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# Last Branch Standing: A Journey Inside Today's Supreme Court

**Sarah Isgur**, Popular Media Personality for ABC News & The Dispatch, Political Insider & Influencer, Legal Expert

**Jean Paul Bradshaw, Senior Counsel**, Lathrop GPM (*Moderator*)

## Summary of *Last Branch Standing*

- Sarah will discuss the book generally

## Discussion of Supreme Court and current decisions

- Meet the Supreme Court – the 3-3-3 Makeup of the Current Court
  - The Deciders
  - The Conservative Honey Badgers
  - The Lonely Liberals
  - How they interact on decisions
- How to decide if something is a “big case”
- Is the Court functioning as the Constitution contemplated?
  - Compare to Executive and Legislative branches
- Public/media perceptions vs. reality
- Efforts to reform the Court
  - Chemerenski proposals

## Conclusions



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## Bankruptcy Updates and Trends

**The Hon. Brian Fenimore**, Western District of Missouri Bankruptcy Court

**Ben Struby, Partner**, Lathrop GPM

### Filing Trends

#### Agriculture: Distress patterns

- What are you seeing in the agricultural space, and how does it differ from general commercial filings?

#### Transportation bankruptcies: Drivers and ripple effects

- What are the factors behind the rise in transportation bankruptcies, and what are some practical considerations for lessors and secured creditors?

#### Merchant cash advances: Increased claims and litigation

- What is driving the increase in claims and litigation involving MCAs in bankruptcy and adversary proceedings?

#### Effects of AI

- Where is AI already changing bankruptcy practice?

#### Courthouse construction update



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# Evolving Government Priorities and What They Mean for Businesses

## Introduction

*Please be advised that no panelist is speaking on behalf of their former agency or office. All insights and opinions shared during the discussion are solely those of the individual panelists and do not reflect the views or positions of any governmental agency or affiliated organization.*

1. Panelists will walk through their respective government experience and roles
  - a. **Alison Auxter, Deputy General Counsel**, formerly with CFTC
  - b. **Stephanie Bradshaw, Counsel**, former AUSA, KCMO
  - c. **Tom Calhoun-Lopez, Counsel**, former AUSA, District of Minnesota
  - d. **Patty Silva**, formerly with SEC

## The Changing Landscape of Government Agencies

1. What did you see as the primary mission of your office or agency during your tenure?
2. How have the priorities of your former office or agency changed under the current administration?

## Navigating Agency Turnover and Inexperience

1. We have seen significant turnover in government counsel in the past year. How is this impacting the ability to process cases and where are the primary challenges?
  - a. Impact of reduced staff and high turnover on government investigations.
  - b. Loss of institutional knowledge and the challenges of dealing with less experienced agency counsel.
2. What are your tips for approaching supervisors or higher-ups to effectively advocate for a client?



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## Political Appointments and Judicial Shifts

1. We are seeing more and more appointments that seem to be based on political motivations rather than experience and knowledge. What does that mean for companies facing regulatory scrutiny?
  - a. Rise of political appointments lacking substantive industry knowledge.
  - b. How courts and judges are responding to government attorneys with less presumed credibility.

## Strategic Defense and Early Intervention

1. When is the right time for a company to bring in defense counsel during a government inquiry?
  - a. Actionable strategies for early intervention to mitigate legal risks and improve efficiency.
  - b. Differentiation between civil investigative demands and investigative subpoenas.
2. How does engaging counsel early help shape the narrative and prevent an indictment?

## Closing Remarks & Key Takeaways

### Additional Resources:

- [USAG Memo \(4/6/26\): Creation of the National Fraud Enforcement Division](#)



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# Three Things Every Lawyer and Leader Needs to Know About Insurance

**Bradley Dlatt, Counsel**, Lathrop GPM

**Carlton Callenbach, Litigation Counsel**, Lockton Companies

## 1. Treat Insurance Purchases Like Any Other Deal - Leverage Legal to Maximize Value

- Insurance policies are renewed annually. Insurers modify terms year-to-year, don't just blindly renew policies.
- Treat each annual renewal like a new deal. Build the right team and lean on them to perform appropriate diligence.
- Brokers are experts on pricing and marketplace. They rarely have time to go line-by-line through insurance policies to review. That is where outside coverage counsel can help.

## 2. Know What a “Claim” Is and When to Report It

- “Claims-Made” insurance policies like directors & officers (D&O), professional liability (E&O), cyber liability, and employment practices liability (EPLI) define “Claim” broadly. Even something relatively innocuous can trigger them.
- For example, claims-made policies often define claim to include any “written demand for monetary or non-monetary relief.”
- Failure to identify and report a demand letter as a claim, for example, can have ramifications on future policies. It can create new insurer defenses to otherwise valid claims.

