ILTA Masterclass

Navigating the Intersection of AI and Law:

A Framework for Responsible Use and Regulation of AI

by Ivy B. Grey, JD, LLM

Chief Strategy & Growth officer, WordRake

WORDRAKE

Today's Learning Objective

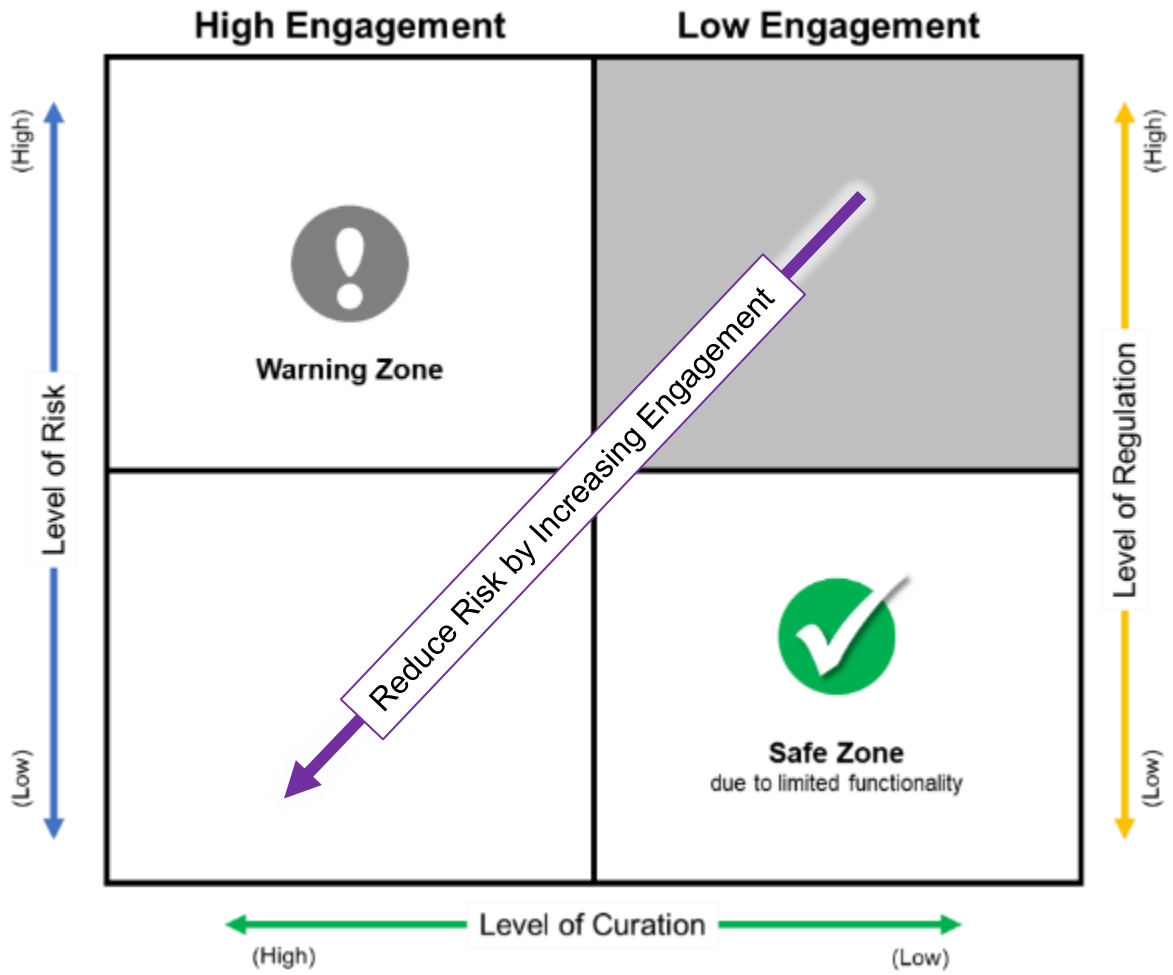
By the end of the webinar, you'll have a solid understanding of the AI Engagement Framework and its role in guiding responsible and effective AI integration in the legal profession.

You'll have the knowledge and skills to make informed decisions, mitigate risks, and harness the transformative power of AI while meeting ethical standards and working efficiently and effectively.

(NOTE: We will not discuss regulating technology creators or the foundational models LLMs are trained on.)

INTRODUCING

The AI Engagement Framework



INTRODUCING

The AI Engagement Framework

Engagement:

How legal professionals interact with AI outputs, whether they engage critically or passively accept the outputs.

Knowledge:

The level of knowledge legal professionals must have about the topic, database, and platform to obtain an acceptable response.

Curation and Validation:

The level of curation underlying the source material from which the AI draws and the presence of guardrails to constrain and validate responses.

Your Presenter Today



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Ivy B. Grey is the Chief Strategy & Growth officer for WordRake. Prior to joining the team, she practiced bankruptcy law for ten years. Ivy is a member of the Board of Directors of Scribes, the American Society of Legal Writers, which publishes the *Journal of Legal Writing* and *The Scrivener*, and advocates for clear, succinct, forceful legal writing. In 2020, Ivy was recognized as an Influential Woman in Legal Tech by ILTA. She has also been recognized as a Fastcase 50 Honoree and included in the Women of Legal Tech list by the ABA Legal Technology Resource Center.

She learned to understand RegEx to create American Legal Style for PerfectIt and learned to understand and work in WordRake's proprietary and patented algorithms based on parts of speech, syntax, and flexible contextual cues.

Definitions

- **Algorithm:** a coded set of instructions for software that solves a problem or performs a function.
- **Artificial Intelligence (AI):** a general term used to refer to a category of technologies and capabilities that simulate human learning, reasoning and creativity.
- **Natural Language Processing (NLP):** a type of AI used to analyze, understand, and generate human language. For legal documents, NLP analyzes legal documents, contracts, and other legal texts to identify key provisions, clauses, and risks.
- **Extractive AI:** an AI algorithm that extracts relevant data points from the data it has been trained on.
- **Generative AI:** an algorithm that generates new outputs based on the data it has been trained on. Unlike extractive AI systems designed to recognize patterns, extract pre-existing data, and make predictions, generative AI creates new content in the form of images, text, audio, and more.
- **Large Language Model (LLM):** a machine learning model that can recognize, summarize, translate, predict, analyze sentiment, and generate text based on the patterns and relationships (probabilities) it has learned from massive datasets. LLMs work by predicting the next term, or word, in a sentence, given the words that came before it.

Source: https://www.lexisnexis.com/community/insights/legal/b/thought-leadership/posts/ai-terms-for-legal-professionals-understanding-what-powers-legal-tech (lightly edited and cleaned up)

Definitions

- **Bidirectional Encoder Representations (BERT):** a ML and NLP framework that analyzes nuanced, niche language and context with a high degree of accuracy.
- **GPT:** Generative Pretrained Transformer is a family of AI language models introduced by OpenAI. These models can be fine-tuned for various natural language processing tasks, such as text generation, language translation, and text classification. The "pre-training" in its name refers to the initial training process on a large text collection where the model learns to predict the next word in a passage, which provides a solid foundation for the model to perform well on downstream tasks with limited amounts of task-specific data.
- **ChatGPT:** an artificial intelligence chatbot launched by OpenAI in November 2022. It is built on top of OpenAI's GPT-3.5 using supervised learning as well as reinforcement learning. Although the core function of a chatbot is to mimic a human conversation, ChatGPT is versatile and acts as Generative AI.
- **GPT-3:** the third-generation language prediction model in the GPT series introduced in May 2020 by OpenAI. It is an autoregressive language model, i.e., it predicts future outcomes using what it has previously observed and produces human-like text.
- **GPT-4:** the fourth-generation language prediction model in the GPT series introduced in March 2023 by OpenAI is multimodal and accepts both image and text inputs to ultimately produce text.

Source: https://www.lexisnexis.com/community/insights/legal/b/thought-leadership/posts/ai-terms-for-legal-professionals-understanding-what-powers-legal-tech (lightly edited and cleaned up)

If AI in Law is Not New...

Why Does It Seem Necessary to Regulate and Disclose the Use of Generative AI in Legal Practice?

What's different now?

- We have been using AI in law for decades, but generative AI requires us to rethink our use and regulation of it.
- We've become comfortable with using extractive AI to find caselaw in legal research databases; we use corrective AI every time we check our writing with spellcheck; and we use collaborative AI any time AI augments our work by surfacing suggestions for legal professionals to evaluate and approve.
- But when generative AI entered the market, things changed: **Harried professionals can now get and accept AI-generated outputs without scrutiny, which introduces a new risk that didn't exist with older forms of AI that relied on curated databases and were only accessible by highly trained users.**
- As we expand our use of AI in law and lower (or remove) the barriers to accessing these tools, it is ever more important for us to be discerning users. We must question, verify, and scrutinize how we use AI tools and learn to act with wisdom and accountability.

Barriers to Entry Changed

Purchasing

Expensive, Enterprise IT Purchase of Access for Specific Users

Training

Extensive Training to Use Legal-Specific Tools

Using

Limited Access Granted to Specific Users with Billing Codes Req'd – No "Fun" Use

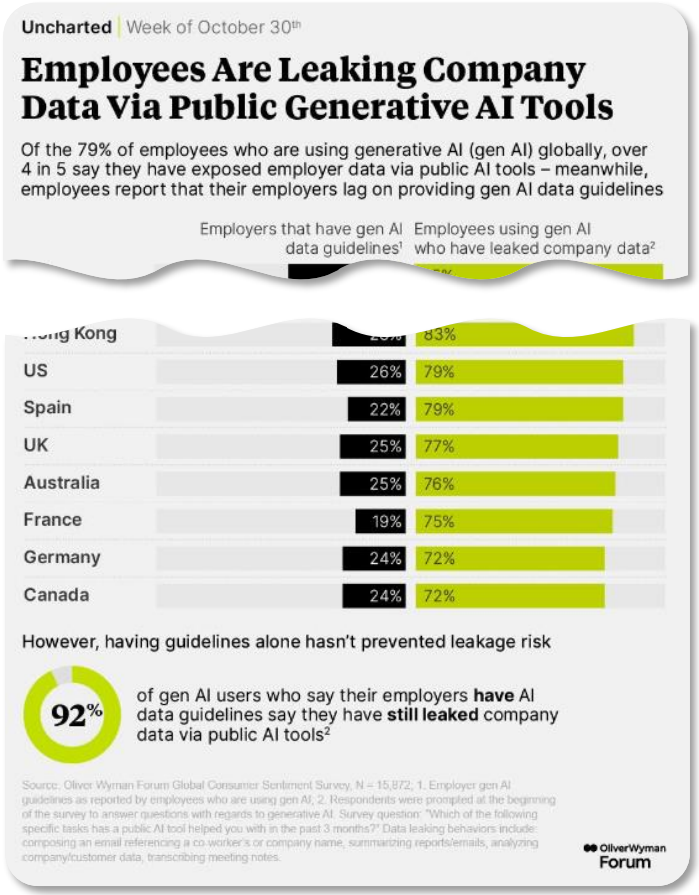
Barriers to Entry Changed

Using

Before: Limited Access Granted to Specific Users with Billing Codes Req'd – No "Fun" Use

Now: Anyone can use GenAI for free from their personal smart phones, which the firms don't control

"92% of gen AI users … have leaked company data via public AI tools"



How Queries Have Changed

Before:

```
(slip OR fall) AND ("business
premises") AND ((icy OR slippery)
/5 (stair! OR step!))
```

You

Name v. Name, 666 JD 2008

In re Good Luck, 123 JD 2001

Slip v. Fall, 5678 JD 2002

Banana v. Peel, 369 JD 1999

Research Results

Now:

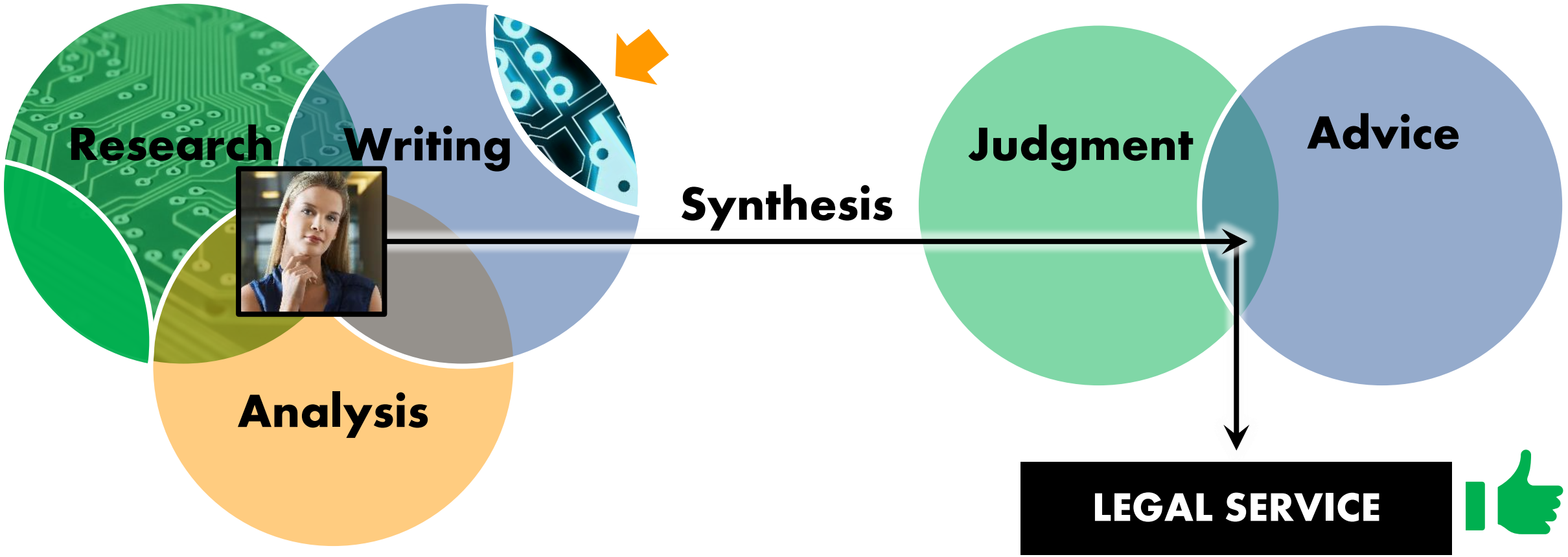
Write a plaintiff's brief for a slip and fall case

You

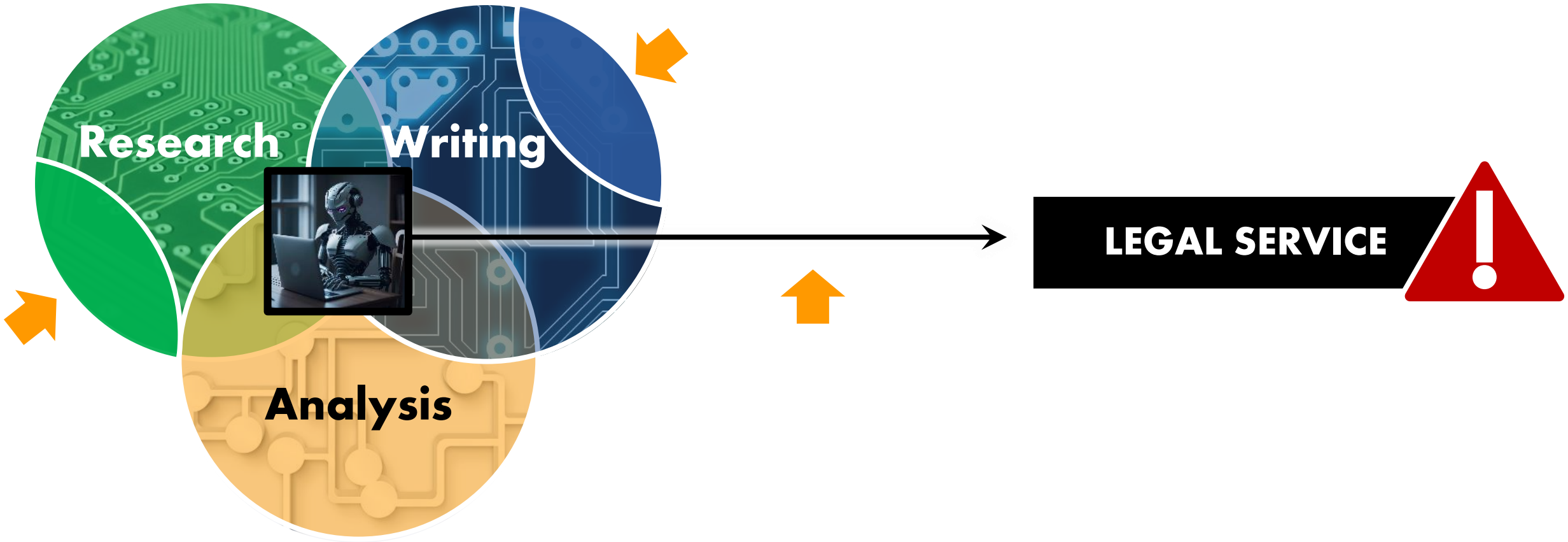
In this case, we represent the plaintiff who has suffered injuries due to a slip and fall incident. On [date], at [location], the plaintiff was subjected to a traumatic fall, resulting in significant harm. This brief outlines the events leading up to the incident, establishes liability, discusses damages, presents legal arguments, and concludes with a request for relief.

