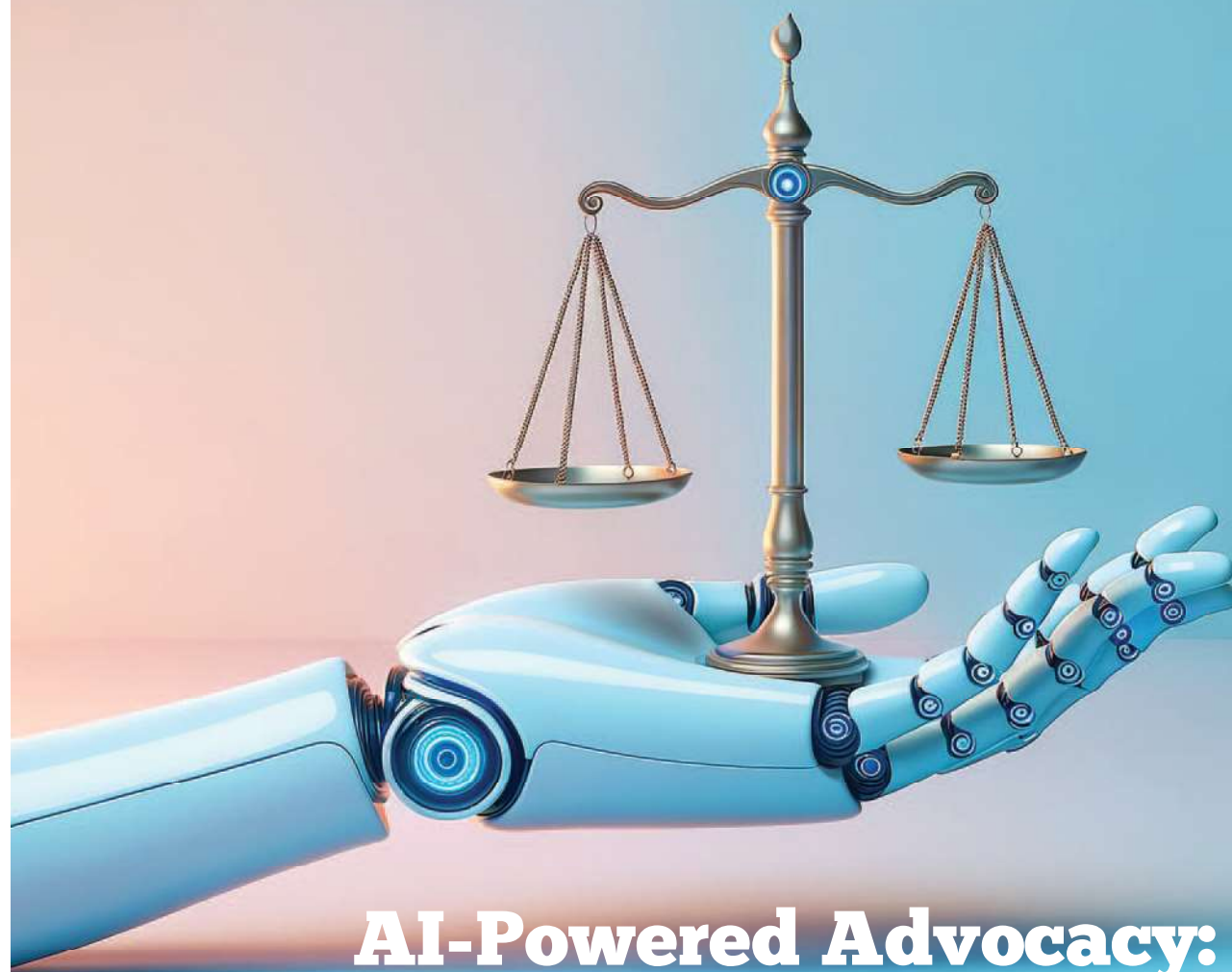


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AI-Powered Advocacy:

Transforming Criminal Defense Through Prompt Engineering

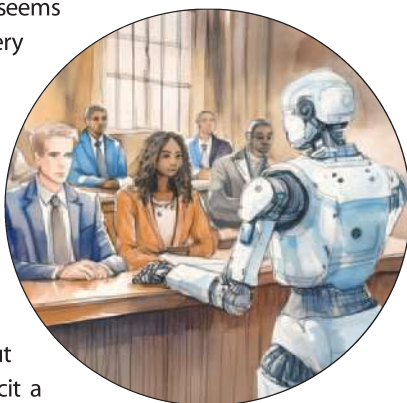
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By Patrick T. Barone

Artificial intelligence (AI) seems to be top of mind for every profession, but how can lawyers use it on a daily basis? Patrick Barone focuses on prompt engineering strategies for improving the use of AI in criminal trial practice. A prompt is a question or instruction put into an AI platform to elicit a specific response. Barone



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explains how defense attorneys can use “audience persona prompts” to enhance communication when deselecting a jury, arguing a motion, or preparing for a sentencing hearing.

