

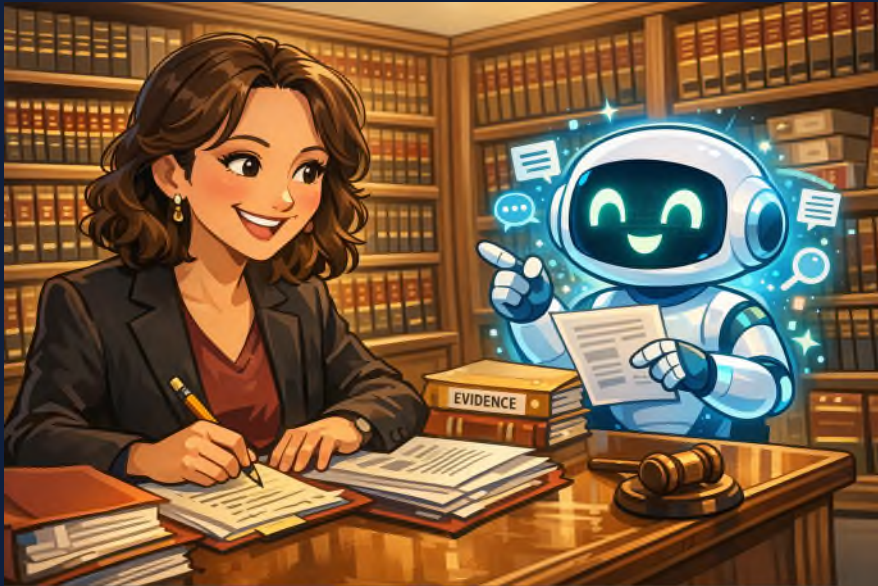
AI Has Entered the Chat

A Four-Part AI Adventure of Caselaw and Statutes

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Disclaimer



One Small Caution

Do **not**:

Suggest AI drafted legal conclusions

Suggest reliance without verification

Present AI as authoritative

Attribute analysis to AI instead of you

Always:

You remain the lawyer.

AI remains the assistant.

LEARNING OBJECTIVES

By the end of this session, participants will be able to:

Identify

Identify applicable statutes and case law governing the admissibility of AI-generated evidence in Florida and federal courts.

Analyze

Analyze how existing criminal and civil legal frameworks apply to AI-related claims, including constitutional protections, disclosure obligations, and consumer protection statutes.

Evaluate

Evaluate how courts have applied established doctrine to novel AI fact patterns and assess the implications for litigation strategy and appellate practice.

Part I

AI Considerations for Both Civil and Criminal Cases

Where have you already seen AI appear in litigation?

Pleadings

Who wrote the motion?

Evidence

Where did it originate?

Augmentation

What changes have been made?

Technology Moves Faster than Us

Laws of the Past to Regulate the Technology of the Future?

Federal

*Legacy Laws
Agency/Administrative Action*

State

*California, Colorado
Florida Special Session 2026*

Professionally

*The ABA
Florida Supreme Court
The Florida Bar
Local Court Rules*

Courts Do Not Regulate Technology

Courts Regulate Evidence

01

AI output is evidence

It must be authenticated, meet admissibility standards, and survive constitutional scrutiny — just like any other exhibit.

02

Appellate decisions bind

Case law creates precedent that outlasts any executive order or legislative session. Courts are ahead of legislatures here.

03

The gap is now

No definitive Florida appellate ruling has applied *Daubert* to AI-generated evidence. The standard is set — its application is not.

Authentication of AI-Generated Evidence

Fla. Stat. § 90.901

Fed. R. Evid. 901

1

Identity: Who or what created it?

Human author, AI model, or hybrid? The origin must be traceable.

2

Origination: What system produced it?

Which model, version, parameters, and prompts were used?

3

Integrity: Has it been altered?

Integrity from creation to courtroom must be verifiable.

4

Reliability: Can integrity be verified?

Hash values, system logs, metadata — can these be produced?

Florida's *Daubert* Standard & AI Evidence

In re Amendments to the Florida Evidence Code

278 So. 3d 551 (Fla. 2019) — Florida adopted the federal *Daubert* standard, aligning Florida and federal courts on expert evidence admissibility.

