

Rural Practice

The newsletter of the Illinois State Bar Association's Section on Rural Practice

Rural Law Practice in the News

BY SAM ELLIS & CARI BRETT RINCKER

Illinois expands Access to Justice funding and Court Navigator Network

In late April and May 2026, the Illinois Supreme Court Commission on Access to Justice ("ATJ Commission") announced a new round of grant funding totaling approximately \$400,000 awarded to 26 organizations focused on improving meaningful participation in the courts.¹ The funded programs emphasize expansion of community-based legal clinics, improved remote access to courts, and strengthened pro bono services for self-represented litigants.²

In parallel, the Court opened applications for its 2026–2027 Access to Justice Improvement Grant Program

and encouraged courts statewide to join the newly emphasized Court Navigator Network.³ The Network connects court personnel and access-to-justice professionals to share resources and support self-represented litigants, particularly in underserved and rural communities.⁴

For rural practitioners, these developments reinforce a continued shift toward court-supported infrastructure as a primary mechanism for addressing access gaps.

Indiana launches Rural Practice Academy to address workforce shortages

In early 2026, the Indiana State Bar Association announced the creation of

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What Those People Selling Generic Prompts and Skills Aren't Telling You About Copyright

BY CAROLYN ELEFANT

IF YOU THINK YOU CAN BUY A package of pre-written prompts or skills to generate marketing content for your law firm, think again.

That's because when you rely on generic prompts or skills as input, the resulting output may not be protected by copyright—meaning that your competitor down the street can copy it, paste it onto

their own website, and there's very little you can do about it.

It's an issue that almost nobody in the AI-for-lawyers space is talking about

Here's the quick backstory. As a general rule, only work created by humans qualify for copyright protection. So, what happens

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a Rural Practice Academy, a structured, year-long program designed to encourage attorneys to practice in underserved rural counties.⁵ The program targets early-career attorneys and seeks to build long-term interest in rural practice through mentorship and professional development.⁶

The program targets early-career attorneys and seeks to build long-term interest in rural practice through mentorship and professional development rather than short-term placement incentives. It reflects a broader trend among state bar associations toward workforce development models that emphasize training pipelines and sustained engagement.

For rural firms, such programs may present opportunities to integrate new attorneys into local practice environments while reducing recruitment burdens through bar-supported initiatives.

Kansas implements financial incentives to attract rural attorneys

Kansas continues to move forward with implementation of the Attorney Training for Rural Kansas Act, with additional reporting in May 2026 highlighting the program's rollout.⁷ The legislation provides financial incentives to both law students and practicing attorneys, including tuition stipends and loan repayment assistance, in exchange for commitments to rural

practice.⁸

State officials have emphasized that rural attorney shortages are driven in part by an aging legal workforce and lower compensation levels compared to urban practice, making financial incentives a necessary tool for recruitment and retention.⁹

The Kansas model reflects an increasingly common legislative approach that combines pipeline development with debt relief, reinforcing the trend toward long-term retention strategies.

National data continues to highlight severity of rural legal deserts

Recent scholarship and reporting in 2026 continue to underscore the persistence of legal deserts across the United States. A May 2026 academic analysis suggests that attorney shortages in rural counties remain structurally persistent over time, with many counties rarely exiting legal desert status once established.¹⁰

These findings align with earlier national research showing that more than half of rural counties lack sufficient numbers of practicing attorneys, limiting access to legal services for issues ranging from family law to agricultural business planning.¹¹

For rural practitioners, the data reinforces the broader policy reality: attorney scarcity is a long-term infrastructure challenge requiring coordinated responses.

Rural Practice

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Collaborative and technology-based models gain traction in rural communities

Recent reporting highlights the increasing reliance on collaborative and technology-driven models to deliver legal services in rural areas. Legal aid organizations and community partners are expanding remote service delivery and regional collaboration as local offices face funding and staffing constraints.¹²

These developments reflect a growing recognition that traditional brick-and-mortar service models may be insufficient in sparsely populated regions, particularly where transportation barriers and limited attorney availability intersect.

For rural attorneys, these evolving service models may create new opportunities

for partnership while reshaping how legal services are delivered in rural practice. ■

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What Those People Selling Generic Prompts

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when AI is involved in creation? The U.S. Copyright Office addressed that question in its January 2025 report on [Copyright and Artificial Intelligence](#), and the conclusion was clear. Prompts alone—no matter how detailed or how extensively iterated—don't give humans enough control over the output to claim copyright. The Office treats prompts as “unprotectible ideas” or instructions. In other words, you're telling the AI what you want, but you're not controlling how it expresses that idea. The AI is.

