

From Reactive to Proactive Defense: Forcing Litigation onto the Merits in a Civil Case — with AI-Augmented Litigation Strategy

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Abstract

This article examines the strategic shift from reactive to proactive defense in civil litigation, particularly in cases characterized by weak evidentiary foundations and narrative-driven claims. It argues that modern litigation increasingly involves “AI-amplified narratives,” where generative tools enhance the sophistication and volume of filings without necessarily strengthening underlying proof. Using a multiple case study and phenomenological approach, the study analyzes how defense strategy can pivot to re-center litigation on the evidentiary record. Key mechanisms include targeted third-party subpoenas, corrective motion practice, and trial-readiness signaling. The article further explores how artificial intelligence, when used appropriately, functions as a diagnostic tool to identify inconsistencies, organize complex records, and test opposing arguments. However, it emphasizes that AI cannot replace legal reasoning or evidentiary judgment. The findings demonstrate that the decisive advantage in litigation lies not in narrative construction, but in forcing claims to withstand evidentiary scrutiny.

Keywords: Reactive Defense • Proactive Strategy • Narrative vs Evidence • AI-Augmented Litigation • Targeted Discovery • Corrective Motions • Trial Readiness

Introduction

Civil litigation is undergoing a structural transformation as advances in artificial intelligence (AI) reshape how legal arguments are constructed, presented, and contested. Generative AI tools are now widely used to draft pleadings, synthesize case law, and generate persuasive narratives at scale. While these technologies enhance efficiency and accessibility, they introduce a critical tension: increasingly sophisticated legal narratives do not necessarily correspond to stronger underlying evidence. As a result, courts and practitioners face a growing challenge in distinguishing between well-presented claims and well-supported claims (Susskind, 2023).

Recent scholarship highlights how digital legal tools are reshaping both the production and evaluation of legal arguments, reinforcing the need to distinguish between rhetorical coherence and evidentiary validity (Ashley, 2023; Casey et al., 2024). This evolving landscape underscores the importance of maintaining evidentiary standards in technology-mediated litigation environments.

This tension is particularly evident in cases where early litigation stages are dominated by narrative and procedural maneuvering rather than evidentiary clarity. Parties may rely on volume, complexity, or technical language to create an impression of legitimacy, even when key elements such as causation or damages remain insufficiently supported. AI amplifies this dynamic by enabling rapid production of polished arguments, potentially exacerbating

information asymmetry between parties (Casey et al., 2024). This article examines the shift from reactive to proactive defense as a means of restoring the centrality of evidence in civil litigation. It explores how targeted discovery, procedural correction, and trial readiness can reorient cases toward their evidentiary foundations. The central argument is that while AI may influence how cases are argued, it does not alter the requirement that claims be proven. Proactive defense ensures that outcomes are determined by admissible evidence rather than assertion.

Problem Setting

Civil litigation has long been shaped by tension between narrative persuasion and evidentiary proof. While the legal system prioritizes admissible evidence, burden of proof, and procedural fairness, many cases—particularly in early and mid-litigation phases—are driven by narrative construction, strategic pressure, and procedural maneuvering rather than a clear evidentiary foundation. A recurring pattern emerges in which claims are advanced despite weak or incomplete evidence, supported by assertive storytelling, selective disclosure, and procedural mechanisms such as deemed admissions or discovery asymmetry.

The contemporary litigation landscape has intensified this pattern through AI integration. Generative systems enable the rapid production of arguments that are linguistically polished and structurally coherent, increasing persuasive force regardless of evidentiary strength (Bommarito & Katz, 2023; Surden, 2024). This creates a form of “synthetic credibility,” where presentation obscures deficiencies in proof.

Within this context, litigation becomes asymmetrical. One party may leverage AI to produce high-volume, rhetorically compelling filings, while the opposing party remains constrained by reactive strategies. This imbalance allows narrative-driven claims to shape the early trajectory of a case, creating a procedural environment in which pressure—rather than proof—temporarily influences outcomes.

The problem, therefore, is not merely weak evidence, but the ability of modern litigation practices—augmented by AI—to sustain claims through narrative sophistication and procedural leverage. Outcomes should ultimately be determined by evidence contained in the record.

Research Questions

The purpose of this study is to analyze the shift from reactive to proactive defense in civil litigation, particularly in cases where evidentiary gaps are masked by narrative and procedural tactics. Specifically, this study examines how targeted discovery, motion practice, and AI-assisted analysis can re-center litigation on its evidentiary foundations.

