



PROGRAM MATERIALS

Program #36220

October 22, 2026

The Human Bottleneck: Why AI Won't Fix the Biggest Problem in Legal Practice

Copyright ©2026 by

- **Christopher Kercher, Esq. - Kercher Law PLLC**

All Rights Reserved.

Licensed to Celesq®, Inc.

Celesq® AttorneysEd Center

www.celesq.com

**5301 North Federal Highway, Suite 150, Boca Raton, FL 33487
Phone 561-241-1919**



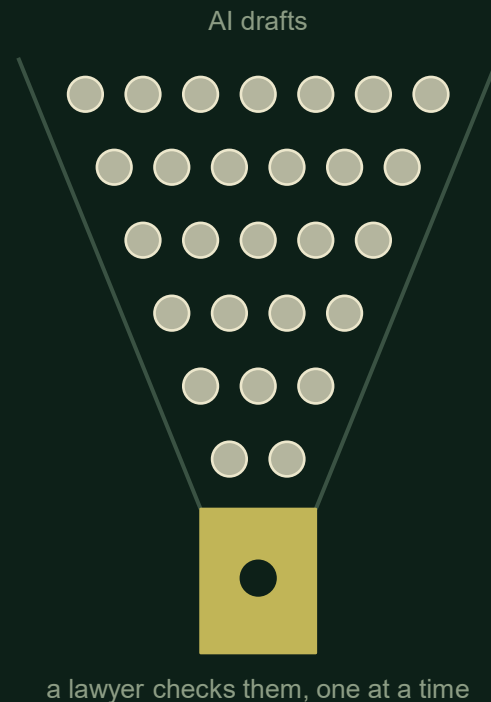
The Human Bottleneck

Why AI Won't Fix the Biggest Problem in Legal Practice

Christopher Kercher · Kercher Law

chris@kercherlitigation.com

Celesq AttorneysEd Center · Program #36220 · October 22, 2026, 11:00 a.m. ET

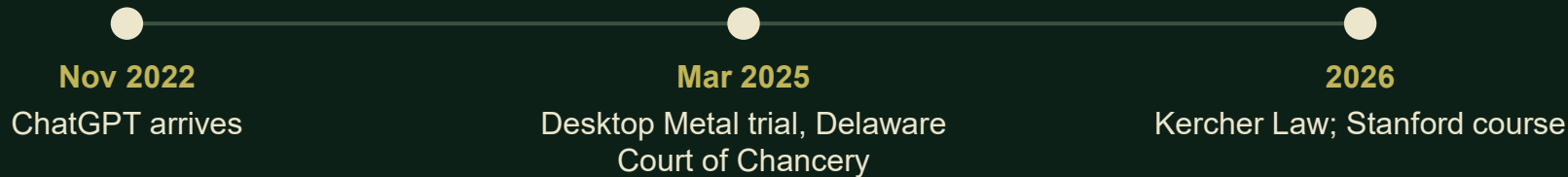




ABOUT THE PRESENTER

Christopher Kercher

Trial lawyer, Kercher Law · teaches A Litigator's Guide to AI at Stanford Law School



LITIGATORS OF THE WEEK · THE AMERICAN LAWYER, MARCH 28, 2025

An AI-powered trial win: in Desktop Metal v. Nano Dimension, the Quinn Emanuel team was likely “the first major trial team to harness AI’s game-changing potential.”

Quinn Emanuel team led by William Burck, with Christopher Kercher and Peter Fountain (the team’s own words).



What You Will Be Able to Do

From the published program description

1 Identify legal tasks suited to AI assistance

Route each task by what an error costs and what checking costs.

Part II

2 Preserve appropriate human oversight

Apply ABA Formal Opinion 512 and Rules 5.1 and 5.3 to AI-assisted work.

Parts IV and V

3 Diagnose the bottlenecks that keep AI from improving speed and quality

Find where a task waits on a lawyer, and why the firm leaves it there.

Parts I and VI

4 Redesign legal workflows so lawyers and AI systems complement one another

Split the work into checked steps and budget the lawyer hours.

Part VII



AI Multiplies the Output a Lawyer Must Check

BEFORE AI

Read the 200 most important documents

Build the chronology once

Draft one version of the brief



WITH AI

Have all 10,000 read and summarized

Rebuild it after every production

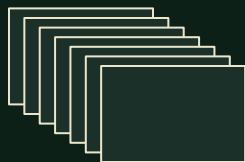
Draft three versions to compare

Every item on the right reaches the client only after a lawyer checks it.



The Slowest Step Sets the Pace

Speeding up any other step doesn't speed up the matter



Drafts waiting to be checked

Drafts now arrive faster than one lawyer can check them, so they wait. The decision waits behind the check. The matter moves at the speed of the check, not the speed of the draft.

Eliyahu M. Goldratt & Jeff Cox, *The Goal* (1984). Goldratt's rule: a system's output is set by its bottleneck, and an hour saved at a non-bottleneck is a mirage.



Where AI-Assisted Work Waits on People

The test: work waits there on a person, a better model won't remove it, and a lawyer or firm can change it

THE WORK: WHERE A TASK WAITS

1 Choosing

Which tasks go to the tool, and how each will be checked.

3 Checking

Verifying output against the record and the law. Hours per draft.

2 Assigning

Instructions that state the goal, the sources, the scope, and what to do when the record is silent.

4 Deciding

Strategy, advice, the signature. Starved when lawyer hours go to work the tool could do.

THE FIRM: WHY THE WAIT PERSISTS

5 Permission

Approved tools, client rules, court orders.

