

The Times They Are A-Changin'

Bob Dylan

Come gather 'round people wherever you roam
And admit that the waters around you have grown
And accept it that soon you'll be drenched to the bone
If your time to you is worth savin'
Then you better start swimmin' or you'll sink like a stone
For the times, they are a-changin'

Come writers and critics who prophesize with your pen
And keep your eyes wide, the chance won't come again
And don't speak too soon for the wheel's still in spin
And there's no tellin' who that it's namin'
For the loser now will be later to win
'Cause the times, they are a-changin'

Come senators, congressmen, please heed the call
Don't stand in the doorway, don't block up the hall
For he that gets hurt will be he who has stalled
'Cause the battle outside ragin'
Will soon shake your windows and rattle your walls
For the times, they are a-changin'

Come mothers and fathers
throughout the land
And don't criticize what you can't
understand
Your sons and your daughters are
beyond your command
Your old road is rapidly aging
Please get out of the new one if you
can't lend your hand
'Cause the times, they are a-changin'

The line it is drawn, the curse it is cast
The slowest now will later be fast
As the present now will later be past
The order is rapidly fadin'
And the first one now will later be last
'Cause the times, they are a-changin'

Maintaining Your Ethical Compass in the Midst of Chaos

Kelly L. Faglioni
Partner & Deputy General Counsel
Hunton

Caryn C. Frick
Director, Assistant General Counsel
Capital One

Roadmap




I. THE USE OF GENERATIVE AI TOOLS IN THE LEGAL PROFESSION

II. ETHICS IN A NON-ENFORCEMENT CLIMATE

III. LAWYERS IN THE CROSSHAIRS

IV. JUDGES IN THE CROSSHAIRS



TECHNOLOGY IN THE LEGAL PROFESSION

ABA Commission on Ethics 20/20

(created in 2009; report in 2012)

“Technology and globalization have transformed the practice of law in ways the profession could not anticipate.”

“Technology affects nearly every aspect of legal work, including how we store confidential information, communicate with clients, conduct discovery, engage in research, and market legal services.”

HUNTON





Ghosts of Technology Mistakes Past

- Accidental “reply all” or other inadvertently sent communications
- Removable PDF redactions
- Inadvertently shared metadata



TECHNOLOGY IN THE LEGAL PROFESSION

ABA Commission on Ethics 20/20 Recommendations for Rule Changes

Competence: a lawyer “should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology” in order to “maintain the requisite knowledge and skill.” **R. 1.1, cmt [6]**

Confidentiality: “Make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.” **R. 1.6(c)**

Inadvertent Production: “Promptly notify the sender” if the lawyer “knows or reasonably should know that the document *or electronically stored information* was inadvertently sent.” **R. 4.4(b)**

USE OF GENERATIVE AI TOOLS IN THE LEGAL PROFESSION



Artificial Intelligence (AI)

The “capability of computer systems or algorithms to imitate intelligent human behavior.”

E.g., logical deduction, creativity, decision-making, and understanding spoken language.

AI Uses



Spelling, grammar checks

Timekeeping tools (predictive capabilities)

E-billing (flag defined criteria)

Document review

Contract review

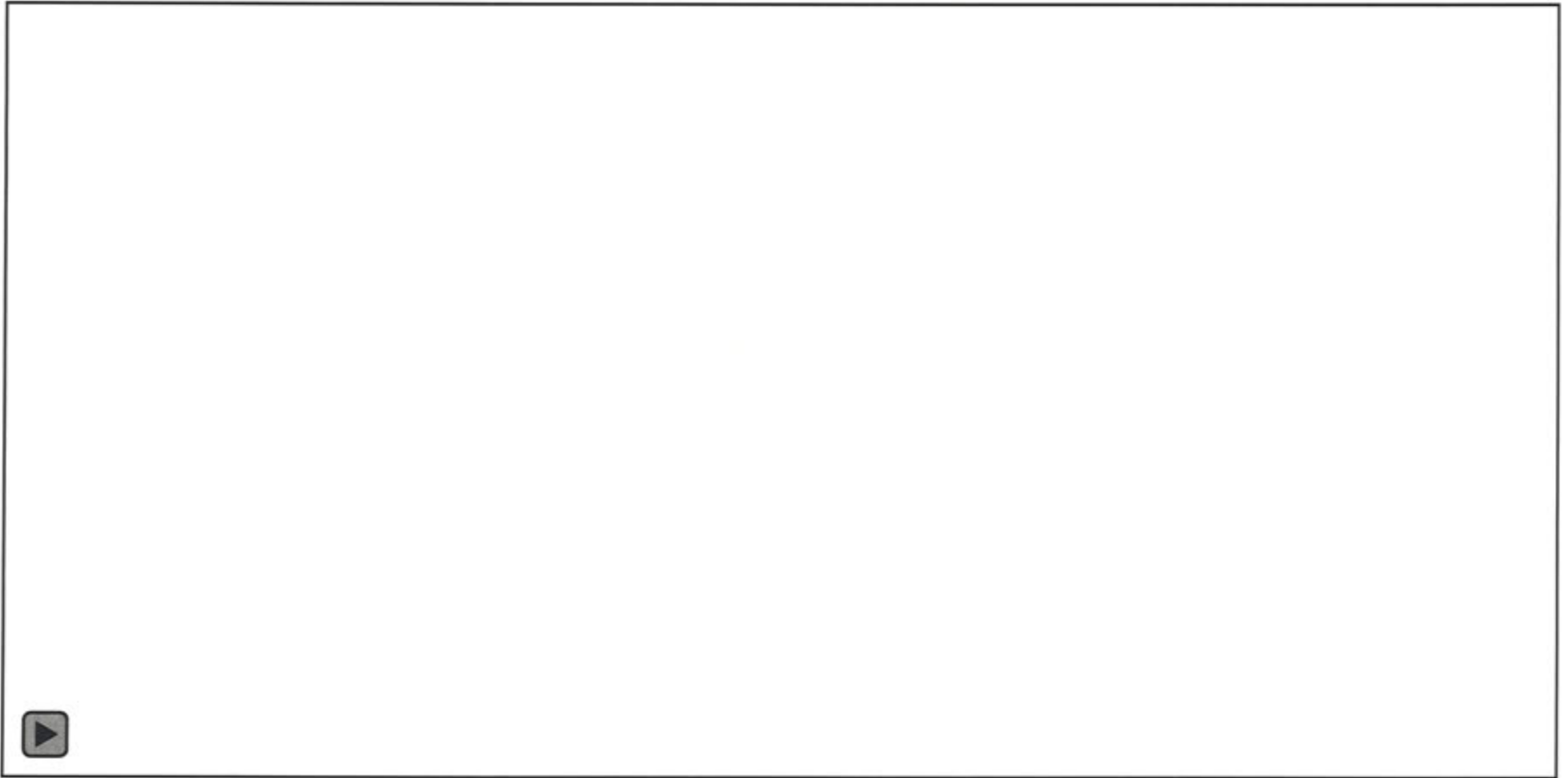
Research platforms (including "natural language" searching)

Composition & creation of graphic, artistic, presentation, etc. (generative)

HUNTON

Technology Disruption Chaos of Change

Fax, E-mail, Mobile phones



Technology Disruption Chaos of Change

Generative AI



HUNTON

World War Z (2013)
Paramount Pictures

Which best represents your generative AI experience to date?