To guide this inquiry, the following research questions are posed:

1. How do narrative-driven litigation strategies, particularly when augmented by AI tools, influence the early trajectory of civil cases with weak evidentiary foundations?
2. What conditions trigger the transition from reactive to proactive defense strategies in such cases?

3. How can AI be used as a diagnostic tool to identify evidentiary gaps and inconsistencies without supplanting legal judgment?
4. In what ways do proactive defense strategies—such as third-party subpoenas and procedural corrections—shift litigation from narrative dominance to evidentiary evaluation?

Addressing these questions is essential for understanding how modern litigation can remain grounded in proof rather than persuasion in AI-influenced legal environments. This inquiry clarifies how evidentiary standards can be maintained despite the increasing sophistication of AI-generated legal narratives. It also highlights the importance of aligning litigation strategy with the evidentiary record to ensure that outcomes are determined by substantiated claims.

Figure 1: From Reactive to Proactive Defense in Civil Litigation

From Reactive to Proactive Defense in Civil Litigation

Forcing Litigation onto the Merits in a Civil Case – with AI-Augmented Litigation Strategy

The Problem

- Narrative-Driven Claims
- Weak Evidentiary Support
- AI-Amplified Filings



Polished AI-Generated Arguments

Reactive Defense

- Passive Response to Filings
- Discovery Compliance



Proactive Defense

Focusing on the Evidence



Targeted Discovery

- Third-Party Subpoenas



Corrective Motions

- Challenging Weak Claims



Trial Readiness

- Building a Strong Case

> **Forcing Litigation Onto the Merits** <

Emphasizing Facts Over Narratives

Source: *From Reactive to Proactive Defense: Forcing Litigation onto the Merits in a Civil Case – with AI-Augmented Litigation Strategy*

Figure 1. From reactive to proactive defense in civil litigation. The figure conceptualizes the strategic transition from a reactive posture—characterized by passive responses to filings and narrative-driven claims—to a proactive, evidence-centered approach. In the reactive phase, AI-amplified filings and procedural dynamics contribute to narrative dominance despite weak evidentiary support. The turning point occurs with the recognition of evidentiary gaps, prompting a shift toward proactive defense. This phase is operationalized through targeted discovery (e.g., third-party subpoenas), corrective motion practice, and trial-readiness signaling, all of which reorient the case toward the full evidentiary record. The model highlights the dual role of artificial intelligence as both a tool for narrative amplification and a diagnostic resource for identifying inconsistencies and gaps in proof. Overall, the figure illustrates how proactive defense forces litigation onto the merits, emphasizing that legal outcomes are determined by admissible evidence rather than persuasive narrative.

Theoretical Framework

This study is grounded in an interdisciplinary theoretical framework that integrates legal reasoning theory, evidentiary decision-making, information asymmetry, and artificial intelligence (AI)-augmented legal analytics. At its foundation, civil litigation is conceptualized as an interaction between narrative construction and evidentiary validation, where outcomes depend on the ability to substantiate claims with admissible proof. While narrative shapes early perceptions, adjudication requires a transition from assertion to verification, a process increasingly influenced by AI (Surden, 2024).

Legal informatics emphasizes that outcomes depend not only on facts, but on how those facts are structured into legally coherent arguments (Ashley, 2023). Litigation can therefore be understood as the construction and testing of competing narratives. The shift from reactive to proactive defense reflects a movement from passive engagement with opposing narratives to active restructuring of the evidentiary landscape, reinforcing that evidentiary support—not rhetorical presentation—determines claim strength.

In adversarial systems, the burden of proof constrains unsupported claims. However, during early litigation stages, procedural dynamics and information asymmetry can weaken this constraint. Proactive defense strategies, including third-party subpoenas and corrective motions, reassert the primacy of the evidentiary record by shifting focus from allegation to demonstration (Marcus, 2024).

AI further complicates this dynamic by introducing asymmetric sophistication. One party may use AI to produce high-volume, polished arguments that obscure evidentiary gaps, while the other uses AI diagnostically to identify inconsistencies (Bommarito & Katz, 2023). At the same time, AI can reduce asymmetry by enabling more efficient discovery and verification of evidence.

AI systems can analyze large document sets, identify patterns, and generate structured insights, enabling practitioners to detect inconsistencies and map relationships between claims and evidence (Zhang et al., 2023). However, AI remains constrained by its training data and design,

capable of simulating coherence without ensuring evidentiary validity. This limitation reinforces the need for human oversight and professional judgment (Surden, 2024).