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By Daniel E. Monnat and Gina L. Wehby

A defense lawyer stands before the jury, eloquently weaving the client’s defense theme. Suddenly, the jury sees the prosecutor jump up and say, “Objection! Defense counsel knows that’s improper!” “Sustained,” the judge rules. This speaking objection is improper because it does not declare a substantive legal ground. More importantly, the defense lawyer appears dishonest and conniving in each juror’s eyes. What can the defense lawyer do to combat the prosecutor’s toxic tactic?



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Publisher Lisa M. Wayne
Senior Editor Quintin M. Chatman
Chief Marketing Officer Jessica Stepan
Art Director Catherine Zlomek
Graphic Designer Julian M. Giles

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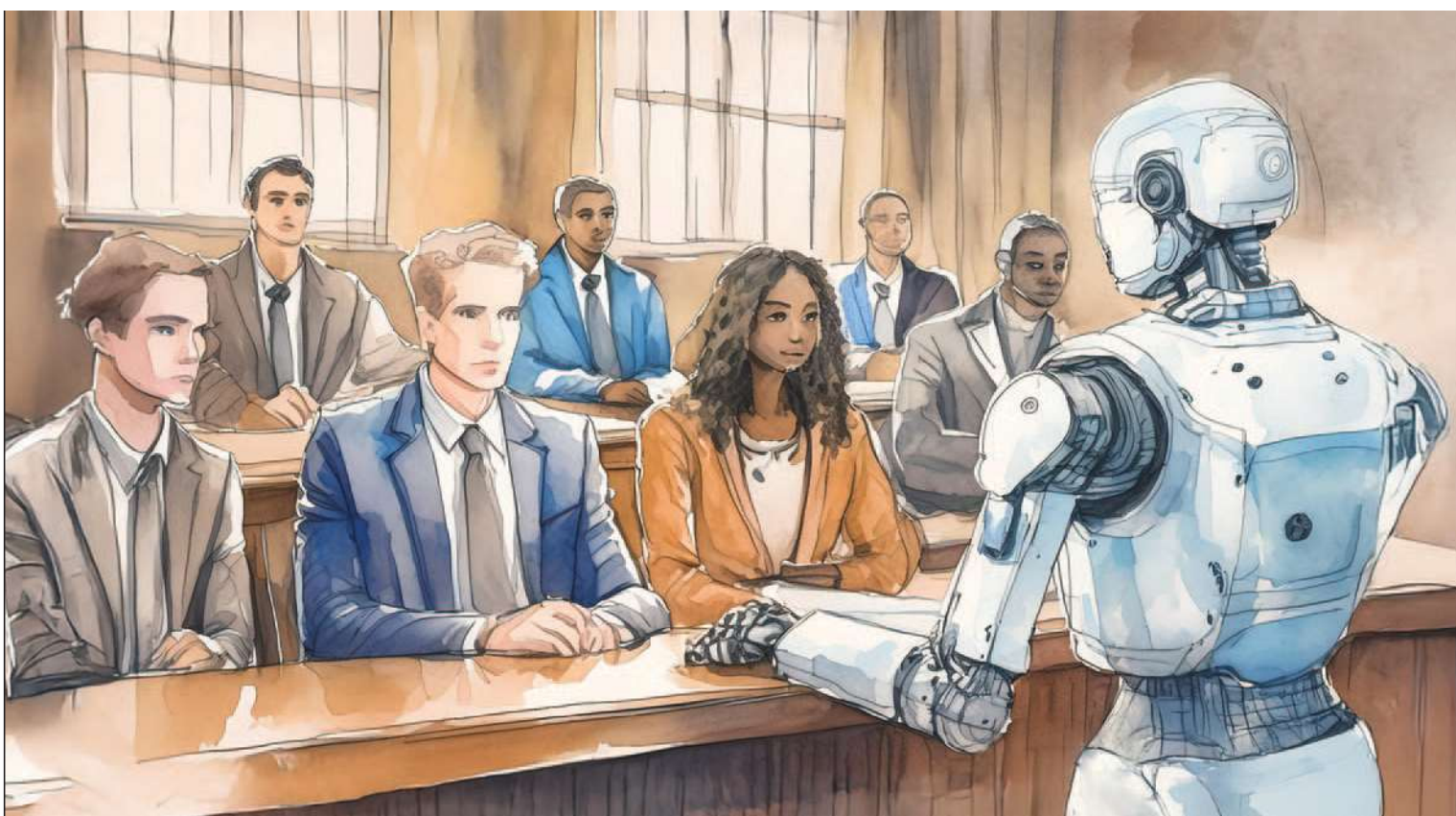
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AI-Powered Advocacy: Transforming Criminal Defense Through Prompt Engineering

Large Language Model Generative AI (GAI) is transforming legal practice, offering criminal defense attorneys powerful tools to redefine and reimagine essential tasks such as legal research, evidence analysis, and trial preparation. To fully take advantage of this transformation, lawyers must develop the skillful use of prompt engineering, which allows them to tailor GAI outputs to their specific needs. Equally important, effective prompt engineering establishes guardrails that help ensure the AI generates responses that are accurate, relevant, and less prone to hallucinations or bias. This article explores how mastering these techniques can enhance advocacy while addressing the ethical and practical challenges inherent in this emerging technology.

