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Can Lawyers Rely on Artificial Intelligence?

The Risks and the Rewards

ALSO IN THIS ISSUE

- Cross-Examination in a DUI Case
- A *Brady* Primer for Defense Attorneys
- Expert Testimony About Memory

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14 Rethinking Generative AI in Legal Practice: Toward a Trustworthy Paradigm

By Patrick T. Barone

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The propensity of Large Language Model Generative AI (GenAI) to produce inaccurate content is not a defect. Instead, it is a predictable result of how the technology functions. When factual accuracy is not essential, GenAI's capacity to innovate and connect disparate concepts can lead to new approaches, novel arguments, and more successful client outcomes. However, when circumstances require accuracy, the use of GenAI must be contingent on two conditions: the lawyer must possess the necessary subject matter expertise and must commit to independently evaluating the results.

24 The Art of Cross-Examination in a DUI Case

By Edward L. Fiandach


Julian Giles | NACDL.org

Edward Fiandach says that when cross-examining in a DUI case, defense counsel should demonstrate that witnesses were incorrect in their conclusions, did not hear or see the things about which they testified, or gave incomplete testimony. He describes a method to help accomplish these goals. Fiandach discusses the tools of cross-examination and reveals the big mistake cross-examiners make.

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Rethinking Generative AI in Legal Practice: Toward a Trustworthy Paradigm

Virtually all law firms are already using some form of Large Language Model Generative AI (GenAI).[1] The percentage of lawyers using GenAI went from less than 20% in 2022 to almost 80% in 2024.[2] The five most used applications include (1) discovery; (2) legal search; (3) document generation; (4) brief and memoranda generation; and (5) prediction of case outcomes.[3]

This explosion has been made possible, in part, due to the plethora of GenAI platforms specifically designed for the legal profession, such as Harvey AI,[4] CoCounsel,[5] Lexis+ AI,[6] and Westlaw Precision.[7] Many major law firms have also created internal versions of these tools, while criminal defense lawyers and smaller firms are also increasingly applying machine-learning techniques to document review and litigation preparation.[8]

When used well, the research across law firms, corporate legal departments, and the legal industry at large consistently finds that GenAI adoption leads to more efficient operations,[9] higher-quality work output, improved client outcomes,[10] and new opportunities for revenue or cost savings.[11] Lawyers across all sectors, from 1,500-lawyer big law to solo criminal defense attorneys are increasingly embracing GenAI, fully utilizing it in their practices and enjoying the immense benefits it provides.

But lawyers are also increasingly finding that the unskilled or improper use of GenAI has a propensity to create immense risk for themselves and their clients. The main culprit is that GenAI often fails to provide accurate output. The common description of this problem is that GenAI models hallucinate. Research shows that these false but plausible outputs generated by AI are not incidental glitches, but an inherent byproduct of how GenAI systems are designed.[12] These systems are built on probabilistic language modeling, where outputs are generated by predicting the most likely next word based on patterns in massive training datasets, not by verifying factual accuracy or understanding meaning.[13]

Because these models operate statistically rather than semantically, they lack any true grasp of context or truth, which results in fluent yet factually incorrect responses.[14] These errors often stem from overgeneralization: GenAI extrapolates patterns learned from data and fills in gaps with information that is statistically likely but not necessarily true.[15] In some cases, as Anthropic has observed, a model like Claude may appear to reason within a conceptual framework shared across languages — suggesting the presence of a kind of universal "language of thought."[16] But even this apparent sophistication does not confer understanding. The persuasive fluency of AI-generated language makes hallucinations especially dangerous in the legal field, where even minor factual inaccuracies can have significant consequences.[17] Hallucinations are a structural limitation of current GenAI and must be managed through human oversight, rigorous verification, and

BY PATRICK T. BARONE

professional responsibility rather than technological fixes alone.[18]