6 Incentives

Fee and pay systems that reward hours.

7 Training

How juniors become lawyers who can check.

Workflow design is not on the list. It is how you widen these steps (Part VII).

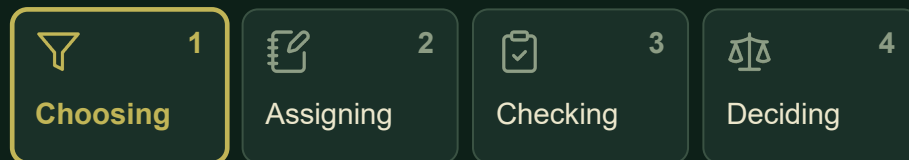


PART II · THE WORK

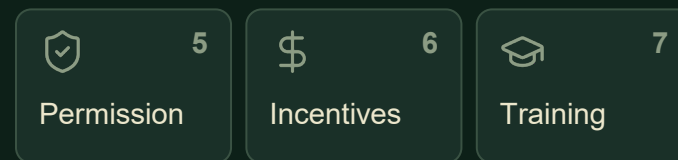
Choosing

Which tasks go to the tool, and how each will be checked

THE WORK: WHERE A TASK WAITS



THE FIRM: WHY THE WAIT PERSISTS





Two Questions Decide Where a Task Goes

What does an error cost? What does it cost to check?

Before either: may this client's data go into this tool? If not, stop (Part VI).

HIGH COST
OF ERROR

Hand off; check every line

Chronology with document cites; cite-check of a brief; quotations in a filing

A lawyer does it; AI as second reader

Privilege calls; settlement advice; the argument the case turns on

LOW COST
OF ERROR

Hand off; spot-check

Internal deposition digest; document index

Starting point only

Brainstormed deposition topics; issue spotting; first list of documents to request

CHEAP TO CHECK

COSTLY TO CHECK

Predictions (outcomes, values, how a judge will rule) can't be checked until later. Treat them as prompts for your own analysis, never as evidence.



Hypothetical 1: The 40,000-Document Production

One request from the partner. Which parts go to the tool?

THE FACTS

A securities case. The other side has produced 40,000 documents. The partner tells an associate: “Use AI to find every document showing the CFO knew about the defect before March 2024, and confirm there’s nothing else.”

1 Hand off: finding and tagging

Retrieval can be checked: read each hit against the document. Open every document the brief will cite.

2 Needs its own proof: “nothing else”

A claim of absence needs a logged search: terms, sets searched, and an elusion sample of non-hits read by a person (as in TAR).

3 Keep with the lawyer: “the CFO knew”

Knowledge is an inference. The tool can list the evidence on each side; the partner decides what the brief says.

One sentence held three tasks, each with its own route.

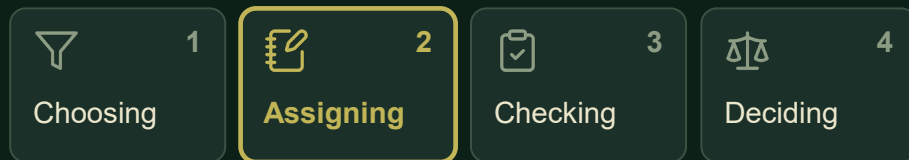


PART III · THE WORK

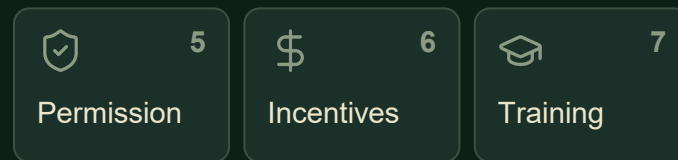
Assigning

What the tool needs to know, and how to tell it

THE WORK: WHERE A TASK WAITS



THE FIRM: WHY THE WAIT PERSISTS





A Vague Request Gets an Easier Question Answered

Name the output you'll use, and don't lean the question

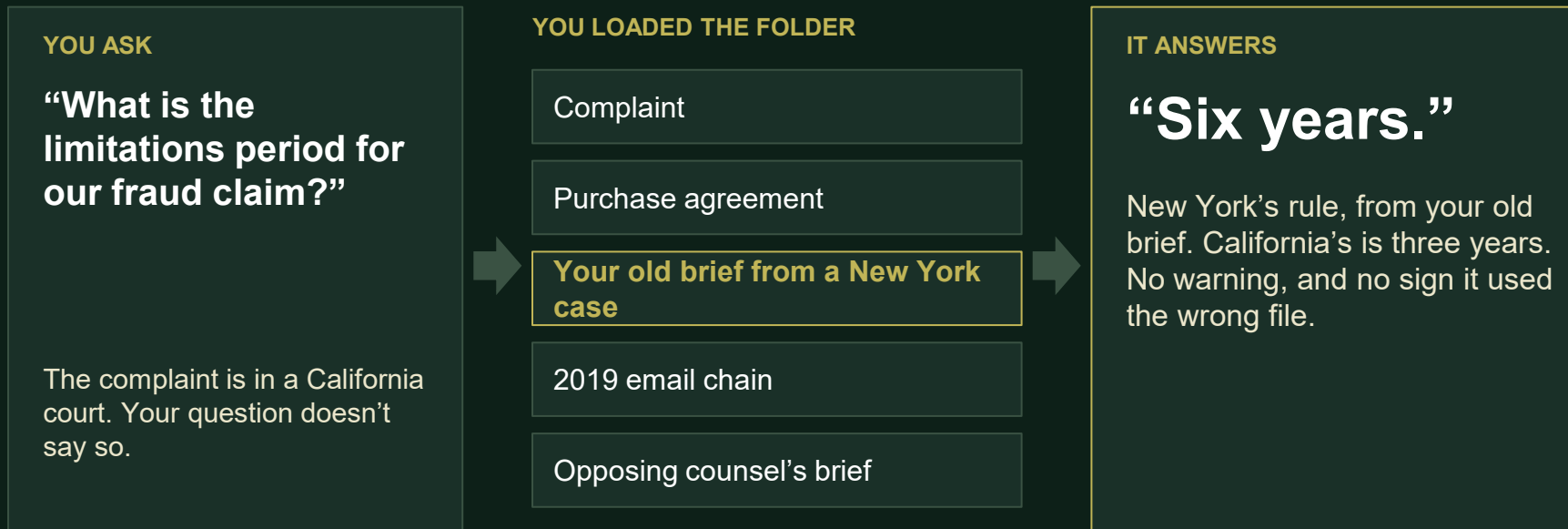
Instead of	Write	Why
"Explain why the motion fails."	"Assess whether the motion succeeds, and say what would change the answer."	<i>The first wording assumes the answer.</i>
"Is our argument strong?"	"Give opposing counsel's best reply to each point."	<i>"Strong?" invites agreement.</i>
"Summarize the deposition."	"List every admission on damages, with page and line."	<i>Names the output you will use.</i>
"Review this contract."	"Flag each clause that shifts risk to our client, with section numbers."	<i>Names the risk you care about.</i>