## 3. Approach the Claims Process with Care a/k/a “Don’t Bring a Knife to a Gun Fight”

- Every claim is a story. Take care to avoid pleading yourself out of coverage.
- Understand what insurers need and what they don't.
- Keep good records.
- Preserve privilege.
- Don't be afraid to ask for help early. Insurers almost always have counsel involved before you think they do.



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May 6, 2026

# Litigation Trends & Targets



Presenters:

Brian Fries  
Partner  
Lathrop GPM

Sinead McGonagle  
Associate  
Lathrop GPM



# Fads or Transformative?

- **Number one topic on lawyers' minds?**
  - A.I.
  - Technological advances
  - Digital Mass Torts
    - Behavioral influences as opposed to chemical exposures or physical harms
- **What are the primary changes in our society as a whole?**
  - Divisiveness
  - Entrenchment in positions
  - “Ability to seamlessly deceive” “Deep fakes” “fake news” “conspiracies”



VS.



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# What The Data Shows

- No shortage of filings
  - Range of 200k filings/yr in federal courts
- Substantial increase in class action filings each year for several years.
- Plenty of automobile negligence, employment cases, civil rights, etc.
- More *pro se* cases.
- Data/Technology driven theme in many cases.



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# Trends in Class Actions

- Substantial increase in class action filings over last several years.
- Growth in privacy-related class actions (session replay technology, web site chatbots, web site pixels).
- Growth in cybersecurity/data breach filings.
- Increased AI-driven and consumer protection cases.
- Growth in ERISA related cases.

- Numerosity
- Typicality
- Common ?s of fact or law
- Adequate Representation

And then---

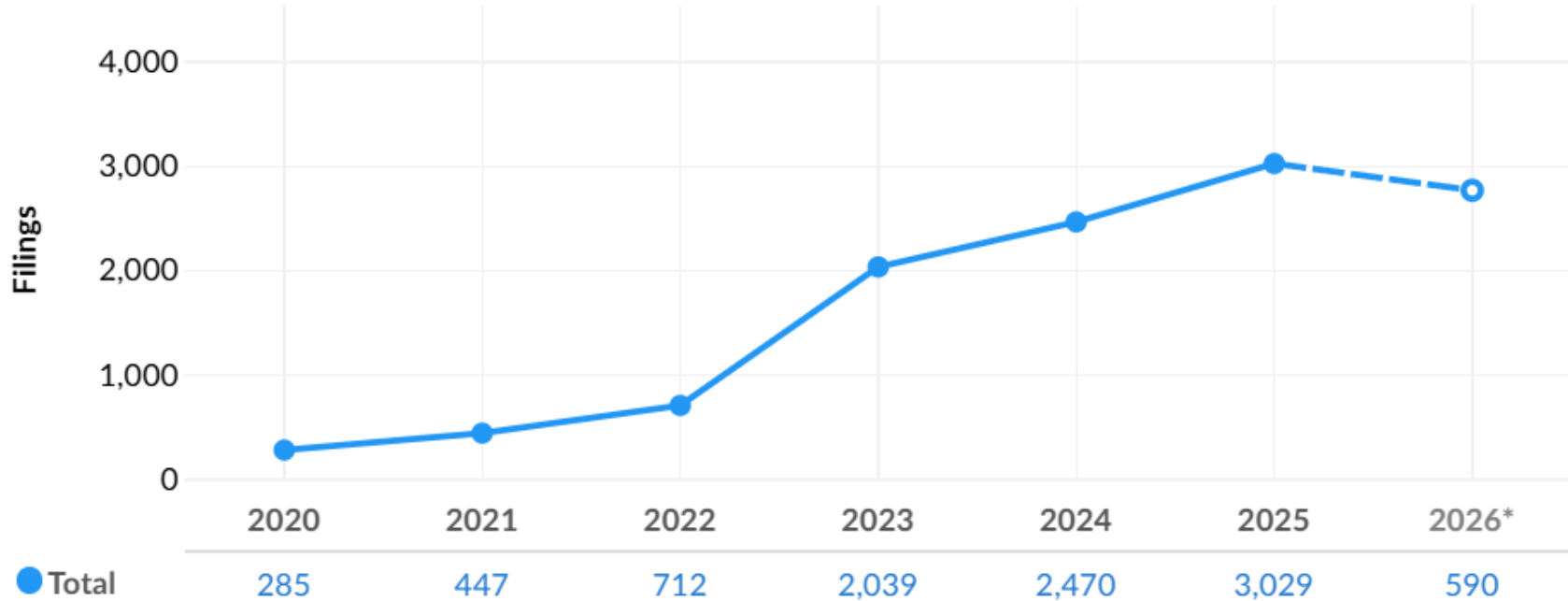
(b)(3) predominance of common issues



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# Number of Data Breach Cases filed, all Federal District Courts

Case Filings



\* 2026 numbers are year-to-date. Open dots are full-year estimates.