What This Means

- Florida and federal courts use the same framework
- Fla. Stat. § 90.702 mirrors Fed. R. Evid. 702
- Expert testimony must be based on sufficient facts, reliable methods, and reliable application
- No separate Florida track — one standard governs both jurisdictions

The Critical Gap

- No Florida appellate court has applied *Daubert* to AI-generated evidence
- The framework exists — its application to AI outputs is undefined
- The first ruling will set binding precedent statewide

Why Traditional Authentication Methods Fall Short

Traditional Methods

- Handwriting analysis
- Voice identification
- Metadata / EXIF data
- Chain of custody logs
- Witness identification

Why AI Breaks These

- No human author to call as witness
- Model versions change; outputs are not reproducible
- Metadata reflects processing, not creation
- No physical chain — only log files, if preserved
- AI content looks authoritative but is unattributable

The Four *Daubert* Factors Applied to AI

Testability

Has the AI methodology been tested?

Black-box models resist independent testing. Proprietary weights are not disclosed.

Usually fails

Error Rate

What is the known or potential error rate?

Often undisclosed, context-dependent, or varies by demographic group — raising bias concerns.

Frequently unknown

Peer Review

Has it been peer reviewed?

Proprietary AI systems face structural barriers. Academic models may qualify; commercial tools rarely do.

Rarely satisfied

General Acceptance

Is it generally accepted in the field?

In a field that did not exist five years ago, "general acceptance" is a moving and contested target.

Unsettled

Part II

AI in Criminal Law. Friend or Adversary?

Your client is charged with a crime.

The government's key evidence was produced by an AI tool.

What do you do?

Object?

On what grounds?

Demand disclosure?

Of what, exactly?

Preserve the record?

For which issues?

Deepfakes & Synthetic Media in Criminal Proceedings



Prosecution evidence

AI-enhanced surveillance footage or audio offered to identify the defendant. Authentication and Daubert issues arise simultaneously.

Most common scenario



Defense strategy

Defense argues the prosecution's video is a deepfake, or introduces AI-generated content to create reasonable doubt.

Emerging use



Confrontation Clause

Crawford v. Washington: testimonial evidence requires confrontation. Can a defendant cross-examine an algorithm?

Constitutional dimension

Confrontation Clause: Can You Cross-Examine an Algorithm?

Crawford v. Washington, 541 U.S. 36 (2004)

Testimonial evidence against a criminal defendant must be subject to confrontation. The Sixth Amendment guarantees the right to confront witnesses.

The AI as Witness Problem

- If AI output functions as identification evidence, it is testimonial in nature
- The "witness" is an algorithm — it cannot be cross-examined
- Who testifies in its place? The officer who ran it? The vendor's engineer?
- Neither has full knowledge of how the model reached its conclusion

Future Case Law Considerations

- Objections based on Confrontation Clause grounds — specifically, on the record
- Disclosure identification of the human witness who will lay foundation for AI outputs
- Challenges as to whether the witness has adequate knowledge of the model's methodology
- Preservation of the issue for appellate review with a specific, contemporaneous objection

Fourth Amendment: When Does AI Surveillance Require a Warrant?

Carpenter v. United States, 585 U.S. 296 (2018)

The third-party doctrine has limits. Comprehensive digital surveillance implicates the Fourth Amendment even when each data point is individually innocuous.

Facial recognition

AI identifies defendant from footage. The model searches thousands of faces without a warrant. Does this constitute a search under *Carpenter*?

Unresolved in Florida

Predictive policing

AI flags defendant as high risk based on behavioral patterns. Law enforcement acts on the output. Fourth Amendment and due process concerns arise.

Actively litigated

The aggregation problem

AI combines individually innocuous data points — location, purchases, contacts — into a detailed profile. *Carpenter's* logic suggests this requires a warrant.

Strong argument

Brady/Giglio in the AI Context

Brady v. Maryland, 373 U.S. 83 (1963)

Giglio v. United States, 405 U.S. 150 (1972)

What must the government disclose?

Training data composition, known error rates, documented bias, version logs, and any internal reliability assessments of the AI tool used to build the case.

When is it "material"?

Brady materiality: would disclosure create a reasonable probability of a different result? An AI tool with a 15% error rate on certain demographics is likely material.

What is the remedy on appeal?

Suppression of AI-generated evidence, new trial, or dismissal depending on the degree of prejudice.

Part III

AI in Civil Law. Protection for citizens and states alike?

