

Critical Thinking with AI: How Young Appellate Advocates Can Use—Not Lose—Their Edge

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Summary

- This excerpt examines how generative AI is reshaping appellate law and influencing the development of young attorneys.
- While some experienced lawyers believe strong advocacy skills can only be built through years of traditional research and writing, others view AI as a valuable tool that frees attorneys to focus on deeper analysis and strategy.
- As AI becomes more common and client expectations evolve, aspiring appellate advocates must learn to balance technological efficiency with the development of sound judgment, critical thinking, and legal expertise.
- Success in the modern legal profession depends not on rejecting or blindly embracing AI, but on using it thoughtfully to enhance professional growth and advocacy skills.



Maskot via Getty Images

Introduction

As a language-forward technology, it's no wonder that generative AI is revolutionizing the law, a language-forward profession. That includes appellate practice. Yet for young attorneys eagerly seeking opportunities to gain the experience necessary to become a first-chair appellate advocate, senior lawyers can often send mixed signals.

Some of us probably work for AI skeptics who say it takes years of reading, research, and writing from scratch to develop the judgment necessary to be a great advocate. Others of us may work for AI evangelists who see the time saved navigating a cold record and overcoming writer's block as valuably reallocated to "real" analysis, re-writing, and polish. As our opponents use AI and clients increasingly demand it, will the skeptics be able to teach us how to thrive in a changing profession? And will it ever be our turn to step up to the plate as principal author or first chair if the evangelists opt for the digital "second chair" on their laptop, rather than the human one down the hall?

Whether you work for a partner on one of these poles or somewhere in the middle, it is ultimately your job to develop the skills and judgment necessary to prove yourself as a trusted appellate advocate. And in 2026, that means integrating AI into your practice in a way that employs and strengthens your critical thinking skills.

This requires more than after-the-fact review of AI-generated material for inaccuracies and hallucinations. While absolutely required, see ABA Formal Opinion 512 at 3–4, it is only part of a complete approach. To use AI in a way that builds judgment, you must apply it *before* turning to AI for help, no matter how small the task at hand. Instead of playing the dog catcher chasing down AI's shortcomings, shepherd it along with forethought and consistent evaluation.

Building judgment in the age of AI requires identifying opportunities to apply it. Plan your projects, break them into smaller tasks, generate reference sources you can build on, maintain control over your writing, and enhance your oral argument practice. Integrate AI into your daily practice with intention, and you will find no shortage of opportunities to leverage your knowledge and capabilities along the way.

Plan the work, then work the plan

When starting any project, plan your workflow and consider where AI can help. Start with the big picture: what are you trying to accomplish? A piece of work product, like a research memo or brief? Or perhaps something more abstract, like understanding a trial record.

Map out the steps you need to take to get there. For example, to write a brief, you'll need to review the record, read the key cases, research additional authorities, identify the core issues, take notes and organize your thoughts, draft an outline of the brief, produce a rough draft, and revise it over several rounds—perhaps even repeating some of these steps or taking them out of order. Your roadmap does not need to be perfect, but you need an idea of what it takes to get where you are going.

Next, size up these steps and predict where AI could help. Consider which tasks require more creative thought (e.g., prioritizing arguments, formulating persuasive issue statements) and which are more rote (e.g., identifying trial witnesses, Bluebooking). Identify the types of work product you or your colleagues normally rely on throughout the life of an appeal. Consider where your time is meaningfully spent (even if less fun), and where AI could simplify lower-value tasks or lend a helping hand. And ask where you can organically produce better first-pass work product than AI could.

These can be tricky questions to answer at the outset of a project, but no matter your experience or skill level—either in appeals or with AI itself—try to answer them for each task on your roadmap. Just like everything in legal practice, you will get a better feel for this with reps and experience, including experimentation, failure, and recalibration. The sooner you can overcome these hurdles, the quicker you will incorporate AI into your independent thoughts, not the other way around.

Refine your thinking to curate results

AI tools work best when given discrete tasks that draw on a limited set of relevant documents, rather than open-ended mandates that require it to sift through a library of information. The smaller the context window of information your AI tool has to digest, the sharper its output will be.

This means you must apply yourself not only at each step of your roadmap, but before using AI for any given task. Think critically about what you want to accomplish, what information (including documents, if any) is necessary, and what would be a distraction. Decide whether you can deploy what you already know more quickly and efficiently than asking AI to generate what would be an imperfect replica of your understanding. And if you decide to use AI, craft a targeted prompt or, if using an AI-suggested prompt, scrutinize whether it grasps what you are looking for and revise as necessary.

Take reviewing the record as an example. A cold, complex record can be intimidating. But uploading as much as possible and asking AI to “summarize”

what happened will lead to disappointing results. Instead of that blunderbuss approach, organize the record by category (e.g., motions or briefs, exhibits, transcripts) and ask what you can learn from each set. Briefs will probably help identify key legal arguments. Transcripts can help identify the most important trial exhibits.

Without guidance and organization, AI will not always treat different categories of record materials appropriately. I've seen legal AI platforms recite arguments in briefs as factual propositions and suggest citing exhibits not admitted in evidence for an appeal from a trial verdict. That is why front-end organization and back-end review are critical. Curating limited document sets not only helps focus your AI-delegated tasks, but refines your thinking along the way.

Assemble your toolbox

AI chat windows can provide loads of information, but they are not designed to be long-term resources; scouring your chat history or booting up a new one every time you need a basic answer is a pain. So equip yourself and your team with other tools to reference and build on over the lifetime of your appeal.