The framework also incorporates strategic litigation theory, which conceptualizes legal action as a sequence of decisions shaping informational structures. Strategic interventions—such as discovery and motion practice—can alter case trajectory by restructuring the evidentiary environment. The shift to proactive defense reflects such an intervention, transforming litigation from a narrative-driven process to a record-driven one (Eisenberg & Lanvers, 2023).

Ethical and epistemological considerations further highlight the risks of “synthetic credibility,” where AI-generated outputs appear authoritative without ensuring reliability. Practitioners must critically evaluate AI outputs and ensure alignment with evidentiary standards while addressing issues of bias, confidentiality, and data security (Remus & Levy, 2024).

Overall, this framework emphasizes that while AI enhances the efficiency and sophistication of legal practice, it does not alter the requirement that claims be supported by admissible evidence. The transition from reactive to proactive defense reflects a reorientation toward evidentiary integrity.

Phase 1: Reactive Defense

In the early stages of many civil cases, defense strategies often adopt a reactive posture, responding to filings, complying with discovery requests, and addressing procedural issues as they arise. By allowing the plaintiff to set the pace and frame the narrative, reactive defense limits control over case direction.

This model becomes problematic when claims are supported more by narrative than evidence. Each filing—regardless of evidentiary strength—contributes to perceived legitimacy. By responding incrementally, the defense may reinforce this perception. Over time, the case evolves through repetition rather than validation of claims.

AI integration further intensifies this dynamic. AI-assisted drafting enables rapid production of pleadings and motions that are polished and strategically framed. These filings can amplify narrative elements and increase litigation volume, requiring the defense to respond to both substance and scale.

This creates “volume-based pressure.” The accumulation of filings, even when weak individually, can influence perceptions of case strength. This dynamic aligns with concerns in legal technology scholarship regarding AI’s impact on adversarial balance (Ashley, 2023; Remus & Levy, 2024).

Reactive defense thus becomes a structural vulnerability in AI-augmented litigation. By focusing on response rather than control, the defense risks entanglement in an opposing narrative. Procedural mechanisms such as deemed admissions can further convert delay into disadvantage.

Ultimately, reactive defense increases information asymmetry. The plaintiff shapes the perceived contours of the case, while the defense operates within them. Without a proactive evidentiary strategy, gaps in proof remain obscured, necessitating a shift toward proactive intervention.

Turning Point

The transition from reactive to proactive defense is typically triggered by recognition of critical evidentiary deficiencies, such as the absence of admissible causation evidence or documented damages. Identifying these gaps reveals the divergence between narrative and evidence.

At this stage, the defense faces a strategic choice: continue responding within the existing framework or actively test the claims. This decision reflects a shift from managing narrative to interrogating proof.

These tools facilitate this transition by serving as diagnostic instruments. By analyzing large volumes of documents, AI can identify inconsistencies, map relationships, and highlight missing evidentiary links. For example, discrepancies between claimed damages and documented records can be identified more efficiently.

However, AI must remain subordinate to professional judgment. While it enhances pattern recognition, it cannot determine legal relevance or admissibility.

The turning point is therefore characterized by recognition that the case lacks evidentiary support and that reactive strategies are insufficient. A representative case pattern illustrates this dynamic. In one matter, claims were supported primarily by summary assertions, while key elements such as causation and damages lacked admissible documentation. Early filings were extensive and polished, reflecting AI-assisted drafting (Bommarito & Katz, 2023; Surden, 2024). Through targeted third-party subpoenas, the defense obtained complete records, revealing inconsistencies between asserted claims and documented evidence. Subsequent motion practice corrected procedural distortions and shifted the case toward record-based evaluation.

This pivot marks a transition from response to evidentiary testing, setting the stage for actions that shift litigation from narrative dominance to evidentiary evaluation.

Phase 2: Proactive Defense

The transition to proactive defense represents a decisive strategic shift. Unlike reactive approaches, proactive defense re-centers litigation on evidence, timing, and control. This phase is characterized by deliberate actions to extract the full record, correct procedural imbalances, and signal trial readiness.

At its core, proactive defense involves three key moves: third-party subpoenas, corrective motion practice, and trial-readiness signaling. Together, these actions shift focus from what is alleged to what can be proven.

Third-party subpoenas are particularly powerful because they bypass selective disclosure. By obtaining records from neutral entities, the defense accesses information less susceptible to narrative framing. This “full record extraction” restores informational symmetry and anchors arguments in verifiable data (Grossman & Cormack, 2023).