On answering an easier question in place of a hard one: Daniel Kahneman, *Thinking, Fast and Slow*, ch. 9 (2011).



Everything You Load Gets Used

Unless you say which source controls, the tool may treat every page as relevant



Load what the question needs, and say which source controls.

Constructed example. Cal. Civ. Proc. Code § 338(d) (three years, accruing on discovery); N.Y. C.P.L.R. 213(8) (greater of six years from accrual or two from actual or constructive discovery).



Six Lines at the Top of Every Assignment

Instruct the tool as you would a new associate who has read nothing. Example: a chronology.

Goal and finish line	A chronology of the March 2024 board process, finished when every entry cites a Bates number.
Scope	Read every document in the folder. If two documents give different dates, stop and ask.
Which source wins	Signed minutes beat drafts. A document beats an email describing it.
Self-check	Before finishing, reopen each cited page and confirm the date.
Marking	Tag each entry DOCUMENT, TESTIMONY, ALLEGED or NOT IN RECORD.
Silence rule	If no document supports an entry, write NOT IN RECORD and name the source that would settle it.

Without a silence rule, the tool fills gaps with plausible facts.

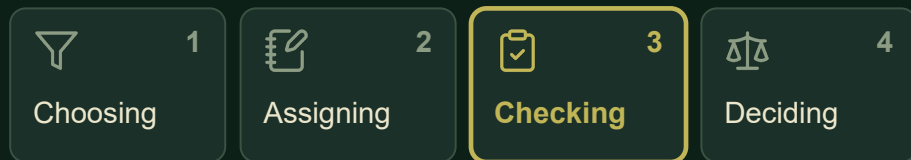


PART IV · THE WORK

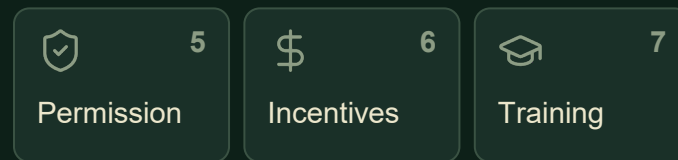
Checking

Plan the review hours when you staff the matter

THE WORK: WHERE A TASK WAITS



THE FIRM: WHY THE WAIT PERSISTS





ABA Opinion 512: Existing Duties Apply to AI

Formal Opinion 512 (July 29, 2024) applies six areas of the Model Rules to generative AI tools

Competence

Rule 1.1

A reasonable understanding of what the tool can and can't do. Review scaled to the task.

Confidentiality

Rule 1.6

Assess disclosure risk. Informed consent before client information goes into a self-learning tool.

Communication

Rule 1.4

Disclose when the client asks or terms require it, when consent is needed, when it affects the fee, or when output drives a key decision.

Claims and candor

Rules 3.1, 3.3, 8.4(c)

Review output before you file it. A false citation is your misstatement.

Supervision

Rules 5.1, 5.3

Managers set clear AI policies. Supervisors make reasonable efforts to ensure compliance and training, and vet vendors.

Fees

Rule 1.5

Bill hourly work at the time actually spent. Don't bill clients to learn a tool you'll use regularly.

Also check your jurisdiction's rules and ethics opinions, and each judge's standing orders; some require a certification about AI use.



Mata: A Missed Check, Then False Statements

Mata v. Avianca, Inc., 678 F. Supp. 3d 443 (S.D.N.Y. 2023)

The research

Steven Schwartz, not admitted in the Southern District, researched the opposition with ChatGPT.

The signature

Peter LoDuca, counsel of record, signed and filed it, relying on that research.

After the warning

When opposing counsel and the court could not find the cases, the lawyers stood by them and made false statements to the court.

The sanction

Under Rule 11 (alternatively, inherent power): \$5,000, jointly and severally on both lawyers and their firm; letters to the client and each judge falsely named.

The court: “there is nothing inherently improper about using a reliable artificial intelligence tool for assistance.”

Rule 11(b) reaches every lawyer who signs, files, submits or later advocates a paper.