A I have not used it and have no immediate plans to use it

0%

B I have not yet used it but plan to do so

0%

C I have used it for personal things but not in connection with work

0%

D I am using it for work in certain circumstances

0%

E I am using it every chance I get

0%

F Something else

0%

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

Generative AI (GAI)

AI of Murdered Chris Pelkey Makes His Own Impact Statement at Sentencing

VICTIM IMPACT STATEMENT

www.youtube.com/watch?v=cMs-_8etNts

HUNTON

Generative AI (GAI)

LAWYER AVATAR

www.youtube.com/watch?v=6oH8LdvVcol

HUNTON



I or someone working on my team has had a generative AI blunder

0%

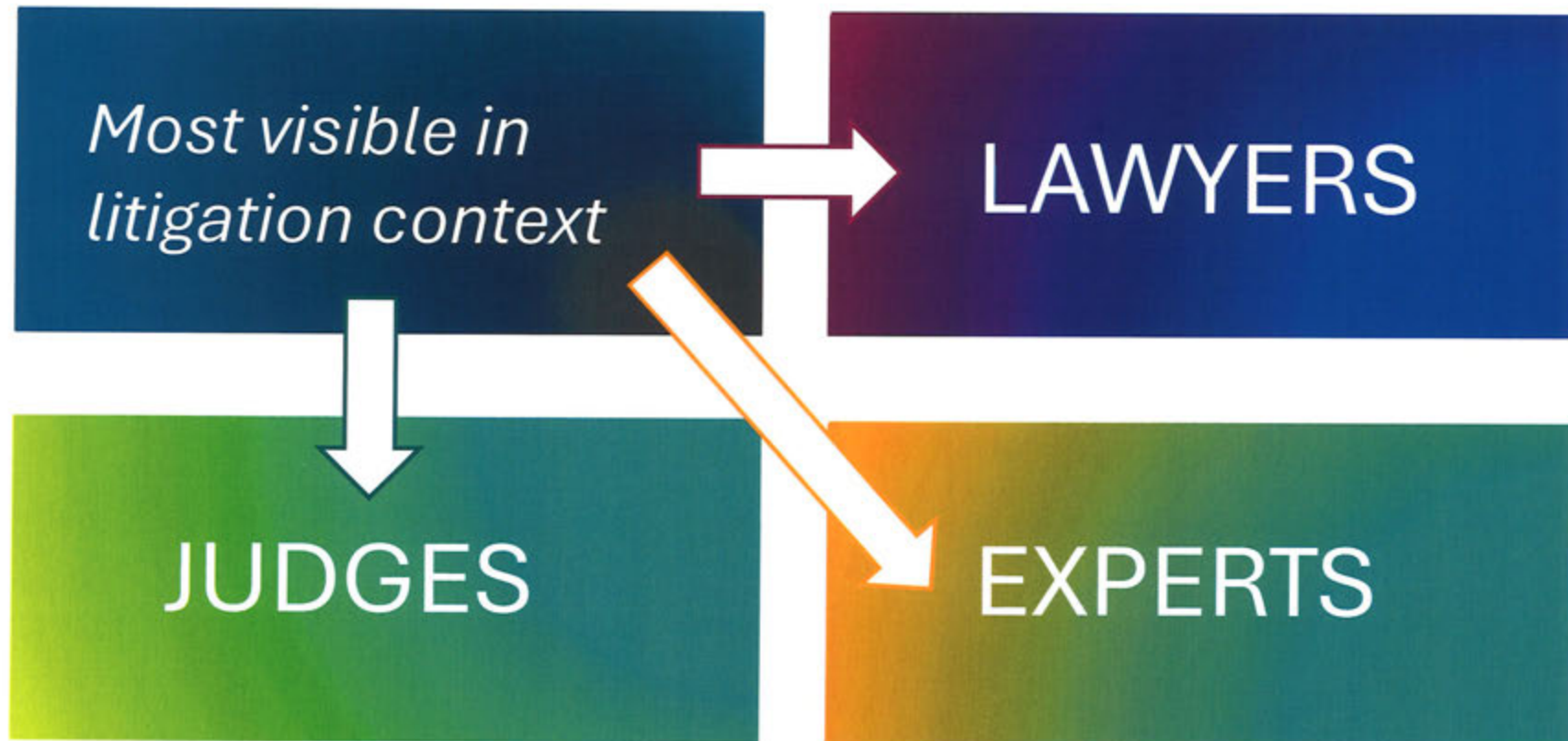
0%

True

False

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

GENERATIVE AI MISHAPS



*From June 2023
As of October 22, 2025*

Party responsible for introducing errors:

Pro Se litigants (174)
Lawyers (118)
Expert (4)
Judge (3)
Paralegal (3)

Nature of the errors:

Fabricated cases (215)
False quotes (86)
Misrepresented (124)
Outdated advice (8)

227 as of 9/10/2025 301 as of 10/22/2025

TRACKING GAI "HALLUCINATION" MISHAPS

Database compiled by Damien Charlotin at:
www.damiencharlotin.com/hallucinations/?sort_by=-date&states=USA&period_idx=0&page=2&page=3&page=4&page=5&page=4&page=5

"[A] credentialed expert on the dangers of AI and misinformation . . . "has fallen victim to the siren call of relying too heavily on AI—in a case that revolves around the dangers of AI, no less."

"AI, in many ways, has the potential to revolutionize legal practice for the better. . . . But when attorneys and experts abdicate their **independent judgment and critical thinking skills** in favor of ready-made, AI-generated answers, the quality of our legal profession and the Court's decisional process suffer."

Judge Provinzino, *Christopher Kohls et al. v. Keith Ellison et al.* (Case No. 0:24-cv-03754) (D. Minn. 2025)

"... Fabricating legal authority is serious misconduct that demands a serious sanction. In the court's view, it demands substantially greater accountability than the reprimands and modest fines that have become common as courts confront this form of AI misuse. As a practical matter, time is telling us – quickly and loudly – that those sanctions are insufficient deterrents. In principle, they do not account for the danger that fake citations pose for the fair administration of justice and the integrity of the judicial system. "

Judge Manasco in a July 23, 2025 Sanctions Order entered in *Johnson v. Dunn*, Case No.: 2:21-cv-1701-AMM (N.D. Ala.)



