

Ethics and AI: User Beware

March 5, 2026
J. Nick Badgerow

A CLE Seminar
presented by

Joseph Hollander & Craft
Lawyers and Counselors LLC

Today's Presenters



J. Nick Badgerow

Partner

SpencerFane

Introduction/Overview

- **Artificial Intelligence – Increasing**
- **Useful: Easier, Cheaper, Faster**
- **Learn or Get Left Behind**
- **What Tools Are Available**
- **AI – Can Cite Fictitious Cases**
 - **Hallucinations**
- **So: Be Careful**
- **Applicable Ethics Rules**
- **Bad Results**



The Point:

- **Be Careful When Using AI**



- *“If counsel relies on artificial intelligence or other technology to draft a filing, the attorney is still responsible for ensuring the filing is accurate and does not contain fabricated caselaw or quotations.”*

Iovino v. Michael Stapleton Associates, Ltd., 2024 WL 3520170, at *6 (W.D. Virginia July 24, 2024).

What Is Artificial Intelligence?

- **Generative AI** – Generates An Answer To A Question By Searching The Info Available On The Subject
- **Large Language Model (LLM)** – Searches Large Amount Of Info
 - Tries To Understand
 - Generates An Answer Or Document
 - Can Hit A Wall
 - Wants To Be Helpful
 - “Sycophancy” – Trying To Agree With User
- **Retrieval Augmentation Generation (RAG)**
 - Using LLM
 - Start With Your Information (“Training Data”)
 - Retrieve Actual/Relevant Source Material
 - Not Always Successful



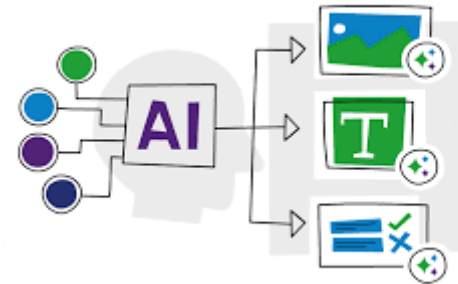
How Do Businesses Use AI?

- **Routine Tasks – Data Entry, Billing, Receipts, Collections**
- **Data Analysis**
- **Decision-making**
- **Innovation**
- **Cybersecurity**
- **Marketing**
- **Sales**
- **Customer Service**
- **Human Resources**
- **“Upskilling”**



How Do Law Firms Use AI?

- **Marketing**
- **Contract Preparation And Analysis**
- **Client Intake**
- **Matter Management**
- **Document Review**
- **Legal Research**
- **Analyze Briefs**
- **Time Entries**
- **Litigation Funding**



Marketing

braze

✦ FIRMPILOT

LAWYER4YOU

Contract Preparation And Analysis



Client Intake



- Capturing Contact Information
- Collecting Case Details via Online Forms
- Scheduling Consultations
- Automating Initial Communications
- Conflict Checking
- E-Signatures and Document Collection
- CRM Functionality and Communication Logs
- Integration with Case Management Tools
- Security and Compliance

Matter Management

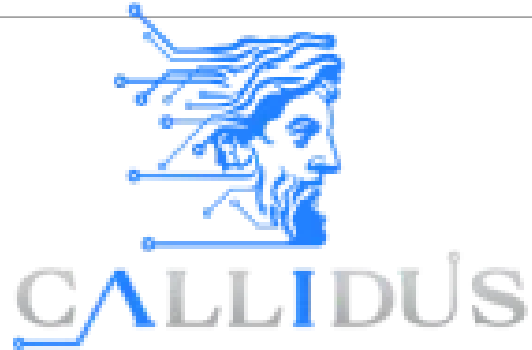


CHECKBOX

Document Review



Legal Research



BRYTER

Harvey



Analyze Briefs

The logo for 8am CasePeer, featuring the text "8am CasePeer" in a sans-serif font. The "8am" is in orange and "CasePeer" is in black. The background is a light blue and green gradient with a faint sun-like shape.

8am CasePeer

The logo for Briefpoint, featuring a green icon of a document with a checkmark and the text "Briefpoint" in a bold, sans-serif font.

Briefpoint

The logo for Clear|brief, featuring the text "Clear|brief" in a serif font, with a vertical line separating "Clear" and "brief". The logo is centered within a white rectangular box with a thin black border, which is set against a light gray background.