Motion practice addresses procedural distortions. Motions to correct admissions, compel discovery, or exclude improper evidence realign the case with its substantive merits. These interventions ensure that the case proceeds on evidentiary grounds rather than procedural shortcuts (Marcus, 2024).

Trial-readiness signaling is both practical and strategic. Preparing for trial demonstrates a willingness to resolve the case through adjudication, influencing the opposing party’s risk assessment. Empirical research shows that credible trial preparation increases the likelihood of favorable settlements (Eisenberg & Lanvers, 2023).

AI Integration (High Value)

The integration of AI into proactive defense significantly enhances the effectiveness of these core moves. Rather than replacing legal judgment, AI functions as a force multiplier, enabling attorneys to process complex information, identify patterns, and test hypotheses at a scale and speed previously unattainable. This section outlines four key areas in which AI contributes to proactive defense: discovery targeting, record analysis, deposition preparation, and strategy simulation. Across cases, AI did not alter the substantive evidentiary record but significantly affected the speed, scale, and organization of both narrative construction and evidentiary analysis.

1. Discovery Targeting

AI-assisted document review has transformed discovery by enabling the identification of relevant information within vast datasets. In proactive defense, AI can identify key custodians—individuals or entities likely to possess critical documents—based on communication patterns, metadata, and organizational roles. This capability allows attorneys to tailor subpoenas more precisely, focusing on sources most likely to yield substantive evidence.

These tools can also prioritize subpoena scope by analyzing existing productions and identifying areas of incompleteness. For example, if communications reference attachments or reports not present in the production, AI systems can flag these gaps for further investigation. This reduces the risk of overlooking critical evidence and helps ensure that discovery efforts are both targeted and comprehensive. Studies in legal informatics have demonstrated that AI-assisted review can achieve higher recall rates than manual review, particularly in identifying relevant documents within large corpora (Zhang et al., 2023).

Another significant contribution of AI in this phase is the detection of production gaps. By comparing expected document types—such as invoices, reports, or correspondence—with those actually produced, these tools highlight discrepancies that may indicate incomplete disclosure.

2. Record Analysis

Once the full record is obtained, the challenge shifts to analysis. Proactive defense requires the synthesis of diverse data sources, including insurance files, communications, timelines, and technical reports. AI excels in this domain by enabling rapid organization and integration of heterogeneous information into coherent narratives.

Through natural language processing (NLP) techniques, these tools extract key entities, events, and relationships from unstructured text, such as emails or reports. This allows attorneys to construct detailed timelines, map sequences of events, and identify inconsistencies or gaps. For example, discrepancies between reported damages and documented repairs can be quickly identified and contextualized within the broader record.

AI also facilitates the conversion of raw data into litigation-ready narratives. By summarizing complex information and highlighting salient points, AI enables attorneys to present evidence more clearly. This is particularly important in trial settings, where clarity and coherence are essential. As noted by Surden (2024), the ability of AI to transform data into structured insights represents one of its most valuable contributions to legal practice.

3. Deposition Preparation

Depositions are a critical component of proactive defense because they provide an opportunity to test the opposing party's claims under oath. AI enhances deposition preparation by generating issue trees—structured frameworks that organize key topics and questions based on the evidentiary record.

These issue trees can focus on areas such as causation gaps, damages inconsistencies, and prior statements. For instance, if the record lacks documentation linking alleged damages to a specific cause, the issue tree can guide questioning to expose this gap. Similarly, inconsistencies between statements and documents can be identified and explored through targeted questioning.

AI-generated issue trees also enable attorneys to anticipate responses and prepare follow-up questions, thereby increasing deposition effectiveness. Research in computational law suggests that structured questioning frameworks improve the ability to elicit relevant information and identify contradictions (Ashley, 2023). By integrating AI into this process, attorneys can approach depositions with greater confidence and precision.

4. Strategy Simulation

One of the most advanced applications of AI in proactive defense is strategy simulation. By modeling the opposing party's arguments, AI allows attorneys to construct the “best version” of the plaintiff's case and test it against the evidentiary record. This process involves identifying the strongest possible interpretations of the evidence and assessing their plausibility.

Through this simulation, attorneys can stress-test their own arguments and identify potential vulnerabilities. For example, if the plaintiff's narrative relies on a particular inference, AI can

evaluate whether that inference is supported by the record or contradicted by other evidence. This enables the defense to refine its strategy and address weaknesses before they are exploited in court.