Check Each Sentence Three Ways

A model's errors look like correct work. One sentence from a draft, from Hypothetical 1:

“By January 2024, the CFO knew of the defect. (Ex. 14.)” Ex. 14 is a January 9, 2024 email to the CFO describing the defect.

Accuracy

Does the source say it?

Ex. 14 exists, is dated January 9, 2024, and describes the defect.

PASSES

Logic

Does it follow?

An email sent to the CFO shows notice, not that the CFO read it. “Knew” goes beyond the source.

FAILS

Completeness

What cuts the other way?

The CFO testified to first reading the email in March (Dep. 88:4–19).

FAILS

Rewrite: “On January 9, 2024, the CFO was sent an email describing the defect (Ex. 14), though the CFO testified to first reading it in March (Dep. 88:4–19).”

Constructed example. The method: open the source, find the passage, test the claim against it, and write down what the source does not support.



Plan Review Hours the Way You Plan Staffing

Rule 5.1(a): reasonable efforts to have “measures giving reasonable assurance” that all lawyers in the firm conform to the Rules

Budget it

When you staff a matter, set review hours for each AI-assisted task and name who does them. Track one month; set the next budget from that.

Set criteria first

Write what a good answer looks like before the draft exists. Reading for feel rewards fluent prose.

Match depth to risk

Every line of anything filed or sent. Samples for internal work. Use the grid from Part II.

Run hard questions twice

When two runs or two reviewers disagree, a lawyer decides. Agreement is not proof.

Keep a failure log

Record each error and its fix. Use them in the next assignment and in training.



Hypothetical 2: The Overnight Opposition

It reads well. What has to happen before it's filed?

THE FACTS

A second-year associate uses the firm's AI tool to draft an opposition to a summary judgment motion overnight. The partner reads it at 7 a.m. It is persuasive and well organized, and it's due at noon. The associate used a free consumer chatbot for one section because the firm's tool was slow.

Candor (3.3, 8.4(c)) and Rule 11(b)

Pull and read every cited case. Check every quotation word for word. Open every record cite at the page and line.

Supervision (5.1)

The partner signs and owns it. Assign the checks by name, and protect the time before noon.

Confidentiality (1.6)

Find out what went in. Without informed consent, that input is itself the problem under Opinion 512. Decide what the client must be told (1.4).

The firm (5.1(a))

A firm tool slow enough that associates route around it is a policy and training failure. Fix the tool or the rule.

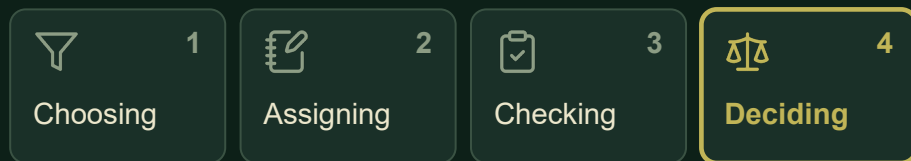


PART V · THE WORK

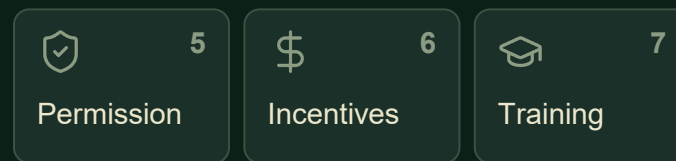
Deciding

The calls that stay with a lawyer, and get starved when hours go elsewhere

THE WORK: WHERE A TASK WAITS



THE FIRM: WHY THE WAIT PERSISTS





Four Calls That Stay With the Lawyer

A model's suggestion doesn't supply the client's judgment or shift professional responsibility

Strategy against an opponent

A model projects from past patterns. An opponent responds to what you do. Test your theory against their best account.

What this client wants

Ask. Don't let the tool infer the client's goals, risk tolerance or settlement authority.

What you stand behind

A source that checks out is not a certification. The signature is a lawyer's.

Which question matters next

Tools can propose and rank questions. The lawyer picks one and can say why.

Redesign should send lawyer hours here.

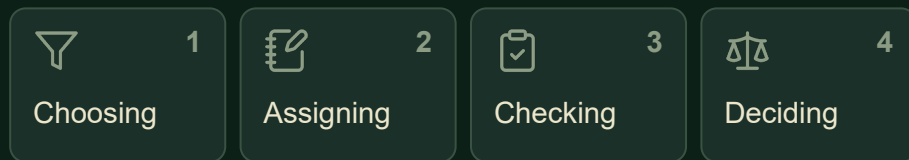


PART VI · THE FIRM

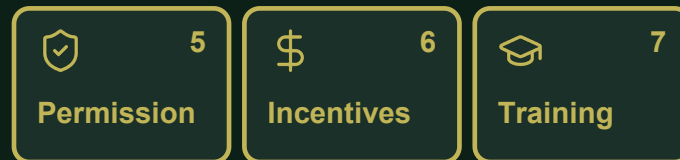
Permission, Incentives and Training

Why the wait persists after the tools improve

THE WORK: WHERE A TASK WAITS



THE FIRM: WHY THE WAIT PERSISTS





Permission Comes Before the First Prompt

May this data go into this tool, under these terms, for this matter?

Approved tools

Which tools the firm or agency allows, and on what contract terms: retention, training on inputs, access.

Client rules

Outside counsel guidelines and engagement terms that limit AI use or require disclosing it.

Court orders

Protective orders on who may see produced material. Judges' standing orders on AI use and certification.

A named owner

Someone who answers “may I use this tool here?” within a day. Slow answers send lawyers to unapproved tools.

Hypothetical 2's consumer chatbot is what a slow answer looks like.