Clear|brief

Time Entries

REPLICON™ | The
Time Intelligence™
Company



billables.ai

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Litigation Funding

LEGORA / AI

 **DISCO**
LAW BETTER

supio⁺

Case Outcome Prediction



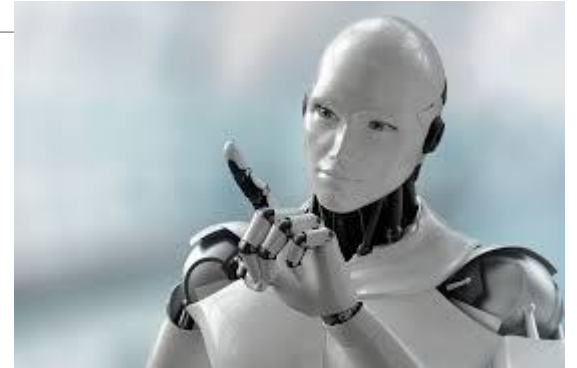
What This Program Is Not

- Locate, Evaluate, Access **Appropriate** Tool
- **Recommendations** on Tools
- **How** To Use AI



Reality:

- **AI Can Cite Fictitious Cases**
- **Hallucinations**
- **Ad Lib**
- **Wants to Be Helpful**
- **One-Third Of The Time? More?**
- **Will Discuss Examples In Cases Later**



Because AI Hallucinates - Lawyers Must Be Careful



- Review Cites And Quotes
- Shepardize
- Ensure Cites And Quotes Exist And Are Correct
- Fundamental Obligation

Recent MIT study: Excessive use of AI assistants can lead to

cognitive laziness

lower brain activity

reduced memory retention

decline in a person's own abilities

lower brain engagement

Rules And Principles

- **ABA Opinion 512 (July 29, 2024)**
- **Rule 11 (and State Equivalents)**
- **Model Rules Of Professional Conduct**



Rule 11 (FRCP & Related State Statutes)

Signing Pleading >> Lawyer Certifies:

- Knowledge
- Claims, Defenses, Legal Contentions
 - Warranted By Existing Law
 - Or Good Faith Argument For Modifying Law

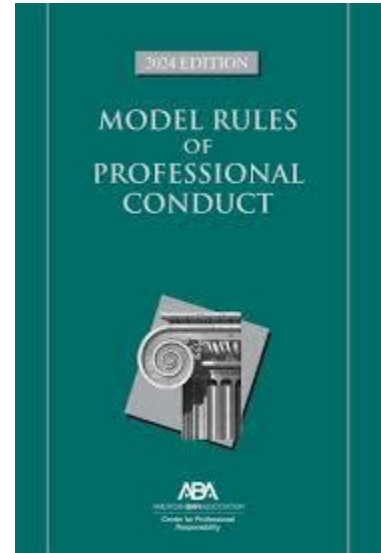


“THE SIGNING ATTORNEY IS THE FINAL AUDITOR, AND RESPONSIBLE FOR ALL LEGAL AND FACTUAL CLAIMS CONTAINED IN THEIR MOTIONS” INCLUDING ARGUMENTS AND AUTHORITIES GENERATED BY AI

RULE 11 IS NOT ARTIFICIAL; IT IMPOSES A REAL DUTY ON LAWYERS --NOT ON ALGORITHMS -- TO “STOP, THINK, INVESTIGATE AND RESEARCH’ BEFORE SIGNING AND FILING PAPERS.”

Model Rules Of Professional Conduct

- **Applicable In Every State (With Modifications)**
- **Professional Obligation To Comply**
- **Violate Rules:**
 - = **Discipline**
 - = **Including Potential Loss Of License**
 - = **Malpractice Claim**



Rule 1.1 (MRPC) - Competence

- **Shall Provide Competent Representation To A Client**
- **Competent Representation = Legal Knowledge, Skill, Thoroughness And Preparation Necessary**
- **Comment: Includes Keeping Abreast Of **The Benefits And Risks Associated With Relevant Technology****
- **Continuing Study And Education & Continuing Legal Education Requirements**
- **If Use AI Tool, Study How To Use The Tool, Capabilities & Limitations - To Be Competent**



Rule 1.1: Competence (Cont.)

