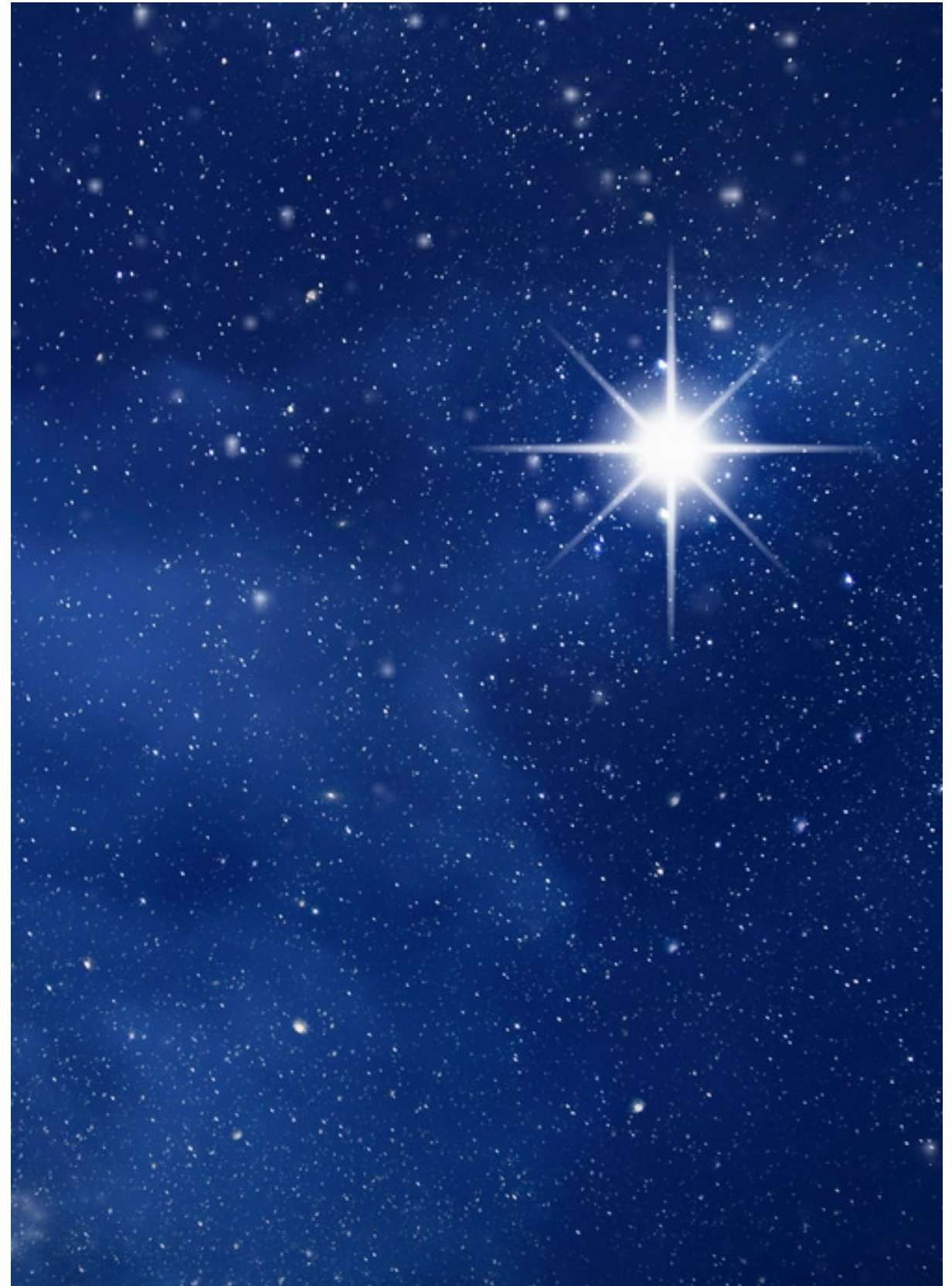


# **Artificial Intelligence: Ethical and Legal Crossroads in a Changing World**

Prof. Tamara Tabo - February 2024

# Reasoning by Analogy Through the New Terrain

- Comparison is the Legal Reasoning's Lodestar
- The Rules Remain Fundamentally the Same, Though New Facts Emerge
- Compare Old School Ethics to Ethics in the AI Age



