

ARTICLES

Federal Court Rejects Privilege Assertion for AI-Generated Research

By Nancy Del Pizzo and Jaana Singh – March 5, 2026

On November 4, 2025, federal agents arrested Bradley Heppner and seized thirty-one AI-generated documents created for the express purpose of obtaining legal advice. *See United States v. Heppner*, No. 25-cr-503 (JSR), 2026 WL 436479 (S.D.N.Y. Feb. 17, 2026). Defense counsel described them on a privilege log as “[a]rtificial intelligence-generated analysis conveying facts to counsel for [the] purpose of obtaining legal advice,” but conceded that Heppner prepared the AI documents without direction from his counsel. Defense Privilege Log, Dkt. No. 23-2, at 7–8, *Heppner*, No. 25-cr-503 (JSR) (S.D.N.Y.). District Judge Jed S. Rakoff, sitting in the United States District for the Southern District of New York, disagreed with the characterization that the documents were privileged.

On February 10, 2026, Judge Rakoff ruled from the bench that there is no attorney-client or work product protection for documents a client created using the generative AI chatbot Claude and subsequently sent to his lawyer. Minute Entry, Dkt. No. 27, *Heppner*, No. 25-cr-503 (JSR) (S.D.N.Y.).

In his February 17, 2026, written opinion, Judge Rakoff explained his reasoning. The court’s decision turned on its finding that Claude cannot satisfy the fundamental requirement that privileged communications occur between a client and counsel. *Heppner*, 2026 WL 436479, at *2. The court observed that privilege presupposes a “trusting human relationship” with “a licensed professional who owes fiduciary duties and is subject to discipline,” a relationship that does not exist between a user and an AI chatbot. *Id.* (citing Ira P. Robbins, “Against an AI Privilege”, JOLT Dig., Harvard L. Sch. (Nov. 7, 2025) (<https://jolt.law.harvard.edu/digest/against-an-ai-privilege>)).

Judge Rakoff found the privilege assertion failed because Heppner admittedly input confidential notes into a third-party platform, the consumer version of Claude, which expressly trains on user data and reserves the right, per its privacy policy, to disclose data to third parties and government authorities. *See Id.* (citing “Anthropic, Privacy Policy” (as of Feb. 20, 2026)). Under those conditions, the court found that no reasonable expectation of confidentiality could exist. The court further noted that Claude’s terms of service directly undercut Heppner’s argument: Claude expressly disclaims that it is not a lawyer, cannot offer formal legal advice or recommendations, and instead recommends consulting with a qualified attorney. *Id.* As for its rejection of work product protection, the court held that independently produced research, even if later transmitted to an attorney, does not qualify as protected work product—a designation reserved to shelter the mental impressions and legal strategies of the attorney, not the client. *Id.* at *3.

This decision is largely fact-specific, suggesting a narrow holding anchored in traditional principles of privilege. Courts may conceivably reach a different conclusion where a client’s use

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of an AI tool is directed by counsel, or where the tool at issue, unlike Claude, does not train its model on user inputs or expressly reserve the right to retain or use its user's inputs for any purpose.

The ruling is not an indictment of a broader adoption of AI in legal practice, but it does signal caution. When using AI tools in connection with legal work, whether directing a client or using AI themselves, practitioners are best advised to scrutinize their service agreements with their AI provider and rely only on enterprise tools that contractually commit to confidentiality, prohibit the use of inputs for training, limit retention of those inputs, and adhere to best-practice information security policies.

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