Chatbot

Writing Required Thinking, Synthesis & Legal Judgment

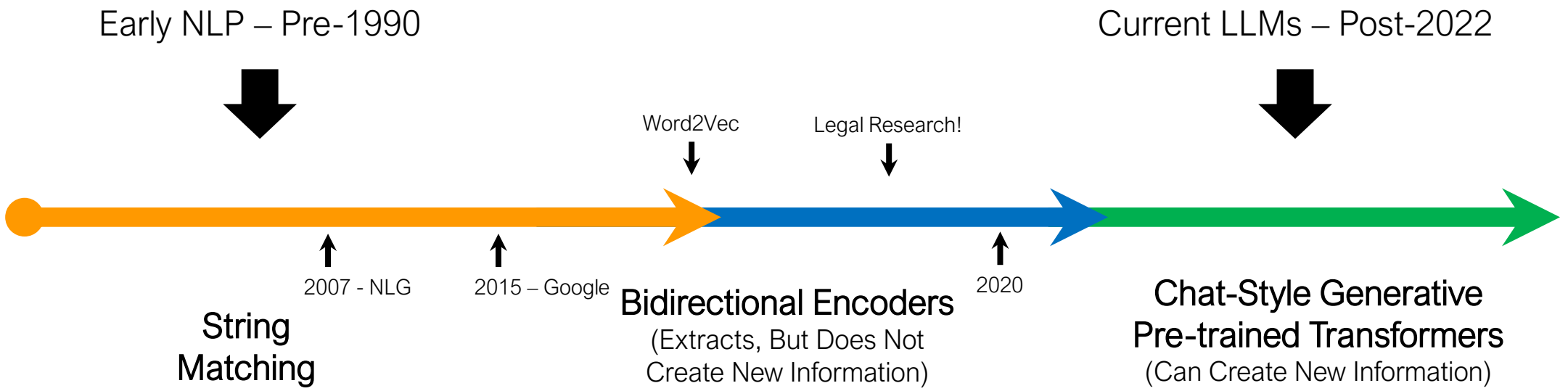


Now It's Possible to Generate Text without Thoughtful Analysis



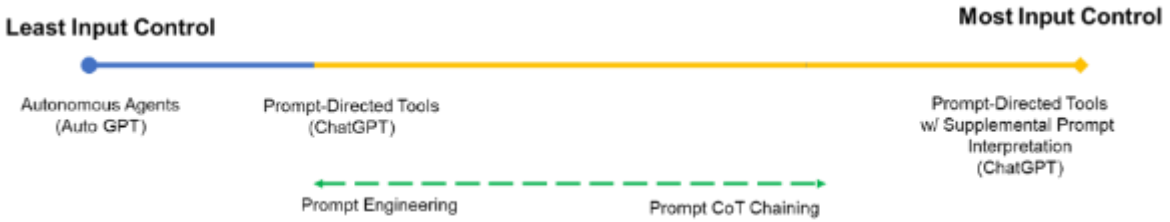
What's different now?

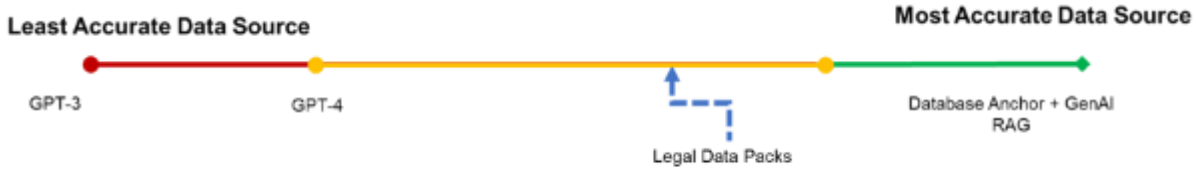
A Language Explosion – Since 2022



What's different now?

A Language Explosion – Since 2022









What's different now?

We tried to solve the problem with…

- More options
- More levers
- More worries
- Faster pace

And we faced a much lower barrier to entry…

Non-Law GenAI Text Apps

A Language Explosion – Since 2022

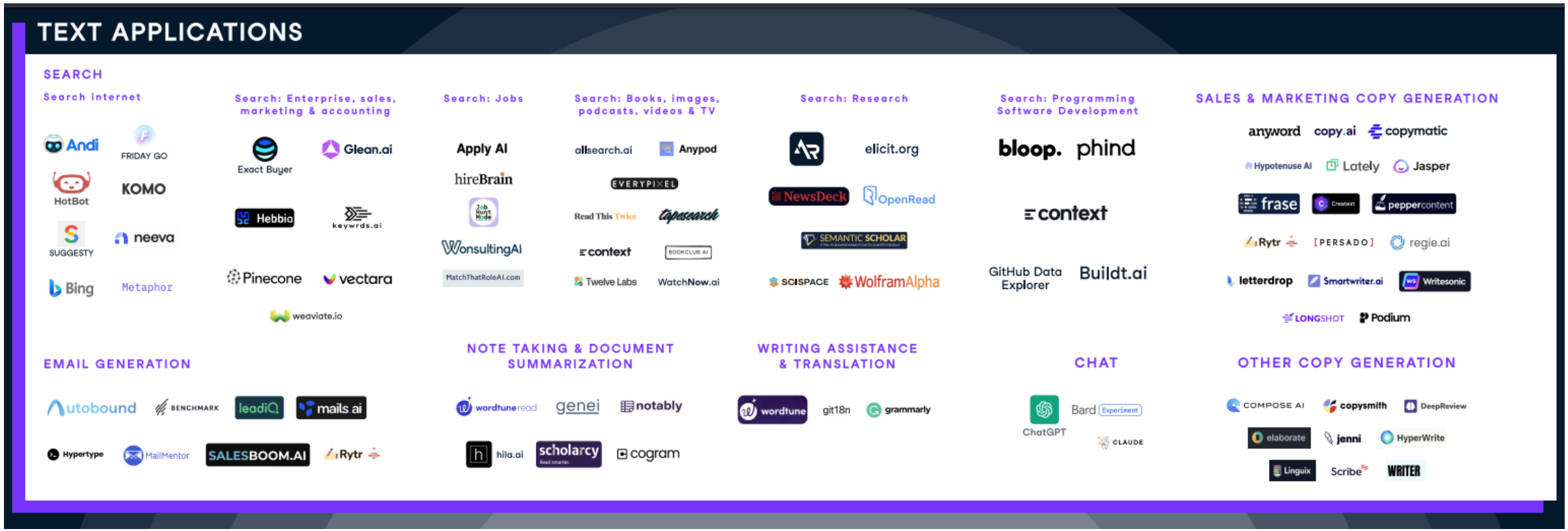


Image Source: https://www.datacamp.com/cheat-sheet/the-generative-ai-tools-landscape

Legal GenAI Text Apps

A Language Explosion – Since 2022



Established Players

casetext · Lexis+ AI · vlex · ndMAX · iManage · LITERA

PerfectIt · ezBRIEFS · henchman · Kelvin Legal Data OS · UniCourt

+ CLM Companies

+ many more not pictured – and more every day!

Don’t boil the ocean…

Not every tool needs extraordinary review, response, and regulation

To respond appropriately, we need a decision-making framework

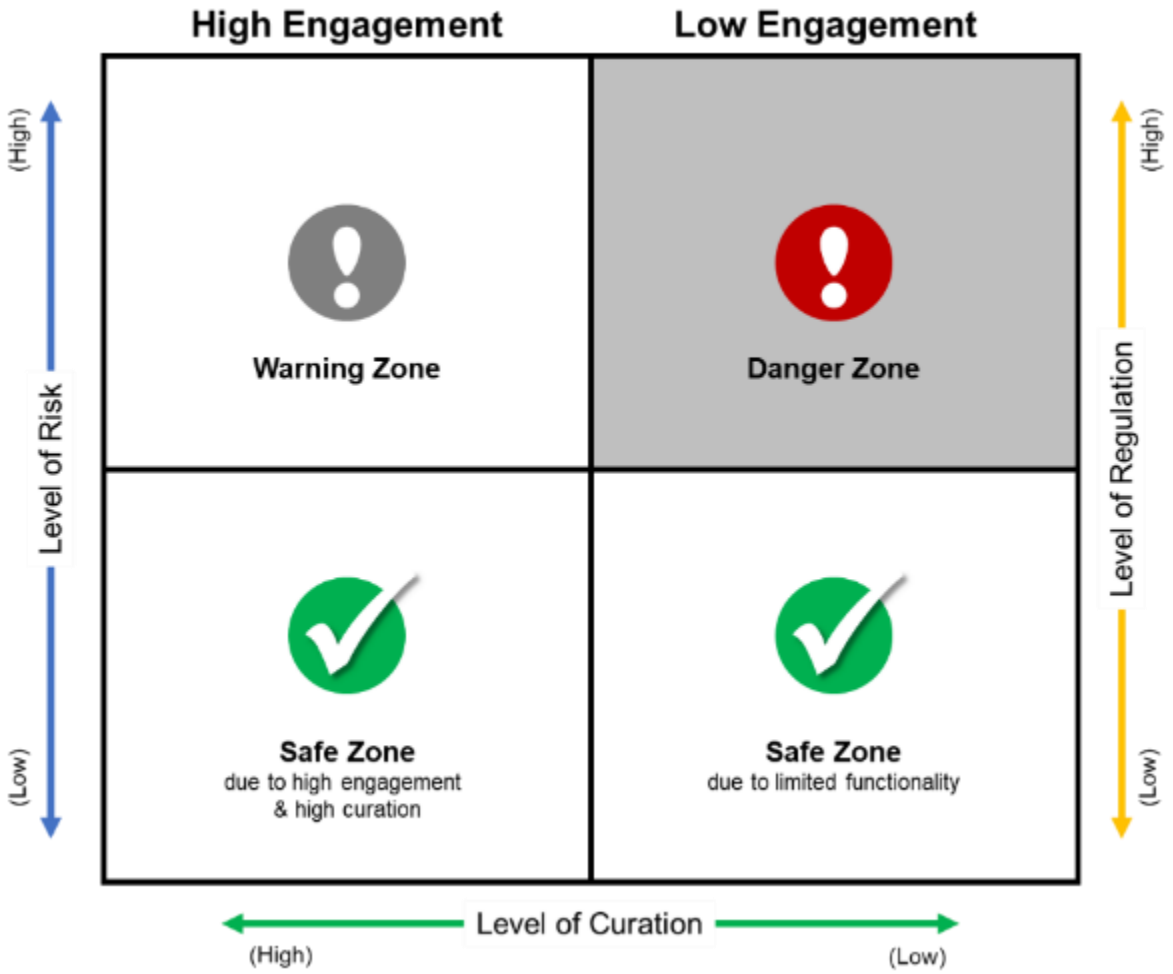
Three factors determine the level of risk involved in using AI in law and the level of oversight each AI tool requires when used:

- How legal professionals **engage with AI outputs** and whether that engagement involves critical inquiry or passive acceptance
- How much a legal professional must **know about their topic**, the database, and the platform to obtain a facially acceptable response
- What level of **curation underlies the source** material from which the AI draws and what guardrails are in place to preemptively validate responses before they are served to the user

With this in mind, we can properly respond to the level of risk associated with tools and work to move them from one risk quadrant to another based on the above factors.