The report didn't specifically address skills, because skills weren't around at that time. But the same logic would likely apply: if the skill is essentially a packaged set of instructions telling Claude “write a client newsletter in a friendly tone covering these five topics,” the output is going to face the same copyrightability problem as a detailed prompt. You bought instructions. Instructions don't create copyright. The AI generated the expression.

That's the risk inherent with plug-and-

play skills and prompts. But there's also a solution if you take the time to create your own skills. Here's why.

The Copyright Office also explained that when a human author's own creative expression is perceptible in the AI output, that expression is protectable. The Office [registered a work called *Rose Enigma*](#) where the artist had drawn an illustration by hand, fed it into an AI system, and the AI produced a modified version. Because the human's original drawing was clearly visible in the output, the human got copyright protection for their contribution.

And therein lies the lesson. If you build a skill that embeds your own expressive material—your template language, your firm's voice and tone and unique turn of a phrase—and those elements carry through into the output, you have a solid basis for protecting your work. Not because you wrote a clever prompt or skill but because your own authored expression is sitting there in the generated work, perceptible and identifiable.

Most lawyers aren't building skills this way because nobody has shown them how. They're either writing prompts on the fly, buying packages that produce generic output, or giving up on AI for marketing content entirely. So let me teach you how to create Claude skills the right way so that you and your team can generate content that you can protect from infringement. Register for the AI for Lawyers Cohort launching **May 1 [here](#)**. ■

Carolyn Elefant is the author of [Solo by Choice: How to Start a Law Firm and Be the Lawyer You Always Wanted to Be](#). Carolyn has co-authored the ABA Publication “[Social Media for Lawyers: The Next Frontier](#)” and “[The Legal ClauseIt: Plug & Play Engagement Agreements and Power Pacts for Small Law Firms](#)”; has been listed as an [Energy and Environmental Super Lawyer for Washington D.C. since 2012](#); was named an [ABA Legal Rebel \(2010\)](#), a [Fastcase 50 Innovator \(2011\)](#), and an [ABA Woman of Legal Tech \(2014\)](#); and has appeared on the [Daily Show in 2014](#) to discuss law firm business models.

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ISBA Rural Practice Section Council Attorney Profile: Elizabeth Eberspacher Nohren

Background and introduction

Full Name: Elizabeth Eberspacher Nohren

Hometown/Current Residence: Shelbyville, IL

Law School Attended and Year of Graduation: SIU Law, 2001

Year Admitted to the Illinois Bar: 2001

Current Role or Status (e.g., practicing attorney, judge, retired): Practicing attorney

Brief overview of your current or most recent practice: Civil litigation firm with concentration in family law, banking, real estate, and estate planning/probate

Career path and practice

Q: What inspired you to pursue a legal career, particularly in a rural setting?

A: Moved home from Chicago to practice with my father and then inherited the family firm. Work life balance and opportunities for travel.

Q: What areas of law have you focused on throughout your career?

A: Family law, banking.

Q: Did you always intend to practice in a rural area? Why or why not?

A: No. I moved home from the city to work with my father and run for judge—at his untimely passing I inherited the rural family firm and withdrew from the judicial race.

Q: Describe your typical client base and the community you serve.

A: My client base now is primarily white collar business owners and their various needs.

Q: What do you enjoy most about your legal career?

A: Being able to control my schedule for personal matters that have arisen and taking extended leaves working remote



Elizabeth Eberspacher Nohren

to travel with family. Lots of work—too much—so the silver lining is never needing more work.

Q: What aspects of the practice are most challenging or frustrating?

A: Needy clients; opposing counsel not meeting deadlines, not doing the work, and making it more difficult, lengthy, and expensive for my client.

Q: Was there anything you actively worked to change or improve in the legal system or in your practice environment?

A: Focus on my staff's family needs—close at 1 pm Fridays; no office hours on weekends; close office for all court holidays; incorporated "flex" time for sporting events and children's needs.

Q: How has rural legal practice changed over the course of your career?

A: Attorney demeanor not professional; judge's unprofessional commentary on the bench.

Accomplishments and contributions

Q: What professional accomplishments are you most proud of?