Under Hourly Billing, Faster Work Earns Less

Setting	What faster work does	What it rewards
Hourly	Fewer hours billed for the same work	Hours
Flat or phased fee	Margin can rise, but the fee must reflect the efficiency	Efficiency, priced fairly
Contingent fee	Same fee, lower cost to earn it	Outcome
In-house or government	Lower outside spend; saved internal hours are hard to show in a budget	Caution and headcount

Opinion 512: bill hourly work at the time actually spent, including prompting and review. Charging the same flat fee with and without the tool may be unreasonable.

Ask what your fee and pay systems reward.



Reviewers Learn by Doing the Work the Tool Now Does

Under Opinion 512, lawyers can't bill clients to learn a tool they'll use regularly, so the firm pays for training

What juniors still have to learn

Reading sources closely, drafting, explaining their choices, and taking correction. That is how a lawyer learns to check a draft.

A practice that keeps it

The junior drafts a short version from the sources first. Then the junior compares the AI version, checks every proposition that differs, and explains what to keep and why.

If the workflow removes the practice, ask who will be able to check in five years.

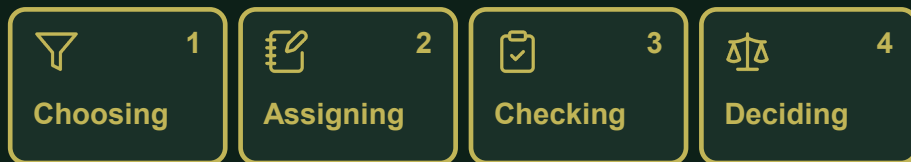


PART VII · REDESIGN

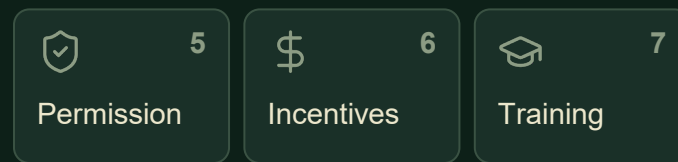
Redesign

Arrange the work so lawyer hours go to checking and deciding

THE WORK: WHERE A TASK WAITS



THE FIRM: WHY THE WAIT PERSISTS

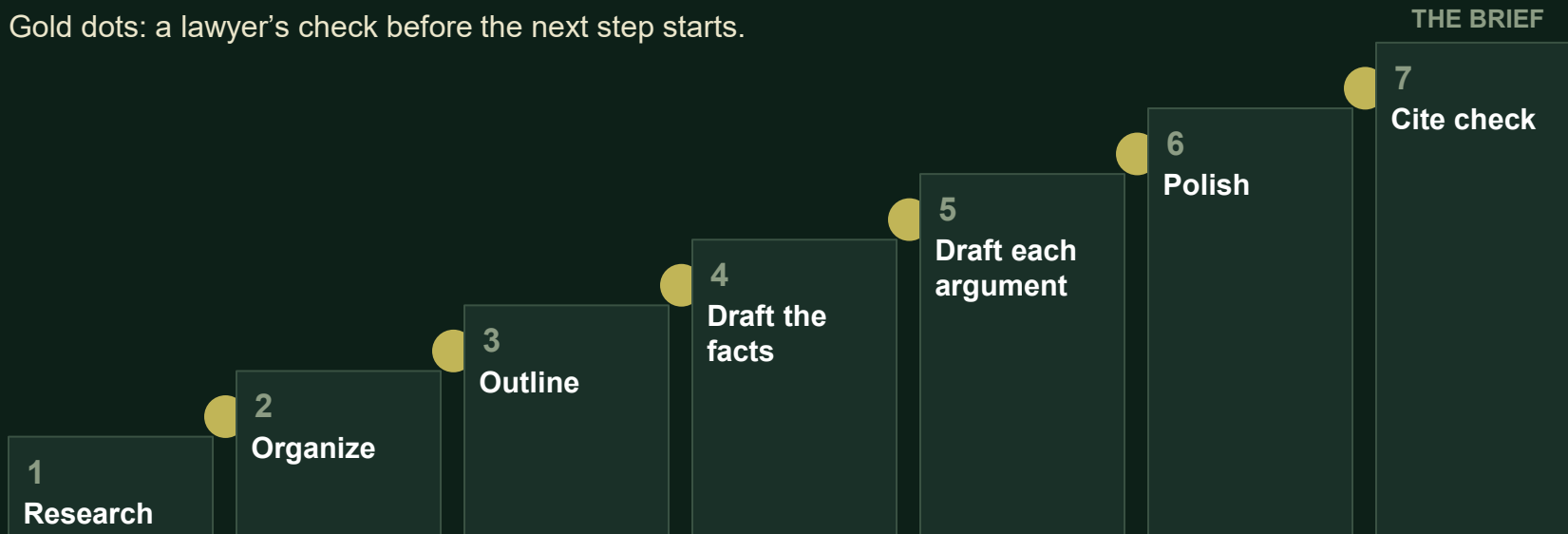




One Brief, Seven Tasks

Split the work into steps a lawyer can check

Gold dots: a lawyer's check before the next step starts.



Hand off one step first.