Therefore, this article proposes a new approach: a modified paradigm for legal practitioners using GenAI — one grounded not in blind trust or total skepticism, but in rethinking what GenAI is and how to best use it. In this paradigm, originally posited by Professor Jules White,[19] GenAI's capacity to "hallucinate" is reframed as a positive feature of the technology rather than a malicious flaw. [20] Because guessing, sometimes wrongly, is a feature of the architecture, the system is a powerhouse for tasks like brainstorming or summarizing style and tone. In this alternative use paradigm, the emphasis is on navigation over generation, on reasoning over recitation, filtering over abject accuracy and most importantly, on traceability — ensuring that outputs can always be linked back to verifiable sources.[21]

The following sections explore practical applications of this paradigm, beginning with one of the most promising and useful for lawyers who litigate: filtering. The article examines how GenAI can be used not to generate new legal facts or conclusions, but to distill and structure information that the lawyer already has lawful access to. In doing so, it highlights a class of tasks where GenAI is not just helpful, but reliable — provided that the tasks are properly scoped, the prompts carefully designed,[22] and the results always anchored in verifiable input.

What emerges from this exploration is not a rejection of GenAI in legal practice, but a reframing of its role: not as an oracle, but as a sophisticated assistant. One that is powerful, but only when properly directed.

Correctness and the Cost of Error

Before using GenAI, thought should be given to the importance of the output being right. Viewed this way, the use of GenAI becomes a calculation where the correctness and efficacy are inversely proportional. The more important the accuracy, the less efficacious GenAI will be. Eventually one reaches a tipping point where the use of GenAI is untenable for a particular purpose. For lawyers exploring the use of GenAI, then, the threshold question must often be: *How much does it matter if the answer is perfectly correct*?

This question is essential because in legal work, the cost of being wrong can range from embarrassing to catastrophic. An AI-generated draft that misstates a deadline, misattributes a case citation, or mischaracterizes a statutory requirement is not merely inefficient, it can damage credibility, jeopardize a client's position, or violate ethical duties.

And this is not merely a philosophical exercise or a simple odds calculation. In practice, much of the legal profession turns on precision. Therefore, where accuracy is paramount, it becomes essential to evaluate not only whether GenAI can produce a seemingly correct answer, but whether it can be *easily and reliably checked*.

Where Accuracy Is Vital — Seek Verification

Because hallucinations are inevitable, the trustworthiness of GenAI depends on how easily its output can be verified — ideally with minimal time or effort. Where accuracy is critical, GenAI should only be used if its answers can be quickly and reliably confirmed. Its value lies in generating solutions faster than a lawyer could unaided, but only when checking that solution is easier than creating it from scratch.

The reverse is also true. If verifying GenAI's output requires deep expertise the user does not possess, its use becomes risky. Consider a criminal defense attorney asking GenAI to draft a document involving nuclear regulatory law and Radiation Exposure Standards. The GenAI may produce a fluent and detailed draft, but without domain knowledge, the lawyer has no way to assess whether it is correct. Verifying the content would require consulting a regulatory expert, thereby rendering the GenAI redundant. In such cases, GenAI creates the illusion of insight while offering no real path to truth.

By contrast, many criminal defense tasks permit straightforward validation. If a GenAI tool extracts key facts relevant to a search and seizure issue from a police report, or flags validation errors in chromatographs from an ethanol blood test, a defense attorney with subject matter expertise can readily confirm the accuracy of the result. These tasks are grounded in materials already in the lawyer's possession or knowledge base, not ones that require external validation.

The key insight is this: A wrong answer is tolerable if it is obvious; it is dangerous when it is hidden. Legal professionals should prioritize use cases where outputs can be checked without relying on intuition, outside experts, or where the factual accuracy of the output is not important, such as in the ideation or brainstorming scenarios discussed below. In that framing, GenAI becomes not a replacement for expertise but a tool that supports it.

Filtering: Surfacing Without Substituting

One of the most immediately useful applications of GenAI in legal practice is the task of *filtering*. At its core, filtering involves asking the GenAI to sift through a body of information, such as lengthy discovery documents, or a corpus of case law and reduce it to the subset that is most relevant to a particular issue. This is not about the GenAI making autonomous legal decisions or conclusions, but about automating the lawyer's capacity to review, interpret, and apply information more efficiently.