In the preceding article¹ in this series, readers were introduced to the many Large Language Model Generative AI models, such as the Generative Pretrained Transformer (GPT) series, Bard, Gemini, and Claude. As previously explained in detail, these models are essentially sophisticated word prediction engines. Their remarkable output is a result of mathematical and computation-

al pattern-matching.² They are built upon the framework of Deep Neural Networks (DNNs) — an advanced facet of computer science that mimics the neural connections in the human brain.³ These models are trained with vast corpora of textual data, utilizing complex algorithms to predict associations between words based on their contextual usage.⁴ Separate but related to the various GAI models are AI enhanced tools, and together they represent two distinct facets of artificial intelligence available to the legal community, each tailored to different purposes and applications. Learning to use both effectively is important for lawyers, so it is helpful to understand how they are related and how they are different.

In contrast to GAI models, which are designed to produce new written content based on the inputs they receive, AI-enhanced tools, particularly those used in specialized fields like legal research, are developed with a focus on augmenting or automating specific tasks. These tools are created for efficiency, leveraging AI to analyze, sort, and present information in a way that supports decision-making. For instance, Thomson Reuters offers Ask Practical Law AI and Westlaw Edge — an AI-enhanced legal research tool. Similarly, LexisNexis has introduced Lexis+ AI, encompassing a suite of tools that assists legal professionals in research, drafting, summarization, and analysis. These products are designed to be relatively user-friendly, tackling tasks that are a staple in the legal profession.

Conversely, GAI models are inherently predictive, utilizing vast datasets from a broad spectrum of sources to generate text, images, or even music in response to user prompts. Their versatility allows them to be applied in various contexts, from creative writing and coding

BY PATRICK T. BARONE

assistance to criminal trial preparation and execution. They are characterized by their ability to engage interactively with users. Thus, the primary distinction between generative AI models and AI-enhanced tools lies in their output and purpose. Generative AI is about creating new content, while AI-enhanced tools process and organize existing information to assist with specific tasks.

This difference is further underscored by the datasets on which they are trained. Generative AI models use broad, diverse datasets to cover a wide range of topics, whereas AI-enhanced tools often rely on domain-specific datasets to help ensure the relevance and accuracy of their outputs. Moreover, the interactivity offered by GAI models, facilitating real-time dialogues with users, contrasts with the more static, query-based interaction typical of AI-enhanced tools.

Generative AI systems are architected with the intention of democratizing access to advanced technology, enabling users without a computer science background to interact with the system using natural language. Because of this, the simple use of GAI models is straightforward, but mastering its use requires diligence and practice. Also, the caliber of the prompts — directives given to the GAI system — plays a crucial role in determining the quality of the generated output. Therefore, understanding the complexities involved in crafting effective prompts is essential.

This article, along with the next in the series,⁵ focuses on strategies for optimizing the use of GAI in criminal trial practice. While these methodologies can apply to both AI-enhanced tools and GAI platforms like ChatGPT, they are particularly suited for the latter, where a greater need exists to guide and control the output to minimize inaccuracies, misleading information, or bias.

Optimizing Generative AI Output: An Introduction to the Essentials of Prompt Engineering

The use of GAI can altogether succeed or fail based on the prompt entered.⁶ A prompt provides a set of instructions to a large language model, programming it to produce responses that are tailored and refined to meet specific needs.⁷ Prompt engineering, therefore, is the skill of designing these prompts to guide the AI in generating accurate, relevant, and useful output.⁸ Engineers in this field apply a mix of creativity, experimentation, and iteration to develop inputs that ensure the GAI operates within specific

and expected parameters. Once optimized, these prompts can be cataloged and reused, thereby streamlining future interactions with the GAI.⁹

In the context of legal practice, prompt engineering is similar to crafting direct examination questions designed to elicit comprehensive and relevant answers from a witness. It also parallels the construction of cross-examination questions that aim to confine the witness's responses within specific boundaries. Like a carefully phrased cross-examination question, a well-crafted prompt minimizes unpredictability in the AI's responses, guiding it toward precise and controlled output.

The underlying significance of prompt engineering is rooted in the training mechanisms of LLM GAI models.¹⁰ These models are educated using extensive text datasets, with their responses — essentially statistical predictions based on words or parts of words¹¹ — hinging on the prompts they receive. The term “engineering” underscores the technical and creative process of constructing effective prompts, somewhat analogous to programming. However, unlike conventional programming languages (e.g., JavaScript, HTML/CSS, Python), where code is translated into a computer-understandable language, prompts are crafted in natural language. As lawyers refine their prompt engineering skills, they can impose more sophisticated constraints on the AI, mitigating the risk of generating erroneous, biased, or “hallucinated” responses,¹² thereby aligning the responses more closely with specific needs or tasks.