HUNTON



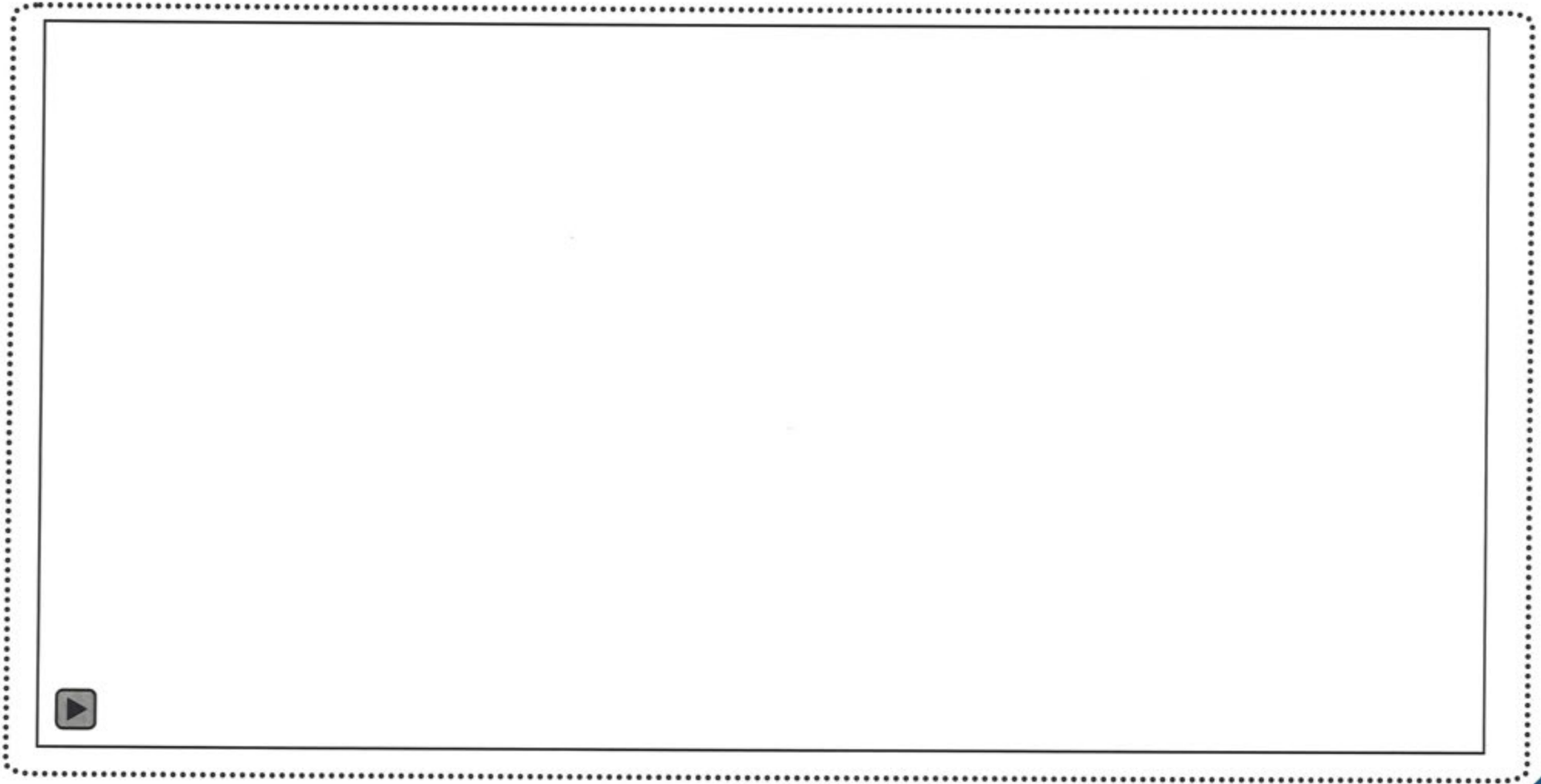
GAI

ETHICAL COMPASS POINTS

- BE TRANSPARENT
- TAKE RESPONSIBILITY
- PROTECT CLIENT CONFIDENTIALITY

ABA LEO 512
(2024)

GAI: BE TRANSPARENT



HUNTON

The Matrix (1999)
Warner Brothers

GAI: BE TRANSPARENT



- Court-required disclosures, certifications
- Rule 8.4(c): no dishonesty, fraud, deceit, misrepresentation (vis-à-vis clients and in publications)
 - Platform Terms & Conditions
- Rule 1.4(a)(2): consult client about means to accomplish client objectives
 - Check Outside Counsel Guidelines
- Rule 1.5: Fees must be reasonable
 - Hourly vs. flat fee

HUNTON

ChatGPT
generated image

Which of the following best describes the expectation of your clients (or your legal department) with respect to generative AI usage?

A Do not use GAI to generate work product without express permission

0%

B Use your discretion -- no need to discuss usage of GAI to create work product

0%

C I (we) expect you to look for ways to use GAI as much as possible

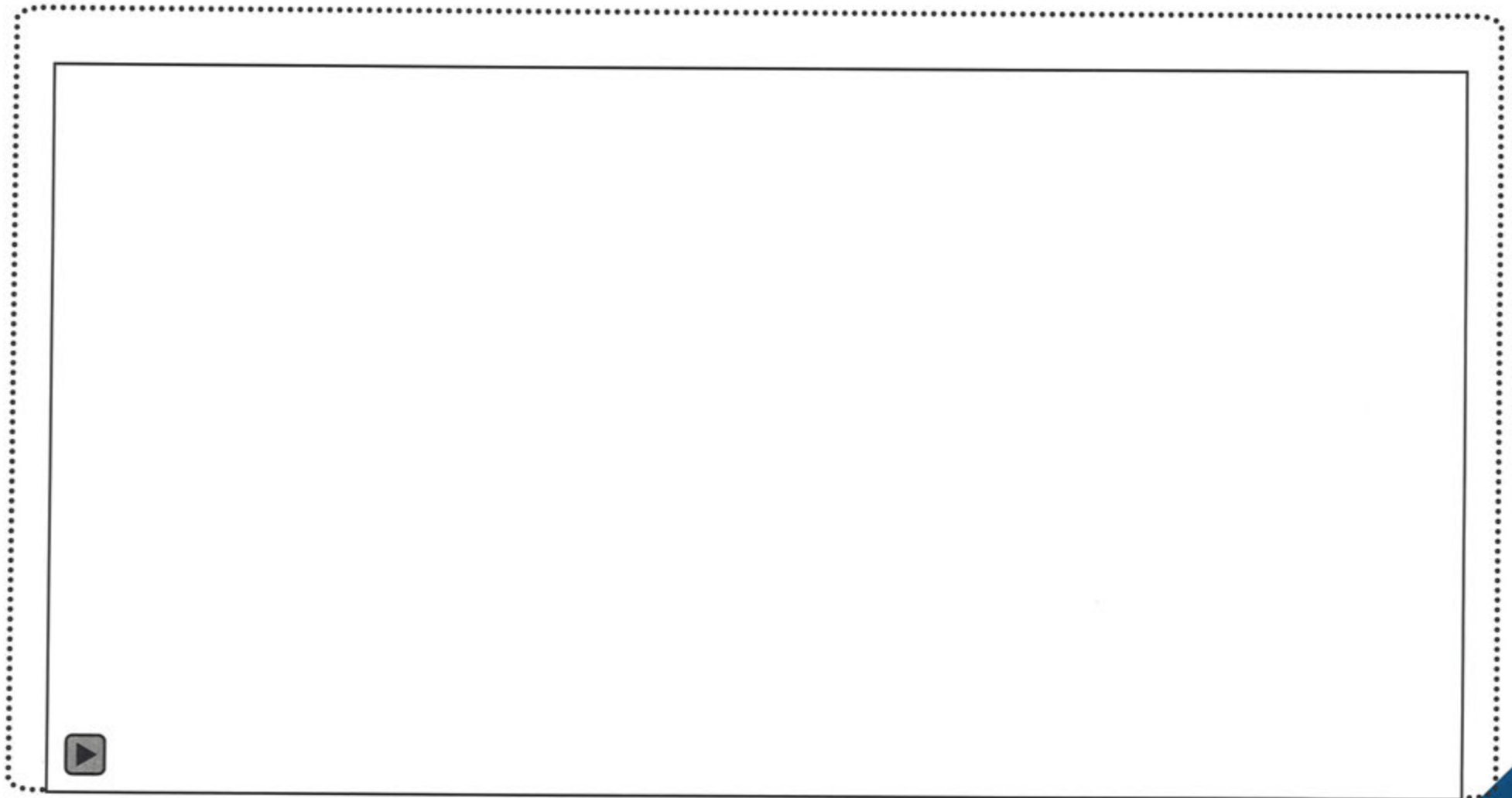
0%

D Something else

0%

GAI: TAKE RESPONSIBILITY

If using GAI, you have to take the “red pill”



GAI: TAKE RESPONSIBILITY

- Rule 1.1 – Competence

- As to GAI tool
 - Pool of materials for training and feeding output
- As to substantive content
- Consult experts



- Rules 5.1, 5.2 – Supervision

ChatGPT
generated image



HUNTON

GAI: PROTECT CLIENT CONFIDENTIALITY



- **Rule 1.6 – Confidentiality (broad scope)**

- Cmt [3]: “confidentiality rule . . . applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source.”
- Can include client identity
- Cmt [4]: “applies to disclosures by a lawyer that do not in themselves reveal protected information but could ***reasonably lead to the discovery of such information*** by a third person.”