- **Basic Obligation**
- **If Use AI: Read, And Confirm The Existence And Validity Of, The Legal Authorities Cited**
- **Reasonable Understanding Of The Capabilities And Limitations**
 - **Understanding Of The Benefits And Risks**
 - **Remain Vigilant About Benefits And Risks**
 - **Relevant Continuing Legal Education Programs**
 - **Consult Others**
- **Failure: Violates Rule 1.1 (Competence)**



Rule 1.6 – Confidentiality

- **Shall Not Reveal Information Relating To The Representation Of A Client**
- **Unless**
 - **Client Gives Informed Consent**
 - **Disclosure Impliedly Authorized To Carry Out Representation Or**
 - **Disclosure Is Permitted By Paragraph (b)**



Rule 1.6 – Confidentiality (Cont.)

- **AI Requires Input**
- **Include Client Confidential Information?**
- **Info Becomes Part Of The Pool Of Info Searched By AI**
- **Some AI Tools Require Input Of Client Info (Usually The Free Ones)**
- **ABA Opinion 512:**
 - **Be Cognizant Of The Duty Under Rule 1.6**
 - **Before Inputting Information - Evaluate The Risks**
 - **Self-Learning GAI Tools Risk Improper Disclosure of Client Confidential Info**
 - **Read And Understand The Terms Of Use, Privacy Policy, And Related Contractual Terms**
 - **Consult With An Expert**



Rule 3.1 - Meritorious Claims/Contentions

- **Not Make Claim Unless Good Faith Basis**
- **Official Comments = Not Abuse Law Or Procedure**
- **Misrepresent The Law = Violates Rule 3.1**
- **Analogous To Rule 11**



Rule 3.3 - Candor Towards Tribunal

- **Not Knowingly**
 - **False Statement Of Fact Or Law To Tribunal**
 - **Fail To Correct False Statement Of Material Fact Or Law Previously Made**
- **= Do Not Misrepresent The Law**
- **“Knowingly” – Rule 1.0(g) = Knowledge May Be Inferred From The Circumstances**
- **= Citing False Cases Without Checking Can Violate Rule 3.3**



Rule 5.3(a) – Responsibility for Assistants

- **Check Work by Assistants**
- **Responsible for Conduct of Assistant IF:**
 - **Orders or Ratifies (i.e. signs the pleading prepared by assistant) OR**
 - **Supervises Assistant; Knows of the Mistake; Fails to Rectify.**
 - **Is AI an “Assistant”?**



Rule 8.4(c) – Dishonesty, Fraud

- **Engage in conduct involving**
 - **Dishonesty**
 - **Fraud**
 - **Deceit**
 - **Misrepresentation**
 - **= Don't Make False Statements**



Rule 8.4(d) – Prejudicial to Administration of Justice

- **Lawyers are Integral to the Justice System**
- **See Rule 3.3 (Candor to Tribunal)**
- **Lying**
- **Plagiarizing**
- **Deceiving Others**
- **Criminal Conduct**
- **Falsifying Documents**
- **Secret Recordings**
- **Mining Metadata**



Bad Results

- **Lawyers Get In Trouble For Using AI Product Without Checking**
- **Relying On Results Of AI Work**
- **One Commentator Records And Charts Cases:**
- **982 Cases (Internationally) Lawyers Subjected To**
 - **Sanctions**
 - **Stricken Pleadings**
 - **Discipline**

Damien Charlotin, “AI Hallucination Cases,” available online at <https://www.damiencharlotin.com/hallucinations/>.



Local Rules

- **Court Are Aware Of Hallucinations**
- **[Some Courts In Trouble For Using AI Cases Without Checking]**
- **Many Courts Have Adopted Rules:**
 - **No Use Of AI**
 - **If Use AI, Certify That You Have Checked**
- **Ropes & Grey – Tracking Rules**
 - **Color Coded Map**
 - **160 Examples Of Rules Or Court Cases**
 - *<https://www.ropesgray.com/en/sites/artificial-intelligence-court-order-tracker>*



E.G. Johnson County District Court (Kansas)

- **Local Rule 3.7 (6/1/2025)**
- **All Pleadings**
- **Must Contain Certification**
 - **No AI Was Used, Or**
 - **AI Was Used (Name The Tool), And**
 - **Signer Independently Verified Every Citation, Quotation, Legal Analysis Submitted After Considering Rule 11 Requirements**
- **If Certification Not Included – Mere Signature Includes Verification**
- **Rule Warns – Misrepresentations:**
 - **Striking Pleadings**
 - **Sanctions**
 - **“Other Consequences”**