Effectively using GAI does require a modicum of technical know-how, but it also significantly benefits from skills that criminal defense attorneys already possess, like strong writing abilities, creative thinking, and inventive problem-solving. At the initial stages of integrating these technologies into regular professional use, it is imperative for lawyers to experiment with diverse prompt-writing approaches and exploring those strategies that are most effective.

Though the idea of “programming” may seem daunting at first, working with these models is less about traditional coding and more about engaging in a creative exchange. This article and the next in this series¹³ will outline various prompt engineering strategies that criminal defense trial lawyers can use to enhance the effectiveness and efficiency of GAI. These articles introduce prompt strategies that progress from basic to

advanced techniques, enabling criminal defense attorneys to create a versatile prompt catalog. Once created, this catalog can be used across all aspects of a criminal defense practice, from straightforward client communications to complex interactions with judges and jurors.

The knowledge presented here draws, in part, on a course provided by Vanderbilt University and led by Dr. Jules White.¹⁴ Lawyers keen on deepening their prompt engineering skills are encouraged to explore the wealth of resources provided by Dr. White and others, available online and through academic channels, and to review the citations referenced in the following sections. Dedicating time to these learning opportunities can greatly increase one's proficiency in interacting with GAI systems, enhancing the ability to leverage these technologies effectively.

Obtaining a deeper understanding of the technology behind AI, such as the transformer neural networks that process text, can also benefit lawyers by allowing them to better tailor their prompts and anticipate the AI's responses. Additionally, being aware of the ethical considerations and potential biases within AI-generated content is essential for lawyers. Ensuring that these tools are used responsibly and align with professional standards is key to maintaining integrity in the justice process.¹⁵

Understanding the Limitations of Large Language Models for Enhanced Legal Analysis

When interacting with LLMs it is crucial to recognize the model's knowledge limitations, especially regarding its training data cutoff date. For example, ChatGPT's training is current only through April 2023 (as of the date of this writing). This limitation means that it may not provide the latest information on subjects that require up-to-the-minute expertise, such as new legal decisions that occurred after this date. For instance, asking for a summary and analysis of the U.S. Supreme Court's most crucial decisions in 2024 might yield a response that on its face appears quite accurate and impressive, which raises the question, if training stopped in April 2023, from where did ChatGPT obtain this response? Was it conjured up from nothing?

In answer to a follow-up question, *if your information is current only up to April 2023, how can you answer my previous question?* this is the response generated: “For predictions or future events like Supreme Court decisions scheduled

for 2024, I rely on publicly available information, such as case dockets, legal analysis, and news reports up to my last update in April 2023. For specific details about Supreme Court cases or any events happening in 2024, I used the browser tool to access and summarize the most recent and relevant information available online from reputable sources. This allows me to provide you with the latest insights and expectations based on the information accessible as of the date of your inquiry.”

Additionally, because the AI is trained on a snapshot of internet and text data, it may miss specific subject matter data from sources not widely available or underrepresented in the training data, such as the information contained in more location-sensitive statutes or municipal codes, the

foundational principles of human-computer interaction, where clear, concise communication is paramount for effective results.¹⁶ Moreover, research in natural language processing underscores the importance of precise input for generating output that is accurate and relevant.¹⁷

Root prompts act as a framework within which the AI operates, clearly delineating what is expected, permitted, and forbidden. This approach not only customizes the AI’s functionality to match user expectations but also instills a layer of control over the generative process, ensuring that the AI’s outputs align closely with the user’s intentions.

When engaging with GAI technologies, establishing root prompts at the beginning of the interaction can thereby significantly enhance the user

known as a “naïve” prompt.¹⁸ This is a straightforward query or command directed at an AI model, lacking any contextual cues or examples to steer its response. It is like posing an open-ended question like “What happened next?” during a direct examination in a courtroom. Such questions, while simple, can elicit wide-ranging responses and, akin to testimony from an unprepared witness, may lead to unexpected or even harmful responses.

To refine this process, particularly within the legal domain, users can employ the “persona model” prompt technique. This involves crafting prompts that imbue the GAI with a specific persona, thus guiding its responses to mirror the knowledge, expertise, and style of the chosen character.¹⁹ This method not only narrows down the AI’s responses to be more relevant and specific but also hopes to tailor its output to better fit specific contexts or audiences.

In legal practice, adopting the persona pattern can be likened to consulting an expert without having to anticipate the expert’s exact language or breadth of knowledge. For instance, prompts designed to emulate a seasoned attorney can generate documents or advice that can reflect sophisticated legal reasoning and professional articulation, keeping the AI’s contributions within the desired realm of expertise.