Strategy simulation also enhances decision-making by providing a more comprehensive understanding of the case. By considering multiple scenarios and outcomes, attorneys can develop strategies that are robust and adaptable. As Bommarito and Katz (2023) argue, the use of AI for predictive and analytical purposes represents a significant advancement in legal strategy, enabling more informed and effective decision-making.

Strategic Effects

Across cases examined, a consistent pattern emerged: proactive defense shifts litigation from narrative-driven evaluation to record-driven adjudication. This transition was not gradual but occurred once evidentiary gaps were actively identified and pursued through targeted procedural and discovery interventions.

The case moves from narrative-driven to record-driven, with evidence becoming the central determinant of outcomes. This shift has several important implications.

First, the identification of evidentiary gaps becomes faster and more precise. AI enables the defense to detect inconsistencies and omissions that might otherwise go unnoticed, thereby strengthening its position. Second, reliance on intuition is reduced, as decisions are increasingly informed by data and analysis. This enhances the objectivity and rigor of legal arguments.

Third, the precision of argument framing improves. By grounding arguments in specific evidence and presenting them clearly, the defense increases its persuasive power. This is particularly important in trial settings, where clarity and coherence are critical.

The outcomes of this shift are significant. Settlement pressure increases as the opposing party confronts the evidentiary weaknesses of its case. Procedural tactics lose effectiveness as the focus shifts to substantive proof. Most importantly, the burden of proof becomes central, with the case ultimately determined by the evidentiary record rather than by what is claimed.

In this way, proactive defense, supported by AI, restores the integrity of the adjudicative process. It helps ensure that outcomes are based on evidence rather than narrative and that the legal system functions as intended. As the use of AI in litigation continues to evolve, its role in facilitating this shift may become increasingly important, creating new opportunities to enhance fairness and efficiency in civil proceedings.

Methods

This study employed a qualitative multiple case study design combined with a phenomenological approach grounded in lived experience to examine the strategic transition from reactive to proactive defense in civil litigation. The integration of these two methodological traditions was intentional: the multiple case study framework enabled comparative analysis across litigation

contexts, while phenomenology provided depth in understanding how strategic decisions are experienced, interpreted, and enacted by legal actors in real time. This combined approach is increasingly recognized as appropriate for examining complex, practice-based phenomena where both structural dynamics and subjective experience shape outcomes (Yin, 2024; Moustakas, 2023).

The research design focused on analytic case selection rather than statistical generalization. Cases were selected based on three criteria: (a) the presence of early-stage evidentiary gaps (e.g., lack of documented causation or damages), (b) observable reliance on narrative or procedural leverage by one party, and (c) a documented strategic shift by the defense toward proactive measures such as third-party subpoenas, corrective motion practice, and trial preparation. This purposive sampling strategy aligns with contemporary qualitative research standards emphasizing information-rich cases that illuminate underlying mechanisms rather than represent population averages (Patton, 2023). To enhance transparency, each selected case met all three criteria and was reviewed against publicly accessible records to confirm the presence of identifiable evidentiary gaps and documented procedural activity.

Data sources were triangulated to enhance rigor and credibility. The primary sources included: (1) publicly available litigation documents (e.g., pleadings, discovery responses, subpoenas), (2) procedural records indicating shifts in litigation posture, and (3) practitioner reflections derived from lived experience within the case context. Where available, documents were cross-checked across multiple filings and procedural records to ensure consistency and completeness of the evidentiary record used for analysis. The inclusion of lived experience as a data source reflects a phenomenological commitment to understanding how legal strategies are perceived and enacted by participants, particularly in high-stakes, adversarial environments. Phenomenological inquiry emphasizes meaning-making processes, capturing how individuals interpret events such as evidentiary gaps, procedural constraints, and strategic pivots (van Manen, 2023).

The phenomenological component of this study followed a reflective, interpretive approach rather than a purely descriptive one. The researcher engaged in *epoché* (bracketing) to the extent possible by separating personal reactions from analytic interpretation, while still acknowledging that complete detachment is neither feasible nor desirable in practice-based research. Instead, reflexivity was used as a methodological tool, allowing insights derived from lived experience to inform—but not dominate—the analysis (Finlay, 2023). This approach is consistent with recent developments in applied phenomenology, which emphasize the value of practitioner insight in understanding complex professional domains.