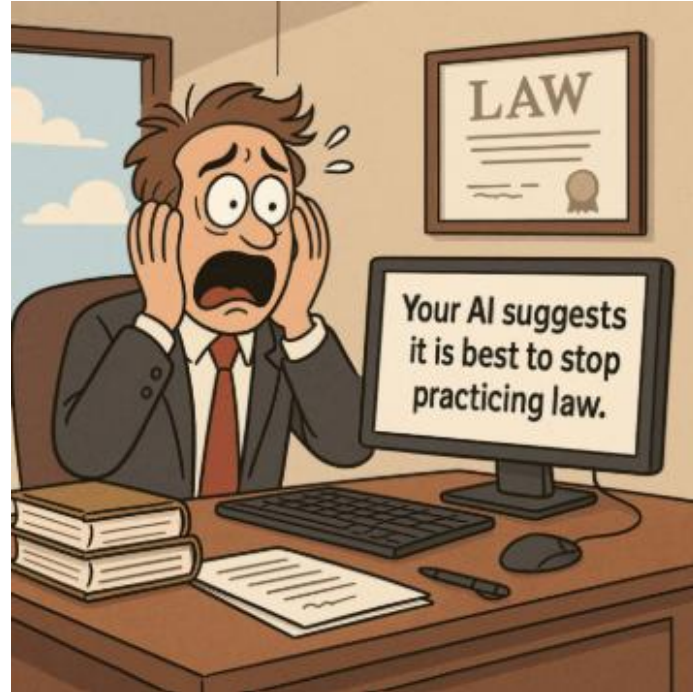
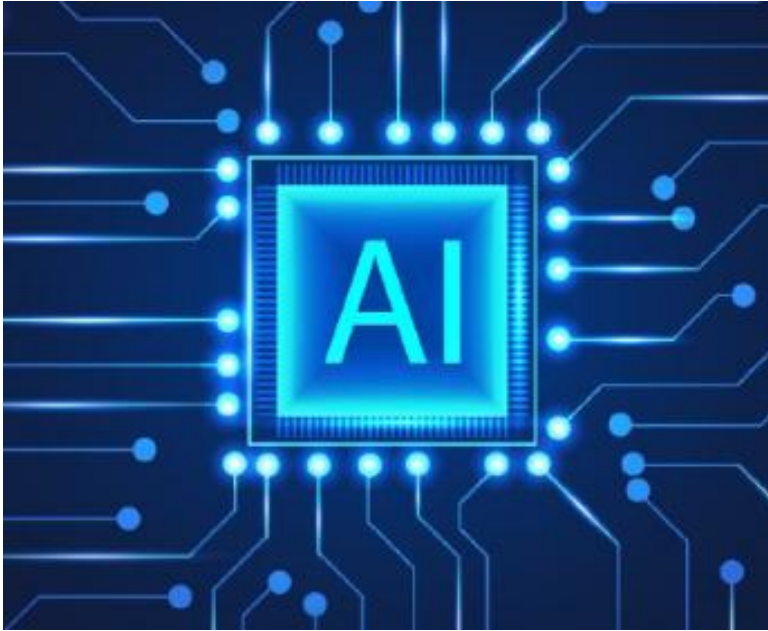
# Rise in Social Media Class Actions/Mass Actions/AGs



- Mass tort lawsuits accuse major social media platforms (Meta/Facebook & Instagram, TikTok, YouTube) of addictive algorithm design harming youth mental health
  - Federal MDL No. 3047
  - State Attorneys General
- March 25, 2026: California jury finds Meta and YouTube liable for negligent design
  - \$6 million in combined damages awarded
- Signals a broader effort to hold social media platforms accountable for alleged harms to minors



# A.I. Fuels Rise in Pro Se Lawsuits



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# Nonlawyer Law Firm Ownership



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# Nonlawyer Law Firm Ownership

- Alternative Service Providers
- Private Equity
- Litigation funding relationships



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# The “Nuclear Verdict”

- Jury awards are increasing in both frequency and magnitude
- “Nuclear verdicts” and “thermonuclear verdicts” are becoming more common across the U.S.
- Big-ticket verdict concerns fueling settlement and cost pressures