The essence of a persona prompt lies in instructing the AI to “act as persona X” and to “provide outputs that persona X would generate.”²⁰ This could involve emulating the role of a renowned lawyer, a specific professional title, or even a historical figure, thereby programming the AI to channel responses that align with the chosen persona’s attributes. For example, a prompt like *act as Clarence Darrow and explain the concept of reasonable doubt to a jury during a closing argument* instructs the GAI to adopt Darrow’s analytical approach and eloquence. Provided the GAI being utilized has been sufficiently trained on data relevant to this person, the persona prompt not only enriches the interaction but ensures that the GAI’s output resonates with the persona’s expertise and style.

The persona pattern offers a strategic advantage in legal settings by enabling the simulation of advice from a panel of experts, each providing distinct perspectives on a case. This technique can deepen the understanding of various legal issues and strategies, potentially offering a richer, more

Whether seeking succinct bullet points, detailed paragraphs, or responses in a specific format, informing the artificial intelligence platform of these preferences upfront can streamline the response process.

most up-to-date case law, and topic-specific law practice manuals. These limitations can potentially cause problematic gaps in the AI’s ability to accurately answer highly technical legal questions.

To work around an AI’s knowledge limitations due to its training cutoff, users can utilize the retrieval-augmented tools discussed below. This includes uploading recent documents, such as PDFs or legal texts, which also provides the AI with current material to draw from, thereby helping to fill knowledge gaps. Crafting prompts that include highly detailed facts and context can help guide the AI toward generating responses based on relevant background, even if the AI itself lacks post-cutoff knowledge. Finally, verifying the AI’s outputs by cross-referencing with authoritative sources ensures accuracy and helps correct any outdated information the model may produce.

Crafting Root Prompts: Guiding Generative AI Toward Desired Outcomes

Initiating a dialogue with GAI involves careful consideration of the desired outcome. Root prompts effectively set the stage for the AI’s identity, objectives, and operational boundaries. Using root prompts also aligns with

experience. These initial guidelines help shape the AI’s behavior, ensuring it produces responses that are both relevant and within the desired scope. By setting clear expectations for the AI’s performance, users can tailor the interaction to their specific needs, reducing the likelihood of receiving misleading, inaccurate or irrelevant responses.

Whether seeking succinct bullet points, detailed paragraphs, or responses in a specific format, informing the AI of these preferences upfront can streamline the response process. Simple directives, such as *when I ask a question, respond in plain language, or for queries about legal concepts, include verifiable citations*, guide the AI toward delivering the desired type of answer. As users become more adept at defining their requirements, the precision of root prompts can be enhanced to solicit more specific behaviors or responses. For example, a slightly refined prompt would be to give the GAI this instruction: *Whenever I make a legal inquiry, always support your response with links to or from both primary and reputable secondary sources.*

The Naïve Prompt and the Persona Pattern Prompt

When lawyers first experiment with GAI, they often start with what is

refined approach to trial preparation and argumentation.

AI-Assisted Jury Selection: Crafting Persona Prompts for Deeper Insights

Crafting an effective set of voir dire questions for jury selection is a crucial skill for criminal defense trial lawyers, enabling them to identify potential biases among jurors. However, the real complexity in voir dire extends beyond merely formulating questions. Lawyers are often faced with the dilemma of how to respond when a potential juror expresses an unfavorable opinion. Typically, a lawyer's instincts might lead to three possible reactions: (1) attempting to persuade the juror to change his or her opinion, which can inadvertently lead to arguments, contradictions, or a perception of cross-examination — approaches that are rarely beneficial in this context; (2) further exploring the juror's bias to justify a challenge for cause; or (3) opting for a peremptory challenge to exclude the juror.

Mastering the many legal facets and procedural intricacies of voir dire is as much about circumspect communication and psychological insight as it is about possessing formidable legal acumen. Scholars and legal experts emphasize the importance of empathy, strategic questioning, and the careful management of juror perceptions.²¹

Ultimately, the challenge for criminal defense trial lawyers during voir dire is to navigate these complex interpersonal dynamics with a combination of legal strategy, psychological acuity, and a deep understanding of human behavior. This multifaceted approach is crucial for assembling a jury that can fairly and impartially consider the case at hand. To accomplish these aims, ChatGPT can be prompted to act like a jury consultant and suggest various ways to respond to a juror's anticipated objections. Here is a complex prompt that might be utilized for this purpose:

As a jury consultant renowned for your expertise in psychology, group dynamics, communication, and legal persuasion, alongside a specialized skill set in motivational interviewing, assist a criminal defense lawyer with the jury selection for a challenging case. This case is marked by potential jurors holding steadfast beliefs in the absolute accuracy of scientific

evidence, with one juror specifically asserting, "I believe that blood test results are always accurate." Drawing upon motivational interviewing techniques and your personal knowledge and research on jury selection and persuasion, advise the lawyer on strategies to engage this juror. The goal is to subtly challenge the juror's assumptions and foster an open-minded evaluation of the evidence, ensuring the conversation encourages reflection rather than emboldens resistance or confrontation.