HUNTON

GAI: PROTECT CLIENT CONFIDENTIALITY



Rule 1.6 – Confidentiality (broad scope)

- “Shall not reveal”
- Make reasonable efforts to prevent disclosure

ABA LEO 477R

considered confidentiality as to **devices** to create, transmit & store confidential communications (desktop, laptop & notebook computers, tablet devices, smartphones, cloud resource & storage locations)

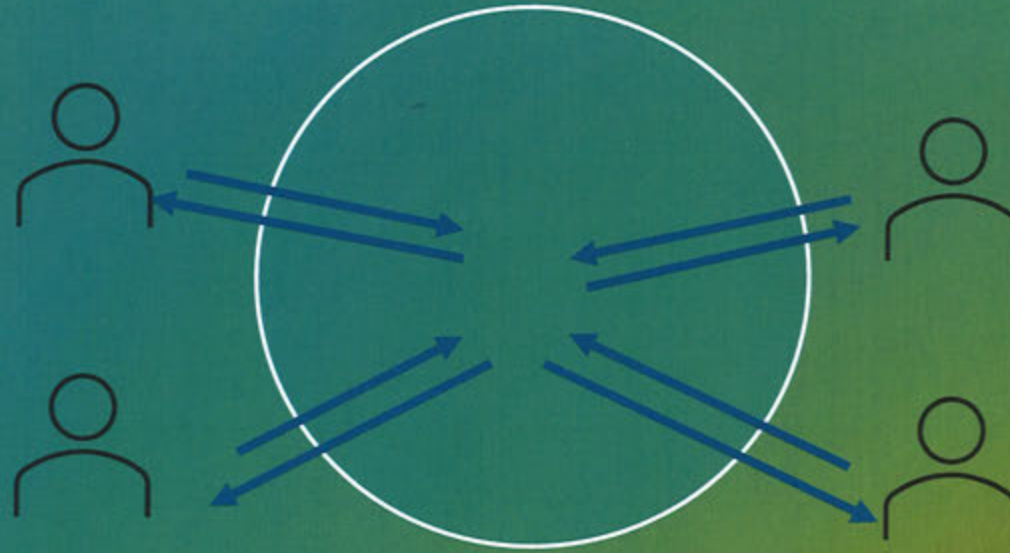
ABA LEO 99-413 Using **unencrypted email** is consistent with duty of confidentiality because of a “reasonable expectation of privacy”

- Lawyers not guarantors
- What =

Reasonable efforts to protect?

Meets reasonable expectation of privacy test?

HUNTON



Open vs. closed system?

Data, architecture
shared publicly

Data controlled by,
confidential to user
organization

- Reasonable efforts to protect? (Sensitivity, likelihood of disclosure, cost + difficulty of additional safeguards, negative impact of additional safeguards)
- Meets reasonable expectation of privacy test?

Which of the following best describes the expectation of your clients (or your legal department) with respect to protecting client confidential information relative to a closed system GAI tool?

A No need to remove client name from materials shared into closed system GAI tool so long as output is reviewed for any confidential information

0%

B Removing client name prior to sharing into closed system GAI tool is sufficient

0%

C Do not share work product into even a closed system GAI tool without express permission

0%

D Something else

0%



Genericize inputs
Use hypotheticals



Information input into the tool may later be revealed in response to prompts by lawyers working on other matters (which may be a lawyer subject to an ethical screen or may result in revealing work product to other clients)

CLOSED ~~≠~~ NO RISK

GAI: PROTECT CLIENT CONFIDENTIALITY



Confidentiality



PRIVILEGE?

HUNTON

ETHICS IN A NON-ENFORCEMENT CLIMATE



Ambiguity



Conflict of laws



Non-enforcement

SEE NO EVIL



CoPilot-generated image

HUNTON

NON-ENFORCEMENT EXAMPLES

FOREIGN CORRUPT PRACTICES ACT

Makes bribery a criminal offense

- ❖ No offer, payment, promise to pay
- ❖ Money / anything of value
- ❖ To influence foreign official in official capacity
- ❖ To do an act in violation of lawful duty, secure any improper advantage



HUNTON

NON-ENFORCEMENT EXAMPLES (FCPA)



180 Days - FCPA

The President's foreign policy authority is inextricably linked with the global economic competitiveness of American companies. American national security depends in substantial part on the United States and its companies gaining strategic business advantages whether in critical minerals, deep-water ports, or other key infrastructure or assets.

But overexpansive and unpredictable FCPA enforcement against American citizens and businesses — by our own Government — for **routine business practices in other nations** not only wastes limited prosecutorial resources that could be dedicated to preserving American freedoms, but actively **harms American economic competitiveness** and, therefore, national security.

It is therefore the policy of my Administration to preserve the Presidential authority to conduct foreign affairs and advance American economic and national security by **eliminating excessive barriers** to American commerce abroad.

2/10/2025: White House orders enforcement “pause”

(<https://www.whitehouse.gov/presidential-actions/2025/02/pausing-foreign-corrupt-practices-act-enforcement-to-further-american-economic-and-national-security/>)


NON-ENFORCEMENT EXAMPLES

FOREIGN AGENTS REGISTRATION ACT (FARA)

“Foreign agents” (individuals and entities engaged in domestic lobbying or advocacy for foreign governments or entities) must register with the DOJ and disclose information on their relationship, activities, and compensation.

- Triggers:
 - Political activities;
 - Acts as public relations counsel, publicity agent, information-service employee or political consultant;
 - Solicits, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of the foreign principals; or
 - Represents the interests of the foreign principal before any agency or official of the Government of the United States.
- 8 Exemption Categories
- Violations can lead to civil or criminal penalties





Shifting Resources in the National Security Division. To free resources to address more pressing priorities, and end risks of further weaponization and abuses of prosecutorial discretion, the Foreign Influence Task Force shall be disbanded. Recourse to criminal charges under the Foreign Agents Registration Act (FARA) and 18 U.S.C. § 951 shall be limited to instances of alleged conduct similar to more traditional espionage by foreign government actors. With respect to FARA and § 951, the Counterintelligence and Export Control Section, including the FARA Unit, shall focus on civil enforcement, regulatory initiatives, and public guidance.

The National Security Division's Corporate Enforcement Unit is also disbanded. Personnel assigned to the Unit shall return to their previous posts.

2/5/2025: OAG enforcement "policy" shift announced:
<https://www.justice.gov/ag/media/1388541/dl?inline>



“Heinous assassinations and other acts of political violence in the United States have dramatically increased in recent years. . . .

