expansively about how best to address the legal academy's integrity risks.

Academic dishonesty is an uncomfortable topic for legal academics—it admits of wrongdoing among peers and acknowledges weaknesses in institutional structures and norms. Nevertheless, it is a topic better addressed *before* an awful scandal has made itself known. Self-monitoring is far from glamorous work. But it is far better than watching helplessly on the sidelines as a whisper campaign erupts into a full-blown crisis.