ChatGPT provided the following response:

1. **Empathize and Build Rapport:** Begin by acknowledging the juror's trust in scientific evidence, which shows a respect for the scientific process and an appreciation for objective measures of truth. This establishes a foundation of respect and understanding.
2. **Use Open-ended Questions:** Encourage the juror to explore their beliefs further with questions that cannot be answered with a simple yes or no. For example, "Would you be willing to share what personal knowledge or life experience leads to your strong trust in the accuracy of blood tests?" This invites the juror to reflect on their beliefs and the basis for these beliefs, opening the door to further discussion.
3. **Explore Ambiguities:** Incorporating their prior answers, gently introduce the concept that while scientific methods strive for precision, there are scenarios where results can be influenced by various human factors, such as the handling of samples or the calibration of equipment. Questions like, "Are you open to belief that the process of conducting these tests might impact their outcomes?" can prompt the juror to consider complexities they might not have previously contemplated.
4. **Reflective Listening:** Listen attentively to the juror's responses, reflecting back the juror's statements in a way that encourages them to consider the implications of their beliefs. For instance, if the juror mentions trusting technology

implicitly, you might reflect, "It sounds like you place a high value on technological advancements and their role in our justice system. Are you open to the possibility of human error in these processes?"

5. **Elicit Self-motivational Statements:** Aim to guide this juror toward expressing their own reasons for possibly reconsidering the infallibility of blood tests. This could be achieved by discussing hypothetical scenarios or asking about the juror's views on the importance of ensuring fair trials, prompting them to articulate values that might support a more nuanced view of scientific evidence.
6. **Summarize and Guide:** Summarize the key points raised during the discussion, highlighting any moments of ambivalence or reconsideration the juror expressed. Offer a closing question that guides the juror toward an open-minded stance, such as, "Considering the various factors we've discussed that could influence the accuracy of blood tests, how might this affect your perspective on this type of evidence in a trial?"

By using the persona prompt in this way, lawyers can simulate the use of a jury consultant to assist in learning how to refine responses to juror objections. This is especially helpful when there are insufficient funds available to retain an appropriately qualified consultant. Next, this concept is expanded to show how multiple audience persona prompts can be used to simulate focus groups.

Virtual Focus Groups — Single and Multiple Audience Persona Pattern Prompts

The audience persona pattern is a strategic approach used to produce outputs specifically tailored for a defined audience persona. This audience could range from individuals like judges to collective entities such as juries or even more specialized groups defined by professional background or interest areas. The essence of creating an audience persona prompt lies in the development of a comprehensive profile that encapsulates the intended audience's demographic specifics, interests, needs, challenges, and preferences. This detailed profiling aims to refine communication strategies, enabling more effective engagement and resonance with the target audience.

By intricately detailing the audience's characteristics in the prompt, the GAI is better positioned to align its output with the audience's expectations and needs, ensuring that the communication is not only appropriate but also highly relevant and engaging. This method significantly enhances the effectiveness of AI-generated content by making it more personalized and contextually relevant to the intended recipients.

To implement this pattern effectively, the prompt should explicitly instruct the GAI using a format that introduces the context and specifics of the audience persona. An example structure could be: "Explain X to me as if I am Persona Y."²² Here, "Y" denotes and includes the audience persona, which might be described as "someone with an undergraduate degree in chemistry working in a hospital laboratory" or "a judge who was previously a prosecuting attorney." This framework allows for a broad range of personalization, catering to various fields and levels of expertise.

The richness and accuracy of the GAI's output directly correlate with the amount of detailed information provided about the audience persona. Therefore, to achieve a finely tuned result, it is crucial to furnish the GAI with a well-rounded and vivid description of "Y," alongside the specific topic "X" that requires explanation. This practice ensures that the GAI's responses are meticulously crafted to address the unique perspectives, knowledge base, and informational needs of the audience, thereby facilitating more meaningful and impactful communication. This audience persona pattern not only underscores the versatility and adaptability of AI in generating customized content but also highlights the importance of understanding one's audience in effective communication.

For criminal defense trial attorneys, the strategic use of audience persona prompts offers a versatile tool for enhancing communication and possibly even legal strategy across various aspects of their practice. For example, by incorporating detailed information about clients' backgrounds, fears, and expectations into these prompts, attorneys can significantly refine the way they communicate to or about this client, ensuring that such communications are not only legally sound but also conveyed with the requisite clarity and empathy. This tailored approach can foster a stronger sense of trust and rapport between attorney and client. It is vital, however, for

attorneys to ensure that in so doing, they do not compromise client confidentiality in the process of defining the audience persona for the GAI.

Audience persona prompts can also be used when preparing for a motion or sentencing hearing. By inputting comprehensive information about the judge's professional journey, areas of expertise, and noteworthy cases, alongside the judge's values, communication preferences, and any discernible biases, attorneys can tailor their arguments to align more closely with the judge's perspectives and expectations. This level of customization requires a delicate balance of thorough research and ethical considerations, especially when including potentially sensitive information about political orientations or prior case decisions.

