

April 9, 2026

**FEDERAL JUDGE RULES THAT COMMUNICATIONS BETWEEN A LITIGANT
AND PUBLIC ARTIFICIAL INTELLIGENCE PLATFORM ARE NOT PROTECTED
BY ATTORNEY-CLIENT PRIVILEGE OR WORK-PRODUCT DOCTRINE**

By: Thomas R. Lahey, Esq.

On February 17, 2026, Judge Jed S. Rakoff, U.S.D.J., of the U.S. District Court for the Southern District of New York ruled in *United States v. Heppner* that a criminal defendant's interactions with a public generative artificial intelligence ("AI") platform were not protected by attorney-client privilege or the work-product doctrine. In so ruling, the District Court granted the government's pre-trial motion seeking discovery of the defendant's prompts and the AI tool's generative responses.

The District Court based its ruling on the public-facing nature of the Claude AI tool and Anthropic's end user privacy policy, which permits Anthropic to sell and/or disclose user data to third parties, including federal, state, and local governments. The District Court concluded that the defendant's interaction with the Claude AI tool is not akin to a communication between an attorney and his or her client, even if the defendant asserts that he or she maintained a "trusting human relationship" with the AI tool. The Court further found that the interactions were not confidential due to Anthropic's end user agreement, which provides that Anthropic collects data on both users' "inputs" and Claude's "outputs," that it uses such data to "train" Claude, and that Anthropic reserves the right to disclose such data to a host of "third parties," including governmental regulatory authorities." In reviewing Anthropic's end user privacy policy, the Court reasoned that the policy clearly puts Claude's users on notice that Anthropic, even in the absence of a subpoena compelling it to do so, may "disclose personal data to third parties in connection with claims, disputes[,] or litigation." Finally, the Court ruled that because the defendant communicated with Claude "of his own volition," there could be no finding that the defendant communicated with Claude "for the 'express purpose of talking to counsel,'" as alleged. For these reasons, the District Court declined to extend the attorney-client privilege to a litigant's interactions with an AI tool.

Florham Park

220 Park Avenue
Florham Park, NJ 07932
973-539-1000

Paramus

115 West Century Road
Suite 100
Paramus, NJ 07652
201-262-1600

Sparta

351 Sparta Avenue
Sparta, NJ 07871
973-295-3670

New York

9 East 40th Street
New York, NY 10016
646-652-7775

Additionally, the Court declined to apply the attorney work-product privilege to the defendant's interactions with Claude because they were not "prepared by or at the behest of counsel," nor did they reflect defense counsel's strategy in the litigation.

Litigants who utilize generative AI tools for the purpose of seeking legal advice should be aware of this landmark decision – a first of its kind in the era of AI. Those conversations may not be confidential or privileged. Litigants – and even those not in litigation but who are represented by counsel in anticipation of litigation or where litigation is reasonably foreseeable – should consult with their counsel before interacting with any AI tool regarding any legal matter. Communications between the attorney and the client are privileged and confidential subject to the Court Rules. This ruling by the District Court in SDNY suggests that communications with public AI tools are discoverable and can be used against any party in litigation, including civil litigation.

For more information on this ruling and its potential impacts, please contact Thomas R. Lahey, Esq. at tlahey@spsk.com.

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