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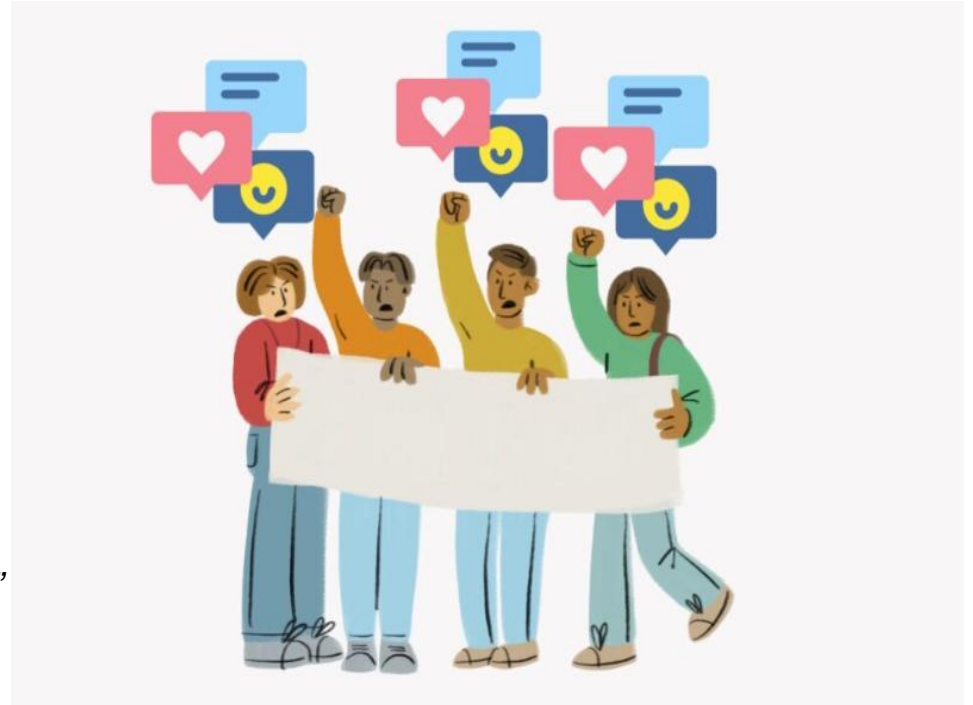
# Client Trends



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# What's Driving This?

- Anti-corporate sentiment
  - Media Influence
  - Plaintiff Attorney Strategies
    - Reptile Theory
    - Anchoring
- Societal issues from our first slide:
- *Divisiveness*
  - *Entrenchment in positions*
  - *“Ability to seamlessly deceive” “Deep fakes” “fake news” “conspiracies”*



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# In Sum...We Are In a Transformative Phase



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# Contact Information



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May 6, 2026

# Where will we be with AI in 5 years and what ethical pitfalls lie ahead?



Presenters:

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Travis McCallon  
Partner  
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# 2026 – Legal-Specific AI Platforms and General AI Tools



**Harvey AI**

*Legal-Specific*

Purpose-built for law firms; handles contracts, due diligence, and litigation analysis



**Legora**

*Legal-Specific*

Collaborative AI platform for contract drafting, review, and negotiation workflows



**Lexis+/Westlaw AI**

*Legal Research*

AI-assisted legal research with case law analysis, brief drafting, and citator functions



**Microsoft Copilot**

*Microsoft / Azure*

Integrated into M365; assists with Word, Outlook, Teams, and legal document workflows



**ChatGPT / GPT-4**

*OpenAI*

General-purpose LLM; widely used for drafting, research summaries, and analysis



**Claude**

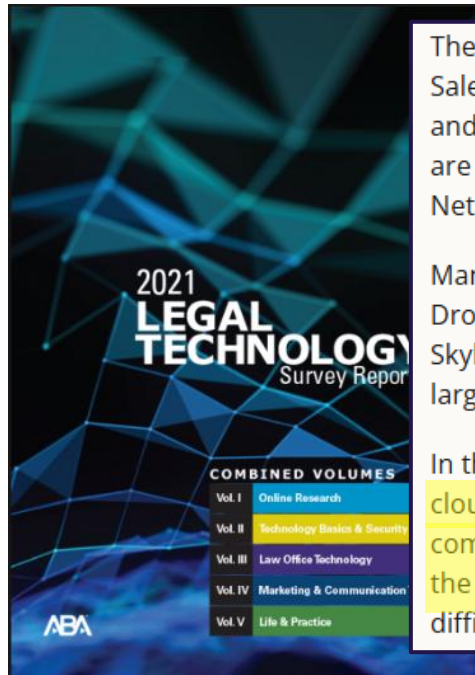
*Anthropic*

Constitutional AI model; used for long-document analysis and complex legal reasoning



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# First, let's look at where we were five years ago ...



The cloud approach has become quite popular in the business world (e.g., Salesforce.com, BaseCamp, Microsoft 365, Zoom, Microsoft Teams, LinkedIn, and Slack) and for individuals (e.g., Dropbox, Gmail, Evernote, Netflix, Facebook, and more). There are also a growing number of legal-specific cloud services, such as Clio, Rocket Matter, NetDocuments, Practice Panther, MyCase, and many more.

Many people also use cloud applications daily in their personal lives, from Gmail to Dropbox to Netflix to Zoom to Facetime and Facebook. According to a report by Skyhigh Networks, the average number of cloud applications used by each employee in large business enterprises has been estimated at 36 apps.