Errors Compound Unless You Check Each Step

Constructed arithmetic: five required steps, each right 90% of the time

59%

No checks. The chance all five steps come out right.

$$0.9 \times 0.9 \times 0.9 \times 0.9 \times 0.9 \approx 0.59$$

90%

A check after each step that catches and fixes 80% of that step's errors.

$$\text{Each step: } 0.9 + (0.1 \times 0.8) = 0.98. \text{ All five: } 0.98^5 \approx 0.90$$

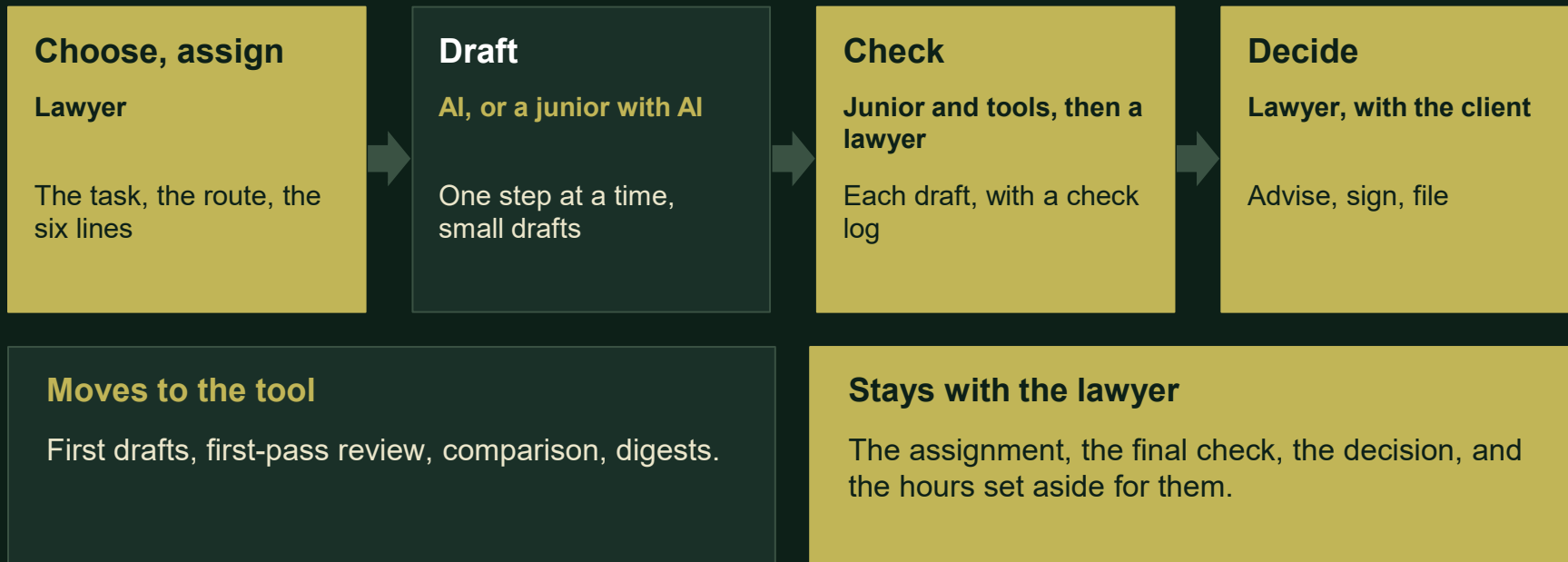
Each of those five checks is lawyer time, and it has to be in the plan.

Assumes independent steps and a check that adds no new errors. Real error rates vary by task and tool, and have to be measured.



A Workflow Built Around the Check

The same four steps as Part I. What changes is the size of each draft and the hours set aside.





Seven Things to Do This Month

One for each place the work waits

1 Choosing

Sort ten recurring tasks on the grid. Hand off one high-stakes, easy-to-check task.

2 Assigning

Write the six lines for one matter, including the silence rule.

3 Checking

Put review hours and a name next to each AI-assisted task in your next staffing plan.

4 Deciding

List the calls on your matter that stay with a lawyer, and protect time for them.

5 Permission

Find out who answers “may I use this tool here?” and how long it takes.

6 Incentives

Ask what your fee and pay systems reward. In-house: ask outside counsel for one fixed-fee phase.

7 Training

Have a junior draft from the sources before seeing the AI version, then compare.



CLOSING

Plan the Lawyer Hours

Choosing, assigning, checking and deciding take lawyer time, and they set the pace of an AI-assisted practice.



Christopher Kercher

Kercher Law

chris@kercherlitigation.com



Questions

Use the live question link now, or email me after the program. The written materials follow this slide.



WRITTEN MATERIALS

Reference Pages

Each page teaches one objective without the lecture

- A. Program summary
- B. Timed agenda
- C. Where does work wait? (objective 3)
- D. Task triage worksheet (objective 1)
- E. Assignment template (objective 4)
- F. Checking checklist (objective 2)
- G. Firm AI policy elements (objective 2)
- H. Workflow patterns (objective 4)
- I. Redesign, worked example (objective 4)
- J. Hypothetical 3 (objectives 1, 2)
- K. Glossary
- L. Authorities and sources



Program Summary

The argument of the program in prose

AI tools now produce first drafts, summaries, chronologies and document reviews in minutes. Every one of those outputs still reaches a client or a court only after a lawyer checks it and decides what to do with it. Under the theory of constraints (Goldratt, *The Goal*), a process moves no faster than its slowest step. In AI-assisted legal work, the slowest steps are human.

The program identifies four steps where a task waits on a lawyer, each of which stays when the model improves: choosing what goes to the tool and how it will be checked; assigning it with instructions that state the goal, the sources, the scope and a rule for when the record is silent; checking the output for accuracy, logic and completeness; and deciding, the strategic and client calls a lawyer keeps. Three firm conditions keep those steps slow: permission (approved tools, client rules and court orders), incentives (fee and pay systems that reward hours), and training (how juniors learn to check).