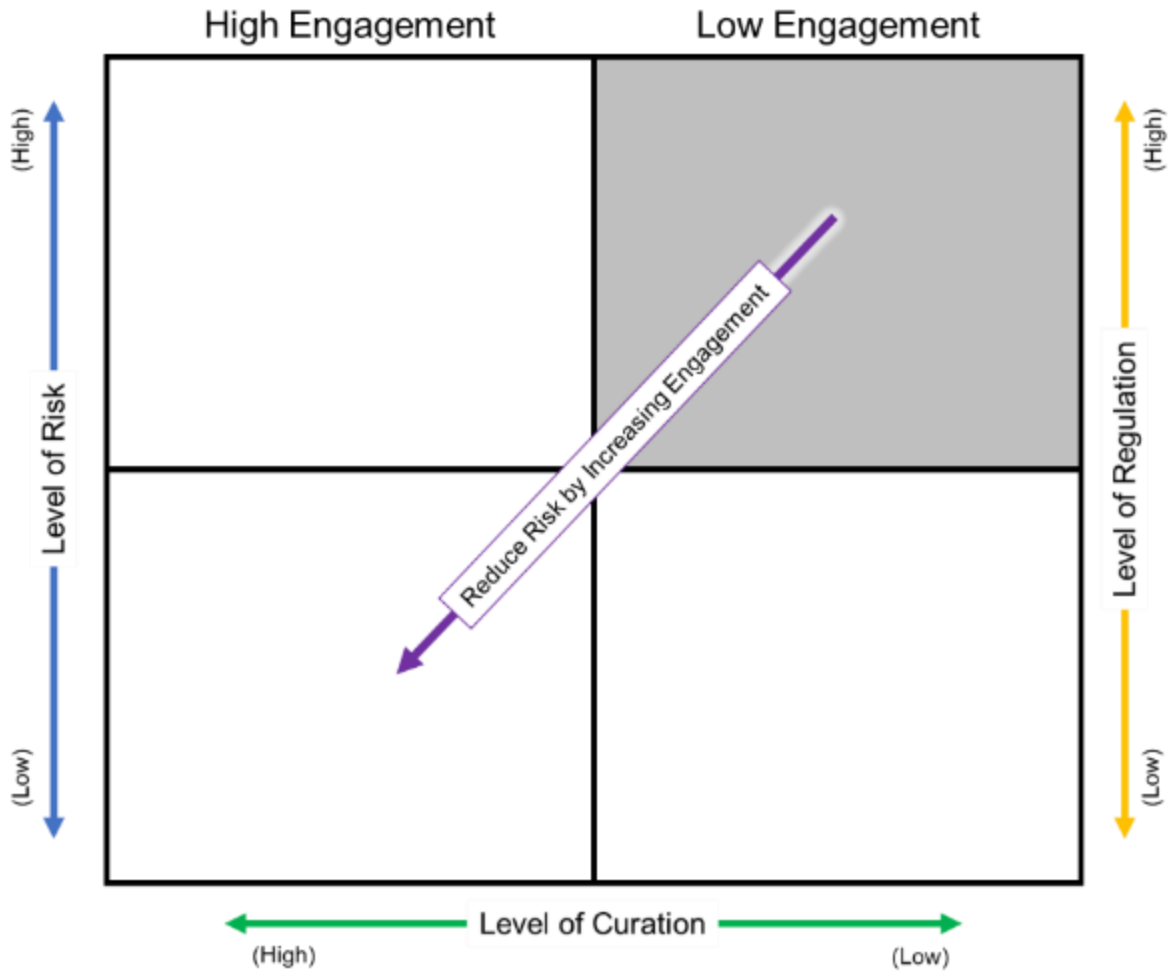
INTRODUCING

The AI Engagement Framework



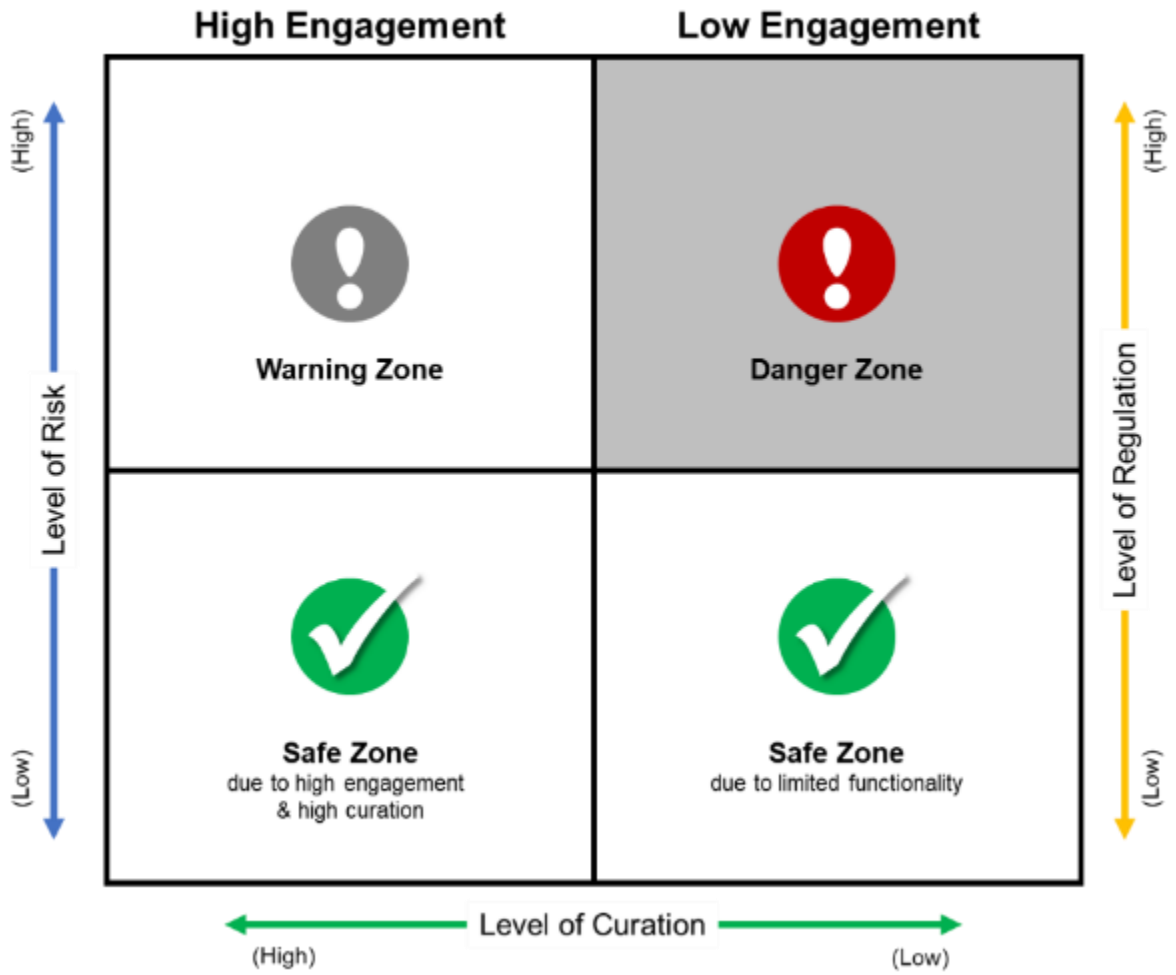
AI Engagement Framework

Created for Flexibility, Not Fear



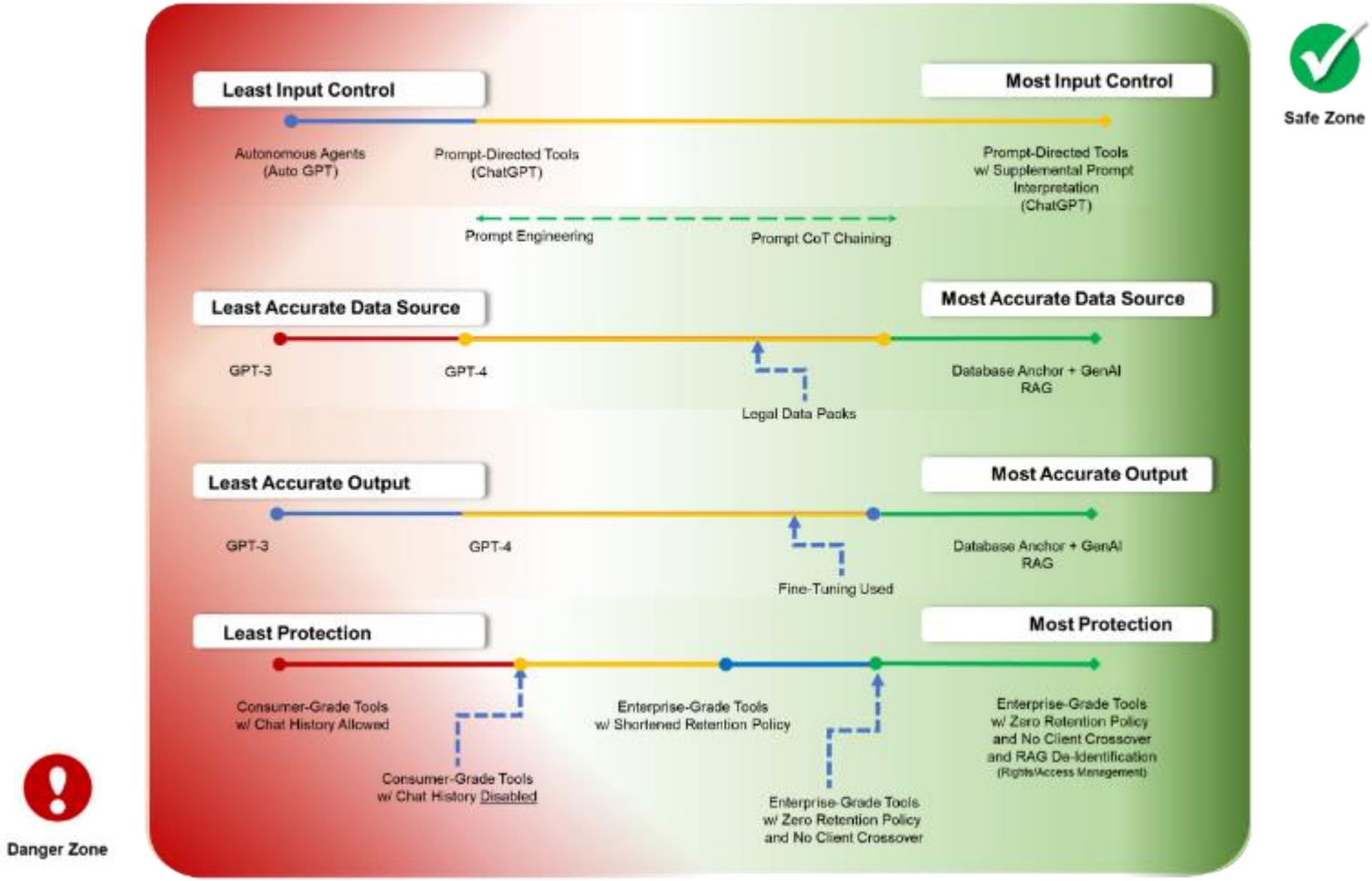
AI Engagement Framework

Zones of Concern



Recognizing Your Levers

Controlling Your Fate



Factors that Influence Quadrant Placement

1



User Engagement
(for input & output)

2



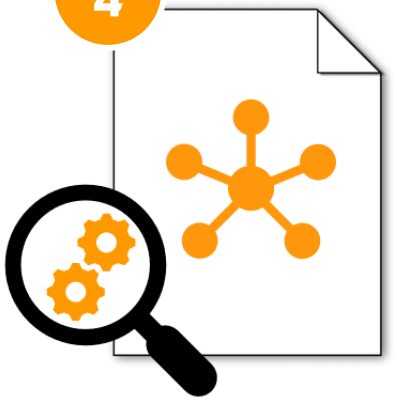
Data Privacy & Confidentiality
(goes to risk)

3



User Expertise
(goes to risk & engagement)

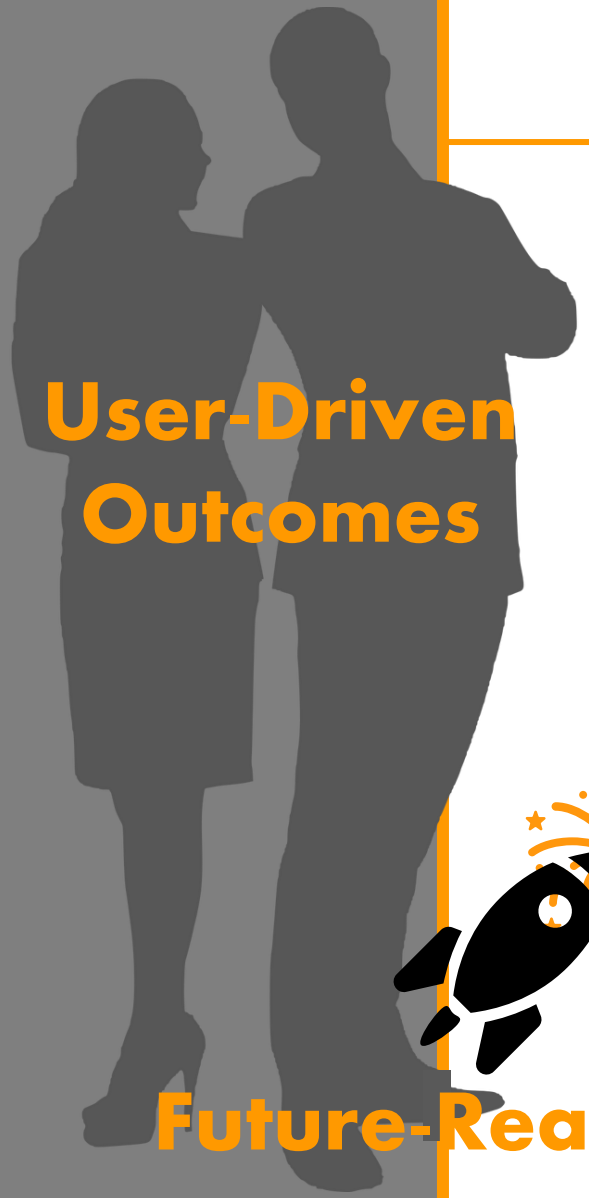
4



Data Source & Explainability
(goes to risk & regulation)

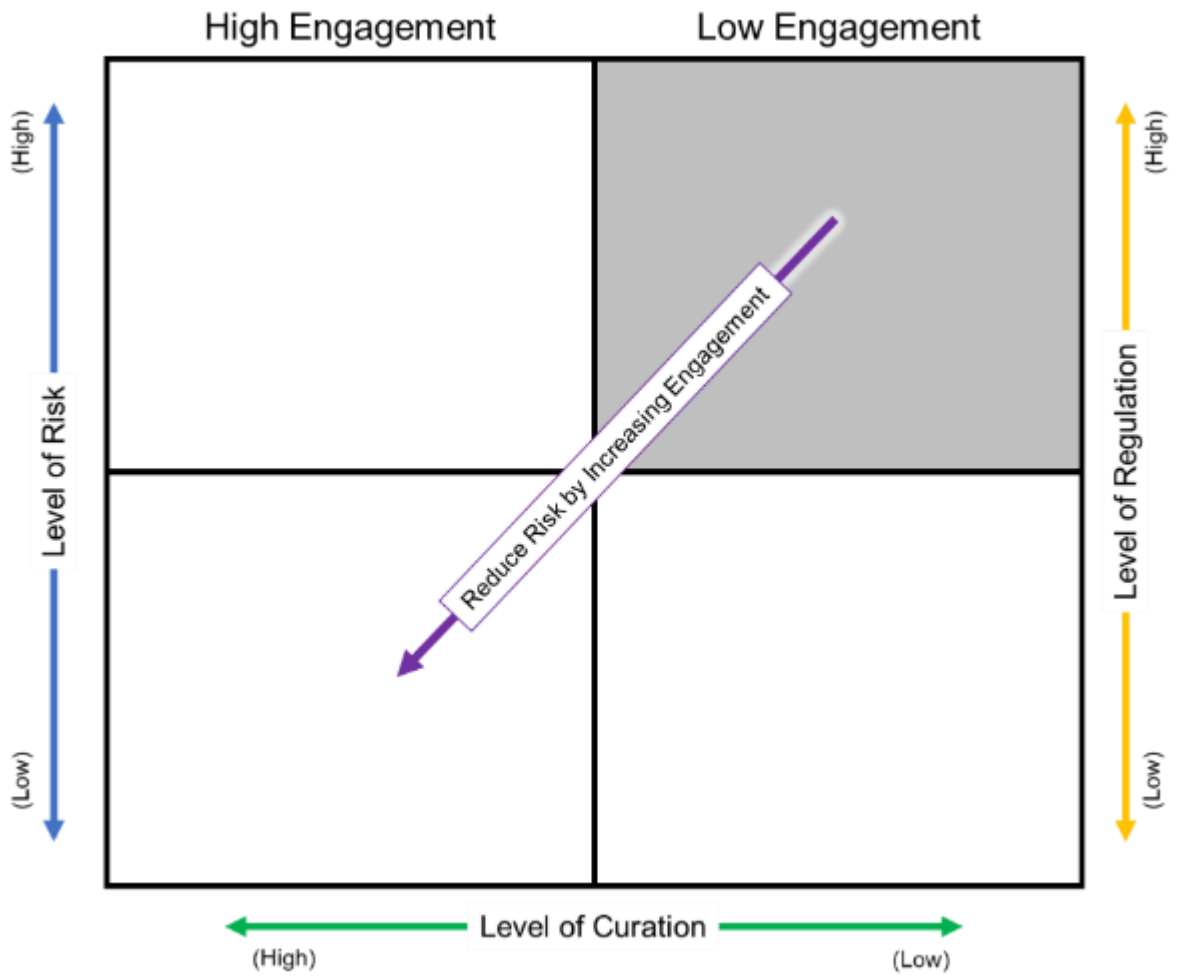
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Importance of Quadrant Fluidity



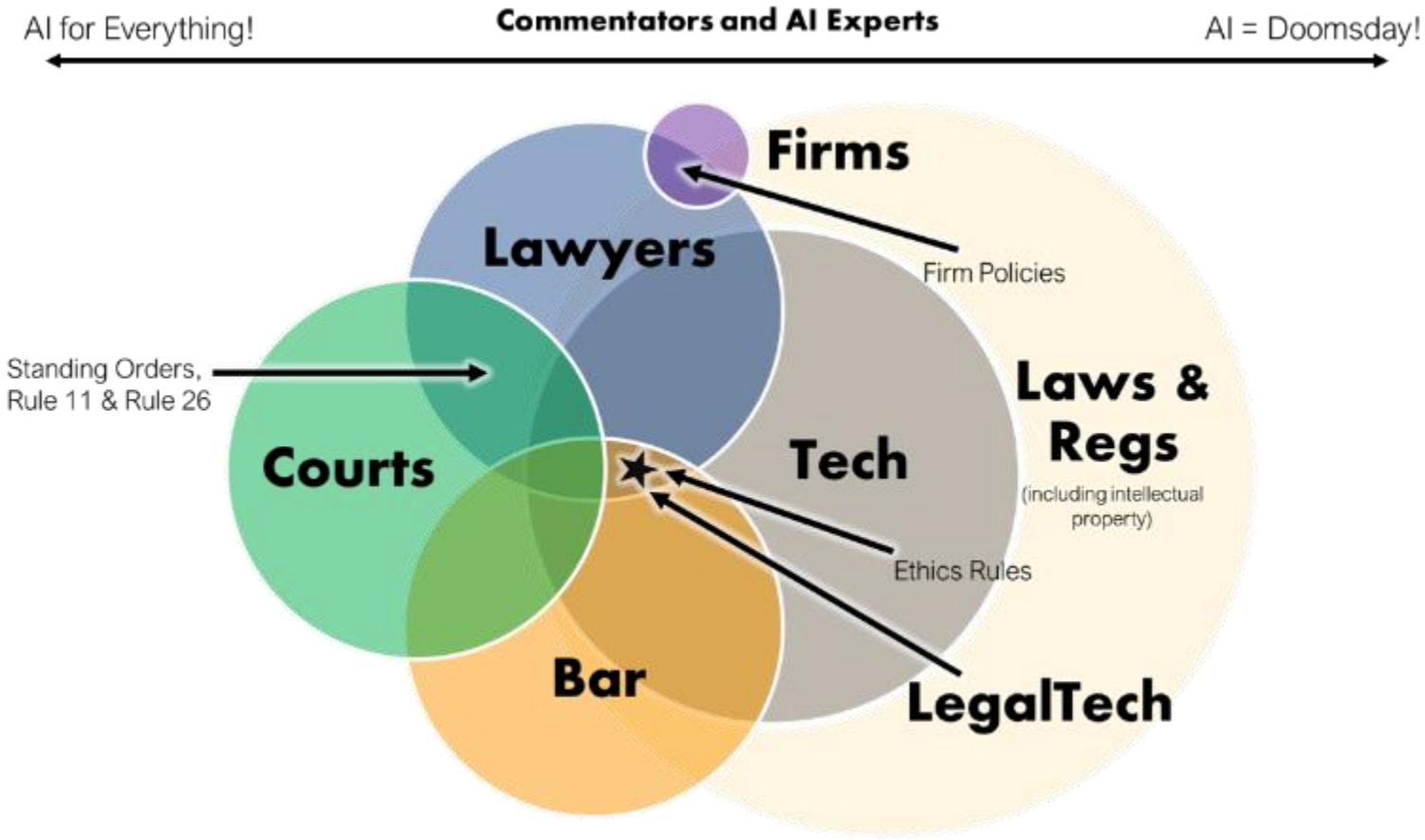
User-Driven Outcomes

Future-Ready



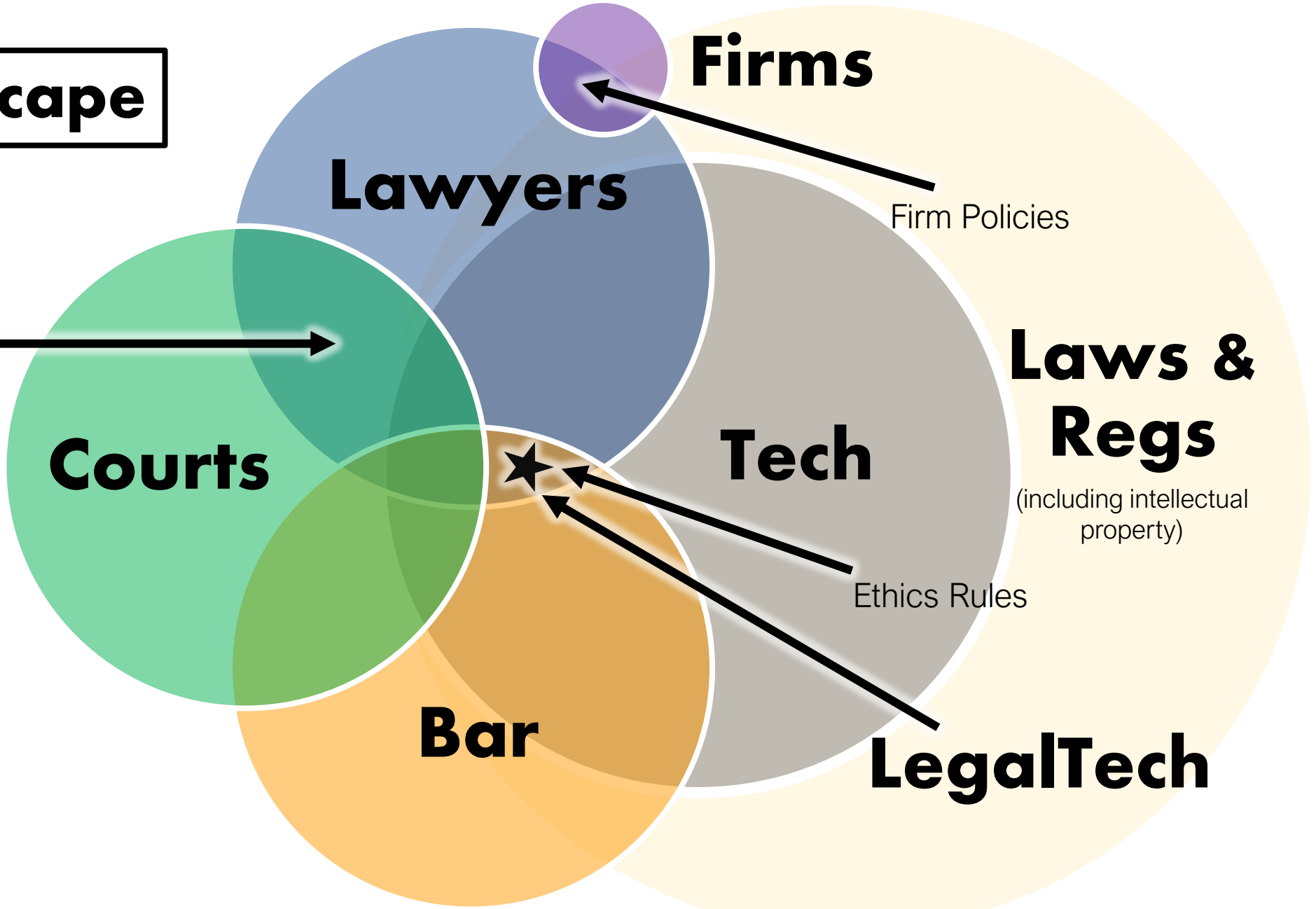
What's Causing the Complication?