Risk

If verifying GenAI's output requires expertise defense counsel does not possess, its use becomes risky.

Importantly, this process presumes that the lawyer already has access to the underlying materials. The GenAI is not being used to determine what information a lawyer *should* be utilizing, nor is it deciding what material can be disclosed to opposing counsel or to a court. Those questions are fundamentally ethical and procedural, and they must remain firmly in the discretion of the human lawyer.

Imagine, for example, that a lawyer is reviewing 2,000 pages of email communications produced in response to a FOIA directed to a forensic laboratory. The GenAI can be asked to isolate emails containing answers to questions such as, "What did they know and when did they know it?" In addition, counsel can use it to flag every message that contains a particular word or phrase. The GenAI could then be asked to formulate arguments for suppression based on the number of instances that are discovered. Here is a sample prompt to elucidate this use.

Example: Validity of Forensic Techniques — Measurement Uncertainty and Discredited Methods

Context: You are reviewing forensic lab documents for compliance with ISO/IEC 17025,

which requires labs to estimate and document measurement uncertainty, including all significant contributors. You suspect the lab may have failed to account for key sources of uncertainty in its analysis.

Sample Prompt Template:

Search the uploaded document [e.g., PDF containing lab emails or investigative reports] for instances of [insert specific keywords or phrases, e.g., "operator error," "instrument drift," or "chain of custody"]. Return a chart with the following columns: [page number] [matched phrase] [context snippet — 1–2 sentences showing how the phrase is used]. Highlight only relevant or potentially significant occurrences. Ignore irrelevant or duplicate matches unless the context differs meaningfully.

What makes this use of GenAI trustworthy is the ability to *trace* its output back to the original inputs. If the GenAI searches a set of 200 emails, the chart produced will include a page number allowing the output to be easily confirmed.

This principle of *traceability* is the bedrock of responsible GenAI filtering. Whether the GenAI is summarizing trial testimony or flagging key clauses in a set of discovery documents, each assertion or excerpt should point back to its source — line numbers, paragraph references, or direct quotations. For example, if the GenAI produces a summary sentence like "*The witness admitted to deleting the emails*," it should immediately follow with a reference such as "*evidentiary hearing testimony of John Smith, Page 132, Line 14*." This transparency not only enables accuracy but also supports the kind of due diligence that lawyers are ethically and professionally obligated to perform.

A critical distinction exists here between using GenAI to *filter and catalog* information versus using it to *decide* something on the lawyer's behalf. A trustworthy use of GenAI aids human reasoning without supplanting it. The filtering process is particularly well-suited for this kind of support because the output is, by definition, a subset of the input. Nothing new is being created; no legal interpretations are being asserted by the system itself. This containment makes it relatively easy for the human lawyer to verify that the GenAI's output is complete, relevant, and accurate. The value of the GenAI's analysis is entirely dependent on the quality, completeness, and accessibility of the source materials the lawyer gives it.

Beyond filtering relevant documents, GenAI can also assist in making sense of the filtered results by identifying patterns, drawing preliminary conclusions, or suggesting how specific records may support a legal argument. Once potentially significant references are identified, lawyers can prompt the GenAI to assess their argumentative value: how a phrase or pattern might support a claim of forensic error, *Brady*[23] violation, or institutional misconduct. For more nuanced filtering, attorneys can also ask the GenAI to search for the occurrence of a word or phrase (e.g., "operator error") within a set number of words from another (e.g., "instrument drift"), helping isolate documents where meaningful connections appear. These capabilities turn GenAI from a document scanner into a strategic assistant.

Sample Prompt Template (Drawing Inferences from Filtered Content):

Based on the filtered results from the uploaded document, identify any patterns or themes that could support a defense argument. Consider how the occurrences of [insert keyword or phrase] — especially those appearing within [X] words of [insert related term] — may suggest systemic issues, procedural violations, or credibility problems. Summarize key conclusions and suggest how they might be used in support of motions, cross-examination, or discovery requests.