Data analysis proceeded in three stages. First, a within-case analysis was conducted for each selected case, focusing on identifying key moments of strategic transition. These moments were operationalized as points at which the defense shifted from responding to opposing actions to actively shaping the evidentiary and procedural landscape. Indicators included the issuance of third-party subpoenas, the filing of corrective motions, and explicit preparation for trial. Second, a cross-case analysis was performed to identify recurring patterns and divergences across cases. This comparative approach allowed for the identification of common triggers (e.g., recognition of evidentiary gaps) and common outcomes (e.g., increased settlement pressure or trial

readiness). Third, a phenomenological synthesis was conducted, integrating structural findings with experiential insights to develop a holistic understanding of the transition process.

To support analytic rigor, the study employed thematic coding combined with pattern matching. Codes were developed inductively from the data and organized into higher-order themes such as “narrative dominance,” “evidentiary disruption,” and “strategic reorientation.” Pattern matching was then used to compare observed themes with theoretical expectations derived from litigation strategy literature. This approach enhances internal validity by linking empirical observations to conceptual frameworks (Yin, 2024). Coding decisions and thematic groupings were iteratively reviewed to ensure consistency across cases and alignment with the evidentiary record.

Ethical considerations were addressed through strict de-identification of all case materials. Names, locations, and identifying details were modified or omitted to protect confidentiality and comply with professional standards. Additionally, care was taken to avoid disclosure of privileged communications or sensitive strategy discussions. The study is presented as an educational and analytical examination of litigation strategy rather than a commentary on specific individuals or cases.

Finally, the limitations of this methodology are acknowledged. As a qualitative study, findings are not intended to be statistically generalizable. The reliance on purposive sampling and lived experience introduces the possibility of selection and interpretive bias. However, these limitations are mitigated through triangulation, reflexivity, and transparent analytic procedures. Moreover, the goal of this study is not generalization but theoretical and practical insight into how proactive defense strategies can reorient litigation toward evidentiary evaluation in an AI-influenced legal environment. The analytic objective was not statistical generalization but identification of recurring strategic patterns across cases.

Lessons for Practitioners

The transition from reactive to proactive defense in civil litigation offers practical lessons that are increasingly relevant in an era shaped by artificial intelligence (AI), high-volume filings, and narrative-driven advocacy. While the foundational principles of litigation—burden of proof, admissibility, and evidentiary sufficiency—remain unchanged, the conditions under which these principles operate have evolved. Practitioners must now navigate a landscape in which technological tools can amplify both strong and weak claims, creating new forms of asymmetry and requiring more deliberate strategic responses. This section distills key lessons for practitioners, focusing on when to pivot, how to sequence strategy, the appropriate role of AI, associated risks, and the broader implications of emerging litigation dynamics.

When to Pivot

One of the most critical decisions in litigation strategy is determining when to shift from a reactive to a proactive posture. This pivot is not triggered by procedural milestones alone, but by the recognition of a deeper misalignment between the narrative presented and the evidence available. Practitioners should consider pivoting when narrative exceeds evidence—when claims are repeatedly asserted but not substantiated by admissible documentation. This condition often

appears in cases where allegations are supported by estimates, summaries, or generalized assertions rather than by concrete records such as invoices, contracts, or verified reports. In such scenarios, continued reactive defense risks reinforcing the narrative rather than challenging its foundation.

A second indicator is the centrality of third-party records in establishing the truth of the case. When key evidence resides outside the control of the parties—such as in the files of insurers, contractors, or institutional entities—the defense must recognize that the case cannot be resolved through party-driven discovery alone. Instead, it requires proactive measures to obtain and analyze these external records. As recent scholarship on discovery practice emphasizes, third-party data sources increasingly serve as the “ground truth” in complex litigation, particularly where digital records and institutional documentation play a central role (Grossman & Cormack, 2023).

A third trigger for pivoting is the opponent’s reliance on complexity over clarity. This may involve extensive statistical analyses, layered theoretical frameworks, or voluminous filings that create an appearance of rigor without corresponding evidentiary support. In such cases, complexity can function as a substitute for proof, obscuring the absence of clear causal links or documented damages. Practitioners must recognize that engaging with this complexity on its own terms may perpetuate the imbalance. Instead, the strategic response is to simplify the case by focusing on what can be proven, thereby exposing the gap between narrative and record.

How to Sequence Strategy

Once the decision to pivot has been made, the effectiveness of proactive defense depends on sequencing. A structured approach enhances both efficiency and impact, ensuring that each step builds on the previous one.