Understanding the Landscape



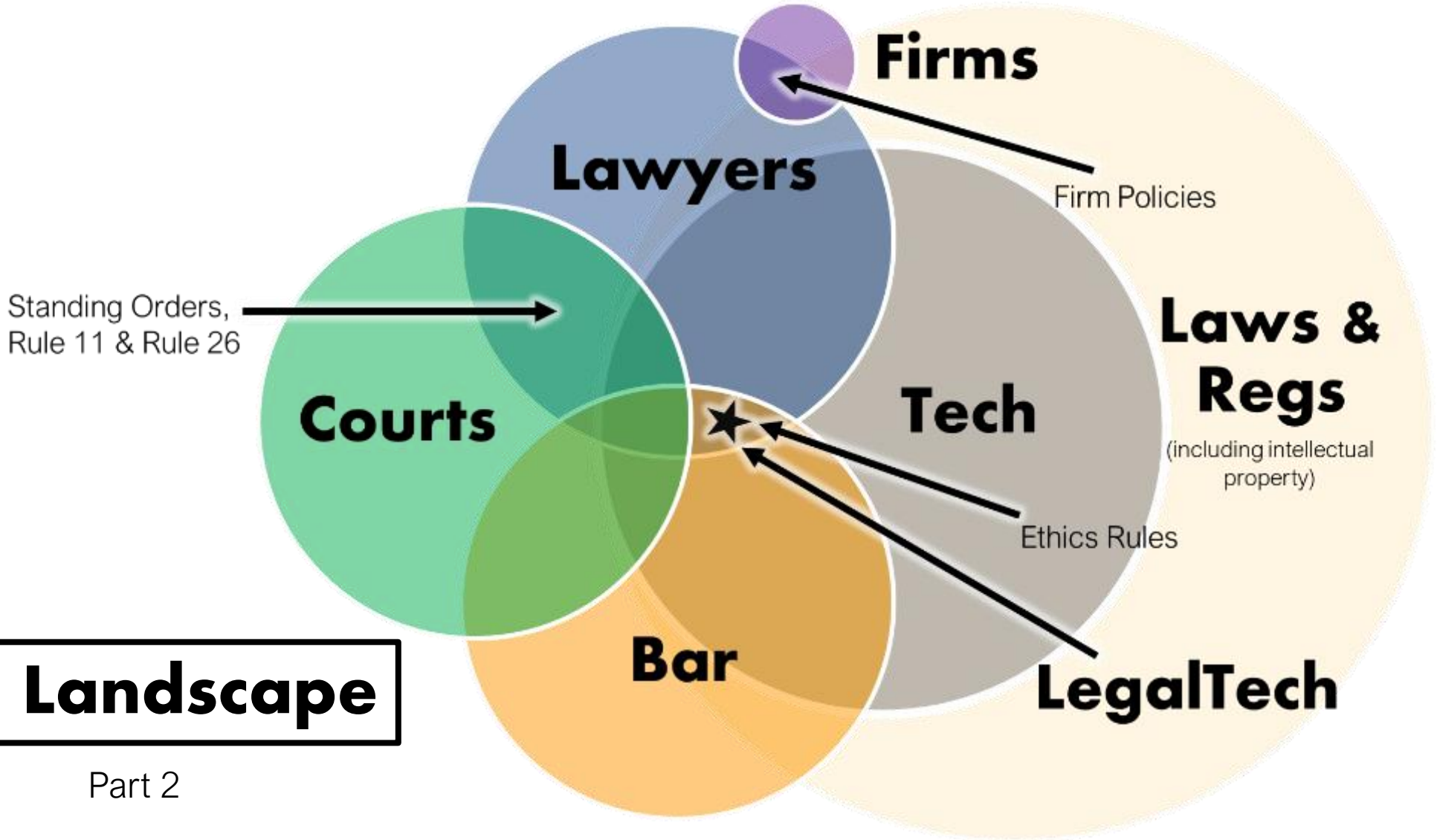
The Landscape

Part 1



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Write to the Point.

AI for Everything! **Commentators and AI Experts** AI = Doomsday!

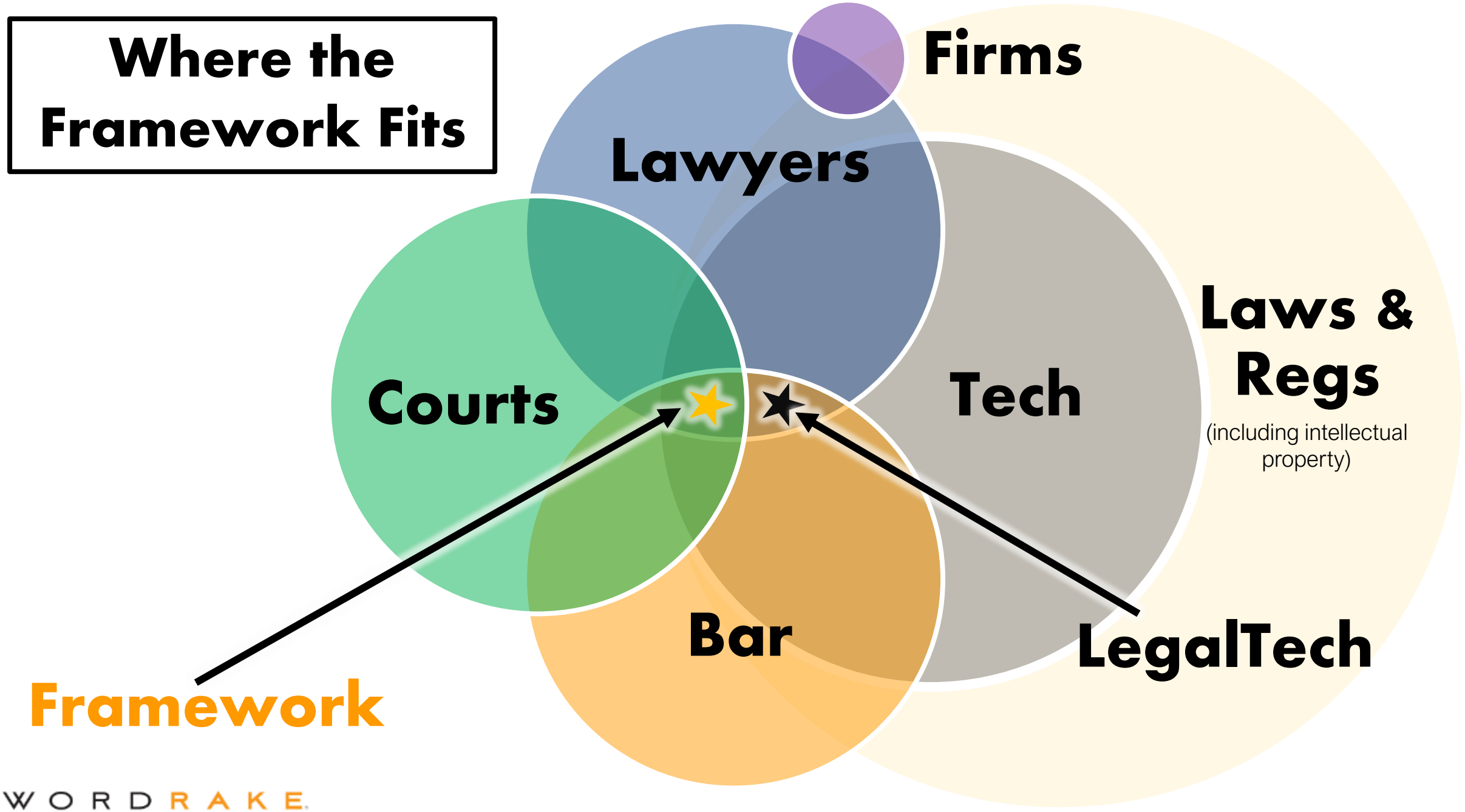


The Landscape

Part 2

WORDRAKE
Write to the Point.

Where the Framework Fits



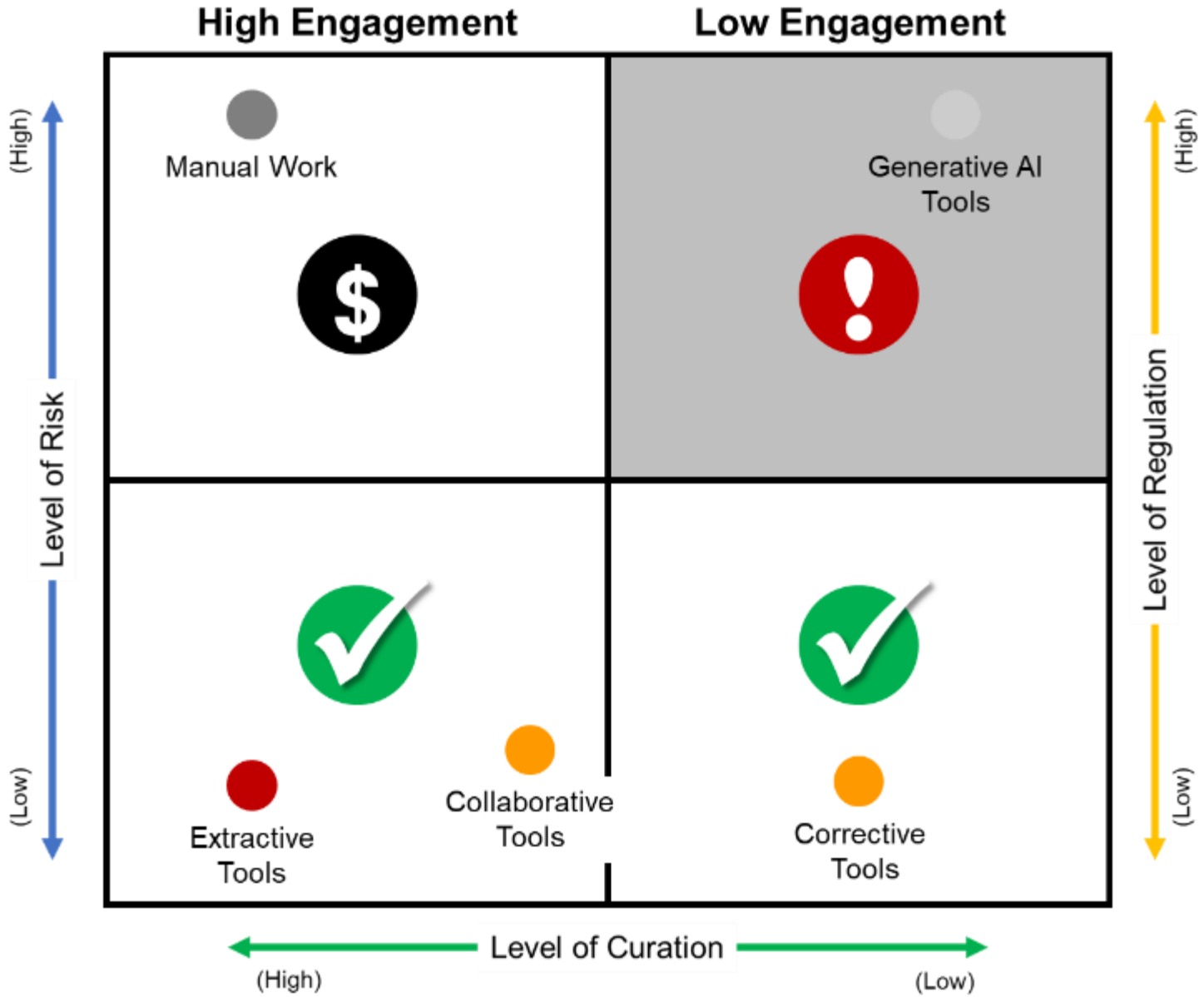
WORDRAKE
Write to the Point.

Applying the Framework to Representative Categories

4

Representative Categories:

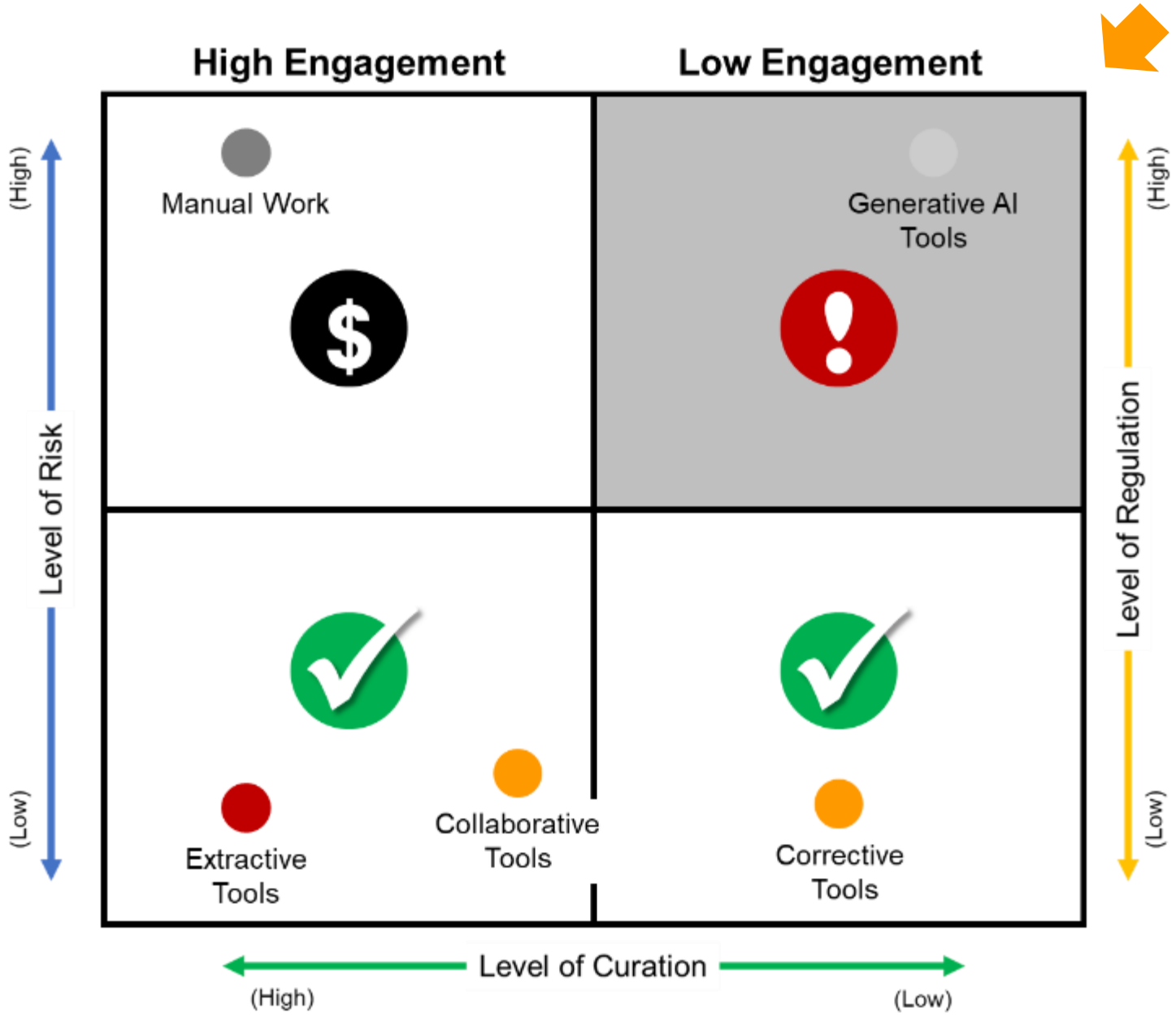
- **Generative**
- **Extractive**
- **Collaborative**
- **Corrective**



WORDRAKE
Write to the Point.

Generative: The Creative Companion (High Risk)

- **Examples:** ChatGPT, Bard, Claude
- **Definition:** A digital brainstormer that aids in initiating and summarizing content.
- **Content Creation:** Excels in producing first drafts and summaries.
- **Risk:** High due to bias, inaccuracies, and hallucinations, but it seems plausible.
- **Human Interaction:** Virtually no interaction needed to receive a response; high needed verify outputs, review content, and edit content.
- **Application:** Used for first drafts, summaries, and explanations of concepts.
- **Strengths/Limitations:** Rapid content generation but needs human review for accuracy.



WORDRAKE
Write to the Point.

How Does GenAI Sabotage the Truth?

One basic goal of GenAI is to model a style or a genre, like writing new poems in the style of Walt Whitman, or creating a satisfying werewolf romance story. These systems were not designed with accuracy as a goal, and they were not meant to engage in logical reasoning. Indeed, their primary purpose was to create new content. GPT methods sample from a probability distribution of relevant words and phrases, and while there may be some bias toward truthful results — to the extent the truth is more common among the sources from which GenAI draws — the model itself is unable to separate fact from fiction.[24] Newer LLMs attempt to create more trustworthy content, but building in accurate citations and proper legal reasoning is a tall order.

This inability becomes especially problematic when one attempts to perform legal research using GenAI tools not built for that purpose. ChatGPT 3.5 routinely cites irrelevant or nonexistent cases, alongside relevant or real ones, because it is trying to fit the pattern of how one writes about the law; it is not necessarily trying to tell a true story. For example, in response to the prompt "find me a dog-noise case from Tennessee," ChatGPT 3.5 provided a response that claimed to be based on a Tennessee dog-noise case but actually miscited to a 2018 Texas Supreme Court medical-malpractice case (*Benge MD PLLC v. Williams*, Case No. 14-1057 (Tex. 2018)). And, when asked to write about the *Benge* case in the style of a newspaper article, ChatGPT 3.5 continued this incorrect pattern ("In a recent legal ruling, the Tennessee Court of Appeals addressed a contentious dispute between neighbors over incessant dog barking. The case of *Benge v. Williams* shed light on the complex issue of noise nuisances caused by pets and their potential impact on neighbors' quiet enjoyment of their property.").