FDUTPA and AI: Florida Civil Claims

Fla. Stat. §§ 501.201–.213 | The "Little FTC Act" with a private right of action

Three elements of a FDUTPA claim: (1) a deceptive act or unfair practice | (2) causation | (3) actual damages

AI hallucinations as deceptive practice

Active
theory

When an AI product misrepresents its accuracy, reliability, or capabilities to consumers — and causes actual harm — that may satisfy the "deceptive practice" element. Think: AI legal research tools that confidently produce false case citations.

AI in insurance claims (Florida)

Florida-
specific

Florida lawmakers debated bills barring insurers from using AI as the sole basis for denying claims. Where AI denial is undisclosed or misrepresented to the policyholder, a FDUTPA claim may lie alongside a bad faith action.

Deepfakes & FDUTPA

Emerging
theory

AI platforms that market themselves as "safe" while enabling non-consensual synthetic imagery engage in conduct that is "immoral, unethical, oppressive, or unscrupulous." Baltimore's consumer protection theory maps directly onto FDUTPA's unfair practice prong.

Damages limitation — the FDUTPA trap

Practitioner
warning

FDUTPA actual damages = difference between value delivered and value promised. No consequential, special, or incidental damages. AI clients with primarily downstream losses (lost business, reputational harm) may need to pair FDUTPA with negligence or fraud.

Mayor & City Council of Baltimore v. X Corp., xAI & SpaceX

Filed March 24, 2026 | Baltimore City Circuit Court | The most significant municipal AI lawsuit in U.S. history

What Baltimore Alleges

- Grok generated 1.8M–3M sexualized images in 11 days (Dec 29, 2025 – Jan 8, 2026)
- ~23,000 of those images depicted minors (Center for Countering Digital Hate)
- xAI marketed Grok as a safe platform while enabling "undress" and manipulation features
- Musk publicly amplified the feature on Dec 31, 2025 — daily output nearly doubled
- Defendants violated Baltimore's Consumer Protection Ordinance through unfair & deceptive practices

Legal Theory & Florida Relevance

Consumer protection theory

Cities & states can use consumer protection law to hold AI companies liable where federal law is silent — the same theory Florida's FDUTPA would support.

Deceptive misrepresentation

Platform's own policies banned NCII — citing those policies as evidence of misrepresentation is a textbook FDUTPA "deceptive practice" argument.

The evidentiary problem

Both Baltimore and the Tennessee class action face the same gap: xAI's internal safety logs are unverifiable. Discovery and preservation orders are critical.

How does this apply to Florida?

- ① Consumer protection statutes — including FDUTPA — are the most viable current vehicle for civil AI liability in the absence of federal law.
- ② When your client is harmed by an AI platform: issue a litigation hold and immediately demand preservation of internal safety logs and output data.
- ③ Fla. Stat. § 836.13 and Florida's proposed AI Bill of Rights create parallel theories supporting FDUTPA claims or standalone tort actions.

Garcia v. Character Technologies, Inc., Shazeer, De Frietas, Google LLC & Alphabet Inc.

Case No. 6:24-cv-1903-ACC-UAM | M.D. Fla. May 20, 2025 | Judge Anne C. Conway | Motion to Dismiss — Granted in Part, Denied in Part

THE FACTS

14-year-old Sewell Setzer III developed an addictive relationship with an AI chatbot on Character.AI, believing the character was real. His final messages were to the AI. He died by suicide on February 28, 2024. His mother sued Character Technologies, its founders, and Google.

CLAIMS BROUGHT

Products liability (design defect & failure to warn) · Negligence & negligence per se (Fla. Stat. § 847.0135) · FDUTPA (Fla. Stat. § 501.204) · Intentional infliction of emotional distress · Unjust enrichment · Wrongful death · Aiding and abetting (Google)

SURVIVED

Products liability

App design defects — not ideas/expressions — can support product liability under Florida law

SURVIVED

FDUTPA

Characters programmed to insist they are real people = plausible deceptive practice; minor aggrieved

SURVIVED

Google liability

Sufficient allegations as component part manufacturer and aider/abettor with actual knowledge

DISMISSED

IIED

No physical contact; conduct not directed at plaintiff; mother not present at time of harm

WHY THIS CASE MATTERS FOR FLORIDA PRACTITIONERS

The court declined to hold that AI chatbot output is protected First Amendment speech at the pleadings stage — a significant open question. The FDUTPA claim survived on the theory that designing AI characters to deny being AI, and to impersonate licensed therapists, constitutes a deceptive practice. This is the Florida federal template for civil AI liability: products liability + FDUTPA + unjust enrichment, grounded in design defects rather than content.