# Competence & Diligence



# Competence Rules

**ABA Model Rule 1.1: A lawyer shall provide competent representation to a client.**

**Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.**



# Diligence Rules

**ABA Model Rule 1.3: A lawyer shall act with reasonable diligence and promptness in representing a client.**

- Acting with commitment and dedication to the interests of each client
- Controlling your workload so that each matter can be handled competently
- Think: If competence is the ability to do the job right, then diligence is following through on doing the job right

# Imagine:

- On a tight deadline, Attorney calls a friend and asks for some general legal guidance on an issue in the friend's practice area.
- Friend practices in a different jurisdiction and provides replies that reflect good law in his jurisdiction but not in Attorney's
- Attorney incorporates Friend's legal authorities in her work without verifying their applicability
- Ethical?



# Compare:

## Ethics in the AI Age



## Judge fines lawyers \$5,000 for submitting 'gibberish' cases generated by ChatGPT, then lying about it

ELURA NANOS | Jun 22nd, 2023, 7:08 pm

Two personal injury lawyers were fined \$5,000 Thursday for using fake cases and citations generated by ChatGPT in court documents and then lying about it in open court. The Manhattan judge who imposed the fine left lawyers Steven A. Schwartz and Peter LoDuca to their consciences to decide whether the phony filing warranted personal apologies to the judges.