This political violence is not a series of isolated incidents and does not emerge organically. Instead, it is a culmination of sophisticated, organized campaigns of targeted intimidation, radicalization, threats, and violence designed to silence opposing speech, limit political activity, change or direct policy outcomes, and prevent the functioning of a democratic society. **A new law enforcement strategy** that investigates all participants in these criminal and terroristic conspiracies — including the organized structures, networks, entities, organizations, funding sources, and predicate actions behind them — **is required.** ”

9/25/2025: National Security Presidential Memorandum (NSPM-7):

<https://www.whitehouse.gov/presidential-actions/2025/09/countering-domestic-terrorism-and-organized-political-violence/>



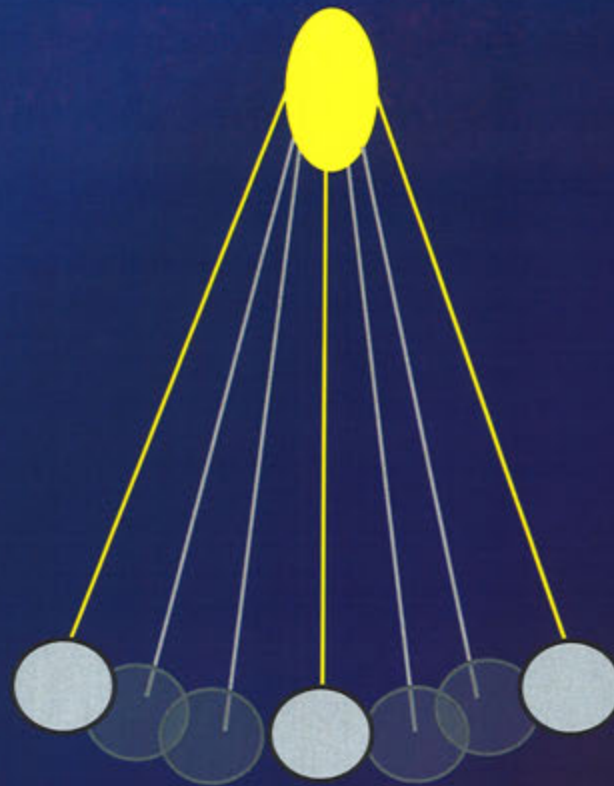
Sec. 2. Investigating Domestic Terrorist Organizations. (a) The National Joint Terrorism Task Force and its local offices (collectively, "JTTFs") shall coordinate and supervise a comprehensive national strategy to investigate, prosecute, and disrupt entities and individuals engaged in acts of political violence and intimidation designed to suppress lawful political activity or obstruct the rule of law. This strategy shall include the investigatory and prosecutorial measures set forth in this section.

(c) The JTTFs shall also investigate:

(ii) non-governmental organizations and American citizens residing abroad or with close ties to foreign governments, agents, citizens, foundations, or influence networks engaged in violations of the Foreign Agents Registration Act (22 U.S.C. 611 et seq.) or money laundering by funding, creating, or supporting entities that engage in activities that support or encourage domestic terrorism.

(NSPM-7):

<https://www.whitehouse.gov/presidential-actions/2025/09/countering-domestic-terrorism-and-organized-political-violence/>



DOJ NPRM:

- **Narrow FARA Commercial Exceptions**
 - Normal Legal Representations (beyond proceedings)

**OAG Memo:
Traditional
Espionage**

**NSPM-7: New Law
Enforcement Strategy to
Fight Domestic Terror**

NON-ENFORCEMENT EXAMPLES

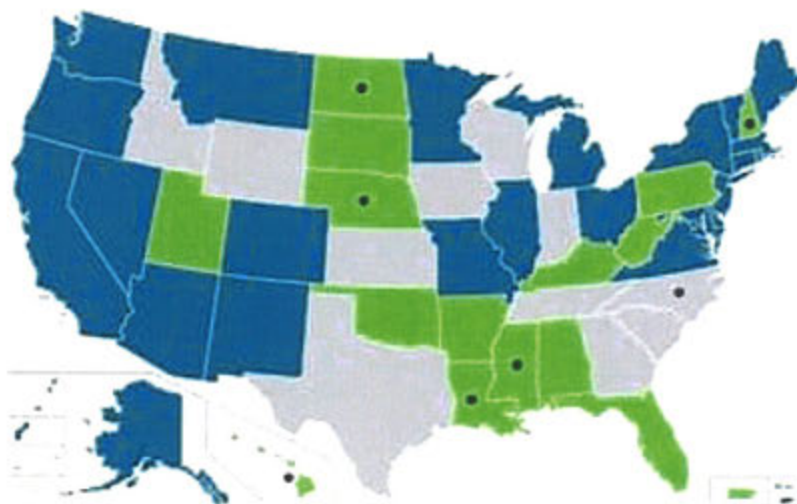
MARIJUANA - FEDERAL

❖ **SCHEDULE I** (Controlled Substances Act, 21 U.S.C. §801 et seq.)

❖ **Illegal** to “manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense” a Schedule I controlled substance.

MARIJUANA – STATES VARY

- ❖ **Illegal**
- ❖ **Medical**
- ❖ **Recreational**
- Decriminalized



NON-ENFORCEMENT: Ethical Compass Points

Rule 1.2

Shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent

"May discuss consequences"



MAY



SHALL



Rule 1.4

Consult about limitations

Explain a matter to permit informed client decisions

Rule 1.16

Ensure that the lawyer's services will not be used to commit or further a crime or fraud both **before** the representation is undertaken and when it is **ongoing**

Rules 1.6, 4.1

Disclose material fact to avoid assisting crime or fraud



RULES 1.2(d), 1.16: DUTY TO INQUIRE

ABA Formal Opinion 491 (2020)
“Obligations Under Rule 1.2(d) to Avoid Counseling or Assisting in a Crime or Fraud in Non-Litigation Settings”

“depends on the circumstances”

knowledge of facts that create a high probability that a client is seeking the lawyer’s services in a transaction to further criminal or fraudulent activity has a duty to inquire further to avoid assisting that activity under Rule 1.2(d)



HUNTON

Rule 1.16 (2023)

(a) A lawyer shall inquire into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation. Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

...

(4) the client or prospective client seeks to use or persists in using the lawyer’s services to commit or further a crime or fraud, despite the lawyer’s discussion pursuant to Rules 1.2(d) and 1.4(a)(5) regarding the limitations on the lawyer assisting with the proposed conduct.



STATE Rule 1.2 Variations:
limited to conflicting law (not
non-enforcement) scenario

May counsel + assist w/conduct
authorized by state* marijuana
laws

Must advise re: federal law

No express rule or comment
recognition for state/federal law
divergence

May counsel + assist w/conduct
authorized by state laws

Must advise re: other applicable
law

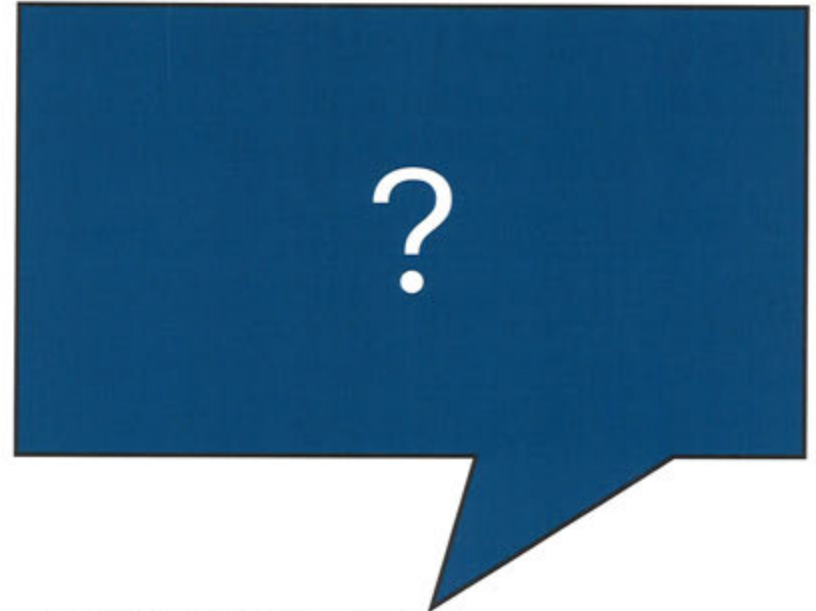


[Rule 1.2(d)] does not make a distinction between crimes which are enforced and those which are not. So long as both the federal law and the language of the Rule each remain the same, an attorney needs to perform the analysis required by the Rule and determine whether the particular legal service being requested rises to the level of assistance in violating federal law.