E.G. Shawnee County Rule 3.125

- 1) verify that any content generated by AI was **checked** for accuracy, and
- 2) **disclose** to Court and opposing parties in writing/clearly marked on first page, that it contains AI generated content, and
- 3) **certification** it was checked for accuracy
- 4) Violation may subject attorneys and pro se litigants to **sanctions**



E.G. District of Kansas

- **STANDING ORDER 26-01 (1/28/26)**
- **REMINDS & CAUTIONS ALL LAWYERS & PARTIES**
- **RESPONSIBLE FOR REVIEWING AND VERIFYING**
- **COURT MAY IMPOSE SANCTIONS**
 - **STRIKE PLEADINGS**
 - **MONETARY**
 - **REFER TO DISCIPLINE**
 - **DISQUALIFY COUNSEL**
 - **FILING RESTRICTIONS**
 - **DISMISSING CASE**



Sanctions

Hundreds Of Cases – Lawyers Sanctioned For Citing Fictitious Case Law

Mata v. Avianca, Inc.

Attorney Cited A Number Of Fake Cases

- Generated By AI
- Not Checked By Attorney
- Attempted To Cover Up
- Lied To Court
- Monetary Sanction
- Fake Opinion Is Not Existing Law Nor Good Faith Argument For Modifying Existing Law



Mata v. Avianca

- **Higher Argument =**
 - **Legal System Depends On Honest = Judges Can Then Make Reasoned Decisions**
- **Citing Fake Cases Undermines That Relationship Of Trust**
- **Harms Flow From Fake Cases:**
 - **Opposing Party & Court Waste Time / Money**
 - **Client May Be Deprived Of Valid Arguments**
 - **Reputation Of Courts & Judges Called Into Question By Fake Cases Attributed To Them**
 - **Entire System Subjected To Cynicism And Ridicule**
- ***Mata v. Avianca, Inc.*, 678 F.Supp.3d 443, 2023 U.S. Dist. LEXIS 108263, *2 (S.D.N.Y. 2023).**



Kruse v. Karlen

- “Overwhelming Majority Of Cases Cited” By Lawyer
 - Inaccurate
 - Entirely Fictitious
 - Only 2 Of 22 Cited Cases Are Genuine
- Example: *Smith v ABC Corporation*, 321 S.W.3d 123
 - Smith
 - ABC
 - 321 – 123
- Lawyer Sanctioned
- Pleadings Stricken
- *Kruse v. Karlen*, 692 S.W.3d 43, 48-49 (Mo. App. 2024).
- Many Cases = Lawyers Sanctioned For Citing Fake Cases



Not Just Lawyers = Judges Also

- Judge Denied Wife's Petition To Reopen Divorce
- Judge's Order Cited Fake Cases
- Court Of Appeals Reversed
- Sanctioned Lawyer (\$2,500) Who Fed Fake Cases To Trial Judge
- (Judge: Still Robed)
- *Shahid v Esaam*, 2025 Ga. App. LEXIS 299 *; 2025 LX 214277 (6/30/2025).
- Stanford Study: **69% to 88%**= Hallucinations
- <https://hai.stanford.edu/news/hallucinating-law-legal-mistakes-large-language-models-are-pervasive>



Pleadings Stricken And Case Dismissed

- **Dismissed Appeal For Citing Fake Cases**
- ***Gutierrez v. Gutierrez*, 399 So.3d 1185 (Fla. App. 04 December 2024).**
- **Numerous Fatal Briefing Deficiencies**
 - **Including Citation Of Fake Cases**
- **Dismissed Appeal**
- ***Kruse v. Karlen*, 692 S.W.3d 43, 46 (Mo. App. 2024).**



Pleadings Stricken

- “Far Too Common”
- Increasing
- Challenges
- Ethical Issues
- May Result In Sanctions Or Penalties
- It Is Improper To Submit “Non-Existent Judicial Opinions With Fake Quotes And Citations”
- Pleading Stricken
- *Powhatan Cnty. Sch. Bd.. v. Skinger*, 2025 WL 1559593, at *9 (E.D. Va. Jun 02, 2025)
- *Grant v. City of Long Beach*, 96 F.4th 1255, 1256-57 (9th Cir. 2024) (striking pleadings and dismissal appeal because of counsel's use of fabricated caselaw).