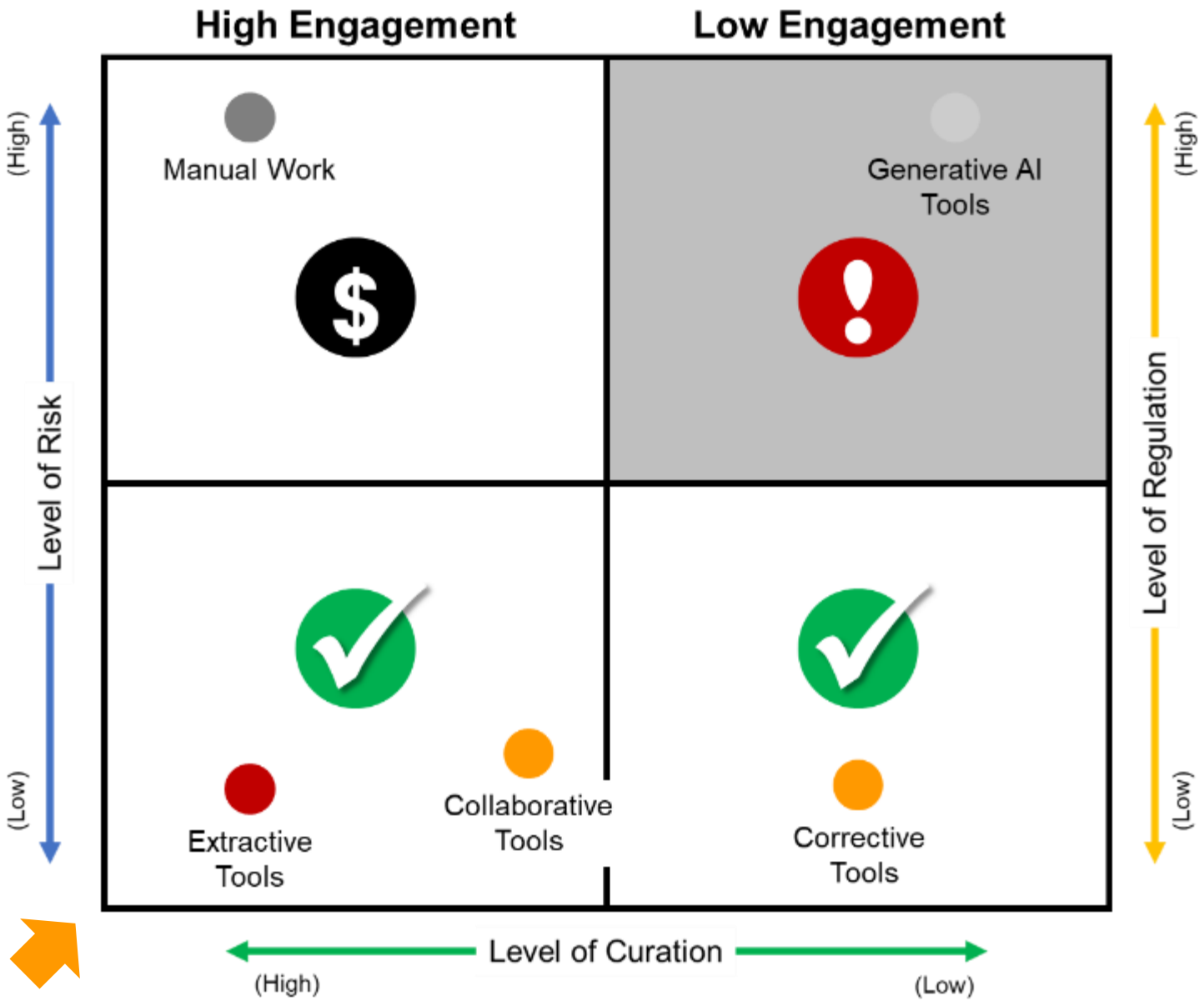
The phenomenon at issue here, referred to as AI "hallucinations," is to be expected of LLMs; indeed, many consider it a feature rather than a bug. Recall that the training goal of LLMs is to emulate the textual style of the training dataset. Adding the word "not" or removing "only," for example, does not much change the overall fluency and apparent reasonableness of an LLM-generated sentence — but obviously can change the legal meaning dramatically. Similarly, a sentence in a GenAI-drafted legal brief may still fit the general structure of the text upon which the model was trained, regardless of whether the citations found in it are related to the subject. The reason why ChatGPT 3.5 consistently correctly associates *Obergefell v. Hodges*[25] with the topic of same-gender marriage is because the case is repeatedly mentioned in thousands of sentences about that subject in its training data, but citations to less well-known cases are less likely to be properly cited.[26] Even cases referenced in Wikipedia articles (such as Judge Grimm's *Mancia v. Mayflower Textile Services Co.* opinion),[27] can be misconstrued by ChatGPT 3.5. It claims that briefs citing that opinion focus on overtime pay and labor standards (the overall subject of *Mancia*), when, in fact, Judge Grimm's ruling focused on the parties' failure to cooperatively engage in the discovery process in violation of Fed. R. Civ. P. 26(g), the proposition for which the case has frequently been cited.

Newer or more purpose-built GenAI systems may eventually ameliorate this concern. For example, they can be trained to detect when a user is seeking a case citation and add a verification step to ensure valid and appropriate output. Also, as mentioned earlier, GenAI systems are now being built specifically for the purpose of legal research. For the time being, however, pro se filers will likely not have access — and may never have access — to the paid databases and specialized technologies used by lawyers and will instead turn to free, general-purpose GenAI systems (like ChatGPT 3.5).

Quoted from https://judicature.duke.edu/articles/is-disclosure-and-certification-of-the-use-of-generative-ai-really-necessary/

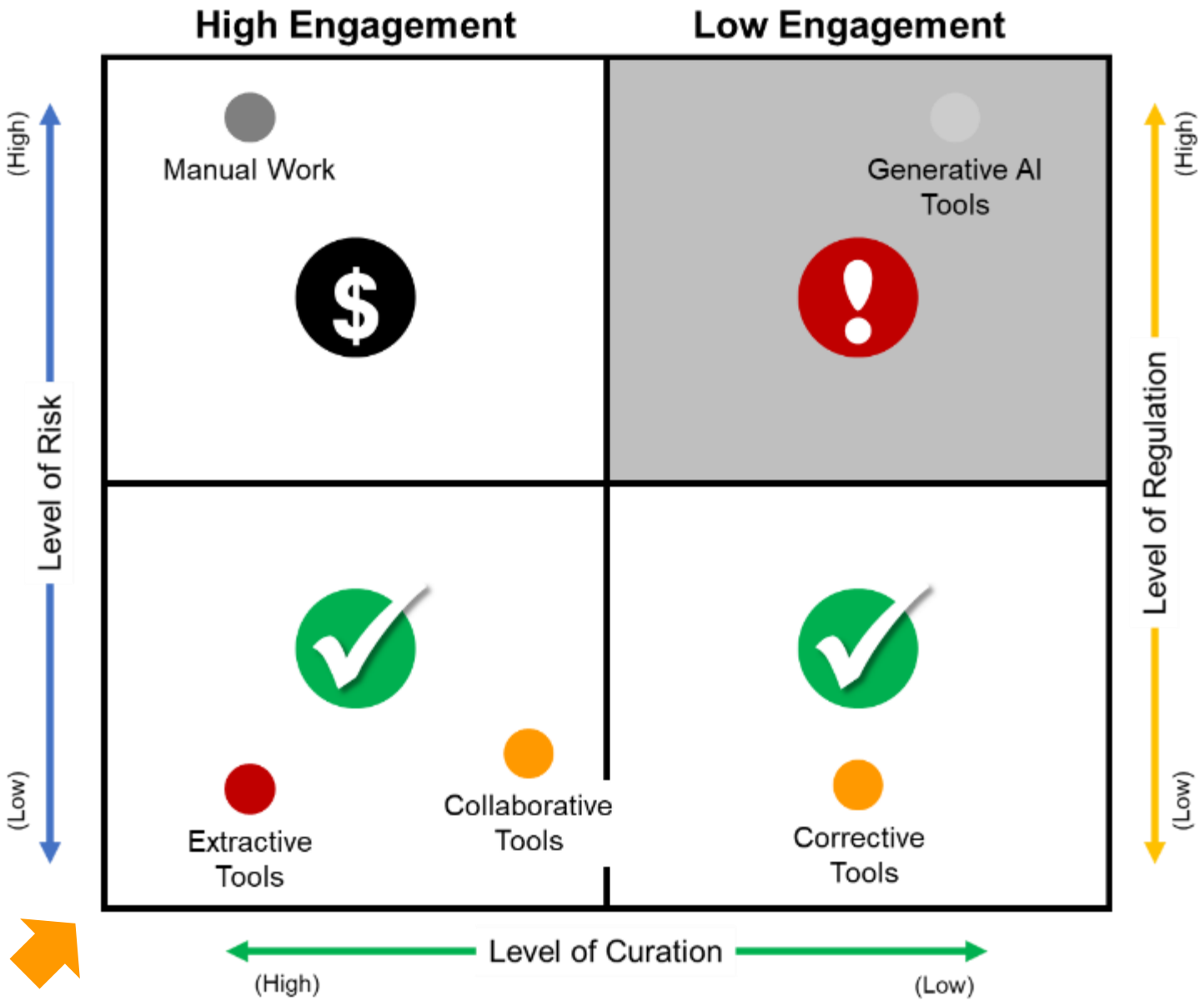
Extractive: The Precision Researcher (Medium-Low Risk)

- **Example:** Lexis, Westlaw, Fastcase/vLex
- **Definition:** Specialized in retrieving relevant information from a curated database.
- **Data Extraction:** Gleans specific information from vast data sources.
- **Risk:** Medium because a bad query can lead to bad results and the results of the query can be outcome-determinative for clients.
- **Human Interaction:** High for directing search; high for ensuring contextual relevance; high for incorporating outputs into legal work.
- **Application:** Assists lawyers by retrieving specific legal references quickly and accurately.
- **Strengths/Limitations:** Reliable in data extraction but requires training to use and awareness of existing databases.



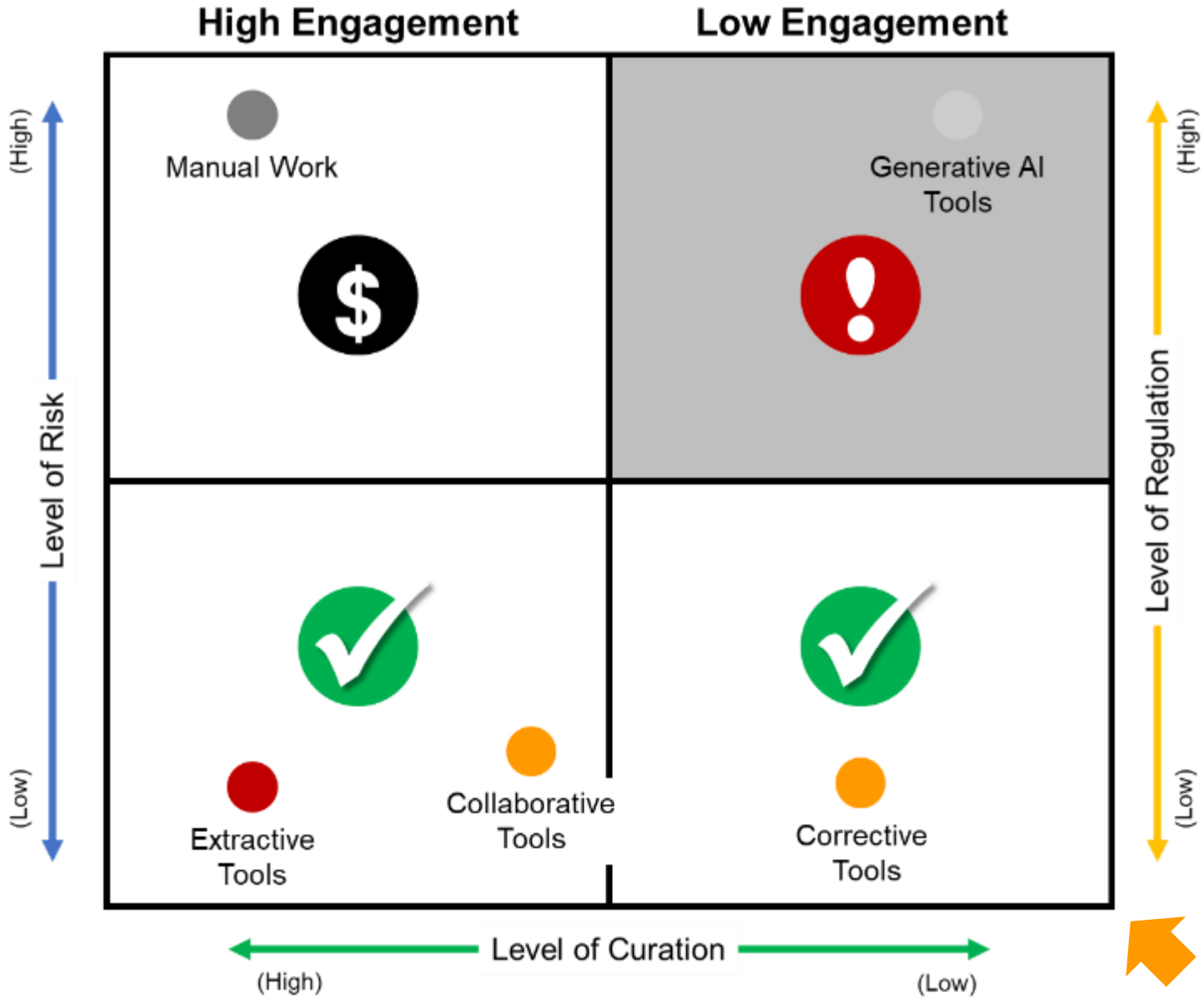
Collaborative: The Constructive Collaborator (Medium-Low Risk)

- **Example:** WordRake
- **Definition:** Facilitates a balance between human decisions and prompt-driven improvement.
- **Augments Human Work:** Based on expert algorithms, identifies opportunities for improvement.
- **Risk:** Medium-low, suggestions might affect original clarity or meaning.
- **Human Interaction:** High, with humans making final decisions.
- **Application:** Refines legal documents while allowing human oversight on final outputs.
- **Strengths/Limitations:** Provides balanced insights but demands consistent human interaction.



Corrective: The Language Accuracy Enforcer (Low Risk)

- **Example:** Spellcheck
- **Definition:** Ensures documents are error-free and polished.
- **Error Correction:** Focuses on fixing superficial, predictable mistakes in texts.
- **Risk:** Low, limited to fixing basic mistakes.
- **Human Interaction:** Low to Medium for ensuring content sanctity.
- **Application:** Used to refine legal documents by eliminating superficial errors.
- **Strengths/Limitations:** Accurate error detection, but only addresses surface-level issues.



If we already have a duty of technology competence, then...

Why do we need the AI Engagement Framework?

Why We Need the AI Engagement Framework

- Emphasizes that that responsibility for tech use and outcomes is on the user
- Helps us make informed decisions on which tools to use for specific tasks
- Determines the level of scrutiny and interaction required for reasonably accepting AI outputs and teaches responsible yet reasonable engagement
- Will guide ethical practices, firm policies, and training
- Will ensure regulatory consistency and reasonableness while avoiding overbreadth
- Avoids placing unreasonable burdens on tried-and-true, responsibly built LegalTech
- Creates a flexible guideline based on user- or buyer-controlled factors that can adapt as new tech comes to market

Current Regulatory Landscape

- Firm/Corporate Execs: Don't use generative AI – ever!
  - *Problem:* Alarmist and unrealistic. Ignores that people have access to GenAI outside of work, such as on phones.
- Internet Commentators: Use generative AI for everything!
  - *Problem:* Suggests using generative AI for improper use cases. Confuses correlation of accuracy for causation of accuracy. Elevates goals of using generative AI frequently over proper use cases that improve accuracy and efficiency.
- Some Judges: Disclose use of generative AI (or all AI) in pleadings (May – July 2023) + Also consider: Webinar re State Courts [link]
  - *Problem:* Overbroad and overly aggressive. Unintentionally sweeps older, safer tools into new rules. Creates a patchwork of conflicting rules.
- Most Bars and Commentators: Ethics rules cover this already (Yes, but they're vague. Still task forces are proliferating.)
  - *Problem:* This works, but the ethics rules aren't specific enough to proactively guide training and decision-making. Punitive approach.
- California Bar: Issued Draft Guidelines for Use of Generative Artificial Intelligence in the Practice of Law (October 2023) [link]
  - *Problem:* This works and shows the right intent, but it relies on existing ethics rules that are vague and best practices recommendations still don't give useful direction about how to move forward. Dazza Greenwood at MIT contributed.
- US Government: Issued Executive Order on AI (October 2023) [link] + Also consider: EU Draft AI Act (August 2023) [link]
  - *Problem:* This focuses mostly on AI developers, not on AI users. For lawyers, the most important aspect of this EO is the concern bias built into AI tools that might drive sentencing guidelines, housing decisions, hiring, or immigration. This would also apply for any judicial analytics. Also addresses cybersecurity.
- G7: Issued International Code of Conduct for Organizations Developing Advanced AI Systems (October 2023) [link]
  - *Problem:* This focuses mostly on AI developers, not on AI users. For lawyers, the most important aspect of this CoC relates to privacy and data collection. Also addresses cybersecurity.

Applicable Ethics Rules

- Model Rule 1.1: Duty to competently represent clients, which includes substance and methods.
- Model Rule 1.4: Duty to communicate with the client and obtain informed consent.
- Model Rule 1.5: The prohibition against collecting unreasonable fees.
- Model Rule 1.6: The duty to protect client confidences.
- Model Rule 2.1: The duty to use independent professional judgment and give clients well-informed advice.
- Model Rule 3.3: Duty of candor to the tribunal, which requires a lawyer to avoid misleading the court.
- Model Rule 4.4: Duties to third parties related to accidental disclosures of confidential information.
- Model Rules 5.1 and 5.3: Duty to supervise subordinates and properly oversee the tools we use.