It is worth noting that there is no guarantee that, with a change in policy, administration, or resources, the federal law might ultimately be enforced to the chagrin of lawyers whose conduct enabled the dispensaries. Even under the present policy, it is a situation where potential clients may ultimately, if not initially, use the medical dispensary and state law as a pretext for other more lucrative ventures.

Maine Ethics Opinion 199 (2010)

No counsel to commit; No assist in committing;
Non-enforcement scenario



We are trying to win the concession for operating the International Toll Road. Can I invite the head of the Transportation Commission and her family to attend a Taylor Swift concert courtesy of our company?



HUNTON

Can I invite?

0%

0%

0%

Yes

No

It violates law but enforcement risk is low -- you decide

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

My client (or law department) will not accept a "you decide" answer

0%

0%

True

False

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

LAWYERS IN THE CROSSHAIRS - Examples

Investigation, Enforcement

Ethics Complaint

Sanctions Motion

Media Attention

Client, Employer Pressure



McCarthy Era

Watergate Era

Clinton Impeachment

2020 Election Fraud Litigation

Trump Investigator/Prosecutor

Trump Executive Orders

HUNTON

LAWYERS IN THE CROSSHAIRS - Examples



The 65 Project

A bipartisan effort to deter future abuse of the legal system by lawyers seeking to overturn legitimate elections. We will hold such lawyers accountable for past abuses and will work to revitalize the state bar disciplinary process so that lawyers, including public officials, who lie about election results and who fuel insurrection will face professional consequences.

HUNTON

LAWYERS IN THE CROSSHAIRS - Examples



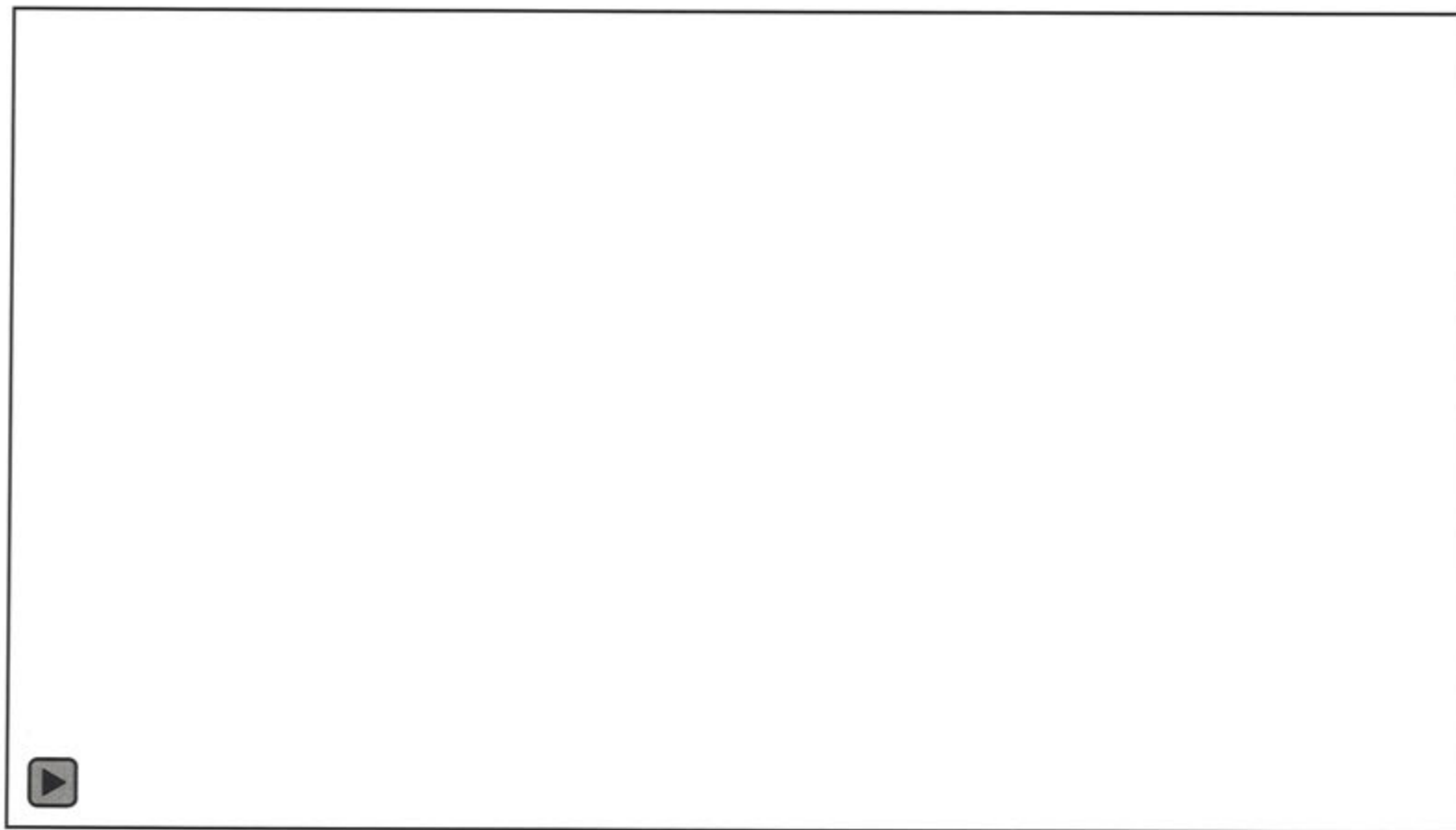
Lawyers
Defending
American
Democracy
(LDAD)

We unite members of the legal profession in:

- Enforcing and upholding principles of democracy and law, consistent with our obligations as lawyers
- **Demanding accountability from lawyers** and public officials
- **Calling out attacks on legal norms** and prescribing redress.

HUNTON

LAWYERS IN THE CROSSHAIRS - Examples



HUNTON

The Matrix (1999)
Warner Brothers

LAWYERS IN THE CROSSHAIRS – Ethical Compass Points

- Meritorious Claims & Contentions (Rule 3.1) vs. Improper Purpose (Rule 4.1)
- Prosecutorial Discretion & Duties (Rule 3.8)
- Honesty (Rules 3.3, 4.1, 8.1-8.3, 8.4(c))
- Within the Bounds of the Law (Rules 1.2(d), 1.16, 8.4(a))
- Representing and Counseling a Client (Within the Bounds of the Law) Is Not Endorsing the Client's Views (Rules 1.2, 2.1)
- Conflicts & Communication (Rules 1.4, 1.7, 1.10)
- Conduct Prejudicial to the Administration of Justice (Rule 8.4(d))



CROSSHAIRS ETHICAL COMPASS POINTS –

Meritorious Claims & Contentions (Rule 3.1) vs. Improper Purpose (Rule 4.1)

RULE 3.1

- Non-frivolous basis in law and fact
- Good faith argument for extension, modification, or reversal of existing law
- **Purpose** is **not** relevant to the objective merits of the client's claim

- *Note: Predecessor Model Code DR 2-109 included prohibition against representation “**merely for the purpose of harassing or maliciously injury**”*
- *Rule 11 sanctions grounds typically combine both*

RULE 4.4

- Lawyer shall not employ **means** with “no **substantial purpose** other than to embarrass, delay, or burden a third person.”