LEXOS MEDIA V. OVERSTOCK.COM

- **DISTRICT OF KANSAS (JUDGE JULIE ROBINSON)**
- **FEBRUARY 2, 2026**
- **EXTENSIVE USE OF AI IN TWO BRIEFS**
- **ORDER FOR SANCTIONS UNDER RULE 11**



LEXOS MEDIA V. OVERSTOCK.COM

- **PATENT INFRINGEMENT**
- **3 PATENTS**
- **MODIFYING DISPLAY OF CURSOR IMAGE ON A V**
- **DEFT. MSJ AND MOTION TO STRIKE PLTF. EXPE**
- **PLTF. BRIEFS IN OPPOSITION**
- **COURT ORDER TO SHOW CAUSE: MULTIPLE BAD CITATIONS AND INCORRECT STATEMENTS OF LEGAL AUTHORITY IN PLTF. BRIEFS**



vector
EPS 10

PLAINTIFF RESPONSE

- **MAIN (TEXAS) ATTORNEY**
 - **ADMITTED USING AI**
 - **UNDER STRESS – MOTHER AND AUNT ILL (DIED)**
 - **DID NO CHECK**
 - **30 YEARS IN PRACTICE**
 - **ADMITTED “UNTRAINED” “NOVICE” ON AI**
 - OTHER FIRM – THREE LAWYERS SIGNED**
 - DID NO CHECK CASES**
 - POLICY AGAINST USING AI**
 - LOCAL COUNSEL – GOT BRIEFS DAY THEY WERE DUE**
 - DID NO CHECK CASES – SIGNED AND FILED**



COURT RULED

- **MOTION TO FILE AMENDED PLEADING – DELETING AI CASES**
- **COURT WENT THROUGH EACH CASE AND QUOTE**
 - **NONEXISTENT**
 - **NOT APPEAR**
 - **MISSTATED**

RULE 11

“There is no question that citing to a nonexistent case, attributing a nonexistent quotation to an existing case, and misstating the law violates Rule 11(b).””

RULE 11 SANCTIONS

- **MAIN ATTORNEY:**
FINE: \$5,000
- **TWO COUNSEL IN OTHER FIRM:**
FINE: \$3,000 EACH
- **ASSOCIATE IN SAME FIRM – DID SIGN
NO AUTHORITY
NO FINE**
- **LOCAL COUNSEL:**
FINE: \$1,000



RULING

- **FAILURE TO VERIFY THAT CASES ACTUALLY EXIST**
- **FAILURE TO CONFIRM CASES STAND FOR PROPOSITIONS STATED**



LESSONS

- 1. IF USE AI, CHECK EVERY CITE AND QUOTE**
- 2. IF YOU SIGN PLEADINGS, CHECK – DO NOT TRUST**
- 3. IF YOU ARE LOCAL COUNSEL, CHECK – DO NOT TRUST**

LESSONS
LEARNED



Discipline

- **Discussed Rules**
 - **1.1 (Competence)**
 - **1.6 (Confidentiality)**
 - **3.3 (Candor Towards Tribunal)**
 - **3.1 (Meritorious Claims/Contentions)**
 - **5.3 (Responsibility for Subordinates)**
 - **8.4(d) (Prejudicial to Administration of Justice)**
- **Violation Of Rules = Discipline**



Disciplinary Process

- **Kansas: Board Of Discipline**
- **Disciplinary Administrator**
- **Missouri: Office of Chief Disciplinary Counsel**
- **Discipline For “Misconduct”**
 - **Violate Rules Of Professional Conduct**
 - **Disciplinary Rules**
 - **Lawyer’s Oath**



Discipline – Rule 1.1 (Competence)

- *Matter of Matos (Patent Appeal)*
- Lawyer cited and quoted from non-existent cases
- Lawyer used non-existent quotes from real cases
- Violated Rule 1.1 - Competence
- Public Reprimand

1.1

Attributing propositions of law to decisions that did not discuss those propositions is bad enough. Purporting to actually quote from decisions where neither the quote nor anything like it appears is worse. And worst of all is citing or purporting to quote from decisions that do not exist.