As legal professionals explore how to integrate GenAI tools into their workflows, filtering presents a practical, low risk starting point. With careful prompt design, such as asking the GenAI to filter, cite, and ground its outputs, lawyers can begin to utilize the scale and speed of GenAI while still exercising full professional judgment over the results. Filtering is not about replacing legal analysis; it is about supplementing it, making legal analysis faster and more focused. This method is especially useful when facing massive volumes of data that would otherwise be overwhelming to examine and prohibitively time consuming to analyze. When grounded in traceability and transparency, filtering becomes a reliable partner in GenAI-assisted legal work.

Ideation — Using GenAI to Spark Thought, Not Final Answers

Ideation is one of the more exceptional ways for lawyers to use GenAI because it allows the benefits of GenAI without directly requiring the output to be exact. In fact, ideation and others like it are among GenAIs most productive legal applications because it arises in precisely the opposite context — when accuracy is irrelevant or, at the very least, of secondary value. In these circumstances, relieved of the obligation to be right, GenAI is instead used as a catalyst for thinking.

Ideation is especially useful because it addresses a common hurdle for many criminal defense lawyers: finding the time to fully explore a range of strategies that might benefit the client. It allows lawyers to think outside the box or consider doing things differently from what worked in the past.

GenAI can assist with brainstorming across many aspects of practice. It can suggest approaches for drafting discovery demands, organizing a trial book, evaluating and preparing motion strategies, or mapping out a litigation timeline. GenAI can offer imaginative strategies for plea negotiations, propose alternative sentencing ideas, or identify creative compromises that may resonate with clients and prosecutors. It can also spotlight subtle ambiguities in a case theory, prompting attorneys to clarify or refine arguments before presenting them in court. Granted, the suggestions are sometimes implausible, but just as often, they are surprisingly useful. In this mode, GenAI's utility is limited only by the breadth of the user's imagination.

Even if some options are irrelevant or suboptimal, the lawyer loses nothing. The mere process of reviewing AI-generated suggestions can spark previously unconsidered defenses or inspire useful follow-up. The GenAI tool is not delivering a final plan. It is stimulating the lawyer's own decision-making process.

Sample Ideation Prompts

Taking the above discussion from the theoretical to the practical, criminal defense lawyers can start with the follow-

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ing prompt patterns tailored to specific legal tasks. These examples invite the GenAI to offer multiple ideas, prioritize them, and explain its reasoning. Thought might be given to how these sample prompts can be modified to best address specific case posture or needs:

1. Plea Negotiation Strategy

Prompt Pattern:
List x [number] potential plea negotiation strategies for a client charged with [insert offense] where the prosecution's case relies heavily on [e.g., forensic evidence or co-defendant testimony]. Rank them in order of likely effectiveness and explain the reasoning behind your ranking.

This prompt encourages a range of ideas while requiring the GenAI to assess and explain the relative strengths of each suggestion, offering a helpful nudge to the lawyer's strategic thinking.

2. Motion Practice Planning

Prompt Pattern:
List x [number] pretrial motions that may be appropriate in a case involving [insert charge], where the key issue is [e.g., an unlawful search or late-disclosed evidence]. Rank them by strategic value and explain why each was placed in that order.

This structure helps attorneys quickly assess tactical options and consider arguments they may not otherwise prioritize.

3. Jury Narrative Strategy

Prompt Pattern:
List x [number] ways to frame a defense narrative that emphasizes [insert theme, e.g., mistaken identity, lack of intent]. Rank them by likely persuasive impact on a jury and explain your reasoning.

This prompt helps explore rhetorical approaches and offers a quick read on what might resonate, or fall flat, in front of a jury.

These sample prompts are purposely terse, and lawyers using them should consider that the quality of GenAI output improves significantly when more case-specific information is included. While short prompts are useful for quick ideation, longer prompts that incorporate things like relevant and specific case facts, identified evidentiary issues, or jurisdictional information tend to produce more tailored and useful responses. Also, the use of persona prompting[24] in this context can significantly elevate the output's value. However, when using open GenAI systems, legal professionals must remain circumspect about excluding sensitive or identifiable case details, always prioritizing client confidentiality and ethical obligations.