CROSSHAIRS ETHICAL COMPASS POINTS –

Prosecutorial Duties (Rule 3.8) & Discretion

RULE 3.8

- Refrain from prosecuting a charge that the prosecutor knows is not supported by **probable cause**
- Parallel to professional standard to burden of proof to withstand dismissal



Prosecutorial Discretion

- U.S. Constitution, Art. II ("**Take Care Clause**") ("... he shall take Care that the Laws be faithfully executed")
- Broad discretion for setting enforcement priorities, deciding whether to prosecute, selecting charges, negotiating plea deals, & recommending sentences
- Subject to **Equal Protection Clause** (unconstitutional motive? E.g., race, religion)

CROSSHAIRS ETHICAL COMPASS POINTS –

Prosecutorial Duties (Rule 3.8) & Discretion

Other Guardrails?

- DOJ policy, norm
- Public call for DOJ independence following Watergate
- Professional Rules

Prosecutorial Discretion

- Subject to **Equal Protection Clause** (unconstitutional motive? E.g., race, religion)



ChatGPT
generated
image

CROSSHAIRS ETHICAL COMPASS POINTS –

Honesty (Rules 3.3, 4.1, 8.1-8.3, 8.4(c))



RULE	
Character / Fitness	State bar will assess whether the candidate has the necessary character to justify the trust and confidence of clients, the public, and the legal system
Rule 8.4(c)	It is “professional misconduct” for a lawyer to “engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”
Rule 8.3	Requires a lawyer to report another lawyer’s professional misconduct that “raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.”
Rule 8.1	Prohibits a lawyer from making a false statement or failing to disclose a fact necessary to correct a misapprehension, in connection with a bar admission application or a disciplinary matter.
Rule 3.3	Prohibits a lawyer from knowingly making a “false statement of fact or law to a tribunal” and requires a lawyer “to correct a false statement of material fact or law previously made to the tribunal by the lawyer” and take remedial measures to prevent or remediate attempts to use the lawyer’s service to perpetuate a crime or fraud.
Rule 4.1	Prohibits a lawyer from knowingly making “false statement of material fact or law to a third person” and requires a lawyer to “disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6” (which permits disclosures in defined circumstances)

CROSSHAIRS ETHICAL COMPASS POINTS –

Within the Bounds of the Law (Rules 1.2(d), 1.16, 8.4(a))



RULE	
1.2(d)	“Shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent.”
1.16	<p>A lawyer shall:</p> <ul style="list-style-type: none">• Inquire into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation.• Decline or withdraw from a representation if (1) the representation will result in violation of the Rules of Professional Conduct or other law, or (2) the client or prospective client seeks to use or persists in using the lawyer’s services to commit or further a crime or fraud.
8.4(a)	Professional misconduct to “commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects.”



CROSSHAIRS ETHICAL COMPASS POINTS –

Honesty (Rules 3.3, 4.1, 8.1-8.3, 8.4(c))

A “lawyer, as a member of the legal profession, is a **representative of clients**, an **officer of the legal system** and a public citizen having special responsibility for the quality of justice.”

“[A] lawyer should further the public’s understanding of and confidence in the rule of law and the justice system because **legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.**”



CROSSHAIRS ETHICAL COMPASS POINTS –

Client Relationship \neq Endorsement

Rule 1.2

- Lawyer “shall abide by a client’s decisions concerning the objectives of representation.”
- A “lawyer’s representation of a client, including representation by appointment, **does not constitute an endorsement of the client’s political, economic, social or moral views or activities.**”
- “Legal representation should not be denied to people . . . whose cause is controversial or the subject of popular disapproval.”

Rule 2.1

- A lawyer is called to “exercise independent professional judgment and render candid advice,” referring to “not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation.”



CROSSHAIRS ETHICAL COMPASS POINTS –

Client Relationship \neq Endorsement

CLIENT
IDENTITY?



OVERSTEPPING
PROFESSIONAL
BOUNDARIES?

HUNTON



CROSSHAIRS ETHICAL COMPASS POINTS –

Conflicts & Communication (Rules 1.4, 1.7, 1.10)

Conflicts (Rules 1.7, 1.10)

- “Significant risk that the representation of one or more clients will be **materially limited by . . . a personal interest of the lawyer.**”
- No imputation if “prohibition is based on a **personal interest** of the disqualified lawyer” that **does not** “present a **significant risk** of materially limiting the representation of the client **by the remaining layers in the firm**”

Communication (Rule 1.4)

- Communicate about circumstances that could impact the lawyer’s ability to carry out the representation.
- Circumstances requiring the client’s informed consent
- Consult with the client about the means to achieve the client’s objectives
- Keep the client reasonably informed about the status of the matter
- Consult with the client about any limitations on the lawyer’s conduct.



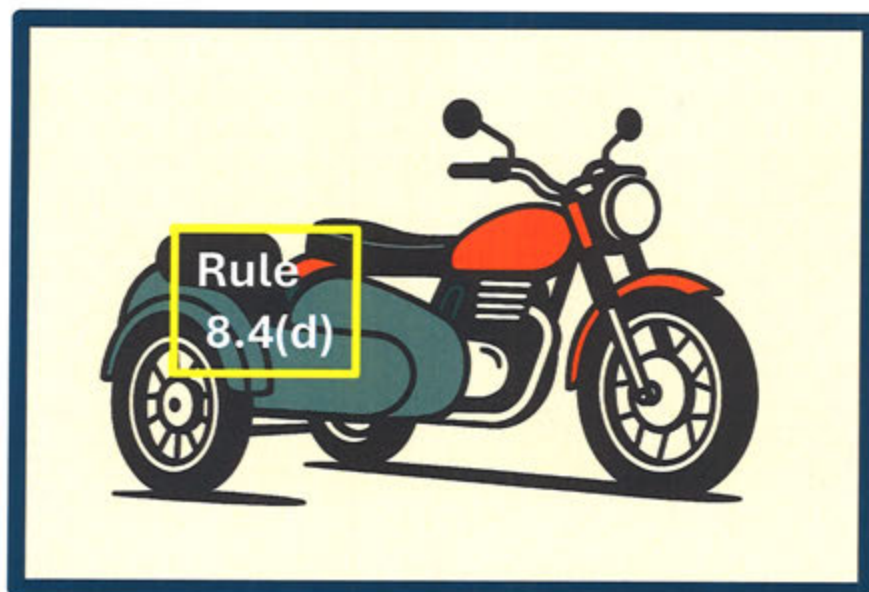
CROSSHAIRS ETHICAL COMPASS POINTS –

Conduct Prejudicial to the Administration of Justice (Rule 8.4(d))

- A “catchall” in the professional misconduct definition
- More often cited along with other rules
- Rule 8.4 cmt. [7]: “lawyer’s abuse of public office can suggest an inability to fulfill the professional role of lawyers”
- Most commonly applied to conduct connected to proceedings of a tribunal
- Must “taint the judicial process in more than a de minimis way”
- Would not justify discipline on a stand-alone basis unless so “egregious” and “flagrantly violative of accepted professional norms” as to ‘undermine the legitimacy of the judicial process.”