The first step is to diagnose evidentiary gaps. This involves a systematic review of the existing record to identify missing links in causation, inconsistencies in damages, and areas where claims lack supporting documentation. AI tools can be valuable in this phase by analyzing large datasets, extracting key entities and relationships, and highlighting discrepancies. For example, natural language processing (NLP) techniques can be used to compare statements across documents, identify references to missing attachments, or detect inconsistencies between claimed and documented values (Surden, 2024). However, the output of such tools must be interpreted within a legal framework, as relevance and admissibility remain human judgments.

The second step is to secure the full record through targeted discovery, particularly third-party subpoenas. This step replaces selective disclosure with comprehensive documentation. By obtaining complete files from neutral entities, practitioners can establish a factual baseline that is less susceptible to narrative manipulation. The importance of this step is underscored by research showing that access to complete datasets significantly improves the accuracy of legal analysis and decision-making (Zhang et al., 2023).

The third step is to fix procedural posture through motion practice. This may include motions to withdraw or amend admissions, compel production, or exclude improper evidence. The goal is to

remove procedural distortions that could influence the outcome independently of the merits. Procedural fairness is a prerequisite for substantive justice, and correcting procedural defects ensures that the case is evaluated on its evidentiary foundation rather than on technicalities (Marcus, 2024).

The fourth and final step is to prepare for trial. Trial readiness serves both practical and strategic functions. Practically, it ensures that the defense is equipped to present its case effectively. Strategically, it signals to the opposing party that the defense is prepared to resolve the case through adjudication, thereby increasing settlement pressure. Empirical studies have shown that credible trial preparation alters the bargaining dynamics of litigation, often leading to more favorable outcomes (Eisenberg & Lanvers, 2023).

Role of AI (Balanced View)

AI has emerged as a powerful tool in litigation, but its role must be understood within clear boundaries. At its best, AI enhances the practitioner's ability to analyze information, identify patterns, and prepare effectively. It is particularly effective in analyzing large document sets, where manual review would be time-consuming and prone to error. AI-assisted review can achieve higher recall rates and greater consistency, enabling practitioners to identify relevant documents more efficiently (Grossman & Cormack, 2023).

AI is also valuable in identifying inconsistencies across documents. By comparing statements, dates, and numerical values, these tools highlight discrepancies that may indicate weaknesses in the opposing party's case. This capability is especially important in cases involving complex data or multiple sources of information.

In addition, AI can accelerate preparation by generating summaries, organizing information, and suggesting lines of inquiry. For example, AI can assist in creating deposition outlines or issue trees that structure questioning around key themes such as causation and damages. These tools enable practitioners to approach preparation with greater clarity and focus.

However, AI should not replace core legal functions. It cannot substitute for legal reasoning, which requires an understanding of rules, precedents, and strategic considerations. Nor can it replace evidentiary judgment, which involves assessing the admissibility and weight of evidence. Finally, AI cannot replicate courtroom strategy, which depends on real-time interaction, persuasion, and adaptability. As legal scholars caution, overreliance on AI risks undermining professional judgment and introducing errors that may not be immediately apparent (Ashley, 2023).

Risks

The integration of AI into litigation introduces several risks that practitioners must manage carefully. One of the most significant is overreliance on AI-generated interpretations. While AI can provide valuable insights, its outputs are based on patterns in data rather than legal principles. Without critical evaluation, practitioners may accept these outputs as authoritative, leading to flawed conclusions.

Another risk is false confidence in “clean-looking” outputs. AI-generated summaries and analyses often appear polished and coherent, which can create an illusion of accuracy. However, this apparent clarity may mask underlying errors or omissions. Practitioners must therefore approach AI outputs with a critical mindset, verifying their accuracy against the original data.

Ethical concerns also arise, particularly with respect to accuracy, bias, and confidentiality. AI systems may reflect biases present in their training data, potentially influencing their outputs in subtle ways. In addition, the use of AI in handling sensitive information raises questions about data security and privilege. Ensuring that AI tools comply with ethical and legal standards is essential for maintaining professional integrity (Remus & Levy, 2024).

Finally, practitioners must consider the cost versus marginal benefit of AI integration. While AI can enhance efficiency, it also requires investment in tools, training, and oversight. The value of AI should be evaluated in relation to the specific needs of the case, rather than adopted indiscriminately.

Emerging Insight

The integration of AI into litigation has introduced a dynamic that can be described as “asymmetric sophistication.” One side may use AI to amplify claims through rhetorically polished and technically detailed filings, while the other uses AI to test and dismantle those claims by exposing evidentiary gaps. This asymmetry reflects a broader shift in legal practice, where technological capability shapes not only efficiency but also strategic positioning.