A: Taking over the firm at the age of 35 and keeping it thriving to date.

Q: Have you been involved in community service, local organizations, or bar association work? Please describe.

A: Constantly donate time/money—area scholarships; chamber board membership; donate to area schools—time and money; joined Rural Practice Section Council. Attend bi-annual ISBA Family Law Conference.

Q: Are there any cases, projects, or experiences that stand out as especially meaningful or impactful?

A: Too many to list (lol).

Looking ahead

Q: What advice would you give to young attorneys considering rural practice?

A: Choose wisely with your firm—make sure goals/personal and professional align.

Q: What opportunities do you think exist today in rural law practice that didn't exist earlier in your career?

A: More opportunities for female litigators.

Q: How can the Rural Practice Section Council better support attorneys in rural areas?

A: Funding; staff and associates.

Q: Are there services, programs, or initiatives you'd like to see the Illinois State Bar Association expand or implement?

A: Downstate/Central IL CLE's. ■

Five Ways to Be a More Efficient Working Mom

BY NICOLE SARTORI

A 2023 NPR ARTICLE ENTITLED “Women are earning more money. But they are still picking up a heavier load at home” explores data from the Pew Research Center regarding the division of labor in the home by gender, income, and political leanings. As the title suggests, even when husbands and wives earn within 40% to 60% of each other, women are spending double the amount of time on housework than their husbands and almost two hours more a week on caregiving, including tending to their children. As a mother of three teens in high school (17-year-old senior, 15-year-old sophomore, and 14-year-old freshman), as well as a lawyer practicing criminal defense and family law in the suburbs of Chicago, I knew I was part of that statistic. When my children were younger, I had difficulty balancing my need for perfectionism in our home and the mom guilt for failing to achieve it. As they grew, I learned to delegate because there is simply not enough time in the day. I leaned on my tribe to help me fill in the gaps of domestic life. Your tribe can consist of family, friends, neighbors, teammate parents, and other members of your community. Over the years, I have found the following tips and tricks to help me be more efficient for my second shift.

#1: The POPLIN Laundry App

What started as a Mother’s Day gift a few years ago became a lifesaver. There is an app that you can put your dirty clothes outside the door of your house, and a washer returns the clothes in a day or two laundered and folded. Unfortunately, the service simply returns it back to your doorstep so the struggle of putting everything away is still there. You can be specific regarding how you want things washed and/or dried. The price is about \$1/ pound depending on how fast you would like the service done. On average for my family of 5, we spend approximately \$100 a week.

#2: Buy an Extra Uniform

Speaking of laundry, sometimes the ball games are so close together that you can’t use the Laundry App. If your child is playing on a sports team that you are ordering a uniform for, I recommend ordering at least one extra jersey/uniform, including (especially) socks. This tip is extremely useful for those tournaments with multiple games spread out the entire weekend. This way when you get home super late from the field/court, you won’t have to rush to wash it for the following morning. I would also recommend buying each kid one additional P.E. uniform. When they hand you the crumpled up stinky one from the bottom of their bookbag on Monday morning, you can exchange it for a clean one and have time to throw it in the bag for your Poplin washer.

#3: Grocery Pick-Up or Delivery

Most major grocery stores have an app that will allow you to place an order for pick up so you don’t have to waste time going into the store. Set up auto-shipments for household paper products such as paper towels and toilet paper on Amazon. There are even apps, such as Shipt, that will deliver those grocery items straight to your door. This does require you to take inventory of your current items and plan out your meals and/or snacks. As I notice we are out of items, I will add them to the virtual cart even if I am not ready to check out. While you do pay extra for the same groceries to be delivered, you may actually spend less because you are not putting extra items (that candle that smells amazing is not a need) into your cart.

#4: Meal Plan

What is for dinner? Every day at approximately 3:00 p.m. (this is what time my kids get home from school) I receive a call or text from each of my children asking that same question. Meal planning is essential if you are not home right when the kids get home. I have prepared some easy recipes in the morning before school, so they simply need to put a pan in the oven. Crockpot or pressure cooker recipes became a staple. Repurposing any leftovers so that you have two meals instead of one is very helpful. I am also a fan of baking two packages of chicken breasts on Sunday and slicing the chicken up for the week. Because of their schedules, there are days when everyone must fend for themselves. My daughter loves making her own chipotle style bowl with the chicken by microwaving a rice pouch, adding shredded lettuce from a bag, salsa from a jar, a scoop of sour cream, and/or guacamole. My son likes to take the chicken and put it in a tortilla with cheese for a quesadilla. I like throwing the chicken into a salad or sometimes on bread or a bagel for a sandwich. If we are all home at the same time for dinner but short on cooking time, I love having breakfast for dinner. Why is cereal acceptable at 6:00 a.m. but not 6:00 p.m.? I have found that scrambled eggs and bacon taste delicious in the evening as well as in the morning too. Once I shifted my focus on enjoying our time around the table together, what was on the table didn’t seem to matter as much.