ABA Formal Opinion 512 applies existing duties of competence, confidentiality, communication, candor, supervision and reasonable fees to these tools. *Mata v. Avianca* shows how a missed check became a sanction once the lawyers stood by the fake citations instead of correcting them. The redesign that follows splits work into steps small enough to check, places a check after each step, budgets the review hours when the matter is staffed, and sends the hours saved to the decisions only a lawyer can make.



Timed Agenda

About 63 minutes of presentation, then questions

Time	Segment	Covers
0:00	Opening and objectives	Why the limit is lawyer time
2:30	Part I. Where the work waits	More output · the slowest step · seven places work waits
11:30	Part II. Choosing	The routing grid · Hypothetical 1
18:45	Part III. Assigning	Vague requests, loaded context, the six lines
28:00	Part IV. Checking	Op. 512 · Mata · three checks · review hours · Hyp. 2
44:30	Part V. Deciding	Four calls that stay with the lawyer
47:15	Part VI. The firm	Permission, incentives, training
54:30	Part VII. Redesign	Checked steps · arithmetic · workflow · seven things
61:45	Questions	Live question link; follow-up by email



Where Does Work Wait? A One-Week Diagnosis

Log each step for one week. The step with the longest wait is your bottleneck.

Step	What to look for	First fix
Choosing	Checkable tasks still done by hand	Sort ten tasks on the grid
Assigning	Drafts sent back because the request was misread	Six lines on every matter
Checking	Drafts waiting more than a day for review	Review hours and a name in the staffing plan
Deciding	Calls made late, or made by default	Protect partner time; set decision dates
Permission	Days from “may I?” to an answer; unapproved tools in use	Name an owner; publish approved uses
Incentives	Hours saved that nobody reports or reuses	Try one fixed-fee phase
Training	Juniors who only approve AI drafts	Draft first, then compare

How to log it: for each AI-assisted task, write down when it was assigned, when the draft arrived, when it was checked, and when it was decided. The longest gap names the step to fix first.



Task Triage Worksheet

Route each task by the cost of an error and the cost of checking it (Part II)

Task	Error cost	Check cost	Route	Who checks
Internal deposition digest	Low	Low	Hand off; spot-check	Associate
Chronology with document cites	High	Low	Hand off; check every cite	Associate, partner
Cite-check of a brief	High	Low	Hand off; read every case	Associate
Privilege calls	High	High	Lawyer decides; AI sorts, drafts log	Reviewing lawyer
Deposition topic list	Low	High	Starting point only	Examining lawyer
Memo on an unsettled question	High	High	Lawyer leads; AI second reader	Partner
Client status update	High	Low	Hand off; lawyer edits, sends	Relationship lawyer

Kinds of task (Kapoor, Henderson & Narayanan 2024): information processing is cheapest to check against the source; judgment needs written criteria; prediction can't be checked until later. Fill the blank rows with your own tasks.



Assignment Template

The six lines, worked for a deposition summary for a summary judgment opposition

Goal and finish line	A table of every statement on when the CFO learned of the defect and what the CFO told the board, with page and line. Finished when every row has a cite.
Scope	Read the whole certified transcript and errata sheet. If an answer is unclear or changed on the errata sheet, flag it and ask.
Which source wins	The certified transcript controls. Ignore the rough draft and any summaries in the folder.
Self-check	Before finishing, reopen each cited page and confirm the quotation word for word.
Marking	Mark each row ADMISSION, DENIAL, UNCLEAR or NOT IN TRANSCRIPT. Note any objection on the record.
Silence rule	If the transcript doesn't address a topic, write NOT IN TRANSCRIPT. Do not infer.

Also state, at the top: the matter and your role, and the approved tool for this matter. Paste nothing into any other service.



Checking Checklist

Before an AI-assisted work product is filed, served or sent to a client

- | | |
|--|--|
| 1 Every cited authority pulled from a primary source and read by a lawyer. | 7 Every claim that something doesn't exist backed by a logged search. |
| 2 Every quotation compared word for word with its source. | 8 Gaps in the record marked as gaps, not filled. |
| 3 Every record cite opened at the page and line. | 9 The court's local rules and the judge's standing orders on AI checked. |
| 4 Each conclusion follows from its cited support (logic). | 10 Tool approved for this client's data; nothing pasted elsewhere. |
| 5 Contrary authority and facts searched for and addressed (completeness). | 11 Time recorded as actually spent, including review. |
| 6 Controlling law confirmed current; date of the check recorded. | 12 A named lawyer has read the final version and signs it. |

Items 1–3, 7: Fed. R. Civ. P. 11(b); Model Rules 3.3, 8.4(c). Items 4, 6: Rule 1.1. Item 5: Rules 1.1, 3.3(a)(2). Item 10: Rule 1.6. Item 11: Rule 1.5; ABA Op. 512. Item 12: Rules 5.1, 5.3.



Firm AI Policy Elements

Suggested elements. Opinion 512 addresses policies, training and vendor diligence; the rest goes further.

A named owner

One person who approves tools and answers use questions quickly.

Vendor diligence (5.3)

Review terms, security and data handling before approval, and again on renewal.

Required review

Minimum checks by task type, keyed to the triage worksheet and the checklist.

Records

What prompts, outputs and checks to keep, and for how long. Kept records may raise discovery and work-product questions.

Client communication

When to tell clients about AI use, and when informed consent is needed (Rules 1.4, 1.6).

Approved tools

Which tools, for which data, on which contract terms (retention, training on inputs, access).

Client restrictions

A matter list showing where client terms, protective orders or court orders limit AI use.