Importantly, asymmetric sophistication does not determine outcomes on its own. While AI can enhance the presentation of claims, it cannot create evidence where none exists. Conversely, AI can assist in identifying weaknesses, but it cannot replace the need for coherent legal strategy. The ultimate determinant remains the evidentiary record. The most effective use of AI, therefore, is not to compete in narrative sophistication, but to reinforce evidentiary clarity.

This insight underscores the central theme of proactive defense: the shift from narrative to record. By leveraging AI to identify and analyze evidence, and by structuring strategy around that evidence, practitioners can ensure that litigation outcomes are grounded in proof rather than persuasion. In doing so, they uphold the principle that documented evidence matters more than what is claimed.

The findings also have important implications for teaching and legal education. As artificial intelligence increasingly shapes how legal arguments are constructed and presented, legal training must place greater emphasis on evidentiary reasoning, critical evaluation, and the distinction between narrative coherence and evidentiary sufficiency. Students and practitioners must be trained to recognize that well-structured arguments—whether AI-assisted or not—do not equate to valid claims unless supported by admissible evidence (Surden, 2024). This suggests a need to strengthen instruction in evidence analysis, procedural strategy, and record-based reasoning. In addition, integrating AI literacy into legal education is essential, not to promote reliance on AI outputs, but to develop the ability to critically assess, verify, and appropriately apply them within legal contexts (Bommarito & Katz, 2023). By aligning legal education with

these competencies, institutions can better prepare practitioners to navigate AI-augmented litigation environments while maintaining the primacy of evidentiary standards.

Conclusion

The evolution from reactive to proactive defense in civil litigation underscores a fundamental truth: the decisive shift in litigation is not technological but strategic. While artificial intelligence (AI) has transformed the tools available to legal practitioners, it has not altered the governing principle of adjudication: claims must be supported by admissible evidence. AI has increased the speed, volume, and sophistication of legal filings, enabling parties to construct compelling narratives with unprecedented efficiency. Yet those narratives remain subject to the same evidentiary constraints that have long defined the legal system (Surden, 2024).

The transition from reacting to claims to forcing proof represents a recalibration of litigation practice in response to this environment. Reactive defense, while procedurally compliant, often allows narrative-driven claims to gain traction by default. Proactive defense, by contrast, restructures the case around the evidentiary record. By securing complete documentation, correcting procedural imbalances, and preparing for trial, practitioners shift the focus from what is asserted to what can be demonstrated. This shift is not merely tactical; it is epistemological, reaffirming the centrality of evidence in legal outcomes.

AI, when properly integrated, serves as a powerful enabler of this shift. Its ability to analyze large datasets, identify inconsistencies, and organize information enhances the practitioner's capacity to expose evidentiary gaps. Rather than replacing legal reasoning, AI augments it, allowing attorneys to move more efficiently from data to insight. For example, AI-assisted document review can reveal discrepancies between claimed damages and documented costs, while predictive analytics can help anticipate opposing arguments and test their plausibility (Bommarito & Katz, 2023). In this sense, AI accelerates the transition from narrative to record by making the evidentiary landscape more transparent and accessible.

However, AI also reinforces the importance of professional judgment. The same tools that can clarify evidence can also amplify unsupported claims, creating an environment in which the appearance of rigor may outpace substance. This dual capacity highlights the need for a disciplined approach to AI use, one that prioritizes verification, context, and ethical responsibility. As legal scholars have noted, the effectiveness of AI in litigation depends not on sophistication alone, but on how it is applied within a framework of evidentiary integrity and procedural fairness (Remus & Levy, 2024).

These developments point to a broader transformation in legal practice, where technological capability and strategic discipline must be aligned to preserve the integrity of the adjudicative process. The emergence of AI has introduced new forms of asymmetry, enabling parties to enhance both the presentation and analysis of claims. Yet it has also provided tools for restoring balance by exposing the limits of narrative and reinforcing the role of evidence. These findings suggest that future litigation strategy—and potentially procedural reform—must account for environments in which narrative sophistication can outpace evidentiary support.

In modern litigation, success depends not on constructing the most compelling narrative, but on grounding that narrative in the evidentiary record. AI may shape how cases are argued, but it does not change what ultimately matters. As this study demonstrates, the decisive advantage lies with those who can shift the focus from claims to proof, ensuring outcomes are determined by substantiated claims rather than assertion. In this context, narrative sophistication may increase—but only evidence in the record determines the outcome.

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