#5: Kids’ Birthday Parties

There was a point when my kids were in elementary school that I felt like I was at a trampoline or inflatable jump place every weekend for one of their classmate’s birthday parties. In my home office, I had a stack of generic yellow birthday cards and gift cards from Target that were my go-to birthday gifts, so I wasn’t running to the store before the party. I kept a bag of the special jump place socks in my trunk, so we did not forget them at home. I also tried to coordinate with the other moms from class to share in the

transportation when the kids were old enough to be dropped off. I would sign the waiver as soon as it was sent so it would not be buried in my inbox. My kids have summer birthdays, and we had a pool in our backyard, so we hosted all their parties at our home. I hired a certified lifeguard that I found on a Facebook group of area moms so I could run around and know that the kids were safe. After I forgot to hand them out to guests one year, I decided to stop handing out goody bags to guests. In ten years, only one child asked if he was receiving one. I told him no but enjoy the cake. If you are feeling so inclined then I would recommend keeping it simple, such as personalized cookies. Speaking of cookies and all baked goods, find a baker on one of those local mom's groups. I used to think I had to make the baked goods from scratch for it

to be special for my kids. That belief put a lot of pressure on me that wasn't needed. My kids were oblivious to who made the cake, they just wanted happy memories. A stressed-out mom isn't one of those.

At the end of each day, you may feel exhausted from trying to balance the demands of your career and your responsibilities at home. Give yourself grace and accept the outside assistance in the ways of apps and people. ■

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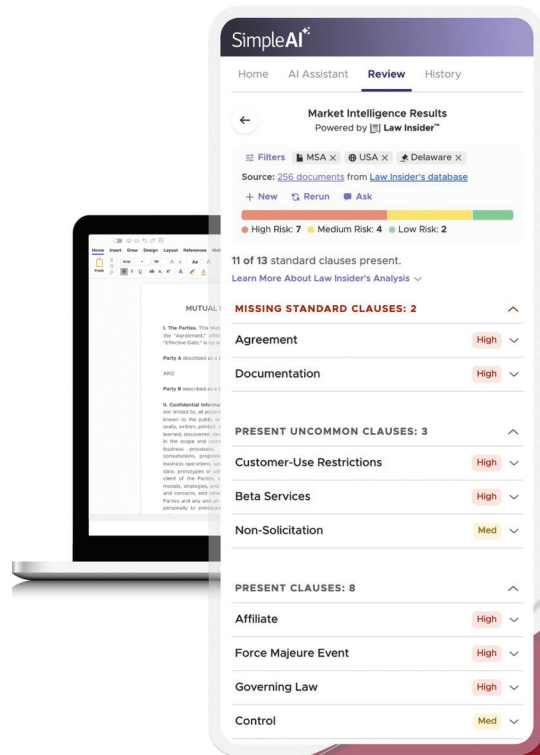
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What Happens When Your Client “Asks Claude”: *United States v. Heppner* and the AI Privilege Problem

BY WILLIAM M. TASCH

Part I: The ruling

On February 10, 2026, Judge Jed S. Rakoff of the United States District Court for the Southern District of New York ruled from the bench in *United States v. Heppner*, No. 25-cr-00503-JSR, that approximately thirty-one documents a criminal defendant generated using the consumer version of Anthropic’s generative AI platform Claude were protected by neither the attorney-client privilege nor the work product doctrine.¹ Judge Rakoff issued a twelve-page written opinion on February 17 confirming and elaborating on the ruling.²

The defendant, Bradley Heppner, had been indicted on charges including securities and wire fraud.³ During the execution of a search warrant at his home, FBI agents seized electronic devices containing the AI-generated documents.⁴ The documents consisted of Heppner’s prompts and Claude’s responses. Heppner’s counsel claimed the materials were privileged and work product. Heppner’s counsel asserted (1) the chats contained information Heppner had learned from his counsel; (2) Heppner created the chats “for the purpose of speaking with counsel to obtain legal advice”; and (3) the content had in fact been shared with counsel.⁵