The application of audience persona prompts extends into more strategic aspects of a criminal defense case, such as jury selection. Knowledge of the jury pool allows for the creation of detailed persona prompts that encompass the educational background, general attitudes toward law enforcement and the relevant criminal laws, and specific viewpoints pertinent to the case at hand. By leveraging AI to develop arguments and narratives that resonate with the jury's collective and individual psychographics, defense attorneys can significantly enhance their persuasive impact in the courtroom.

Another aspect to consider is the dynamic between multiple personas programmed into the GAI.²³ These personas can be designed to either collaborate or operate in an adversarial manner, mimicking the potential interactions within a jury room. For instance, juror personas that work together harmoniously may collectively tilt toward a specific verdict, facilitating a more unified decision-making process. On the contrary, if these personas are configured to embody conflicting viewpoints, the result could mimic the real-world scenario of a hung jury, where consensus is more challenging.

Trial lawyers have the unique opportunity to harness GAI to "focus group" their case by simulating a diverse array of juror personas. While there is no substitute for a focus group consisting of live participants, this simulation can nevertheless offer invaluable insights into how different juror profiles might interact with each other when presented with the specifics of a case. Such an approach allows for the exploration of various strategies and

outcomes, providing a strategic advantage in preparing for trial.

Moreover, once a trial commences and the identities and personalities of actual jurors become known, lawyers can refine their GAI simulations to include personas that closely resemble the real jurors' profiles. This refined simulation can serve as a dynamic tool for anticipating how the jury might respond to different aspects of the case as it unfolds, including reactions to evidence presentation, witness testimony, and argumentation strategies. By analyzing these simulations, a defense lawyer, when back in the courtroom, can adjust his or her approach in real-time, tailoring the case presentation to resonate more effectively with the jury's collective mindset.

This sophisticated application of GAI in legal practice underscores the transformative potential of technology in enhancing the efficacy of legal communication and strategy. The ability to customize communication for various legal stakeholders — clients, judges, and jurors — demonstrates what can be done with such a high level of AI utilization. However, it also underscores the importance of ethical considerations, particularly regarding the confidentiality and privacy of the information used to inform these audience personas.

The Question Refinement Pattern Prompt

Engaging with GAI often involves the initial use of prompts that may not be optimally structured or thoroughly considered. This lack of refinement not only consumes valuable time but also increases the risk of the AI delivering inaccurate or misleading responses. Fortunately, the AI's capabilities offer several strategies for enhancing prompt quality. One straightforward method is to instruct the AI to assist in refining any posed question. An illustrative root prompt for this approach could be: "Whenever I pose a question, please suggest a refined version that could lead to more precise or comprehensive answers."²⁴

This technique aims for the LLM to offer suggestions for improved or more detailed questions than those initially posed by the user, guiding the user toward formulating inquiries that are more likely to elicit accurate and useful responses. Moreover, this approach allows the GAI to support users in accomplishing their research or task-oriented objectives with minimal interactions, significantly reducing the reliance on trial and error.

For example, lawyers interested in exploring the intricacies of gas chromatography in a DUI case as it pertains to alcohol content might use a prompt such as: “Moving forward, whenever I inquire about gas chromatography, suggest an enhanced version of my question that addresses potential limitations in its accuracy, reliability, or precision within the context of whole blood testing for alcohol, and inquire if I would prefer to proceed with your refined question.”

Integrating the question refinement pattern with the persona pattern, as well as the various prompt patterns explained in the next article,²⁵ offers an even more robust approach to improving AI interactions. This combination enables a thorough vetting of the questions and the information provided, ensuring that users can effectively leverage the AI’s capabilities for more accurate and reliable insights.²⁶ This synergistic use of AI functionalities underscores the potential of GAI to significantly augment human inquiry, particularly in specialized fields such as legal research, where precision and reliability are paramount.

Expanding the Data Set with the Retrieval-Augmented Generation Prompt

Retrieval-Augmented Generation (RAG) prompting represents another cutting-edge enhancement for LLMs.²⁷ RAG is particularly valuable in two scenarios: first, when the goal is to ensure that the GAI generates outputs strictly based on specific data provided, such as a single document or documents, specialized case law, administrative law, court rules, rules of evidence, statutory law, legal commentary, or other specialized parts of the legal corpus; and second, when the inquiry requires updating the GAI’s dataset with information produced after the model’s data-training cutoff. This method significantly enriches the output of language models by integrating real-time information retrieval from external sources into the response generation process.²⁸ For a criminal defense attorney, this means limiting the GAI’s habit to prevaricate because it enables access to the most relevant, accurate, and detailed information.