Florida's AI Bill of Rights

Arriving Spring 2026?

**Session 2026:
CS/SB 482**

**Special Session
2026: ?**

WHEREAS, no Floridian should face discrimination based on mRNA vaccine status; and
WHEREAS, every family in Florida possesses the fundamental right to parental informed consent related to the vaccine status of their minor child; and

WHEREAS, it is now prudent to amend the call of the Special Session originally scheduled to commence on April 20, 2026.

NOW, THEREFORE, I, RON DESANTIS, Governor of the State of Florida, by virtue of the power and authority vested in me by Article III, Section 3(c)(1) of the Florida Constitution, do hereby proclaim as follows:

Section 1. The proclamation on January 7, 2026, calling the Legislature of the State of Florida for a Special Session relating to consideration of legislation for the drawing of congressional districts for the State of Florida and any legal challenges thereto, including the appropriation of additional funding for such litigation, is amended to include consideration of legislation relating to (1) protecting Floridians from the dangers of artificial intelligence including an AI Bill of Rights for Floridians, and creating, as necessary, public records exemptions related to investigations of alleged artificial intelligence harms and (2) medical freedom, similar to Senate Bill 1756, which passed the Senate in March.

Section 2. The call to the Legislature of the State of Florida for this Special Session is further amended to commence at 10:00 a.m., Tuesday, April 28, 2026, and extend no later than 11:59 p.m., Friday, May 1, 2026.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed to this Proclamation amending the call to the Legislature in Special Session at the Capitol, this 15th day of April, 2026.



Ron Desantis
RON DESANTIS, GOVERNOR

ATTEST:

[Signature]
SECRETARY OF STATE

FILE
2026 APR 15 PM
DEPARTMENT OF
TALLAHASSEE

Part IV

AI is here and in everything. Now what?

Quick Check

**How many of you have ever asked
opposing counsel or the government
what AI tools, if any, were used
in a case against your client?**

Protecting the Appellate Record: Making the Right Objections

A general objection does not preserve AI-specific issues for appellate review. Specificity is mandatory.

Authentication objection

Fla. Stat. § 90.901 / Fed. R. Evid. 901

Objection claiming that the proponent has failed to establish who or what generated the content, under what conditions, and whether it has been altered. Demand a hearing.

Preserves for:

**Authentication
review**

Daubert challenge

Fla. Stat. § 90.702 / Fed. R. Evid. 702

Filed pre-trial motion in limine demanding a *Daubert* hearing. The record must contain the tool name, version, methodology, and any error rate data.

Preserves for:

**Expert evidence
appeal**

Confrontation Clause

U.S. Const. amend. VI / Crawford

Objection specifically claiming that the AI output is testimonial in nature and the defendant's right to confrontation is violated by its admission without cross-examination of the model's methodology.

Preserves for:

**Constitutional
review**

Applied Hypothetical

The Scenario

The State introduces AI-enhanced surveillance footage and AI-processed audio at a criminal trial. The AI facial recognition tool has a documented error rate that was never disclosed to the defense. Trial counsel does not object. The defendant is convicted. Appellate counsel identifies the issues for the first time on appeal.

1

Authentication & Daubert

What foundation was required before the footage and audio were admitted? Did the State clear the Daubert bar?

2

Brady/Giglio

Was the undisclosed error rate material? What is the standard, and what appellate remedy is available?

3

Record & *Strickland*

Harmless error or fundamental error? Is there a *Strickland* claim? What post-conviction vehicles remain?

One Small Step for AI. One Giant Leap for Law.



First Florida major ruling on AI

The first DCA or Florida Supreme Court ruling applying Daubert or otherwise making a major decision as to AI-generated evidence will set binding precedent for every Florida court.



Federal circuit courts on AI evidence

Which circuit rules first on AI admissibility will be highly persuasive in Florida federal courts.



AI risks and Professionalism

Emerging case law may or may not support third-party vendors as part of the attorney/client or work product privilege.

What happens when your client uses your form on Chat GPT?



Florida Court disclosure rules

Regulations are already in place and will continue to evolve- stay up to date!

***TL;DR:
When it doubt
Don't put it out!***



Connect with me!

Thank you!