Defense counsel’s theory was straightforward: Heppner had received information from his attorneys about the government’s investigation, synthesized that information using Claude to develop defense strategy reports, and then shared those reports with his lawyers in furtherance of the attorney-client relationship.⁶ Critically, however, defense counsel conceded that Heppner created the documents entirely on his own initiative—not at counsel’s direction.⁷

Judge Rakoff found no basis for attorney-client privilege on three

independent grounds. First, the AI tool is not an attorney. Claude is not a licensed professional, owes no fiduciary duties to users, and is subject to no professional discipline. The written opinion states that all recognized privileges require “a trusting human relationship” with a licensed professional—a relationship that does not, and could not, exist between an AI user and a platform like Claude.⁸ Claude itself explicitly disclaimed the ability to provide legal advice; when the government asked Claude whether it could give legal advice, it responded that it was “not a lawyer” and recommended that users consult a qualified attorney.⁹

Second, the communications were not confidential. Heppner voluntarily shared his prompts with a publicly accessible third-party commercial platform. Anthropic’s privacy policy expressly advises users that it collects data on inputs and outputs, uses that data to train its models, and reserves the right to disclose it to third parties, including governmental regulatory authorities.¹⁰ That language negated any reasonable expectation of confidentiality in Heppner’s communications with Claude.¹¹

Third, the court found that the AI chats were not made for the purpose of obtaining legal advice, although “[t]his issue perhaps presents a closer call.” Heppner had consulted the tool on his own, not at counsel’s direction. Since counsel had not directed Heppner to use Claude, the court found the privilege could only apply if Heppner was actually seeking legal advice from Claude, which he was not doing.¹² Eventually sending the outputs to counsel did not matter, because such act could not convert non-privileged material into privileged material.¹³

The court considered the argument that AI inputs are analogous to using cloud-based word processing software, such as Google Docs, to draft correspondence to be shared with counsel. Judge Rakoff

acknowledged the argument but concluded it cuts *against* the privilege claim, not in favor of it: “the use of such applications is not intrinsically privileged.”¹⁴ This aspect of the ruling would have major implications for attorneys and clients who use cloud-based tools in connection with legal matters.

Heppner’s work product claim fared no better. The work product doctrine protects materials prepared by or at the direction of counsel in anticipation of litigation.¹⁵ Defense counsel conceded that counsel had not directed Heppner to use the AI tool.¹⁶ Because the documents were neither prepared by counsel nor at counsel’s direction, and because—by defense counsel’s own acknowledgment—they did not reflect counsel’s legal strategy at the time of creation, the work product doctrine did not apply.¹⁷

At oral argument, defense counsel relied heavily on *Shih v. Petal Card, Inc.*, 565 F. Supp. 3d 557 (S.D.N.Y. 2021), for the proposition that work product protection can attach to materials prepared by a client in anticipation of litigation regardless of attorney direction.¹⁸ Rakoff’s written opinion does not merely distinguish *Shih*—it expressly disagrees with it, finding that *Shih*’s holding undermines the policy animating the work product doctrine, which exists to protect the mental processes of attorneys, not the independent research of clients acting on their own.¹⁹

Judge Rakoff did note one path that might lead to a different result: had counsel directed Heppner to use Claude, the tool “might arguably be said to have functioned in a manner akin to a highly trained professional who may act as a lawyer’s agent within the protection of the attorney-client privilege.”²⁰ That reference—to the so-called *Kovel* doctrine, which can extend privilege to non-attorney agents retained by counsel whose assistance is necessary to the provision of legal advice—appears

in the written opinion and is discussed further below.

One additional consequence of the ruling, addressed in footnote 3 of the written opinion, deserves particular attention: the waiver problem extends beyond the AI documents themselves. Heppner had fed into Claude information he learned from his own attorneys—communications that were themselves privileged. Rakoff held that by sharing that privileged information with Claude and Anthropic, Heppner waived the privilege over those underlying attorney-client communications as well.²¹ The damage, in other words, is not limited to the client inputs and AI-generated outputs. The originally privileged advice from counsel may itself be fair game.