In the legal profession, it's still a much different story. Legal is a lagging industry in cloud use. That said, it is still surprising that even in 2021 the reported use of cloud computing in law practice stayed flat or even declined—despite the pandemic and all the news coverage about Zoom meetings and working from home. This result is difficult to comprehend, let alone explain.



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# An attorney's duty of competence covers technology

## Rule 1.1

**A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.**

**[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject.**



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***Mo. Rule 4-1.1 & KRPC 1.1 cmt. 8***

# Missouri informal opinion 2024-11

**Adoption date:** April 25, 2024

**Question:** Lawyer would like to use generative artificial intelligence (AI) platforms and services in Lawyer's practice and asks for guidance regarding whether Lawyer may ethically use this emerging technology. What ethical issues should Lawyer consider in developing a policy to use this technology in Lawyer's practice within Law Firm?

**Answer:** Various forms of artificial intelligence are used by lawyers every day. However, Lawyer rightly has distinguished that generative artificial intelligence, a type of AI wherein the platform being used is learning and further developing from each query or task to generate new content and produce an appropriate response in this context to assist Lawyer, requires an examination of ethical considerations just as any other new technology service or device does that is being considered for implementation into Law Firm's use.

First, Lawyer must consider the duty of competence in the appropriateness of use of generative AI. ... Lawyer should get education and training to ascertain what types of generative AI are and are not appropriate for use by Law Firm. Not all generative AI platforms and services are intended for use by lawyers, and Lawyer must understand the risks and benefits of implementing use of these technologies.



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***Mo. Informal Opinion 2024-11***

# An attorney's duty to expedite litigation

## Rule 3.2

**A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.**



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***Mo. Rule 4-3.2 & KRPC 3.2***

# Mediation/Alternative Dispute Resolution Tools

- **Full Online Dispute Resolution (ODR) platforms (AI + humans)**
  - ODRI
  - Vilulia
- **How it works**
- Upload a dispute (contracts, facts, emails)
- AI assists throughout the mediation lifecycle:
  - summarizes arguments
  - suggests settlement ranges
  - predicts outcomes
  - drafts agreements
- Still involves human mediators but with AI assistance
- **Consumer “legal automation” tools (pre-mediation resolution)**
  - DoNotPay
  - PettyLawsuit
- **How it works:** You describe your issue (e.g., landlord dispute)
- AI identifies legal grounds and generates:
  - demand letters
  - legal arguments
  - court forms
- If the other party settles, mediation is avoided.
- These tools essentially replace the “pre-negotiation phase” of mediation



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# Mediation/Alternative Dispute Resolution Tools

- **LLM-powered mediation assistants**
  - LLMediator
  - DRAssist
- **How it works:**
- These systems use LLMs to actively participate in mediation-like dialogue
  - Rewrites hostile messages more neutrally
  - Suggests compromises
  - Evaluates arguments
  - Identifies stronger claims
- Some prototypes simulate a mediator by generating responses in real time
- **Multi-agent / simulation-based mediation systems**
- AgentMediation
- **How it works:**
- These systems simulate multiple parties + mediator as AI agents
- Each “agent” represents:
  - Party A
  - Party B
  - Mediator
- They interact in a controlled environment
- Researchers study negotiation dynamics and outcomes



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# How are mediation tools trained to predict settlements?

- Models are hugely dependent on the reliability of their datasets. Common sources include:
  - **Court records**
    - Case filings, motions, rulings, final outcomes
    - Dockets with timelines and procedural steps
  - **Settlement datasets (harder to get)**
    - Insurance claims databases
    - Employment dispute records
    - Internal law firm data
  - **Contracts + dispute context**
    - Clauses (liability caps, arbitration terms)
    - Communications between parties
- ❖ Because **most settlements are private**, datasets are often incomplete or biased.



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# Expect *pro se* litigants to up their pleading game

- **Guided court form systems (official / court-backed)**

- Odyssey Guide & File

- **How it works:**

- Often run by courts or legal aid groups:
- Asks step-by-step questions (like TurboTax)
- Convert answers into court-approved forms
- Sometimes files directly with the court

## AI Drafting Document Tools

- ProSei
- Pleadwise
- LegalFileAI

### AI drafts:

- complaints
- motions
- answers

Includes jurisdiction-specific formatting, case law suggestions, argument structuring

## Full-stack *pro se* platforms: case management + education

- Courtroom 5

### How they work

These try to replace a lawyer's workflow:

- Step-by-step litigation roadmap
- Document templates + drafting tools
- Case law search
- Deadline tracking

Guide users through the **entire lifecycle of a lawsuit**, not just one filing



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# The latest on hallucinated cases here at home

*Lexos Media IP, LLC v. Overstock.com, Inc.* – IP case - District of Kansas federal court (Judge Robinson)