Applicable Civil Procedure Rules

- Rule 11: Judges may sanction lawyers who submit pleadings:
  - for an improper purpose
  - that contain frivolous arguments
  - that contain arguments lacking any evidentiary support

- Rule 26: Judges may sanction lawyers who submit discovery:
  - for an improper purpose
  - based on frivolous arguments unsupported by law or fact
  - that is unreasonable, overly burdensome or unduly expensive

Standing Orders in the United States

- Judge Brantley Starr [link]
  - U.S. District Court for the Northern District of Texas
  - Standing order requiring disclosure and certification regarding use of GenAI
  - Responding to Avianca case (?)
  - May 2023

- Judge Michael M. Baylson [link]
  - U.S. District Court for the Eastern District of Pennsylvania
  - Standing order requiring disclosure and certification regarding use of any AI used in creating pleadings
  - June 2023

- Magistrate Judge Gabriel A. Fuentes [link]
  - U.S. District Court for the Northern District of Illinois
  - Standing order requiring disclosure and description of use of GenAI
  - June 2023

- Judge Stephen Alexander Vaden [link]
  - U.S. Court of International Trade
  - Standing order requiring disclosure re use of GenAI and certification that confidential info was not disclosed
  - June 2023

- *Compare:* Judge Arun Subramanian [link]
  - U.S. District Court for the Southern District of New York
  - Updated practice order to say lawyers may use GenAI but must check their work as usual; all ethics rules still apply
  - July 2023

Practice Direction & Judicial Notices in Canada

- Court of King's Bench of Manitoba (Canada) [link]
  - Practice Direction on the Use of Artificial Intelligence in Court Submissions
  - Requires disclosure and description of use of GenAI
  - June 2023
- Supreme Court of Yukon (Canada) [link]
  - Practice Direction General-29 on the Use of Artificial Intelligence Tools
  - Requires disclosure and description of use of GenAI
  - June 2023
- Court of King's Bench of Alberta (Canada) [link]
  - with the Court of Appeal of Alberta
  - with the Alberta Court of Justice
  - Notice to the Public and Legal Profession
  - Requires a "human in the loop" with use of GenAI
  - October 2023
- Superior Court of Québec (Canada) [link]
  - Notice to the Public and Legal Profession
  - Requires a "human in the loop" with use of GenAI
  - October 2023

Model Rule 1.1: Competence

"A lawyer shall provide competent representation to a client. Competent representation requires the *legal knowledge, skill, thoroughness and preparation* reasonably necessary for the representation." ←Be competent

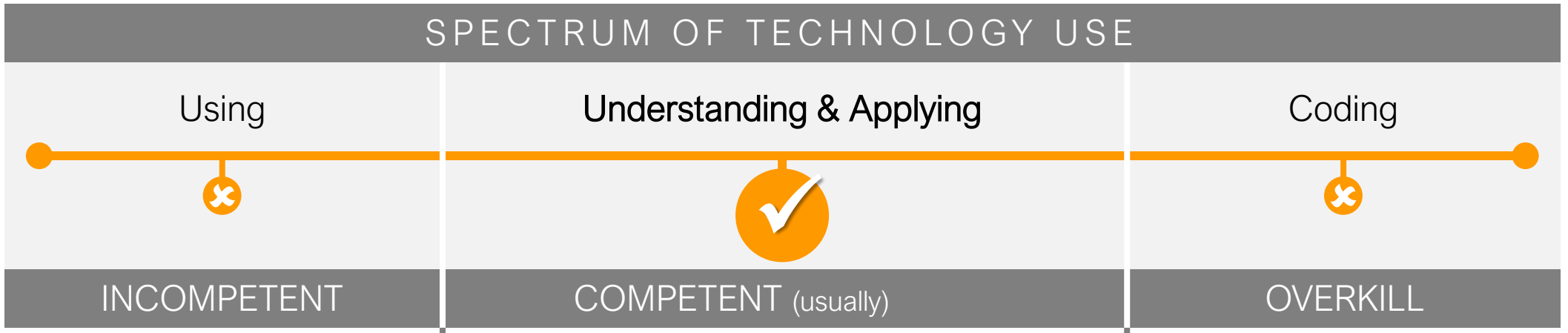
> Comment 8: "To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, *including the benefits and risks associated with relevant tech*, engage in continuing study and education and comply with all [CLE] requirements to which the lawyer is subject." ←Use technology properly

> Comment 5: Competently performing legal work includes "*use of methods and procedures* meeting the standards of competent practitioners. It also includes *adequate preparation*." ←Keep up with the tech tools of the trade

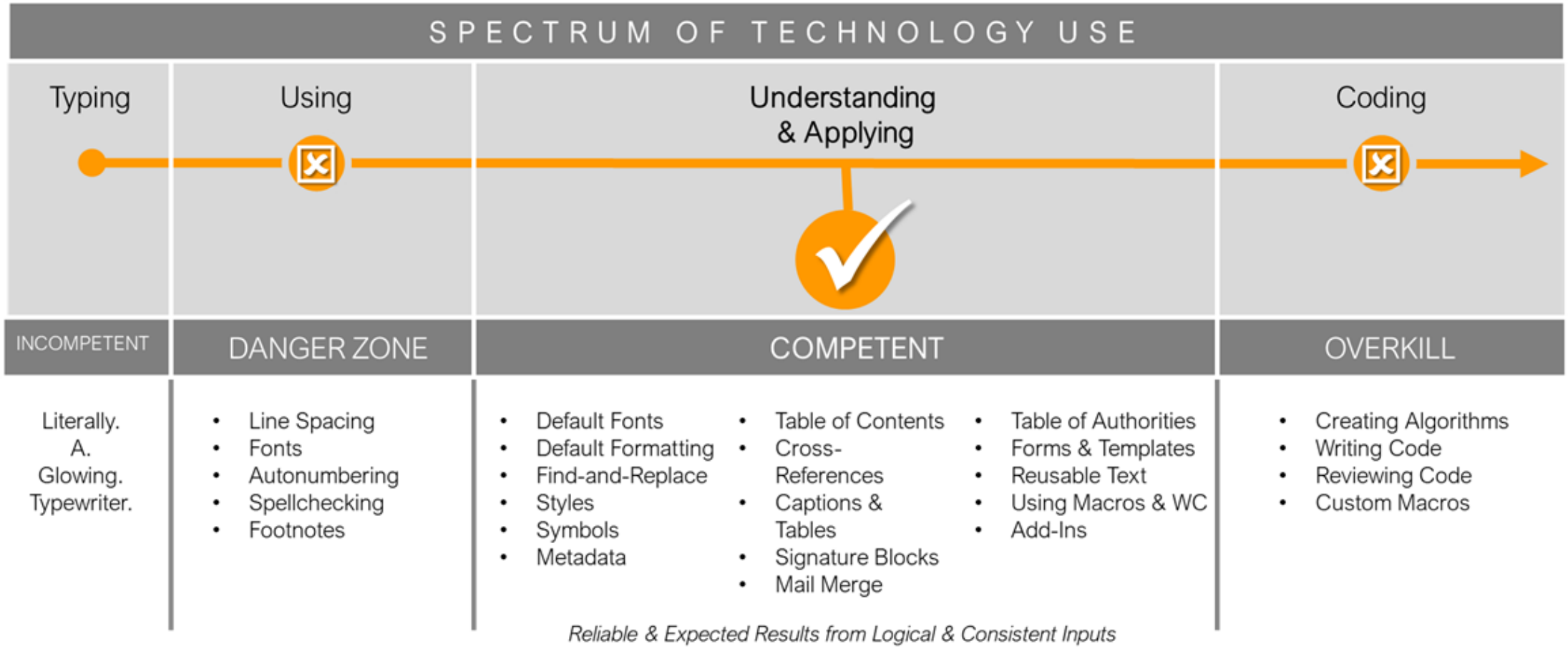
Duty of Technology Competence

- Develop an awareness of technology.
- Gain a grasp of the risks and benefits associated with technology.
- Keep abreast of changes to technology used in legal practice.
- Develop reasonable skill in the tech tools you use.
- When you use technology, do so competently.

Technology Competence – GenAI



Technology Competence – Drafting



Just Because You Could Use GenAI...

Doesn't Mean You Should Use GenAI

WORDRAKE
Write to the Point.

GenAI Lawyers in the News

1



- **Lawyers:** Steven A. Schwartz & Peter LoDuca *(Mata v. Avianca)*
- **Issue:** Citation to Fake Cases
- **Judge:** Judge P. Kevin Castel
- **Court:** SDNY
- **Result:** Sanctions under Rule 11
- **Date:** May 2023

2



- **Lawyer:** Craig Alan Greening *(Ex Parte Allen Michael Lee)*
- **Issue:** Citation to Fake Cases
- **Judge:** Chief Justice Tom Gray
- **Court:** 10th Ct. App. TX
- **Result:** "inadequately briefed"
- **Date:** July 2023

3



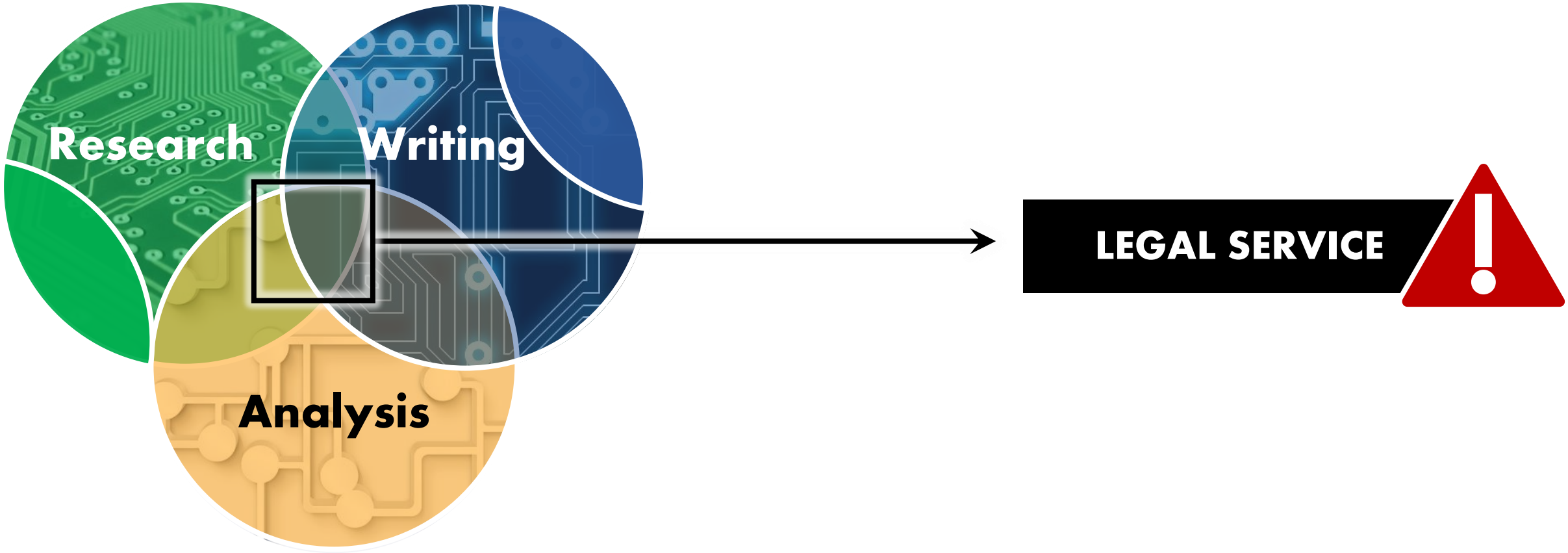
- **Lawyer:** Dennis P. Block *(Eviction Case)*
- **Issue:** Citation to Fake Cases
- **Judge:** Judge Ian Fusselman
- **Court:** Los Angeles County Superior Court
- **Result:** Sanctions under Rule 11
- **Date:** October 2023

4

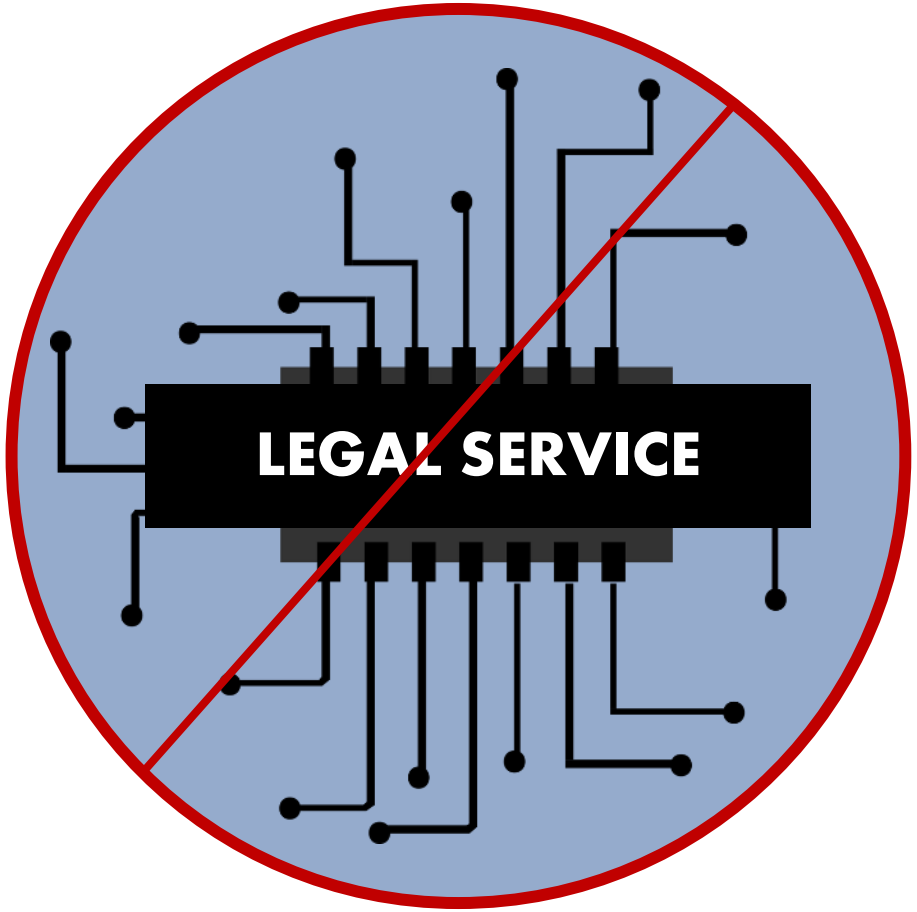


- **Lawyer:** David Kenner *(Prakazrel "Pras" Michel, Fugees)*
- **Issue:** Wrong Facts and Missed Defenses in Closing Statement
- **Judge:** N/A
- **Court:** DDC
- **Result:** Motion for New Trial
- **Date:** October 2023

Generating Text without Thoughtful Analysis & Engagement Is Malpractice



Some Lawyers Skip Thinking Entirely

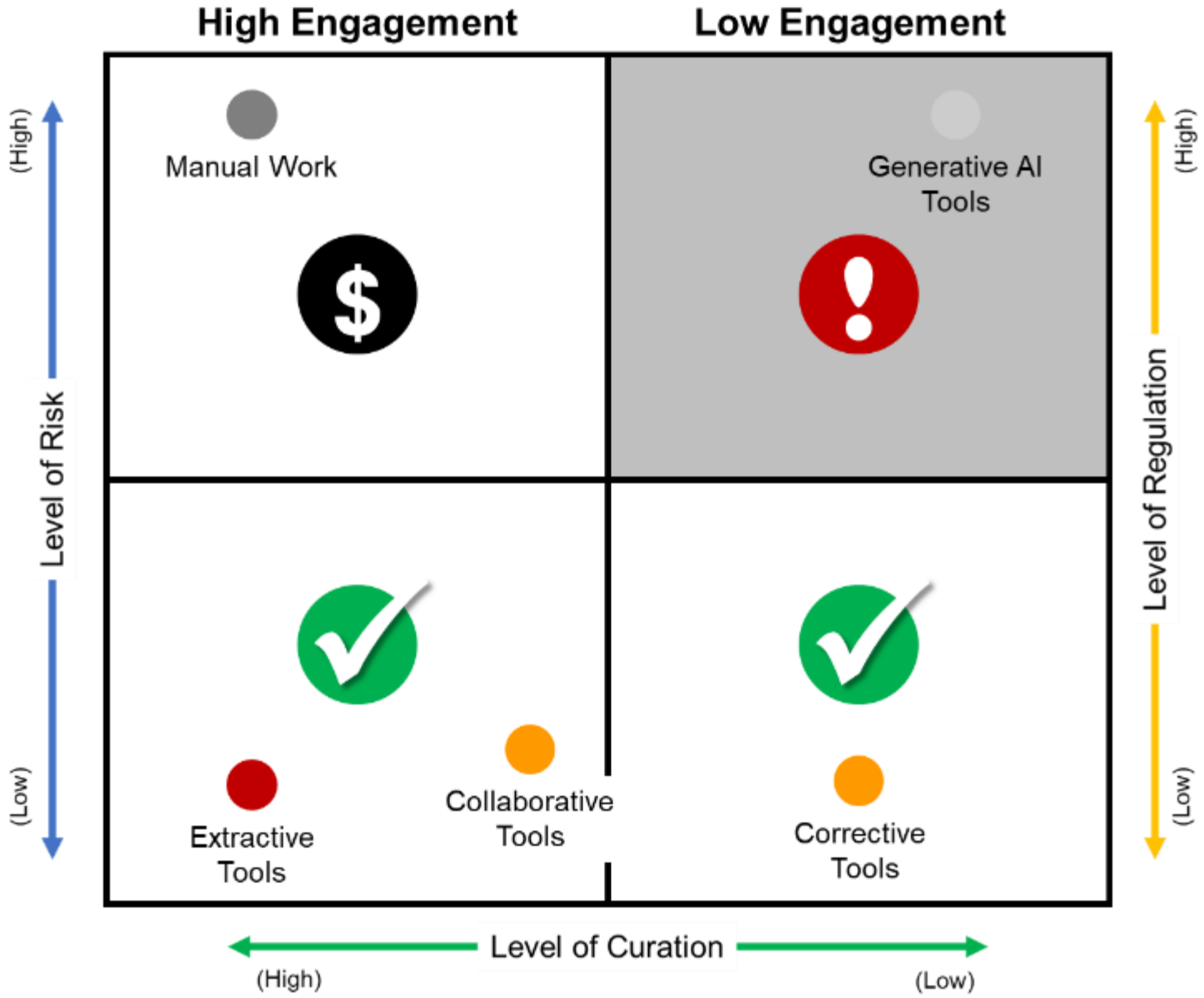


Choosing the Right Tool for the Task

- **What are you working on?**
  - Is your work outcome determinative?
  - Is your priority accuracy or creativity?
  - Is your priority speed or precision?
  - Do you require logic or will conceptual correlation suffice?
- **How much are you willing to change and what is your tolerance for change/variance/misfires?**
  - Where are you in the overall process?
  - Where are you in the document creation process?
  - Do you have a best practices guide, firm guidelines, or court guidelines to comply with or templates to match?
  - What are your goals: start fresh, start over, modify, synthesize, summarize, polish, confirm, conform?
- **How likely are you to spot a potential error and be able to correct it?**
  - How familiar are you with the task and do you have (or does it require) specialized knowledge?
  - Do you have an agreed source of truth: case law, docket, client records?
  - Will you recognize the difference between logical relationships and accidental connections?

