



Using AI to Analyze and Oppose a Trial or Appellate Brief

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Our Agenda

- An approach to reply briefs
 - Review your own case
 - Outline reply
 - Then review the opposing brief, and annotate it
 - Build your outline and refine it (with AI tools)
 - Draft your reply
 - Edit
 - Finalize
- Some practical tips on AI tools
- A review of some of the tools I use

Introduction

- Generative AI tools emerged rapidly after 2023.
- Lawyers can now integrate AI into work flows.
- Today's question: how to use these tools ethically and effectively.

AI's Utility for Litigators

- AI can save time and definitely expands research capabilities.
- Helps you identify issues, arguments, and authorities.
- Ethical duty of competence includes technology.

The Start: Review Your Own Case Approach

- Start by reviewing the file to remind yourself of your own approach to the case.
- Reaffirm the client's objectives and your case narrative.
- Avoid letting the opponent's framing dictate your thinking.

AI Can Help with File Review

- AI tools like ClearBrief summarize pleadings and records.
- They can identify recurring themes and factual patterns.
- AI augments—not replaces—your judgment.

A Warning: Confidentiality

- Public AI tools may not protect client confidentiality.
- Anonymize your query or, better yet, use law-tech tools that secure or delete client data.
- Examples: ClearBrief, Logickull, Westlaw's Drafting Assistant, Westlaw Precision, Lexis +, etc.

Example: ClearBrief

- Summarizes and chronologizes case records.
- Crosschecks citations and extracts key issues.
- Ideal for large administrative records and discovery sets.
- Can produce hyperlinked drafts to authority and evidence.

Step Two: Outline the Reply

- Develop a top-level outline consistent with your case theory **before** reading the opposition.
- Use AI brainstorming tools to identify themes and supporting facts.
- Organize issues logically and persuasively.

Using AI to Spot Issues and Themes

- AI excels at pattern recognition and idea generation.
- Use it to test hypotheses about case strengths or weaknesses.
- Crosscheck AI results with your own reasoning.

AI Tools for Outlining

- ClearBrief: assemble and summarize evidence.
- ChatGPT and Claude: conceptual brainstorming (not confidential).
- Westlaw Precision & CoCounsel: validate authorities and identify others.

Third Step: Strategic Review of Opposition

- Read only after framing your own outline.
- Annotate every rebuttable point, perhaps with digital sticky notes.
- Maintain focus on your narrative, not opposing counsel's – unless you like opposing counsel's framing.

AI-Powered Brief Analysis

- Use ClearBrief to verify citations and summarize arguments.
- Westlaw Drafting Assistant identifies bad or overlooked authorities.
- Westlaw's Quick Check evaluates citation accuracy and precedent strength.

Identify Concessions and Omissions

- Identify un rebutted arguments and factual concessions.
- Argue omissions as implicit concessions.
- Use AI to cross-reference statements against the record.

Annotating the Opposition

- Tag every point worth rebutting.
- Add these to your outline, with page cites to the opposition.

Step Four: Refining the Outline

- Integrate critique from Westlaw or ClearBrief tools.
- Ensure logical flow and coverage of all issues.
- Revise to emphasize your narrative and strategic priorities.

Collaboration and Client Review

- Share outlines for feedback from clients and colleagues before drafting.
- Encourages buy-in and reduces iterative edits later.

Step Five: Drafting

- Always draft from an outline, even for emails and short documents.
- Outlines keep writing focused and efficient.
- Avoid wandering or repetition—stay on topic.

Step Six: Editing and Polishing

- “There is no such thing as good writing, only good rewriting” – Robert Graves
- AI editors can improve clarity, tone, and brevity.
- WordRake highlights weak phrasing and passive voice.
- AI rewriting tools can help you meet word limits.

Example: WordRake & CoCounsel

- Use WordRake for concise legal writing in Word.
- CoCounsel assists with summarization and simplification.

A Word About Ethics

- Treat AI output like work from a junior associate—verify everything.
- Do not delegate legal reasoning to AI.
- Maintain client confidentiality.

Disclosure and Compliance

- Courts increasingly require disclosure of AI use.
- Consult Duke Law's resource:
rails.legal/resources/resource-ai-orders.
- Check local rules or standing orders.

You Remain Responsible

- AI can research, summarize, and check—but not decide.
- You remain accountable for accuracy and integrity.
- Don't trust; do verify.

Tools in the Marketplace

- I use Westlaw Precision and Drafting Assistant, Chat GPT & Claude, Logickull, CoPilot, ClearBrief
- Tested Lexis+AI and CoCounsel
- Other players: Harvey, vLex Vincent, and others.
- Rapid innovation requires periodic reassessment.
- Expect continued evolution and specialization.

Closing Thoughts

- AI enhances—but does not replace—legal expertise.
- Use tools thoughtfully.
- "Come on in, the water's warm!"

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