Part II: Analysis

The ruling is unsurprising—but its implications are not

The holding in *Heppner* may not surprise most practitioners. Viewed through the lens of traditional privilege doctrine, the case presents a fairly clean application of settled principles to a new technological context. The court noted that its ruling appears to answer a question of first impression nationwide: whether communications with a publicly available AI platform in connection with a pending criminal investigation are protected by attorney-client privilege or work product.²²

What is significant about *Heppner* is not the legal conclusion. It is the factual scenario that produced it—one that is almost certainly going to repeat itself, in courtrooms across the country, with rapidly increasing frequency.

Clients are already having this problem

Here is the more pressing concern for practitioners: clients are not waiting for their lawyers to direct them to AI. They are going to AI first—often before they even pick up the phone to call an attorney.

Think about how a person in legal trouble actually behaves today. They receive a demand letter, a termination notice, or a visit from federal agents. Before calling a lawyer, many of them will open a browser and start typing. And

increasingly, they are not just searching—they are chatting. They are describing their situation in detail, asking whether they have legal exposure, exploring what defenses might be available, asking what the worst-case outcome looks like. The AI responds thoughtfully and in plain English. It feels like talking to an advisor. It feels private. It is not.

The *Heppner* case did not involve a client who was naive about legal proceedings. Heppner was represented by counsel at a major firm, had received a grand jury subpoena, and knew he was the target of a federal investigation.²³ He used Claude anyway—presumably because it was convenient, available, and felt like a useful tool for organizing his thoughts. If a represented defendant in a high-stakes federal prosecution can fall into this trap, practitioners should have no illusions about what unrepresented clients or clients in the early stages of seeking representation will do.

The lawyer's obligation: Advise early and explicitly

The clearest takeaway from *Heppner* for Illinois practitioners is an affirmative counseling point. Clients should be told—early, clearly, and in writing—that their AI conversations about their legal matters are not privileged and may be discoverable. (For that matter, the input of case information into *any* cloud-based service or website.) This is not a disclosure clients will intuit on their own. The conversational interface of modern AI tools creates a dangerous illusion of privacy. Every prompt is a potentially discoverable document, and an “admission by a party opponent” at that.

And as the written opinion makes clear, the risk runs deeper than the AI conversation itself. A client who tells Claude what their attorney said has potentially waived privilege over those underlying attorney-client communications.²⁴ The AI document is one problem. The original privileged advice may be another.

Practitioners should consider:

- **Updating engagement letters to include explicit cloud service use**

warnings. Clients should be advised that inputting facts learned from counsel, or legal strategy, into any cloud software or AI tool may constitute a waiver of the attorney-client privilege—not just over the AI-generated materials, but potentially over the underlying communications from counsel themselves.

- **Making AI use part of initial client counseling.** The conversation about what not to do should ideally happen at the outset of the representation, not after the client has already generated thirty documents on Claude.
- **Advising clients to disable AI notetakers during confidential conference calls**—an increasingly relevant concern as AI-powered meeting assistants become standard features in video conferencing platforms. The problem extends beyond deliberate AI use: tools passively embedded in browsers, email clients, and productivity software may be capturing and transmitting client communications without either the attorney or client realizing it. Clients should be counseled to audit the AI features active on their devices, not just the AI tools they intentionally open.
- **Anticipating AI-related discovery demands.** Litigators should expect “AI prompts and outputs” to become a routine category in discovery requests going forward. The government’s success in *Heppner* will encourage opposing counsel to seek AI-generated materials as a matter of course. This cuts both ways: practitioners should be prepared both to respond to such requests and to propound them where relevant.

Heppner also has implications beyond the criminal context. The court’s reasoning applies equally to civil litigation, workplace investigations, regulatory inquiries, and internal business analysis. Any time a person uses an AI tool to analyze legal issues, evaluate liability, or prepare for litigation, they may be creating a

discoverable record. The *Heppner* problem is not a criminal law problem. It is a problem for every practice area.

The way forward: Potential solutions

The situation is not without hope. The *Heppner* court's *Kovel* dicta, now set forth in the written opinion, and the broader commentary the case has generated point toward several emerging approaches:

Counsel-directed use. Judge Rakoff's written opinion specifically observes that the outcome might have differed had counsel directed *Heppner* to use the AI tool.²⁵ Under the *Kovel* doctrine, non-attorney agents—accountants, translators, financial analysts—can operate within the privilege when retained by counsel and their assistance is necessary to the provision of legal advice. The argument is that an AI tool, directed by counsel and integrated into the legal workflow, could function in the same capacity. This is an untested theory, but the written opinion at least leaves the door open. Practitioners who want to harness AI tools in client matters may have a stronger privilege argument if they specifically direct the client's use of the tool, control the engagement, and structure the outputs to inform counsel's advice.