Using RAG, the user compiles text data or related information that comprehensively outlines the legal domain relevant to the query. Next, the user leverages GAI to perform preprocessing, which involves computationally identifying patterns within this newly gathered data. This process creates a

specialized database, often referred to as a vector database,²⁹ which is then made accessible for future use as needed. Unlike standard databases, a vector database organizes data in a way that allows for more efficient pattern recognition and retrieval based on the content’s context, in this case, relevant to a specific area of legal inquiry. The GAI, through in-content modeling, enhances its initial training data by accessing this preprocessed content.³⁰ This approach allows the GAI to incorporate external, context-specific information when responding to questions posed by the lawyer, thereby providing answers that are both informed by and tailored to the specific legal context.

Utilizing RAG prompting requires the most advanced computer skills of all the engineered prompts referenced in this article. However, the effort may be worth the cost because incomplete or lack of up-to-date information is the most frequent cause of LLM’s “hallucinated” responses to prompts.³¹ Ultimately, the reliability of a language model’s outputs hinges on the quality and recency of the data it has been fed. As observed, even the most popular models may rely on information that is no longer current. Instead of signaling their limitations, these models often produce responses with unwarranted confidence, leading users to mistakenly interpret these guesses as factual. Retrieval-Augmented Generation presents a viable solution to mitigate the issue of hallucinations in language models.³²

From Concepts to Courtroom: The Cumulative Impact of LLM GAI

As Large Language Model Generative AI continues to reshape the legal landscape, the practice of the criminal defense lawyer is evolving in response. Adapting to these developments is both a practical necessity and an ethical duty, as lawyers strive to uphold the highest standards of advocacy and client representation. This article offers an introduction to the foundational skills of prompt engineering, focusing on basic strategies to navigate AI effectively within criminal defense. As has been demonstrated, well-crafted prompts allow lawyers to shape AI responses for specific tasks such as testing arguments and preparing for jury selection, while being mindful of the limitations of the technological tools being used.

The methods discussed here are only the beginning. The next article in this

series will delve into more sophisticated prompt engineering techniques. These advanced methods will give lawyers even greater control over AI outputs, enabling more targeted and useful responses and deeper insights tailored to complex criminal cases. Continuous learning is essential to adapt to these rapid changes, with each step forward unlocking further potential in the application of this technology to the practice of law.

By experimenting with and developing unique prompt strategies, lawyers position themselves to better serve their clients, ensuring fairness and thorough representation. Generative AI is no longer a mere curiosity but a useful tool for those willing to integrate it into their practice. Embracing this technology allows criminal defense attorneys to make informed, strategic decisions at every stage of a case, reinforcing due process and positioning GAI as a powerful tool for achieving justice.

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Notes

1. Patrick T. Barone, *The Future of Advocacy: The Trial Lawyer’s Guide to Large Language Model Generative AI*, THE CHAMPION, August 2024, at 16.

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4. Biyang Guo et al., *How Close Is ChatGPT to Human Experts? Comparison Corpus, Evaluation, and Detection*, ARXIV, Jan. 18, 2023, <https://doi.org/10.48550/arXiv.2301.07597>.

5. The final article in the series, discussing how to master prompt engineering, will appear in an upcoming issue of *The Champion*.

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7. Jules White et al., *A Prompt Pattern Catalog to Enhance Prompt Engineering with ChatGPT*, ARXIV, Feb. 21, 2023, <https://doi.org/10.48550/arXiv.2302.11382>.

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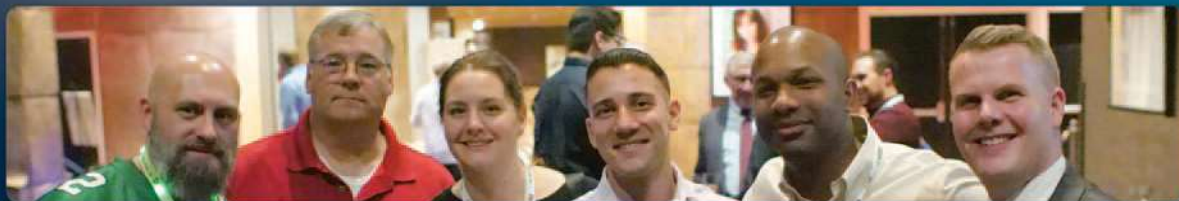


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26. *Id.*

27. Lance Eliot, *Must-Read Best of Practical Prompt Engineering Strategies to Become a Skillful Prompting Wizard in Generative AI*, FORBES, Dec. 28, 2023, <https://www.forbes.com/sites/lanceeliot/2023/12/28/must-read-best-of-practical-prompt-engineering-strategies-to-become-a-skillful-prompting-wizard-in-generative-ai/?sh=2e319b0a19cd>.

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About the Author

Patrick T. Barone founded the Barone Defense Firm, which focuses on DUI, criminal sexual conduct, medical fraud, and self-defense firearms cases. He is a board-certified trainer, educator, and practitioner of psychodrama, sociometry, and group psychotherapy. Barone is the author of five books, including the two-volume treatise *Defending Drinking Drivers*.



NACDL MEMBER

Patrick T. Barone

Barone Defense Firm
Birmingham, Michigan
248-594-4554

EMAIL PBarone@barone.legal
WEBSITE www.baronedefensefirm.com