Also, when deciding how many suggestions to request (as indicated by the placeholder "x" above), users may find it helpful to constrain the GenAI. For example, asking for five options will provide a more manageable list while leaving the number open might yield broader results that require more sifting.

A significant advantage of employing GenAI in this way is the low-risk, highly productive nature of ideation. Attorneys can rapidly generate numerous ideas, discard those that do not align with their objectives, and focus on the most promising concepts. The speed and abundance of AI-generated suggestions encourage attorneys to venture into unconventional territory, exploring imaginative avenues that conventional brainstorming might never reach.

Crucially, this kind of use does not absolve the lawyer of responsibility, nor should it. Just as one would not rely on GenAI to draft a dispositive motion without review, no one should accept an AI-generated workflow or project plan without independent evaluation. But in this context, that review is easy, fast, and expected. The output is explicitly exploratory and is not masquerading as factual. This clarity of purpose makes it a deeply appropriate use of the tool.

Navigation: Asking Where, Not What

Another highly effective and low-risk way to integrate GenAI into criminal defense practice is by using it for *navigation*. This use leverages the technology not toward producing new information, but as a guide to where existing, reliable information already lives. It capitalizes on what GenAI does well — interpreting natural language and surfacing relevant connections — without asking it to be authoritative or infallible. When applied thoughtfully, navigation allows lawyers to move through their own document systems, research archives, or expert databases with greater speed and efficiency, all while maintaining full control over the underlying facts and legal arguments.

Consider, for example, a brief bank maintained within an attorney's office or defender organization. Instead of asking the GenAI to draft a new suppression motion from scratch — risking flawed legal reasoning or citations — the attorney could ask, "*Where can I find a suppression motion based on an unlawful search involving a drug dog subsequent to a traffic stop*?" Using this Direct Navigation Pattern,[25] the GenAI could search the drive or document management system, surface the most relevant briefs, and direct counsel to their locations. The GenAI could then summarize why it selected those documents, perhaps noting that one brief contains an argument based on *Rodriguez v. United States*[26] with similar factual circumstances and jurisdiction. In this way, the GenAI curates rather than creates content.

Benefit

Ideation allows the benefits of GenAI without requiring the output to be exact. Rather than delivering a final plan, the GenAI tool is stimulating the lawyer's own decision-making process.

The same applies to expert witness preparation. Imagine that a defense lawyer is challenging the admissibility of a breath test result involving radio frequency interference on a breath testing instrument using infrared spectroscopy. Rather than asking the GenAI to explain the science, an area where hallucinations are both common and dangerous, the lawyer might say, "*Show me where I can find prior testimony or reports by x [name] expert*." The GenAI could guide counsel to a repository of expert materials: CVs, cross-exam transcripts, prior *Daubert*[27] rulings, or research papers stored in a designated folder. The lawyer stays in control, grounded in real, vetted information, while the GenAI speeds up the path to

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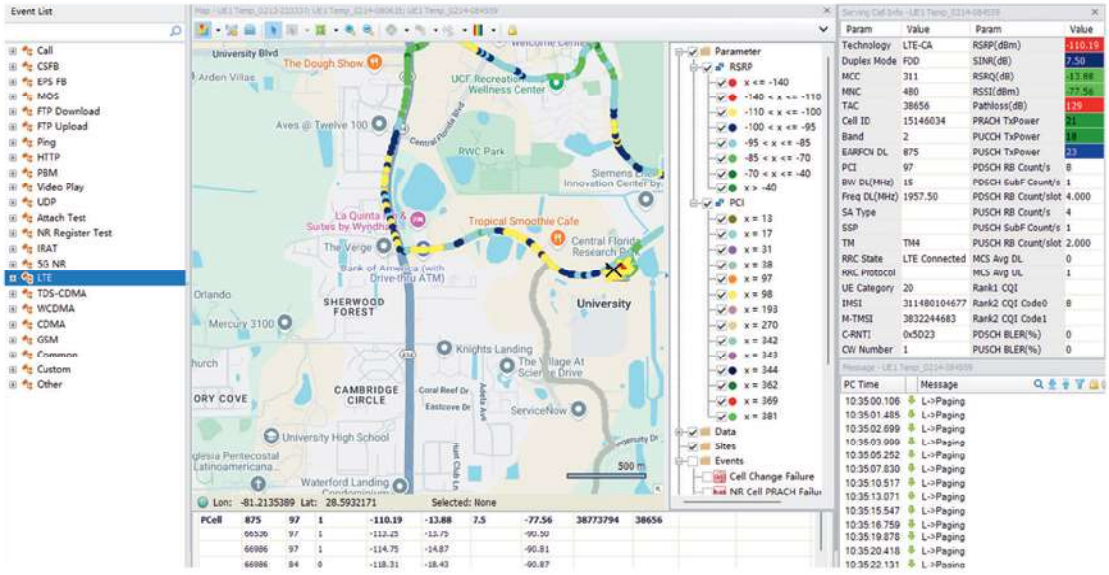