Enterprise-grade AI with contractual confidentiality protections. The *Heppner* court's confidentiality analysis turned heavily on Anthropic's consumer privacy policy.²⁶ Consumer AI platforms retain data, train on inputs, and reserve broad disclosure rights. Enterprise-tier deployments operate differently: they typically include contractual prohibitions on data retention for training purposes, offer zero-retention policies, disclaim ownership of user data, and do not share user data with third parties. Whether courts will treat enterprise AI use differently from consumer AI use remains an open question after *Heppner*, but the court's reasoning suggests that a platform with genuine confidentiality

protections—governed by an enterprise agreement rather than a consumer terms of service—presents a materially different case. Practitioners should understand the difference and advise clients accordingly.

One important caveat, however: even under a zero-retention enterprise agreement, data still passes through the vendor's servers during processing. Whether that transient exposure constitutes “disclosure” sufficient to defeat a confidentiality argument is genuinely unresolved. Expect it to be among the next questions litigated in this space.

Self-hosted models. The most architecturally complete solution—and the one that most cleanly eliminates the third-party disclosure argument—is running an AI model on firm-owned or firm-controlled hardware, entirely within the firm's own environment. If the data never leaves the firm's infrastructure, there is no third-party vendor with independent rights over the prompts or outputs, and the privilege analysis looks considerably more favorable. Open-source models suitable for local deployment currently lag behind commercial platforms for complex legal reasoning tasks, but the gap is narrowing. For firms handling particularly sensitive matters, the tradeoff may be worth considering.

Law firm-integrated AI tools. Some law firms are beginning to deploy proprietary or licensed AI systems specifically designed for privileged legal work, operating within the firm's own infrastructure and subject to attorney-client confidentiality. If the AI tool is deployed by counsel, access is restricted to the attorney-client relationship, and the tool does not transmit data to third parties, the privilege analysis looks considerably more favorable. This is an area to watch as both technology and doctrine continue to develop.

Conclusion

Judge Rakoff closed his written opinion by observing that “AI's novelty does not mean that its use is not subject to

longstanding legal principles.”²⁷ The AI tools available today are powerful, accessible, and feel intuitive in a way that can obscure the legal consequences of their use.

For Illinois practitioners, the lesson is this: assume your clients are already talking to AI about their legal problems—and that some of them have already told the AI what you told them. The prudent practitioner will have warned them of what that means. ■

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1. Transcript of Pretrial Conference at 6, *United States v. Heppner*, No. 25-cr-00503-JSR (S.D.N.Y. Feb. 10, 2026), https://incamera.ai/S.D.N.Y._1_25-cr-00503-02-10-2026.pdf (last accessed March 20, 2026) [hereinafter “Transcript”].

2. Memorandum at 1, *United States v. Heppner*, No. 25-cr-00503-JSR (S.D.N.Y. Feb. 17, 2026), <https://storage.courtlistener.com/recap/gov.uscourts.nysd.652137/gov.uscourts.nysd.652137.27.0.pdf> (last accessed March 20, 2026) [hereinafter “Opinion”].

3. Opinion at 2.
4. Opinion at 3.
5. Opinion at 3-4.
6. Transcript at 3-4.
7. Opinion at 3.
8. Opinion at 5-6.
9. Opinion at 7-8.
10. Opinion at 6.
11. Opinion at 6-7.
12. Opinion at 7-8.
13. Opinion at 8.
14. Opinion at 5-6.
15. Opinion at 8-9.
16. Transcript at 5; Opinion at 3.
17. Opinion at 10-12.
18. Transcript at 4; Opinion at 10-11.
19. Opinion at 10-11.
20. Opinion at 7.
21. Opinion at 8 n.3.
22. Opinion at 2. This article does not attempt to critique the court's opinion. There are certainly legitimate arguments that the court got it wrong. Nonetheless, whether practitioners agree with it or not, the *Heppner* court's reasoning is likely to be adopted by other courts. This article focuses on the implications for practitioners.
23. Transcript at 4.
24. Opinion at 8 n.3.
25. Opinion at 7.
26. Opinion at 6.
27. Opinion at 12.

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