**February 2, 2026:** *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\(b\)](#). Such reliance does not constitute “existing law” and certainly does not provide to the Court a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law. As the Tenth Circuit recently noted, “there is nothing inherently problematic with the use of GenAI in the practice of law.” Instead, the violation here is due to the failure to verify that the cases generated by ChatGPT actually exist and confirm that they stand for the propositions for which they are cited. Because there is no dispute that all five [Plaintiff] attorneys signed both documents that included these errors, and they admit that not one of them verified that the case law in those briefs actually exist and stand for the propositions for which they were cited, their conduct violates [Rule 11\(b\)\(2\)](#).*

*... all of the attorneys who signed the briefs had a nondelegable duty to conduct a reasonable inquiry into the legal authority relied on in the briefs before signing their names.*



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# Lexos Media IP, LLC v. Overstock.com, Inc. (cont.)

*As another district court in the Tenth Circuit has explained, “[w]hen an attorney gives another permission to sign on their behalf without reviewing the document, it is not only actionable under Rule 11 but also a possible violation of a state’s ethical rule of competence.”*

*Discussing the abdication of Kansas local counsel’s duty when he did not read the cited cases to make sure they were accurate before filing: “[H]e delegated a nondelegable duty. Adherence to Rule 11 is particularly important in the context of local counsel. In this district, counsel admitted pro hac vice may not directly file documents in CM/ECF. They are required to use local counsel to do so. And local counsel gives those filings ‘a presumption of legitimacy.’ This is why the Court’s local rule requires pleadings prepared by pro hac vice attorneys be signed by local counsel who is in good standing and that local counsel meaningfully participate in the proceedings.”*



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# Litigation Involving AI Content

- Training data often protected by copyright, has led to significant litigation
  - Several decided cases, dozens of pending cases
- Fair use is a primary issue
  - Purpose and character of the use (commercial, transformative)
  - Nature of the copyrighted work
  - Amount and substantiality of use
  - Effect of use on market for or value of copyrighted work



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# Primary Decided Cases

## Fair Use

- *Bartz v. Anthropic PBC*, 787 F. Supp. 3d 1007, 1014 (N.D. Cal. June 23, 2025)
- *Kadrey v. Meta Platforms, Inc.*, 788 F. Supp. 3d 1026 (N.D. Cal. June 25, 2025)

## No Fair Use

- *Thomson Reuters Enter. Ctr. GMBH v. Ross Intelligence Inc.*, 765 F. Supp. 3d 382 (D. Del. Feb. 11, 2025)



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# *Thompson Reuters v. Ross Intelligence - Facts*

- Ross trained its legal AI search tool using “Bulk Memos,” which were built from Westlaw headnotes; owner of Westlaw sued
- Court found infringement as to content that was copied from and substantially similar to Westlaw headnotes (summary judgment)
- Court found no fair use (summary judgment)



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# Thompson Reuters v. Ross Intelligence – Fair Use

- Purpose and character of the use (Factor 1)
  - Ross’s training use was not transformative “because it does not have a ‘further purpose or different character’ from Thomson Reuters’s.”
    - “Ross was using Thomson Reuters's headnotes as AI data to create a legal research tool to compete with Westlaw.”
  - Intermediate nature of copying (copies of Westlaw material do not appear in output) made non-transformative finding a close issue
    - But Court ultimately found that the copying was not necessary to achieve Ross’s purpose
  - Important: Generative AI not at issue
    - Ross’s AI just returned judicial opinions in response to questions, which is similar to how Westlaw uses headnotes
    - “Because the AI landscape is changing rapidly, I note for readers that only non-generative AI is before me today.”



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# *Thompson Reuters v. Ross Intelligence* – Fair Use

- Effect of use on market for or value of copyrighted work (Factor 4)
  - At a practical level, Ross “meant to compete with Westlaw by developing a market substitute”
  - Court also recognized a *potential* market for Thompson Reuters to use or sell its data for AI training, which weighed against fair use



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# ***Bartz v. Anthropic PBC – Facts***

- Anthropic downloaded, scanned (physical copies), and stored books for use in training generative AI models; book authors sued
- Court found training use was fair use (summary judgment)



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# Bartz v. Anthropic PBC – Fair Use

- Purpose and character of the use (Factor 1)
  - Anthropic’s training use “was transformative—spectacularly so” because it “used copies of Authors’ copyrighted works to iteratively map statistical relationships . . . so that a completed LLM could receive new text inputs and return new text outputs”
  - Court analogized to a regular person reading and recalling a book: “They may need to pay for getting their hands on a text in the first instance. But to make anyone pay specifically for the use of a book each time they read it, each time they recall it from memory, each time they later draw upon it when writing new things in new ways would be unthinkable.”
  - Important: no allegation that AI *output* infringed
    - “[I]f the outputs seen by users had been infringing, Authors would have a different case.”