# Compare:

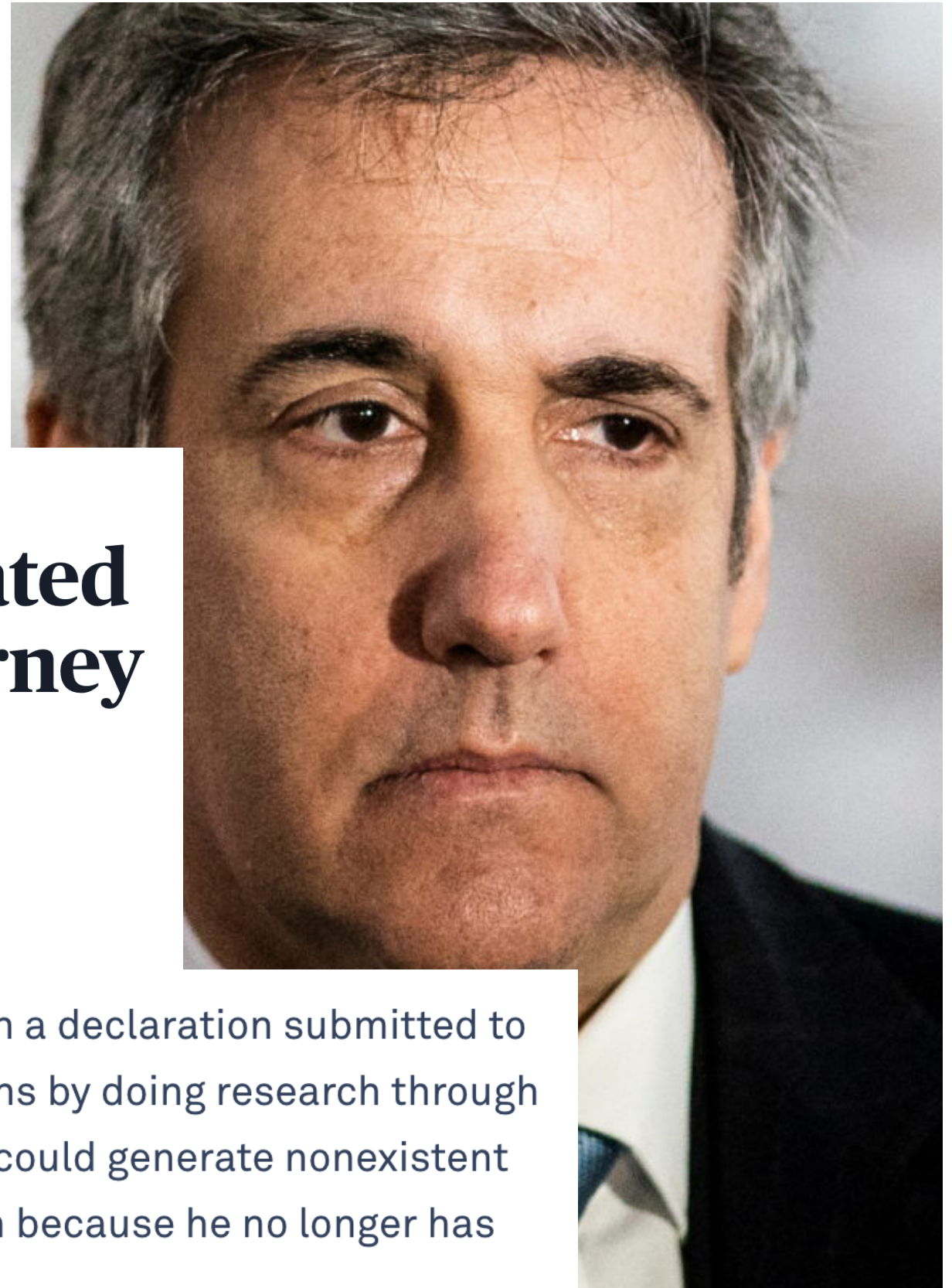
## Ethics in the AI Age

### Michael Cohen says he unwittingly sent AI-generated fake legal cases to his attorney

[Nation](#) Dec 29, 2023 5:59 PM EST

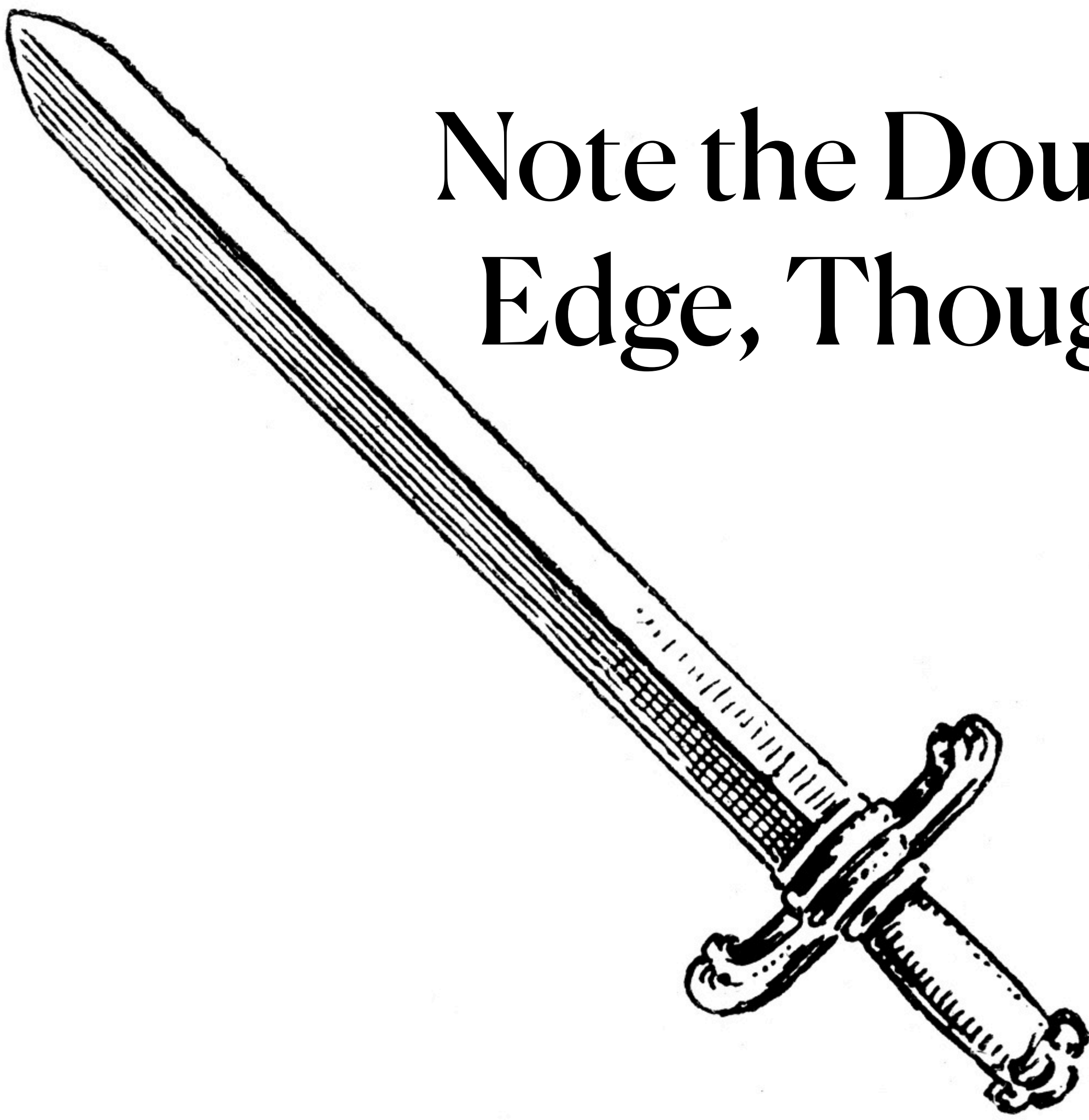
NEW YORK (AP) — [Michael Cohen](#), Donald Trump's onetime personal lawyer and fixer, says he unwittingly passed along to his attorney bogus artificial intelligence-generated legal case citations he got online before they were submitted to a judge.

