



# THE STRAIGHT WORD

BURLINGTON COUNTY BAR ASSOCIATION  
MARCH 2026 / VOLUME 3-2026

mark  your **Calendar**

**MARCH 2026**

## March 2026

- 6 LUNCH & LEARN: LBGTO+ Cases Before U.S. Supreme Court at 12:30-1:30 p.m.
- 17 LUNCH & LEARN: Employment Law: Your Adversary's Pet Peeve - How to Fix (ZOOM)
- 17 IN PERSON Monthly Board Meeting at 4:30 p.m. Bradford Estates
- 17 AWARDS GALA AT BRADFORD ESTATES beginning 5:45 immediately following monthly BCBA Board Meeting
- 31 CLE: Hot Topics in Local Government Law (ZOOM)

## April 2026

- 2 Attorney Wellness Committee: How to Manage Stress in an Organizational Environment 4:00 - 6:00 p.m.
- 15 Monthly Board Meeting at 4:30 p.m.
- 30 Virtual Tour of ISTANBUL

## May 2026

- 6 LAW DAY Proclamation at 9:00 a.m. at Olde Courthouse
- 6 LAW DAY Event: Medford Village Country Club at 5:30

## June 2026

- 4 Installation Dinner (Location TBD)
- 19 Annual Bar Picnic at Flying W from 1:00 - 5:00 p.m.



**It's Award Season!**

**Mark your calendars for  
the Annual Awards Gala  
on March 17th as we honor  
and thank:**

**Jazlyne Caban  
Criscuolo Awardee**

**Nilajah S. Ford  
Women in the Profession  
Awardee**

**Timothy P. O'Brien<sub>1</sub>  
Haines Awardee**

# AI is Not an Attorney

by: David R. Dahan, Esquire and Basia Peragine, Esquire

In early January 2026, our firm presented a CLE seminar on the use of AI and the potential impacts it can have on confidentiality. Now, only a month later, the Southern District of New York (S.D.N.Y.) has validated these concerns, ruling that, on the facts presented, AI-exchanged documents are not protected by the attorney-client privilege or work product doctrine, regardless of if they are later shared with counsel. The ruling, one of the first of its kind, offers early guidance



into how Courts are interpreting the intersection between privilege and AI. On February 17, 2025, the S.D.N.Y. issued its opinion in United States v. Heppner, explicitly stating its intent to answer, “whether, when a user communicates with a publicly available AI platform in connection with a pending criminal investigation, are the AI user’s communications protected by attorney-client privilege or the work product doctrine?” United States v. Heppner, 2026 U.S. Dist. LEXIS 32697, \*2. For the reasons that follow, the Court found it did not.

By way of background, in October of 2025, a grand jury returned an indictment charging the Defendant with securities fraud, wire fraud, conspiracy to commit securities and wire fraud, making false statements to auditors, and falsifying corporate records. Id. at 3. Thereafter, the Federal Bureau of Investigation executed a search warrant at the Defendant’s home, seizing, among other things, approximately 31 documents that memorialized communications that the Defendant had with the generative AI platform “Claude.” Id. at 4. According to counsel for the Defendant, the communications that he had with Claude took place without any suggestion from counsel that he do so. Id. Nonetheless, the Defendant used the AI platform to prepare reports that outlined potential defense strategies and what he might argue with respect to the facts and law. Id. Thus, counsel asserted that the Defendant had created the documents for the purpose of speaking with counsel to obtain legal advice in anticipation of a potential indictment, and that the documents should be covered by attorney-client privilege. Id. at 4, 5.

The Court denied defense counsel’s argument on three main grounds: 1) The AI platform is not an attorney, 2) there was no expectation of confidentiality, and 3) the Defendant did not communicate with the platform for the purpose of obtaining legal advice. Id. at 5-10. As to the first ground, the Court found that the Defendant could not argue that Claude was an attorney. Id. at 6. Therefore, there was no attorney-client privilege. Id. In doing so, the Court explained that

# AI is Not an Attorney

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the attorney-client privilege requires “a trusting human relationship” with someone who owes fiduciary duties. *Id.* at 6, 7. Moreover, the Court found that the Defendant’s communications with Claude were not communications with counsel and noted that the Claude platform terms of service expressly disclaimed any attorney-client relationship. *Id.* at 6, 9. In addressing whether there was a reasonable expectation of privacy, the Court focused on Claude’s privacy policy, which explicitly states that the AI platform collects user inputs and outputs and can disclose them to third parties. *Id.* at 7, 8. Because the Defendant voluntarily input information that could be disclosed to a third party, this information is no longer covered by privilege. *Id.* at 8. Lastly, the Court found that the Defendant did not use the platform for the purpose of obtaining legal advice, as the Defendant’s counsel did not instruct Defendant to use AI and the AI itself disclaimed giving legal advice in its terms of service. *Id.* at 8-10. In doing so, the Court emphasized that non-privileged communications do not become privileged simply because they are later shared with counsel. *Id.* at 9-10.

With respect to its analysis of the work product doctrine, the Court noted that the doctrine, “at its core[,] shelters the mental processes for the attorney, providing a privileged area within which he can analyze and prepare his client’s case.” *Id.* at 10 (internal citation omitted). The Court concluded that the documents did not merit protection under the doctrine because they were “not prepared by or at the behest of counsel” and “they did not ‘reflect’ counsel’s strategy at the time that [the Defendant] created them.” *Id.* at 11 (internal citation omitted).

The Court’s ruling in Heppner offers early practical guidance for best practices in using AI platforms. To ensure clients maintain confidentiality, it is important for attorneys to have candid conversations with clients about the use of AI and best practices. In doing so, attorneys should caution clients that AI platforms are not confidential, and most importantly ensure clients know that AI is not an attorney.