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# Bartz v. Anthropic PBC – Fair Use

- Effect of use on market for or value of copyrighted work (Factor 4)
  - Court rejected the argument that allowing AI to train on copyrighted books will result in “an explosion of works” competing with the copyrighted books
    - Court again analogized to regular persons: “Authors’ complaint is no different than it would be if they complained that training schoolchildren to write well would result in an explosion of competing works.”
  - Court also noted that there could be a potential market for authors to use or license their work for AI training, but unlike *Thompson Reuters* the Court found that such a market is “not one the Copyright Act entitles Authors to exploit”
  - Important: no allegation that AI output infringed
    - “Authors concede that training LLMs did not result in any exact copies nor even infringing knockoffs of their works being provided to the public. If that were not so, this would be a different case.”



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# Bartz v. Anthropic PBC – Relevance of Piracy

- A subset of Anthropic’s books were obtained through pirated sources and subsequently retained; some but not all of these copies were used to train AI
- The Court found no fair use for such copies (even if later used for training AI)
  - “Our analysis must attend to different uses of different copies, and even to different uses of the same copies”
  - Pirating copies for the purpose of building a research library was its own use and not a transformative one
  - Maintaining a library of pirated books “plainly displaced demand for Authors’ books”
    - “Not every person who merely intends to make a fair use of a work is thereby entitled to a full copy in the meantime, nor even to steal a copy so that achieving this fair use is especially simple or cost-effective.”
  - Technically, it is an open question how the Court would have treated pirated copies had every pirated copy been used only for training AI



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# *Kadrey v. Meta Platforms, Inc.* – Facts

- Meta downloaded books from “shadow libraries” and used them to train generative AI models; book authors sued
- Court found training use was fair use (summary judgment)—with an asterisk



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# *Kadrey v. Meta Platforms, Inc.* – Fair Use

- Purpose and character of the use (Factor 1)
  - Meta’s use was transformative because its use was training LLM’s, “which are innovative tools that can be used to generate diverse text and perform a wide range of functions,” while the purpose of the authors’ books “is to be read for entertainment or education”
    - Unlike *Bartz*, the Court reasoned that “an LLM’s consumption of a book is different than a person’s”
  - Important: no allegation that AI *output* infringed



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# Kadrey v. Meta Platforms, Inc. – Fair Use

- Effect of use on market for or value of copyrighted work (Factor 4)
  - Like *Bartz*, the Court found that even if there was a market for authors to use or license their work for AI training, that is not a market the authors are entitled to control
  - Unlike *Bartz*, the Court found “promising” the argument that allowing AI to train on copyrighted books will result in an explosion of works competing with the copyrighted books
    - The Court expressly criticized *Bartz* on this point, finding the *Bartz* Court’s analogy “inapt”: “using books to teach children to write is not remotely like using books to create a product that a single individual could employ to generate countless competing works with a miniscule fraction of the time and creativity it would otherwise take.”
  - Nevertheless, the Court found that the plaintiffs had not presented enough evidence to raise a genuine dispute of material fact regarding a market dilution theory
    - “[P]laintiffs never so much as mentioned” it in their complaint or summary judgment motion.
    - “Because the issue of market dilution is so important in this context, had the plaintiffs presented any evidence that a jury could use to find in their favor on the issue, factor four would have needed to go to a jury.”



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# *Kadrey v. Meta Platforms, Inc.* – Relevance of Piracy

- Meta’s books were obtained through unauthorized sources, but the Court applied a different analysis than *Bartz* on this issue
- The Court did not view Meta’s “piracy” as its own non-transformative use
  - “To say that Meta’s downloading was ‘piracy’ and thus cannot be fair use begs the question because the whole point of fair use analysis is to determine whether a given act of copying was unlawful.”
- The Court would have looked to whether Meta’s “piracy” benefitted the “shadow libraries” where the books originated, but plaintiffs presented no evidence on the issue
- “Presumably, where copying for AI training isn’t fair use, AI developers will simply figure out a way to license the works they wish to use as training data.”



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# Early Trends and Questions

- Courts so far: Nature of use and effect on the market (fair use factors 1 and 4) have been the most important to date
- Courts so far: Using copyrighted work to train *generative* AI is transformative
  - Result likely different if *outputs* can be shown to infringe
  - Similarity of the use to the copyright owner's use is relevant



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# Early Trends and Questions

- Open question: How issues of transformation and market effect will play out in the context of training data comprising songs, images, news articles, etc. (as opposed to books)
  - *New York Times Co. v. Microsoft Corp.* (S.D.N.Y.) (news articles)
  - *Andersen v. Stability AI* (N.D. Cal) (images)
- Open question: Whether the potential for market dilution can prevent a finding of fair use
  - Highly fact-specific and evidence-intensive
- Open question: The extent to which obtaining unlicensed, unauthorized works impacts the fair use analysis
- Open question: The extent to which AI outputs will be found to infringe



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# Lessons for Businesses Using AI

- Ensure appropriate risk mitigation in third-party contracts, including indemnification from copyright infringement liability
  - Especially true given that claims regarding *output* infringement may become more popular (because fair use less likely to apply)
- Avoid using unauthorized, unlicensed training data in proprietary platforms
  - Build in guardrails to minimize regurgitation of copyrighted material in outputs



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# An attorney's duty to maintain confidentiality

## Rule 1.6

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

\* \* \*

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.



