

Federal Court in New York Issues Landmark Opinion on AI, Privilege, and Client-Generated Legal Research

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In a first of its kind decision (the “Opinion”), in the case of *United States v. Heppner*, Civil 1:25-CR-00504 (JSR), the U.S. District Court for the Southern District of New York (“SDNY”), held on February 17, 2026, that written exchanges with a publicly available generative AI platform are not protected by either the attorney–client privilege or the work product doctrine. The SDNY Opinion squarely addresses whether a client’s use of AI tools to analyze legal issues or devise defense strategies can be shielded from government inspection. The Court concluded they are not, emphasizing that AI platforms are not attorneys, do not create confidential communications, and expressly disclaim the provision of legal advice.

The Need for a Lawyer’s Loop

The Opinion provides clarity on how AI intersects with traditional privilege doctrines. The SDNY highlighted that communications with AI platforms lack the “trusting human relationship” (known as the “lawyer’s loop”) that privilege jurisprudence requires, and that users of such platforms consent to privacy policies allowing the provider to store, train on, and even disclose user inputs—including to government authorities. Significantly, the Court rejected any argument that a client’s later decision to share AI outputs with counsel can retroactively cloak these communications in privilege. The message is unmistakable: clients’ independent use of generative AI for legal analysis is unprotected and potentially discoverable.

This Opinion heralds that clients should not submit AI generated legal analysis to their attorneys expecting it to be privileged, and more importantly, that non-attorneys should refrain from attempting to “double check” or supplement attorneys’ legal advice by uploading sensitive facts or strategies into AI systems. The Opinion reinforces the importance of allowing lawyers—not unregulated AI tools—to conduct the legal research, analysis, and strategizing required for competent representation of a client.

McV has adopted a robust Digital Code of Conduct for the Use of Artificial Intelligence by its lawyers and other personnel, to ensure that all firm approved AI tools operate within secure, enterprise grade environments that provide

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rigorous confidentiality protections, accountability, and privilege preserving infrastructures—safeguards entirely absent from the publicly available platform at issue in Heppner.

As AI continues to reshape the practice of law, this SDNY Opinion underscores a core principle: the lawyer—not the algorithm—must remain the client’s primary source for legal analysis and counsel if privilege and confidentiality are to be preserved.

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