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FEBRUARY 16, 2026 | PUBLICATION

"Digital Risk Report," February 2026

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C. Jade Davis
Brian C. Focht
Nick Carr
Douglas A. Cherry
Andrew R. DeWeese

MEDIA CONTACT

Wendy M. Byrne
wbyrne@shumaker.com

AI, Privilege, and the Courts: Key Ruling on AI-Generated Legal Materials
As artificial intelligence (AI) transitions from experimental models to practical, agent-driven applications in 2026, legal professionals and clients alike must be mindful of the confidentiality, privilege, and discoverability of AI-generated content.

A recent bench ruling on February 12, 2026 in *U.S. v. Heppner* (S.D.N.Y.) highlights the evolving intersection of AI and legal privilege. In this case, a Texas financial services executive accused of a $150 million fraud used an AI tool to prepare 31 documents related to his legal case, which he then shared with his attorneys. The court held that these AI-generated documents were not protected by attorney-client privilege or the work product doctrine, emphasizing that materials created independently by a defendant using a commercial AI platform, without attorney involvement, do not meet the requirements for privilege. The judge also noted that the AI tool's terms of service expressly disclaim confidentiality, further undermining any privilege claim.

The government successfully argued that the AI tool was not an attorney, the documents were not created for the purpose of obtaining legal advice, and the information was not confidential. The court agreed, likening the use of an AI tool to seeking input from friends or conducting independent research, neither of which is privileged simply because the results are later shared with counsel. However, the judge cautioned that if prosecutors attempt to use the AI-generated materials at trial, it could create a "witness-advocate conflict" if defense counsel becomes a fact witness.

This decision underscores the importance of understanding the limits of privilege when using AI tools in legal matters, particularly as AI becomes more integrated into professional workflows.

Insights in the February 2026 issue include:

- The Patchwork of Data Privacy Laws: Recent Developments and Implications

- Protecting Your Business' Social Media Accounts from Hackers
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