MISTRUTHS

- Cell Towers broadcast in 120-degree patterns
- Broadcast distance is 4-5 miles
- When traveling 70% of the distance between two towers, a call is handed off

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finding it. This "ask where, not what" approach also enhances accountability.

A close variation of this approach is the Navigate Instead Pattern.[28] With this method, the user instructs the GenAI never to answer certain types of questions directly. For example, suppose the lawyer is preparing to challenge the reliability of a THC drug test that uses gas chromatography coupled with mass spectrometry (GC-MS). Instead of asking the GenAI, "*How reliable is GC-MS for detecting THC?*" — a prompt that could invite speculation or inaccurate synthesis — the lawyer might ask, "*Where can I find research about the reliability of GC-MS for THC detection*?" The GenAI, drawing from the lawyer's internal database of scientific papers, case law, and expert reports, would respond with something like this: "*See the Forensic Science folder in your Research Library, under 'Drug Testing Methods.' Several papers there address GC-MS reliability, including a peer-reviewed study comparing false positive rates and a federal court ruling on admissibility under Daubert.*"[29] If the GenAI gets it wrong, the mistake is obvious because the material will not be there. But if it had attempted to answer the question directly and misstated the science, that error might have gone unnoticed until it was too late.

Framing GenAI in this way, as a system that helps *find* information rather than generate it, makes it a more trustworthy tool for criminal defense. It respects the profession's obligation to verify, cite, and critically analyze, while enhancing the speed and efficiency with which lawyers can access what they already have. It also keeps GenAI in its proper lane: not as a replacement for legal judgment, but as an intelligent interface into the complex repositories we build to support it.

Expertise as the Anchor for Trustworthy AI Use in Legal Practice

While ideation, brainstorming, and other low-stakes tasks allow lawyers to use GenAI without relying on the factual accuracy of its output, these are far from the only trustworthy applications. In many areas of legal practice, accuracy is essential and when it is, the bar for responsible use is higher. Two conditions must be met: The user must have the subject matter expertise to evaluate the output, and the user must actively commit to doing so. Without both, GenAI is no more trustworthy than a junior associate left unsupervised. Expertise isn't just helpful, it is foundational.

Too often, conversations around GenAI focus on what the tools can or cannot do, rather than on what the user is equipped to do with them. When an experienced litigator uses GenAI to generate a draft argument for a suppression motion, the real value is not in whether the GenAI gets everything right. The value is in how quickly it can get the lawyer 50 or 80 percent of the way there while relying on the lawyer's subject matter expertise to verify, refine, and complete the work.

AI-generated output should be treated like a draft memo from a junior associate. It might be helpful, or even insightful, but only in the hands of someone who knows how to spot flaws, fill in gaps, and elevate it to something court-ready. If a lawyer is reviewing a draft complaint generated by AI and cannot identify a missing element of a cause of action, the lawyer is not in a position to use the tool for that task. But if the lawyer is an experienced attorney who knows exactly what to look for, the GenAI has served its purpose: giving the lawyer a head start.