Cohen, who was disbarred five years ago, said in a declaration submitted to the judge on Thursday that he found the citations by doing research through Google Bard and was unaware that the service could generate nonexistent cases. He said he uses the internet for research because he no longer has access to formal legal-research sources.





Note the Double-  
Edge, Though!



# Imagine:

- Attorney crafts a good-faith argument on behalf of her client
- Colleagues at her firm offer to help her to prepare for the appellate oral argument by mootng her OA
- Attorney declines, insisting that she feels comfortable with her arguments as they are and doesn't want to muddle her thinking with possible arguments the other side might make.
- Diligent? Ethical?



# Compare:

## Ethics in the AI Age

- Attorney is drafting arguments on behalf of her client
- Chooses not to use AI tools to get possible opposing arguments
- Ethical?



# Confidentiality





# Confidentiality Rules

**ABA Model Rule 1.6: A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent [...]**

**A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.**

- Applies to disclosures that could reasonably lead to the discovery of such information by a third person
- “Requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer’s supervision.”
- “When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients.”



# Data Security Duties

- Applies to disclosures that could reasonably lead to the discovery of such information by a third person
- “Requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer’s supervision.”
- “When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients.”

# Imagine:

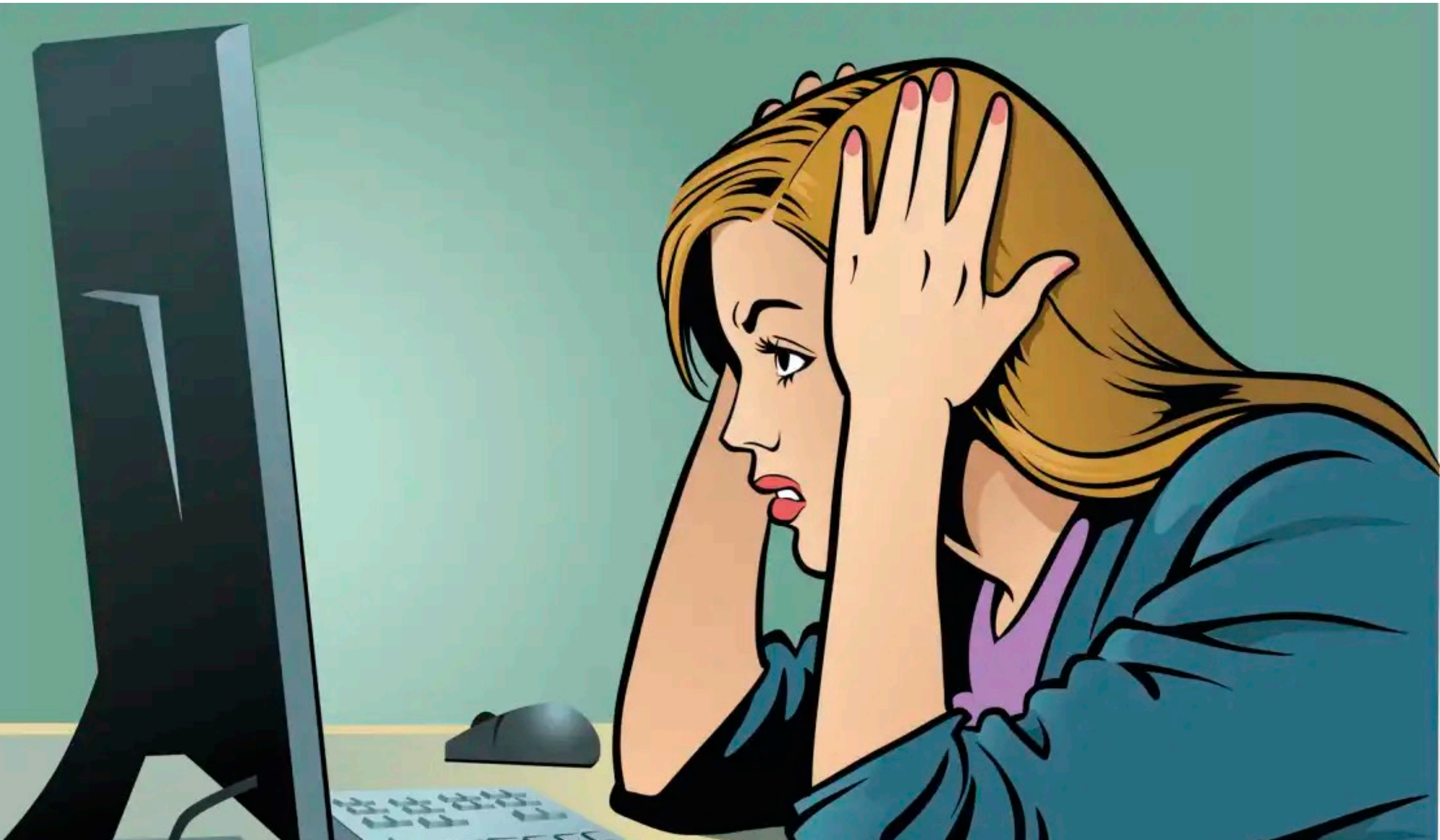
- Attorney uses consumer-level cloud storage, sometimes uses personal email for client work, etc.
- Posts questions about client cases on public message boards
- Discusses current cases while dining at local restaurants
- Ethical?



# Compare:

## Ethics in the AI Age

- Attorney does not know the specific data privacy policies of various AI tools







# **Reasonable Fees**

# Fees

**A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.**

**The factors to be considered in determining the reasonableness of a fee include the following:**

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly [...]



# Imagine:

- Attorney charges clients an hourly rate comparable to other similarly situated attorneys
- Attorney prefers to do all of her legal research using print resources at a nearby law library, eschewing digital databases such as Westlaw, Lexis, etc.
- Attorneys total bills are 3 to 4 times as high as they would be
- Ethical?



# Compare:

## Ethics in the AI Age



- Attorney charges a comparable rate as other similarly situated attorneys
- Attorney prefers to draft all legal documents from scratch, eschewing AI tools
- Attorney's total bills are 3 to 4 times as high as they would otherwise be
- Ethical?



**We're all managing  
partners now.**