

Limitations of Generative AI in Civil Jury Trials

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Generative AI has made significant strides in various fields, promising to revolutionize how we handle complex tasks. It's no wonder that clients, attorneys, and law firms are drawn to its fast, inexpensive, and clear output. The allure of using generative AI for drafting opening statements, closing arguments, direct and cross-examinations, creating graphics, and assisting with trial motions is strong. This allure and the marketing hype ignores a fundamental truth: Generative AI is not yet ready for the courtroom.

Diverse Audiences With Unique Needs

A jury trial is a multifaceted event, involving distinct audiences: the judge, the jury, client representatives, and witnesses. Each of these audiences have different needs and will require a tailored approach that will dynamically change throughout the trial.

1. The Judge: Judges are concerned with the trial record, the potential for appeal, maintaining courtroom control, and efficient time use. They require clear, legally sound arguments. Understanding the judge's experience and background is crucial. A seasoned judge may have a firm view of how a trial should proceed, while a newcomer might still be



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shaping their approach. Each judge's unique viewpoint, philosophy, and rules play a significant role in the trial's dynamics. Generative AI, however, lacks the nuance to adapt to these individualized needs effectively.

2. The Jury: Comprising individuals from diverse backgrounds, jurors have no personal stake in the case outcome but are tasked with delivering a fair verdict. They must understand complex legal rules and concepts, making clear and relatable presentation of evidence crucial. Emotional appeals, compelling storytelling, and witness credibility are vital here—subtleties generative AI often misses.

3. Client Representatives: These individuals, whether in-house legal counsel focused on costs and expectations or high-ranking corporate officers viewing the trial as an extended negotiation, have different goals and concerns. Their anxiety over trial outcomes is heightened by their limited control over courtroom proceedings. Generative AI cannot provide the reassurance and strategic updates these clients need.

4. Witnesses: Witnesses, who range from nervous laypeople to compensated experts, are critical to the case. Their testimony needs to be clear, concise, and compelling. Preparing and managing witnesses requires a human touch. Many factors outside the courtroom and concerns about the future can have significant impact on the emotions, preparation and cooperation of witnesses. Generative AI lacks the information and capabilities to address these outside factors and concerns.

Conflicting Goals and Contexts

During a trial, attorneys juggle multiple goals including:

- Persuading the jury to favor their client.
- Convincing the judge on legal motions.
- Telling the client's story and presenting its case.
- Building client confidence in the trial team.
- Pressuring the opposition to settle favorably.
- Preserving the record for appeal.

These goals often conflict. For instance, preserving a comprehensive record for appeal can dilute the focus of the jury presentation, making the case harder to follow. Similarly, an aggressive stance might please the client but alienate the jury and provoke negative rulings. Generative AI cannot navigate these shifting priorities and their dynamic interplay throughout a trial.

The Dynamic Nature of Trials

Trials are inherently dynamic, with focus shifting based on interactions between opposing counsel and evolving presentations. Generative AI cannot read the room—it misses the subtle shifts in witness demeanor, juror attention, and client reactions. It cannot adjust strategies in real time or understand the instantaneous impact that graphics and presentations from the opposing side during trial may have on the story generative AI wants to tell and how the judge and jury will perceive the testimony and evidence submitted at trial in light of such graphics and presentations.

Inadequate Training Data

Generative AI relies on extensive datasets, typically drawn from publicly available sources. However, issues, narratives, and disputes unique to a particular case, or novel legal issues, often fall outside these datasets. Developing comprehensive datasets for trial use—incorporating trial transcripts, graphics, orders, and decisions—can be prohibitively expensive. The relatively small number of trials annually exacerbates this issue. For instance, the District of Delaware, a popular venue for patent litigation, conducts fewer than 40 trials per year. This scarcity makes it challenging to amass sufficient data to train AI for such specialized applications.

Access to Necessary Data Quality and Protective Orders

Generative AI's effectiveness is also hampered by access to the necessary data. Each case has a unique fact pattern, with documents often under protective orders that restrict access. These orders vary widely, raising ethical and legal concerns about data usage. The AI might not have access to all necessary information, and

integrating private data without breaching confidentiality is problematic.

Navigating Pre-Trial Rulings and Rules of Evidence

Courtroom presentations must adhere to stringent pre-trial rulings and rules of evidence. Generative AI, while proficient at generating content, lacks the legal expertise to navigate these complexities effectively. It might produce inadmissible suggestions or fail to anticipate objections, undermining the presentation's credibility.

Time Constraints and Strategic Decision Making

Trials are governed by strict time limits, forcing careful rationing of time, witnesses, and exhibits. Generative AI lacks the comprehensive understanding of case specifics and strategic foresight needed to make these critical decisions. It might overlook key elements, jeopardizing the case.

The Human Element

Trials hinge on human attributes—emotional intelligence, adaptability, and personal connection. Generative AI cannot replicate these qualities, nor can it gauge courtroom atmosphere or adjust tactics on the fly.

Specific Uses and Limitations

- 1. Opening Statements and Closing Arguments:** While AI can draft these statements, it often lacks the nuance needed for emotional appeal or legal precision, missing the personal touch that experienced trial lawyers provide.
- 2. Graphics and Exhibits:** AI can quickly produce visual aids, but ensuring these are

relevant, focused, and compliant with pre-trial orders is challenging. As discussed above, protective orders often limit AI's access to sensitive information and predicting what resonates with the jury requires human insight.

- 3. Witness Examinations:** Crafting effective questions depends on the lawyer's style and the witness type. AI might miss the tone and strategic direction, failing to adapt to live responses crucial for dynamic examinations.

The Broader Strategic Context

Generative AI is ill-suited for understanding the broader strategic context of a trial. Legal battles often form part of a larger business conflict, where positions in one case can impact another. AI might suggest strategies that win the battle but lose the war, lacking the human judgment needed to see the bigger picture.

Conclusion

Generative AI, despite its many advantages, falls short in the nuanced, adaptive, and human-centric world of civil jury trials. The complexity of addressing diverse audiences, managing conflicting goals, making strategic decisions, adhering to legal rules, ensuring data quality, understanding broader contexts, and handling trial dynamics underscores the irreplaceable value of skilled trial lawyers. The courtroom remains a domain where human judgment, experience, and adaptability are paramount.

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