To distill information in a useful way, think ahead about how the information should be formatted or organized. Bulleted lists, tabular charts, and research memos are classic examples of structure enhancing the raw information within. Not everything deserves a research memo or can be distilled to a chart. Consider where these make sense. And of course, feel free to experiment with AI; try new formats that are not as intuitive or would otherwise take too long to create. Graphs, charts, and diagrams could unlock useful new ways to understand voluminous materials.

Of course, don't be fooled; AI cannot replace your own knowledge. If all you read are bullet-point summaries, you'll have a bullet-point-summary understanding. Only by reading transcripts, briefs, exhibits, and authorities can you internalize them and understand where they fit in your case. AI can help you approach, understand, and retain this information, but you must build and reassess your

own knowledge over the lifetime of your appeal.

To do so, use these tools as catalysts to propel your own work. For example, after trial counsel or your client identifies potential issues for appeal, ask AI to generate an index of where each issue was addressed in a brief or order in the trial court. Use the index as a study guide to start reviewing the record. Along the way you will discover other issues or reframe the existing issues in a different way—this does not mean your AI tool or your index has failed, but rather that you have succeeded in developing your own understanding of the case. You can now update the index—by hand or in Word—and begin enhancing it. Add the key authorities cited in every brief for each issue. Note inconsistencies or red flags. Your AI-generated index ultimately becomes the scaffolding for your own notes, which are essential to guiding further research and outlining your arguments.

We are now treading into writing territory, which deserves special attention.

Make sure it is still your writing

For those who like to write (like most appellate attorneys), AI creates much angst. Building writing skills is a lifelong process, and AI cannot substitute for a personal writing style built through reading, studying legal writing as a discipline, and...well, writing and rewriting. But approaching writing with AI deliberately yields plenty of opportunity to hone and even improve your writing skills.

There are generally two approaches to writing with AI: asking AI to take the first cut and then rewriting it yourself, or writing organically and then using AI to improve your work. The first can help overcome the difficulty of writing from a blank page, and the second can identify gaps in your thinking and analysis.

To be sure, the second approach requires more brainpower and will probably sharpen your overall writing skills, rather than just your editing skills. But whichever path you take, the work product must reflect your own understanding of the case. And the overall process should look similar to writing without AI: compiling notes and ideas, developing an outline, composing a coherent draft, and then rewriting and polishing. *E.g.*, Bryan A. Garner, *Legal Writing in Plain English* 11

(3d ed. 2023) (recommending the “Brainstormer, Architect, Builder, and Critic” approach, in that order). So if you do employ AI to generate a draft, you must have already thought long and hard about the issues and decided on an argument structure. That way, you can proceed issue-by-issue with specific prompts and targeted reference documents, maintaining tight control of the written output in the process.

Once you have a first draft, you must begin inserting your human voice and storytelling ability. That includes identifying themes, framing arguments persuasively, and maintaining the proper tone. This requires time and personal touch. But there are several ways to use AI to improve your writing along the way. For example, ask AI to

- ❑ play the role of opposing counsel and identify weaknesses and counterarguments
- ❑ identify supportive and adverse authorities that are not cited or addressed (if using an AI tool with legal research capabilities)
- ❑ provide alternative organizations, sentence structures, or tones
- ❑ proofread and suggest stylistic changes, including by applying a preferred style guide (such as Chris Schandevell’s “Brief-Writing Ninja Style Guide”).

For each, use thoughtful prompts, critically evaluate the results, and decide for yourself whether the suggestions are worth incorporating. Along the way, your ideas should crystallize, and you will probably find yourself rewriting and editing for long stretches without employing AI.

Anticipate questions and craft answers

Oral argument is one of the hallmarks of appellate practice. Luckily, AI has not taken that away (at least for now). It is no secret that oral argument takes preparation; by the time you reach the podium, you must be the master of your case. AI can help get you there.

Once the briefing is submitted, arm AI with the briefs and relevant record materials and ask it to anticipate oral argument questions. Better yet, tell AI to take on specific roles or mindsets that judges may take. Giving AI a role to play is fantastic for sharpening and varying the questions it asks. For example, tell AI to play a three-judge panel that includes a textualist, purposivist, and pragmatist. Or judges focused on the factual record, your legal arguments, and precedent, respectively. And if you know your panel, identify opinions or transcripts in relevant cases involving your judges and ask AI to predict their questions.

Of course, questions need answers. Tell AI to propose answers to the questions it generates. But before looking at them, answer the mock questions yourself and then compare. Did you hit the same points as the AI-suggested answer? If not, evaluate whether you and the AI employed strong or weak arguments, creative or vapid phrasing, and logical or irrelevant points. If you prefer your own answer or develop a new one, ask AI to evaluate it against the relevant question, and analyze its assessment.

Until audio-vocal AI becomes responsive enough to simulate oral argument, it will be up to you to bring written questions and answers to life in ways that replicate oral argument. Record yourself asking the questions and answering them. After sufficient study and practice alone, ask others to moot you with the likeliest or most difficult questions. Of course, one or more moot arguments with colleagues who develop questions of their own is essential to eliminating any “blind spots.” But you can better prepare by using AI to help predict a host of potential questions before the real grilling happens in court.

Conclusion

To survive the AI boom, young appellate attorneys must develop skills that endure and judgment that earns respect. Just like in other aspects of practice, being proactive beats being reactive every time. Identify opportunities to apply your critical thinking skills while working with AI, and you will be rewarded with a stronger mind and work product. Replace your thinking with AI, and you’ll just be left cleaning up the mess. Whether you work for an AI skeptic or evangelist, or

someone in between, taking your own proactive approach will ensure you grow into a successful appellate advocate.

This article was reviewed and edited with the assistance of Claude (Anthropic). All language is the author's own.

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