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***Mo. Rule 4-1.6 & KRPC 1.6***

# An attorney's duty to be diligent

## Rule 1.3

A lawyer shall act with reasonable diligence and promptness in representing a client.

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. However, a lawyer is not bound to press for every advantage that might be realized for a client. A lawyer has professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. A lawyer's workload should be controlled so that each matter can be handled adequately.



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***Mo. Rule 4-1.3 & KRPC 1.3***

# What does the future of discovery look like?

- Fed. R. Civ. P. 26(b)(1) (“Scope in General”) – Proportionality formally inserted in 2015 as part of continued effort to deal with the problem of over-discovery.
- *Fun while it lasted ...*
- When an AI agent can review an entire company’s email system in minutes and identify all relevant and responsive information, it will reduce the burden to gather potentially responsive information. But it will also create a potential quagmire where various and sundry statements of individuals throughout the company are pulled into the case.
  - Defining relevant custodians – and reaching agreement with the other side – will continue to be paramount.
  - Proportionality battle may need to shift to proportional witnesses/custodians, rather than being document focused.



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# What is your team researching without your knowledge?



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# What is your team researching without your knowledge?

- ***Warner v. Gilbarco, Inc.***, Case No. 2:24-cv-12333, 2026 WL 373043 (E.D. Mich. Feb. 10, 2026)
  - Employer sought discovery of ChatGPT/browsing history
  - Court denied discovery: not relevant/proportional; protected by work product
  - No waiver: AI tools are “tools, not persons”; waiver requires disclosure to an adversary
  - Court rejected argument that AI usage nullifies work product protection
- ***United States v. Heppner***, Case No. 25 Cr. 503, 2026 WL 436479 (S.D.N.Y. Feb. 17, 2026)
  - FBI seizure of devices led to discovery dispute over Claude communications
  - Court held no attorney-client privilege: not counsel communications; privacy policy defeats confidentiality; no “trusting human relationship”
  - Court held no work product: defendant acted on his own(not counsel’s agent); no strategy reflected



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# How do we protect privilege for co-employee AI efforts?

**Consider the possibility of creating an AI agent that comes from the General Counsel's office.**



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# What about loading non-confidential documents produced into an AI engine?

In the old world, documents produced in discovery that were not considered “confidential” could be produced with no expectation that they be kept private or confidential. In the new world order, any non-confidential documents produced could be loaded into an AI engine saved in perpetuity without proper constraints. Even documents that seemed innocuous could be used by an AI engine to reverse engineer a business’ approach and processes in a way never before contemplated. Litigators therefore must be extra vigilant when producing documents that were not previously considered confidential.



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# Recent D. Kan. order protecting non-confidential documents produced in discovery from AI perpetuity

March 25, 2026

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

ELLSWORTH WILLIAM JEFFRIES, III, et al.,

Plaintiffs,

v.

HARCROS CHEMICALS INC., et al.,

Defendants.

Case No. 25-2352-KHV-ADM



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The parties have further crystallized their dispute on this point, which is now before the court on Defendants’ Motion to Amend the Protective Order. (ECF 120.) By way of this motion, Defendants seek to amend the protective order language to expand the AI provisions described above to apply not only to documents and information designated as “Confidential,” but more broadly to all “Discovery Materials”—*i.e.*, all documents and information produced in discovery. Highly summarized, Defendants seek to prevent parties from uploading even non-confidential documents into public or “open loop” generative artificial intelligence tools (collectively, “open AI Tools”).



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On balance, the court finds that Defendants have met their burden to show the need for the relief sought given the AI-specific risks identified by Defendants in this particular case—namely, where documents to be submitted to the AI Tool come from entities in a critical infrastructure industry and disclosure may violate data privacy laws. Plaintiffs’ arguments do not persuade the court otherwise. Parties are often required to produce massive amounts of information in complex litigation, and this often includes documents that may include a small amount of information that is responsive to discovery requests amongst otherwise largely irrelevant or non-responsive information. *See, e.g., Ritchie v. Wal-Mart Stores East, L.P.*, No. 19-4067-SAC-ADM, 2020 WL 5369392, at \*2 (D. Kan. Sept. 8, 2020)



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