What are you working on?

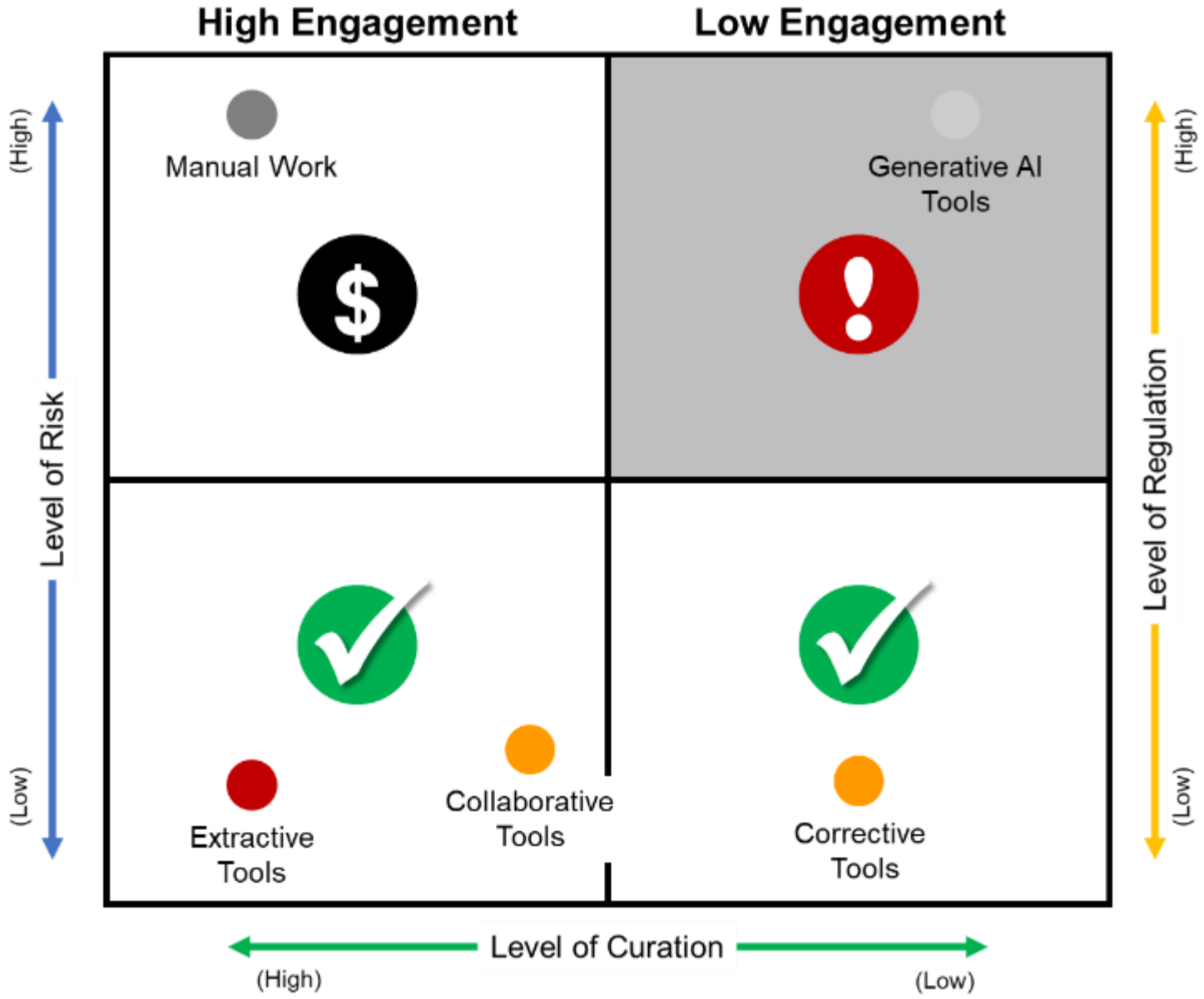
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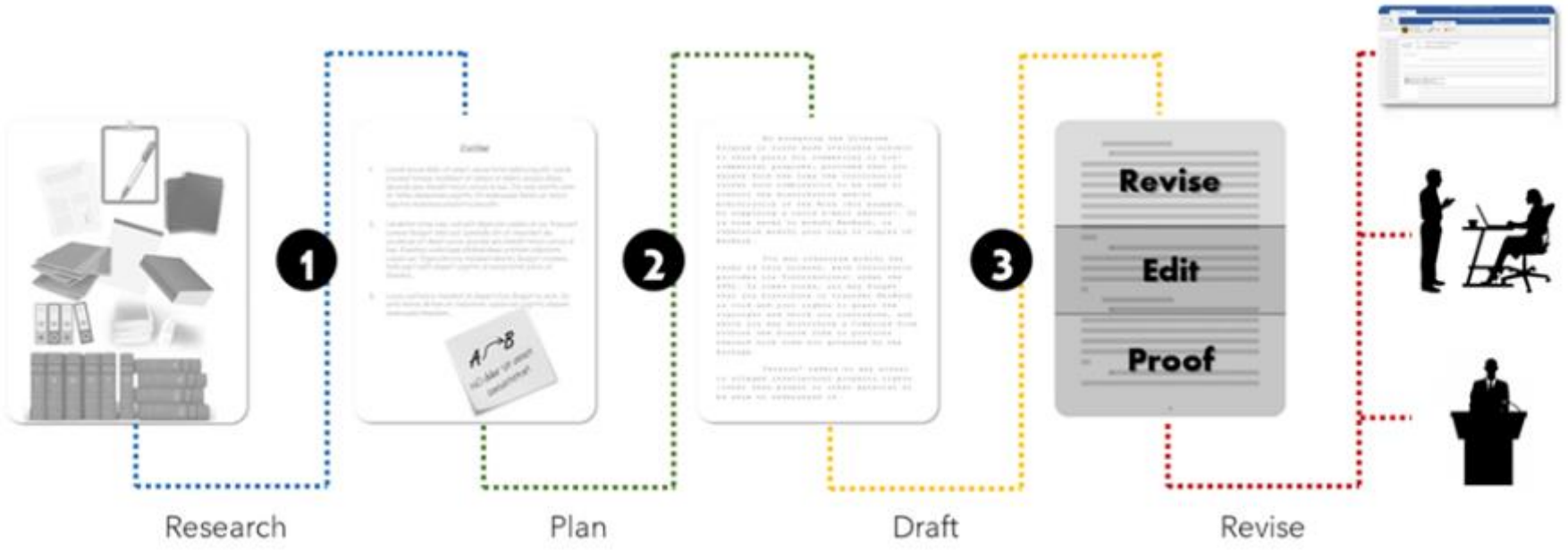
WORDRAKE
Write to the Point.

How much are you willing to change? What is your tolerance for change / variance?

- Where are you in the overall process?
- Where are you in the document creation process?
- Do you have a best practices guide, firm guidelines, or court guidelines to comply with?
- What are your goals: start fresh, start over, modify, synthesize, summarize, polish, confirm, conform?



Where Are You in the Overall Process?



Research

Statutes & caselaw

Precedent documents

Client file

Docket

Plan

Desired outcomes

Known dangers

Known unknowns

Contingency plan

Draft

Structure of argument

Borrowed language

New provisions and arguments

Check against client goals

Revise

Cut extra words and sentences

Improve persuasiveness

Improve structure

Improve organization

Remove irrelevant info

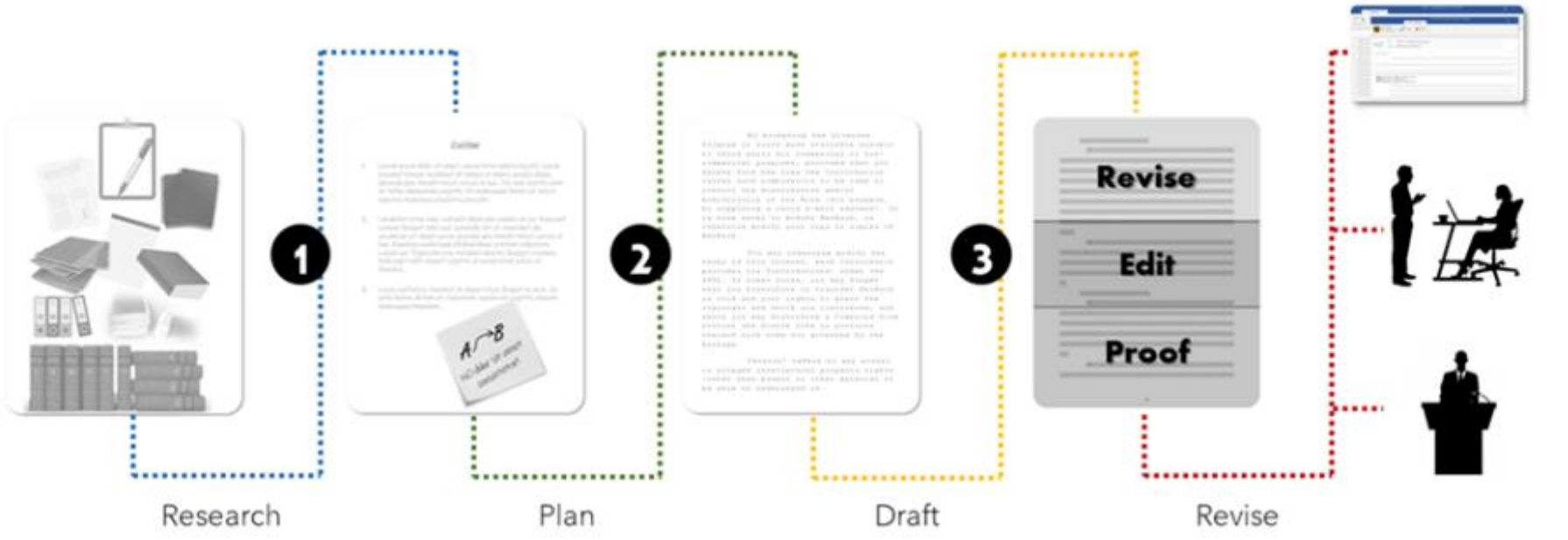
Improve flow

Reveal connections

Check accuracy

Check spelling, grammar, consistency

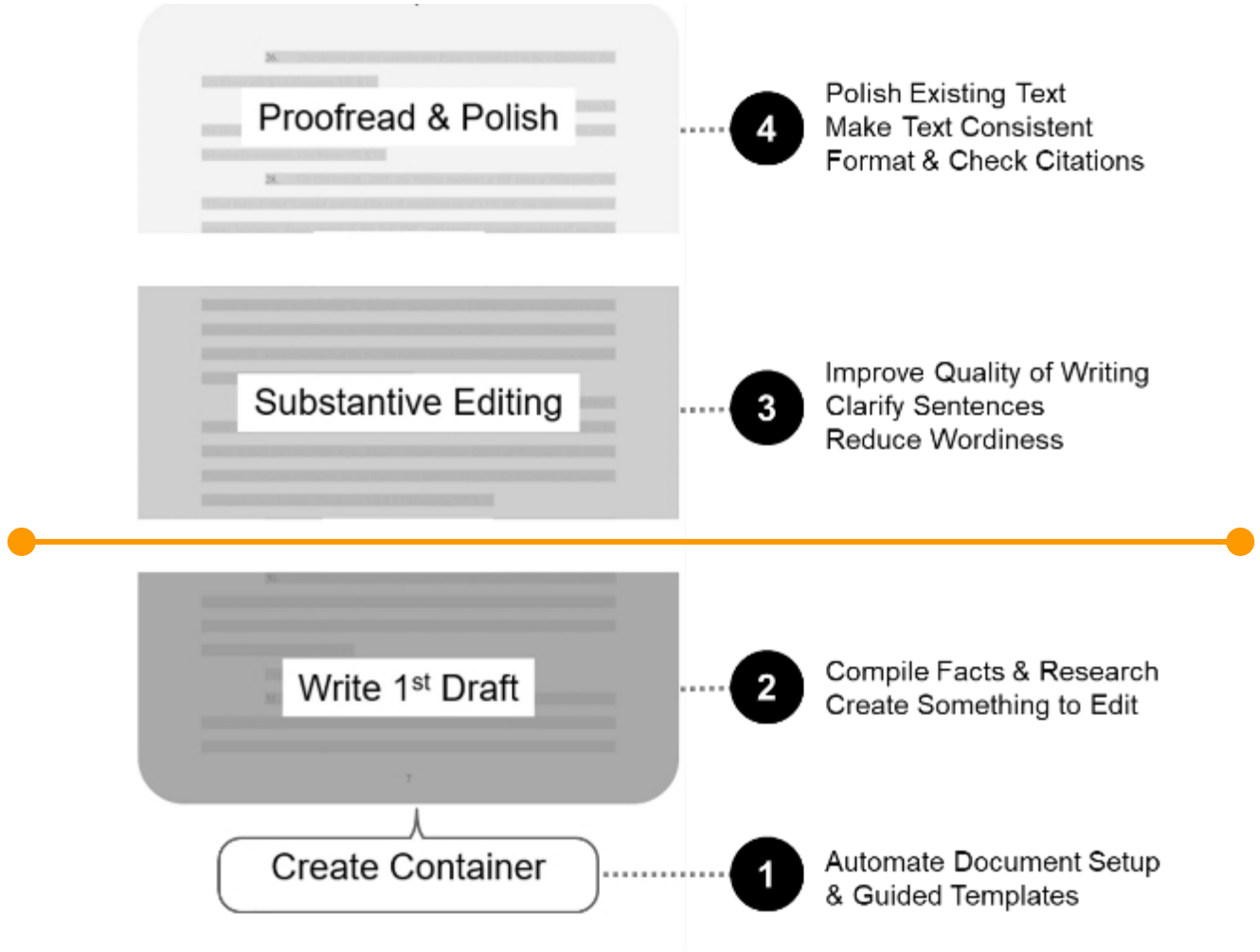
Where Are You in the Overall Process?



Hallucination Risk

Variance & Information Loss Risk

Where Are You in the Document Creation Process?



Where Are You in the Document Refinement Process?



When you've completed your draft, you want expert tools to refine – not to start over



Done!



Nope. Start over.



Wait. What?



Noooooo...

When you've completed your draft, you want expert tools to refine – not to start over



Original Text

As originally enacted in 1938, section 403(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) requires that the label of a food that is fabricated from two or more ingredients declare each ingredient by its common or usual name (except that spices, flavorings, and noncertified colors can be declared as such) (21 U.S.C. 343(i)). However, consumers may be unfamiliar with the common or usual name of an ingredient and may not recognize that certain ingredients contain or are derived from a food allergen. The Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA) (Public Law 108-282) was enacted in August 2004 and, in part, amended the FD&C Act by defining the term "major food allergen" (21 U.S.C. 321(qq)) and stating that foods regulated under the FD&C Act are misbranded unless they declare the presence of each major food allergen on the product label using the name of the food source from which the major food allergen is derived. Section 403(w)(1) of the FD&C Act sets forth the requirements for declaring the presence of each major food allergen on the product label. In addition, the Food Allergy Safety, Treatment, Education, and Research Act of 2021 (FASTER Act) (Public Law 117-11) was enacted in April 2021 and, in part, amended the definition of major food allergen in section 201(qq) of the FD&C Act to include sesame, effective January 1, 2023. This is a revision of the fourth edition of a guidance document originally entitled "Questions and Answers Regarding Food Allergens, Including the Food Allergen Labeling and Consumer Protection Act of 2004" that contains revised and new questions and answers relating to food allergens, including questions and answers about FALCPA and the FASTER Act. Editorial changes, such as renumbering and organizational changes have also been made in this revision. FDA expects to continue to issue subsequent editions of this guidance document by revising existing questions and answers and by adding new questions and answers. This draft guidance document accompanies the final guidance document, Questions and Answers Regarding Food Allergens, Including the Food Allergen Labeling Requirements of the Federal Food, Drug, and Cosmetic Act (Edition 5). FDA is issuing this draft guidance document to receive comments on the new and revised questions and answers, and, as appropriate, will move the questions and answers to the final guidance document, after reviewing comments and incorporating any changes to the question and answer, when appropriate. Note that a question and answer that is in the final guidance document may be withdrawn and moved to a new or revised draft guidance document if FDA determines that the question and answer should be revised in some respect and reissued in draft for comment. A question and answer also may be withdrawn and removed from the guidance documents if, for instance, the issue addressed in the question and answer is addressed elsewhere. For ease of reference, a question and answer retains the same number when it moves from the draft guidance document to the final guidance document and we use the term "RESERVED" after some question numbers, where appropriate, to facilitate this process. For more information related to allergens, please see http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Allergens/default.htm. In general, FDA's guidance documents do not establish legally enforceable responsibilities. Instead, guidances describe the Agency's current thinking on a topic and should be viewed only as recommendations, unless specific regulatory or statutory requirements are cited. The use of the word should in FDA guidances means that something is suggested or recommended, but not required.