Training

Training before access, covering the tool's limits and the firm's review rules.

Incidents

How to report a suspected disclosure or a filed error, and who decides what the client is told.

Billing

Time actually spent; no charge to learn tools used regularly; per-use tool costs at actual cost; basis explained first (Rule 1.5).

Review the policy at least once a year, and whenever a tool, a contract or a governing rule changes.



Workflow Patterns in Plain Terms

Five ways to arrange AI steps, and where the lawyer checks each one

Pattern	Litigation version	Where the lawyer checks
One step at a time	Source table → issue map → outline, each step checked before the next	<i>Between each step</i>
Sort first	Sort documents by type (notice, minutes, email, transcript), then apply each type's check	<i>The sorting rules</i>
Two readers	Two independent readings of the same record, then reconcile	<i>Every disagreement</i>
Lead and helpers	A lead AI run divides a large review as it goes, assigns the pieces, and merges results with a log of what each read	<i>The coverage log</i>
Draft and test	Draft → test against written criteria → revise → test again	<i>The criteria, before the draft</i>

Adapted from the five workflow patterns in Erik Schluntz & Barry Zhang, Building Effective Agents (Anthropic, Dec. 19, 2024): prompt chaining, routing, parallelization, orchestrator–workers, evaluator–optimizer.



Redesign, Worked Example

The overnight opposition from Hypothetical 2, rebuilt

Step	Before	After
Assign	“Draft an opposition” at 6 p.m.	Six lines; approved tool named; noon deadline drives the review plan
Research	Inside the one overnight draft	AI research memo; associate checks every case before outlining
Outline	Inside the one overnight draft	Partner approves the outline the same evening
Draft	One full draft at 7 a.m.	Facts, then each argument, each with a check log
Check	Partner reads for feel at 7 a.m.	Three checks on every sentence; record cites opened; hours budgeted
Decide	Filed at noon because it reads well	Partner decides what to argue and signs, with time set aside

The tool does the same drafting in both versions. The difference is where lawyer hours go: in the redesign they go to the outline, the checks and the decision, and they are planned the evening before.



Hypothetical 3: The Client Who Wants It Cheaper

Permission, communication, competence and fees in one request

THE FACTS

A general counsel asks outside counsel to use AI for a 200,000-document review to cut the budget. To save more, she suggests uploading the set to a free consumer chatbot her team already uses. She wants a fixed price by Friday.

The answer: don't upload the set to a free consumer chatbot. Offer an approved tool on terms that bar training on inputs, a validated review method, and a fixed fee for the phase.

Permission and confidentiality (1.6)

The GC's suggestion is not informed consent. Consumer terms may allow retention or training on inputs. Consent doesn't cure protective-order limits on produced material, privilege risk, or third parties' personal data.

Communication (1.4)

Explain in writing the method, what it can miss, and the review plan, so the client can decide.

Competence (1.1)

Validate the method on this set: sample the non-hits and record the result.

Fees (1.5)

A fixed fee fits if scoped by phase and priced to reflect the tool. If hourly, bill time actually spent.



Glossary

Terms used in this program

Model

The trained system that generates text. Knows general law up to a training cutoff, not your matter.

Assignment

The instructions for a task: goal, scope, which source wins, self-check, marking, silence rule.

Source of truth

The document that controls when sources conflict.

Elusion sample

A sample of documents a search did not retrieve, read by a person to estimate what was missed.

Agent

A model that uses tools in a loop (search, open files, run code), choosing each next step.

Context

Everything the model sees for one answer: instructions, documents and the conversation. Finite.

Silence rule

The instruction for what to do when the record doesn't answer: say so, and name what would.

Self-learning tool

A tool whose provider may retain inputs or use them to train or improve the model.

Fabrication

Output presented as fact with no support in the sources: a fake case, quote or date.

Bottleneck

A step whose capacity is at or below the demand on it. It sets the pace for the whole process (Goldratt).



Authorities and Sources

Cited in this program. Verify each against the current source before relying on it.

LAW AND GUIDANCE

ABA Comm. on Ethics & Pro. Resp., Formal Op. 512 (2024) (Generative Artificial Intelligence Tools).

Model Rules of Pro. Conduct r. 1.1, 1.4, 1.5, 1.6, 3.1, 3.3, 5.1, 5.3, 8.4(c) (Am. Bar Ass'n 2024).

Fed. R. Civ. P. 11(b).

Mata v. Avianca, Inc., 678 F. Supp. 3d 443 (S.D.N.Y. 2023).

Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

Cal. Civ. Proc. Code § 338(d); N.Y. C.P.L.R. 213(8).

State and local guidance, for example: Fla. Bar Ethics Op. 24-1 (2024); State Bar of Cal., Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law (2026); N.Y.C. Bar Ass'n Formal Op. 2024-5; N.Y. State Bar Ass'n, Report and Recommendations of the Task Force on Artificial Intelligence (2024).

OTHER SOURCES

Sayash Kapoor, Peter Henderson & Arvind Narayanan, Promises and Pitfalls of Artificial Intelligence for Legal Applications (2024), arXiv:2402.01656.

Eliyahu M. Goldratt & Jeff Cox, The Goal (North River Press 1984).

Daniel Kahneman, Thinking, Fast and Slow (2011), chs. 7, 9.

Erik Schluntz & Barry Zhang, Building Effective Agents, Anthropic (Dec. 19, 2024), anthropic.com/engineering/building-effective-agents.

Aaron Levie (@levie), X (Aug. 30, 2025).

These materials are for educational purposes and are not legal advice. Check current rules and opinions in your jurisdiction.