Discipline – Rule 1.6 (Confidentiality)

- **ABA Opinion 512: Self-learning GAI tools into which lawyers input information relating to the representation, by their very nature, raise the risk that information relating to one client’s representation may be disclosed improperly, even if the tool is used exclusively by lawyers at the same firm.**
- **Use of generative AI by any legal professional implicates duties of confidentiality, supervision, candor, and more.**
- ***In re Kenney, 25-C-389 (La. App. Oct 23, 2025).***



Discipline – Rule 3.3 (Candor)

- “Inserting into court filings unverified legal citations generated by AI is wholly inconsistent with the duty of candor that Rule 3.3 enumerates.”
- *Johnson v. Dunn, 2:21-cv-1701-AMM (N.D. Ala. Jul 23, 2025).*



Discipline – Rule 3.1 (Meritorious Claims)

- **Citing Fake Cases Violates Rule 3.1 (Meritorious Claims)**
- ***Mavy v. Comm. of Soc. Sec. Admin.*, CV-25-00689-PHX-KML (ASB) (D. Ariz. Aug 14, 2025).**
- **"A fake opinion is not 'existing law' and citation to a fake opinion does not provide a non-frivolous ground for extending, modifying, or reversing existing law, or for establishing new law."**
- ***Mata*, 678 F.Supp.3d at 461.**

MERITORIOUS

Discipline - Rule 5.3 – Supervisory Responsibility

- *Bar Counsel v. Marullo* (Massachusetts)
- Assistants Prepared Brief – Used AI
- Lawyer Signed and Filed Brief
- Multiple erroneous citations
- Four nonexistent cases
- Fabricated quotations
- Misrepresentations of legal propositions and statutes.
- 1.1 (competence), 1.3 (diligence), 5.1(a) and (b) (supervisory responsibilities), 5.3(a) and (b) (non-lawyer supervision), and 8.4(d) (conduct prejudicial to justice)
- Lawyer Sanctioned \$1,000 and Public Reprimand



Rule 8.4(c) – Dishonesty, Fraud, Deceit

- “using nonexistent cases in his briefs and thus making false statements and misrepresentations of the applicable law to this court,” violates Rule 8.4(c).
- *People v. Lerin H. (In re Baby Boy)*, 2025 IL App (4th) 241427 (Ill. App. Jul 21, 2025).
- Even an unintentional misstatement to a court can involve a misrepresentation under Rule 8.4(c). Therefore, output from a GAI tool must be carefully reviewed to ensure that the assertions made to the court are not false.
- ABA Opinion 512.



Second Circuit Case

- **Lawyer Referred To Disciplinary Authority**
- **Citing AI Cases Without Checking**
- ***See Park v. Kim*, 91 F.4th 610, 615-16 (2d Cir. 2024).**



Minnesota Case

- *Kohls v. Ellison*
- Case About Deep Fakes and AI
- Lawyer Submitted Two Expert Reports
- One Expert: Cited and Quoted **Non-Existent** Academic Articles
- Expert Stricken
- *“The irony. Professor Hancock, a credentialed expert on the dangers of AI and misinformation, has fallen victim to the siren call of relying too heavily on AI—in a case that revolves around the dangers of AI, no less.”*

Colorado Case

- **Lawyer Suspended**
- **Cited Cases from ChatGPT**
- **Did Not Check, Read Cases**
- **Filed Brief**
- **Discovered Errors**
- **Did Not Withdraw Motion**
- **Did Not Advise Court**
- **Lawyer Suspended One Year**
- **Violated**
 - **Rule 1.1 (Competence)**
 - **Rule 1.3 (Diligence)**
 - **Rule 3.3 (No False Statement to Court)**
 - **Rule 8.4(c) (Dishonesty, Fraud, Misrepresentation)**



Colorado Case (Cont.)