HUNTON



JUDGES IN LAWYERS' CROSSHAIRS – Ethical Compass Points

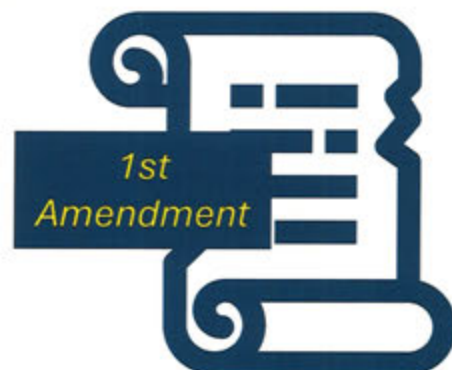


RULE	
8.2(a)	A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, <i>etc.</i>
Rule 8.4(d)	It is professional misconduct for a lawyer to: . . . (c) engage in conduct that is prejudicial to the administration of justice.
Rule 3.4(c)	A lawyer shall not knowingly disobey <u>an obligation under the rules of a tribunal</u> , except for an open refusal based on an assertion that no valid obligations exists.
Rule 3.5(d)	A lawyer shall not engage in conduct intended to disrupt a tribunal.
Sanctions (rules or statutes), Local Rules of Civility	May also focus on conduct that: <ul style="list-style-type: none">• Is intended to harass• Is without basis in law or fact• Degrades or impugns the integrity of the Court• Disobeys court authority• Interferes with the administration of justice

JUDGES IN LAWYERS' CROSSHAIRS – Ethical Compass Points



RULE	
8.2(a)	<ul style="list-style-type: none">✓ False?✓ Knowing or reckless disregard?✓ Qualifications or integrity?✓ Opinion? (Imply false assertion of fact?)
Rule 8.4(d)	✓ Is it conduct that is prejudicial to the administration of justice?
Rule 3.4(c)	✓ Did it violate an obligation under the rules of a tribunal?
Rule 3.5(d)	✓ Was conduct intended to disrupt tribunal?



v.



JUDGES IN LAWYERS' CROSSHAIRS – Examples



The Court: I'll see everyone then, thank you.

The Clerk: Thank you.

Tauber: Judge - - thank you. F*cking c*nt.
(Court in recess at 10:21 a.m.)

- ✓ False?
- ✓ Knowing or reckless disregard?
- ✓ Qualifications or integrity?
- ✓ Opinion? (Imply false assertion of fact?)
- ✓ Is it conduct that is prejudicial to the administration of justice?
- ✓ Did it violate an obligation under the rules of a tribunal?
- ✓ Was conduct intended to disrupt tribunal?

JUDGES IN LAWYERS' CROSSHAIRS – Examples



HUNTON

A Christmas Story (1983)
MGM/UA Entertainment Co.

JUDGES IN LAWYERS' CROSSHAIRS – Examples

Seeking new trial counsel alleged that opponent “played on the stereotype of greedy Jewish executives of an Israeli company allegedly taking advantage of U.S. companies, to trigger religious biases and deepen the ‘us v. them’ nationalistic divide in the minds of jurors.”

Court noted that Freshub was asserting “at least implicitly, that the [c]ourt must grant a new trial to preserve its own integrity and public reputation” as the motion “essentially **accuses the Court of turning a blind eye to Defendants’ highly prejudicial**” arguments. In denying the motion for a new trial, the court noted that Freshub’s “vitriolic and unsubstantiated allegations are not only shocking, but also offensive to this Court.”



HUNTON

- ✓ False?
- ✓ Knowing or reckless disregard?
- ✓ Qualifications or integrity?
- ✓ Opinion? (Imply false assertion of fact?)
- ✓ Is it conduct that is prejudicial to the administration of justice?
- ✓ Did it violate an obligation under the rules of a tribunal?
- ✓ Was conduct intended to disrupt tribunal?

JUDGES IN LAWYERS' CROSSHAIRS – Examples

Judge Keller "has a penchant for sanctioning Jewish lawyers: me, David Kenner and Hugh Manes. I find this to be evidence of anti-semitism."



Judge Keller "was drunk on the bench."

- ✓ False?
- ✓ Knowing or reckless disregard?
- ✓ Qualifications or integrity?
- ✓ Opinion? (Imply false assertion of fact?)
- ✓ Is it conduct that is prejudicial to the administration of justice?
- ✓ Did it violate an obligation under the rules of a tribunal?
- ✓ Was conduct intended to disrupt tribunal?

JUDGES IN LAWYERS' CROSSHAIRS – Examples

- ✓ False?
- ✓ Knowing or reckless disregard?
- ✓ Qualifications or integrity?
- ✓ Opinion? (Imply false assertion of fact?)
- ✓ Is it conduct that is prejudicial to the administration of justice?
- ✓ Did it violate an obligation under the rules of a tribunal?
- ✓ Was conduct intended to disrupt tribunal?

It is outrageous that the Judge wants his profile redone because he thinks it to be inaccurately harsh in portraying him in a poor light. It is an understatement to characterize the Judge as "the worst judge in the central district." It would be fairer to say that he is ignorant, dishonest, ill-tempered, and a bully, and probably is one of the worst judges in the United States. If television cameras ever were permitted in his courtroom, the other federal judges in the Country would be so embarrassed by this buffoon that they would run for cover. One might believe that some of the reason for this sub-standard human is the recent acrimonious divorce through which he recently went: but talking to attorneys who knew him years ago indicates that, if anything, he has mellowed. One other comment: his girlfriend . . . , like the Judge, is a right-wing fanatic.

HUNTON

Yagman case



JUDGES IN LAWYERS' CROSSHAIRS – Examples



HUNTON

A Christmas Story (1983)
MGM/UA Entertainment Co.

JUDGES IN LAWYERS' CROSSHAIRS – Examples

This case personifies the double edged sword of Justice. This case highlights the unfavorable consequences of the legal profession—incompetence and/or corruption of its members. Undeniably, the people who are elected to uphold the higher purpose of the law sometimes go their own way and believe that the people's vested power is their own. The general public assumes that the vast majority of our legal community believes that no one does more harm to the legal system than one who has the name and rank of honor while he/she acts perversely. Unfortunately, this case also exemplifies an additional and more horrifying issue—the tolerance and indifference of other judges, the Court of Appeals and other officers of the court who did nothing to help the financial and emotional pain of family law litigants and the most innocent of all victims—Stanford McNabb's children.

- ✓ False?
- ✓ Knowing or reckless disregard?
- ✓ Qualifications or integrity?
- ✓ Opinion? (Imply false assertion of fact?)
- ✓ Is it conduct that is prejudicial to the administration of justice?
- ✓ Did it violate an obligation under the rules of a tribunal?
- ✓ Was conduct intended to disrupt tribunal?



Mire case

JUDGES IN LAWYERS' CROSSHAIRS – Examples

The corruption and/or incompetence of attorneys and judges in this case is not only a systemic problem; it is an opportunity for reparation for Stanford McNabb and everyone who was victimized by a system designed to protect their rights.

vantage point of a litigant or outside third party. There are two plausible explanations: 1.) The lower court inadvertently issued an opinion written prior to oral argument. When Stan gently alerted them to the fact that the Motion and Order of Recusal was part of the record, the panel was confused and/or did not remember the oral argument of the matter and therefore again inadvertently denied rehearing; or 2.) The lower court wants to cover up the egregious actions of the trial court so it cannot be used in the current election. Either way this Court's active intolerance of such incompetence and/or corruption is essential to restore integrity to the judicial system.



HUNTON

Mire case

- ✓ False?
- ✓ Knowing or reckless disregard?
- ✓ Qualifications or integrity?
- ✓ Opinion? (Imply false assertion of fact?)
- ✓ Is it conduct that is prejudicial to the administration of justice?
- ✓ Did it violate an obligation under the rules of a tribunal?
- ✓ Was conduct intended to disrupt tribunal?