Bringing this all together, consider another scenario: an advocate is exploring emerging theories of parental or third-party criminal liability in the context of mass shootings, and wants to use the GenAI for ideation. Counsel might prompt the tool to suggest areas worth researching, such as the legal limits of involuntary manslaughter for parental omissions, how courts define foreseeability and causation in third-party acts, the scope of duty based on special relationships, or whether failure to act on warning signs can constitute gross negligence. Here, counsel is not asking GenAI for definitive answers; counsel is using it as a brainstorming partner, a way to generate leads that can be investigated further. Crucially, counsel has the legal training to recognize which leads are worth following, and the practical experience to assess the quality of the sources or ideas it offers. In this sense, GenAI becomes a tool of navigation, not a source of truth, but a guide toward it.

GenAI can also help connect ideas across doctrinal boundaries. Perhaps defense counsel wants to think creatively about how the broader evidentiary rules in civil law might inform new approaches to expanding the more limited tools available in criminal discovery. Manually making those connections could take hours. With GenAI, one can surface analogies in minutes. But again, the user needs the legal acumen to assess whether those analogies hold up. If fluent in both domains, defense counsel will be able to evaluate the reasoning. If not, the lawyer might still use the output to initiate collaboration or consult reliable secondary sources to verify the ideas.

With the right level of subject matter expertise, GenAI can even assist with deeper, more fact-intensive research. At the far end of the spectrum is the use of GenAI's deep research capabilities to save time and expand the scope of inquiry. For example:

Sample Prompt for Deep Research Regarding the Fermentation Defense:

I am preparing a legal argument in support of a neofermentation defense in a DUI case with a reported BAC of .22. The blood sample was left unrefrigerated for 7 days during summer. I need scientific and forensic support for the contention that sodium fluoride in the collection vial would not be sufficient to prevent fermentation prior to testing, potentially leading to a falsely elevated BAC. Please identify and summarize peer-reviewed studies, official forensic standards, lab guidelines, and expert commentary — ranked in order of evidentiary strength — that support this claim. Prioritize materials discussing sodium fluoride's effectiveness over time, especially in unrefrigerated or warm storage conditions.

Provided the lawyer using this kind of tool has the expertise to properly vet and evaluate the results, this is a perfectly appropriate, and ethical, use of GenAI.

But things get dangerous when lawyers use GenAI outside their wheelhouse and without guardrails. A lawyer asking GenAI to draft a firearms trust when the lawyer has never handled an estate planning matter is no different from the lawyer running someone else's Python script[30] on his machine without knowing what it does. The lawyer does not know what is missing, what has been misinterpreted, or what unintended consequences may follow. This is where

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malpractice risk lives, not in the GenAI itself, but in the mismatch between the tool's output and the user's expertise.

The ethical use of GenAI in legal practice hinges on honest self-assessment. If an experienced attorney would not feel confident editing a junior associate's draft in a given area, the experienced attorney should not feel confident relying on GenAI in that area either. But if the veteran attorney would, and if she does so routinely, then the same instincts that serve her well in mentoring younger lawyers can serve her here, too. Evaluate, revise, improve. In domains where a user's expertise is strong, GenAI becomes not a shortcut to answers, but a fast track to better questions, clearer thinking, and ultimately, stronger work.

Conclusion: A Framework for Trustworthy Use

The limitations of GenAI, particularly its propensity to produce fabricated or inaccurate content, are not defects, but a predictable result of how the technology functions. Properly understood, this limitation becomes the foundation for its most effective use. In contexts where factual accuracy is not essential, GenAI's immense capacity to creatively innovate and connect disparate concepts can lead to new approaches, novel arguments, and ultimately, more successful client outcomes.

In these settings, the technology becomes a tool for ideation, insight generation, and strategic exploration. Where accuracy is required, its use must be contingent on two conditions: the lawyer must possess the necessary subject matter expertise and must commit to independently evaluating the results. In this respect, trustworthiness is not a property of the GenAI itself, but of the professional judgment applied to its use.

Notes

1. *See* American Bar Association, *When Legal Tech Comes of Age*, https://www.americanbar.org/groups/law_practice/resources/law-technology-today/2025/when-legal-tech-comes-of-age/?utm_source=chatgpt.com.
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