- **Crabill Served Three Month Suspension**
- **Fired by Law Firm**
- **Started His Own Law Firm**
- **Using AI as his primary legal assistant**
- **To Save Clients Money**
- **Av{AI}lable Legal Solutions**



AV{AI}LABLE LEGAL

Chief Justice John Roberts

- **Report To Federal Judiciary (2023)**
- **AI – Can Dramatically Increase Access To Key Information**
 - **But: Risks Of Invading Privacy**
 - **Dehumanizing The Law**
- **Use Of AI Requires**
 - **Caution**
 - **Humility**
- **Caution = Be Careful**
 - **Don't Blindly Accept Results**
 - **Check**
 - **Confirm**



Conclusion

- **(Most) Lawyers Are Committed To Zealous Advocacy**
- **Use All Tools Available**
- **AI = Cost Effective, Efficient, Time Saving**
- **AI = Just ONES and ZEROES = No SOUL**
- **Check Every Citation**
- **Confirm Every Quotation**
- **Use Of *Artificial* Intelligence Must Be Accompanied By Application Of *Actual* Intelligence**



conclusion

Thank You

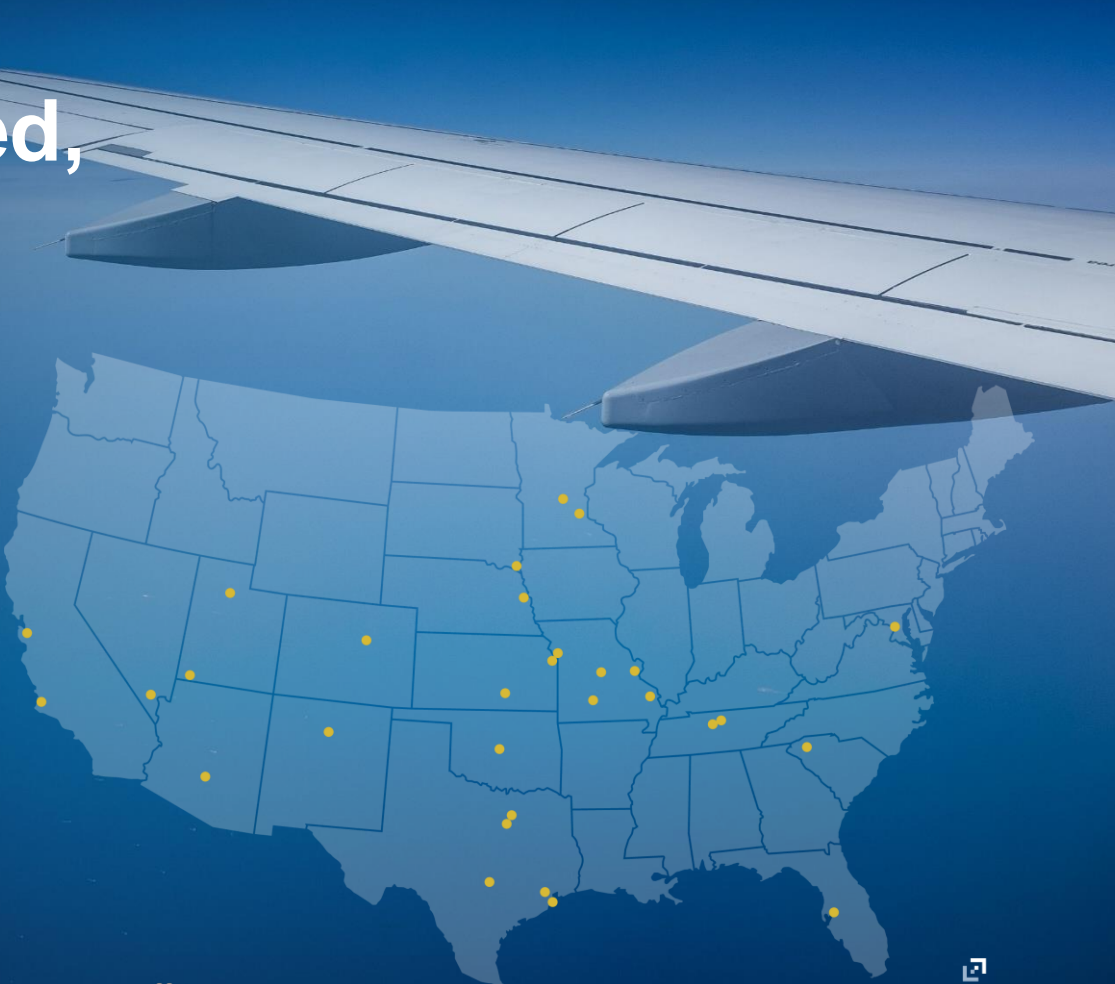
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