ChatGPT Rewrite

In 1938, Section 403(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) required food labels to list ingredients by their common or usual names, except for spices, flavorings, and noncertified colors. The Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA) amended this by mandating the declaration of major food allergens using the name of the food source. The Food Allergy Safety, Treatment, Education, and Research Act of 2021 (FASTER Act) expanded the definition of major food allergens to include sesame.

This document is a revision of a guidance document titled "Questions and Answers Regarding Food Allergens, Including FALCPA and FASTER Act." It contains updated information and may undergo further revisions in the future. FDA is seeking comments on this draft guidance document to refine its content.

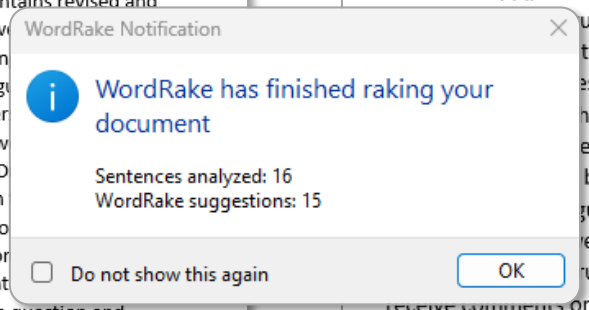
FDA guidance documents reflect the agency's current thinking on a topic and are recommendations rather than legal requirements. Use of the word "should" indicates suggestions but not mandates. For more on allergens, visit http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Allergens/default.htm.

Beware of over-editing and losing valuable information:

- 44 revisions
- 417 words cut
- deleted relevant information
- lost important context
- introduced a new term "major food allergen"
- simplified into irrelevance

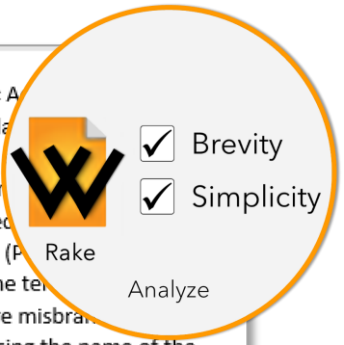
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WordRake Revision

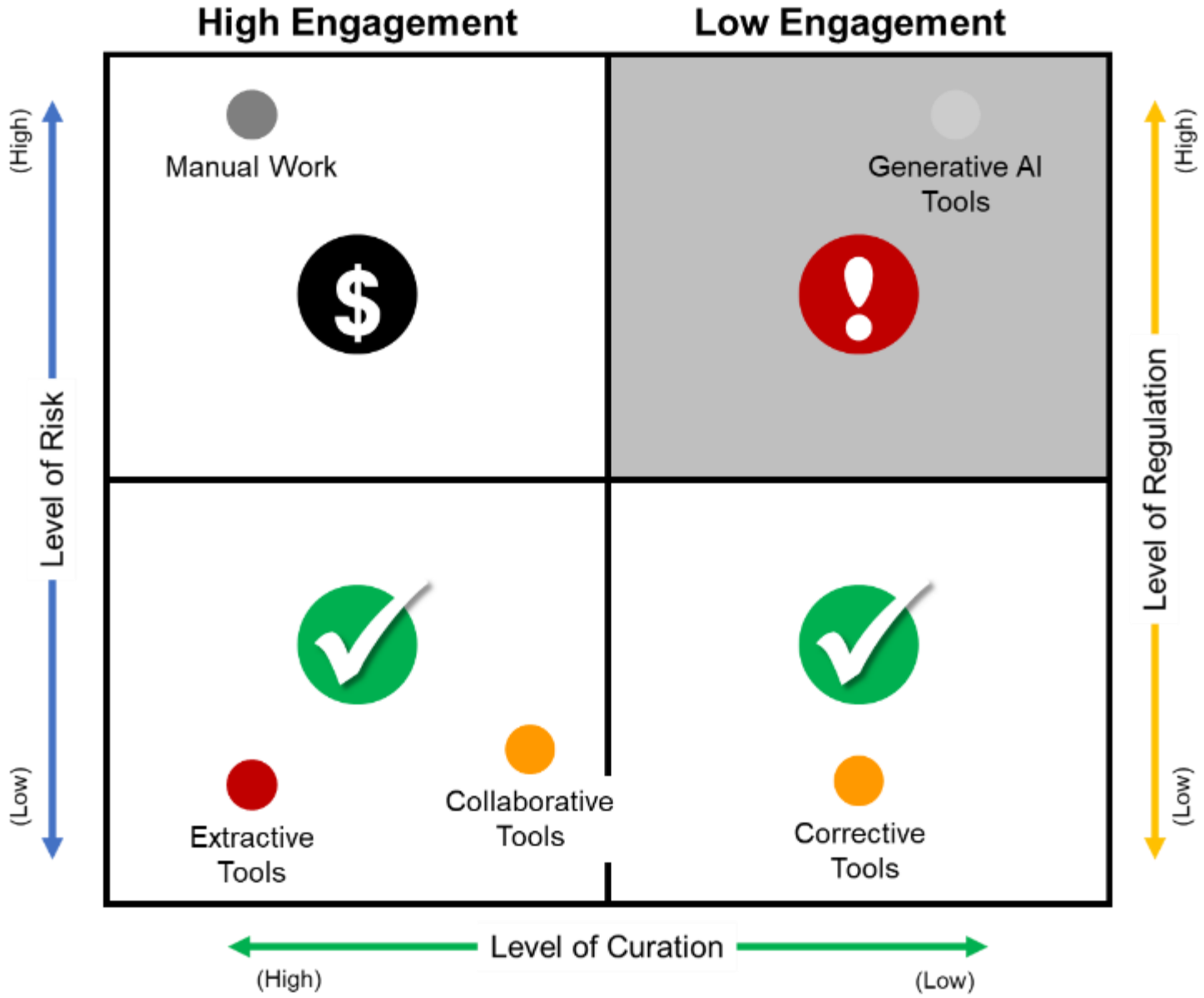
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WORDRAKE
Write to the Point.

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- Do you have an agreed source of truth: case law, docket, client records?
- Will you recognize the difference between logical relationships and accidental connections?



WORDRAKE
Write to the Point.

GenAI Is Not the Best Choice for All Tasks

"Your [users] were so preoccupied with whether they could, they didn't stop to think if they should."

- Ian Malcom (Jeff Goldblum) from Jurassic Park (1993)

- Legal research is still best performed by legal research tools.
- Legal editing is still best performed by legal editing tools.
- Legal reasoning is still best done by humans.



Great idea, right?!?

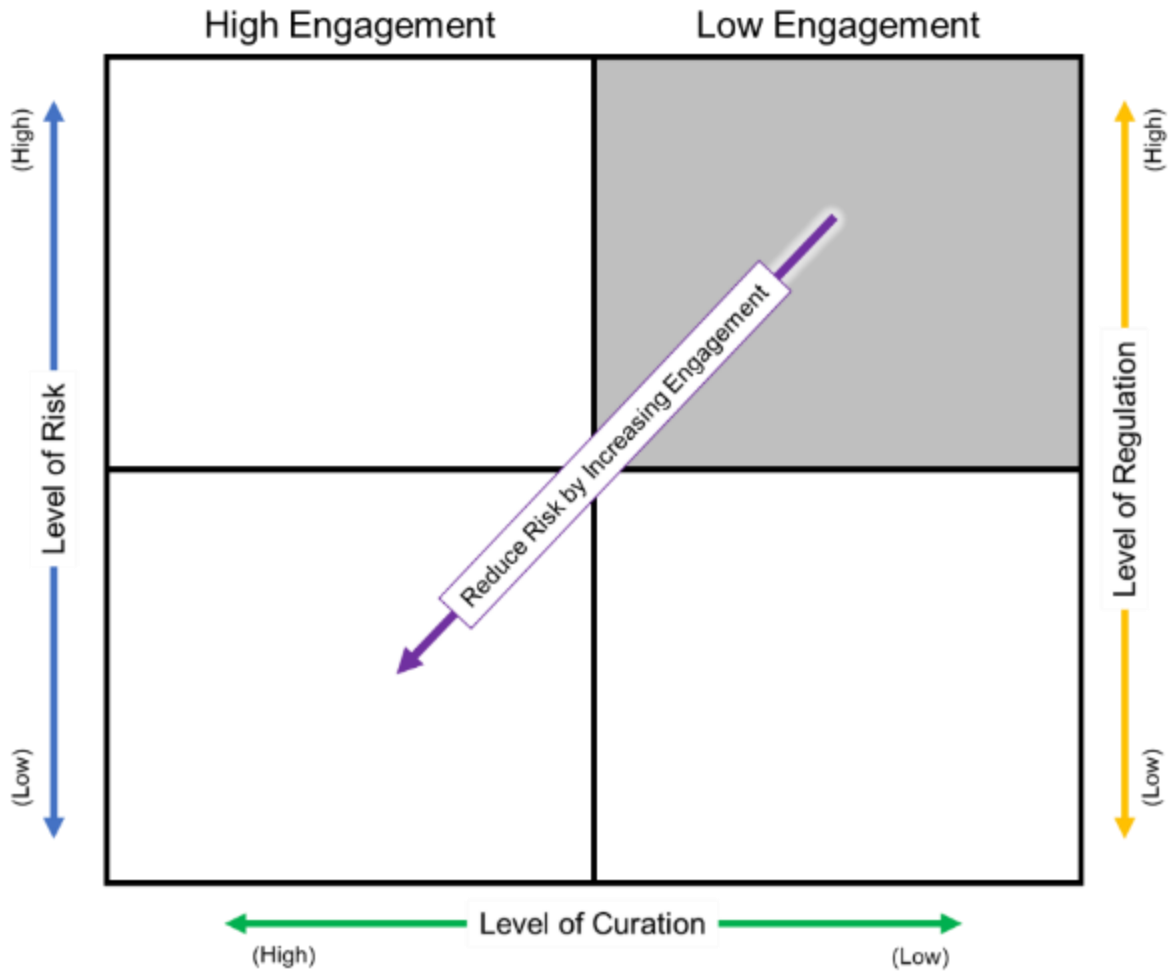


What can you control?

What counts as "engagement"?

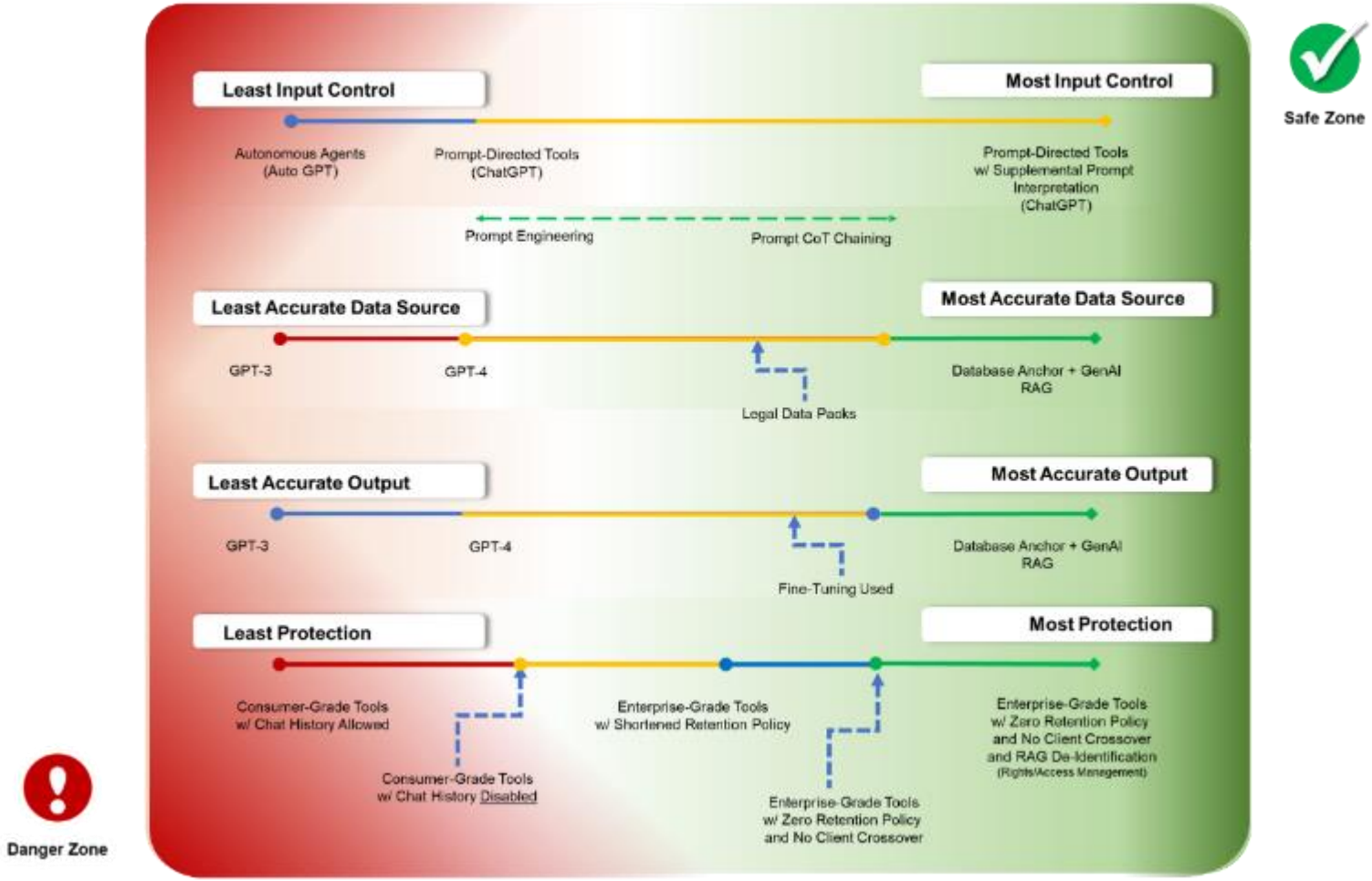
AI Engagement Framework

Moving Tools Between Quadrants

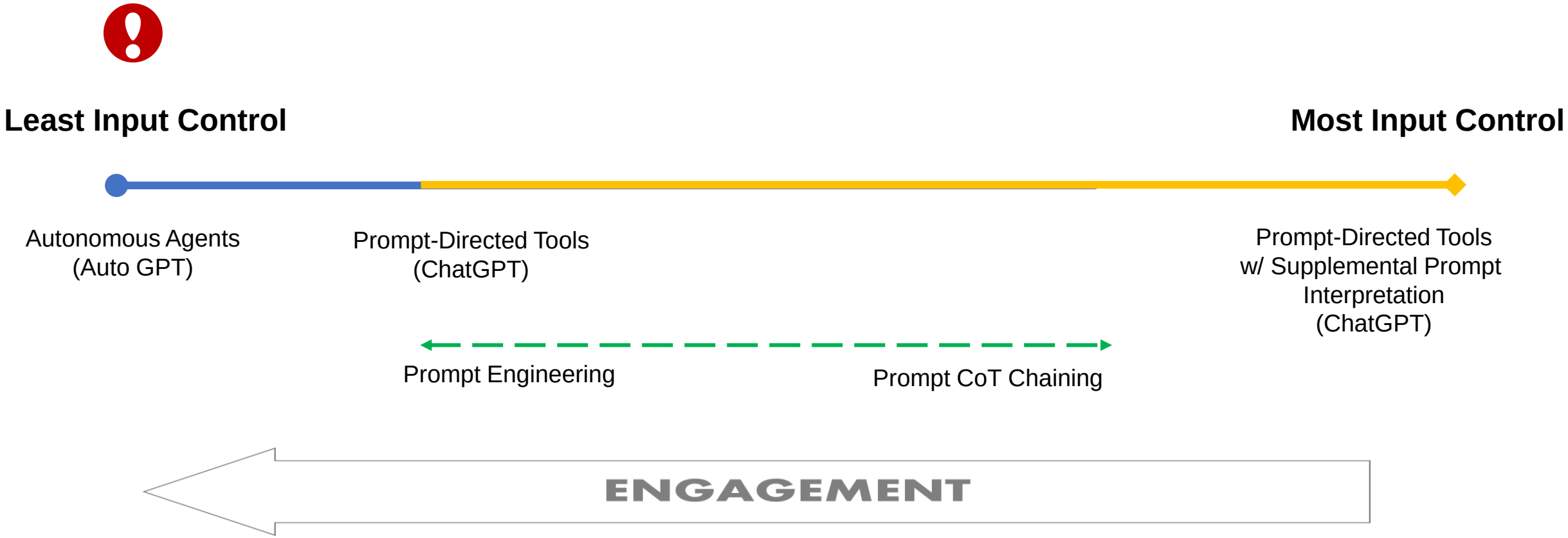


Recognizing Your Levers

Moving Tools Between Quadrants



GenAI Input Control Spectrum



Crafting Thoughtful Inputs
(aka Prompt Engineering)

- Prompt Engineering [Link to prompting for lawyers by Liz Chase on LinkedIn]
  - Prompt engineering is the practice of deliberately designing inputs to produce optimal outputs. The goal is to structure text that can be interpreted and understood by a generative AI model. It can include a query, style guidelines, and other direction about the desired output.
- Few-Shot Prompting [Link]
  - Use few-shot prompting to steer the language model to better performance by defining terms in your prompt, explaining the context, or providing examples of what you want to receive. The language model will try to use your information and follow your example when generating its response.
- CoT (Chain of Thought) Prompting [Link]
  - This prompting method encourages the language model to explain its "reasoning," which improves the logical consistency of the output. It requires intermediate reasoning steps. Combine it with few-shot prompting for more complex tasks that require reasoning before responding.
- GATE (Generative Active Task Elicitation) [Link via Connor Grennan on LinkedIn]
  - Instead of the user driving the follow up prompting, the LLM coaxes out user intent, which brings better results with less user effort.
- GAL Method (Group Advisory Layer) [Link]
  - Creates personas for advisory boards and task forces to engage with the user to help with decision-making and assessment. Leads to deeper thinking and engagement with generative AI. Method created by Dennis Kennedy.

GenAI Data Source Spectrum



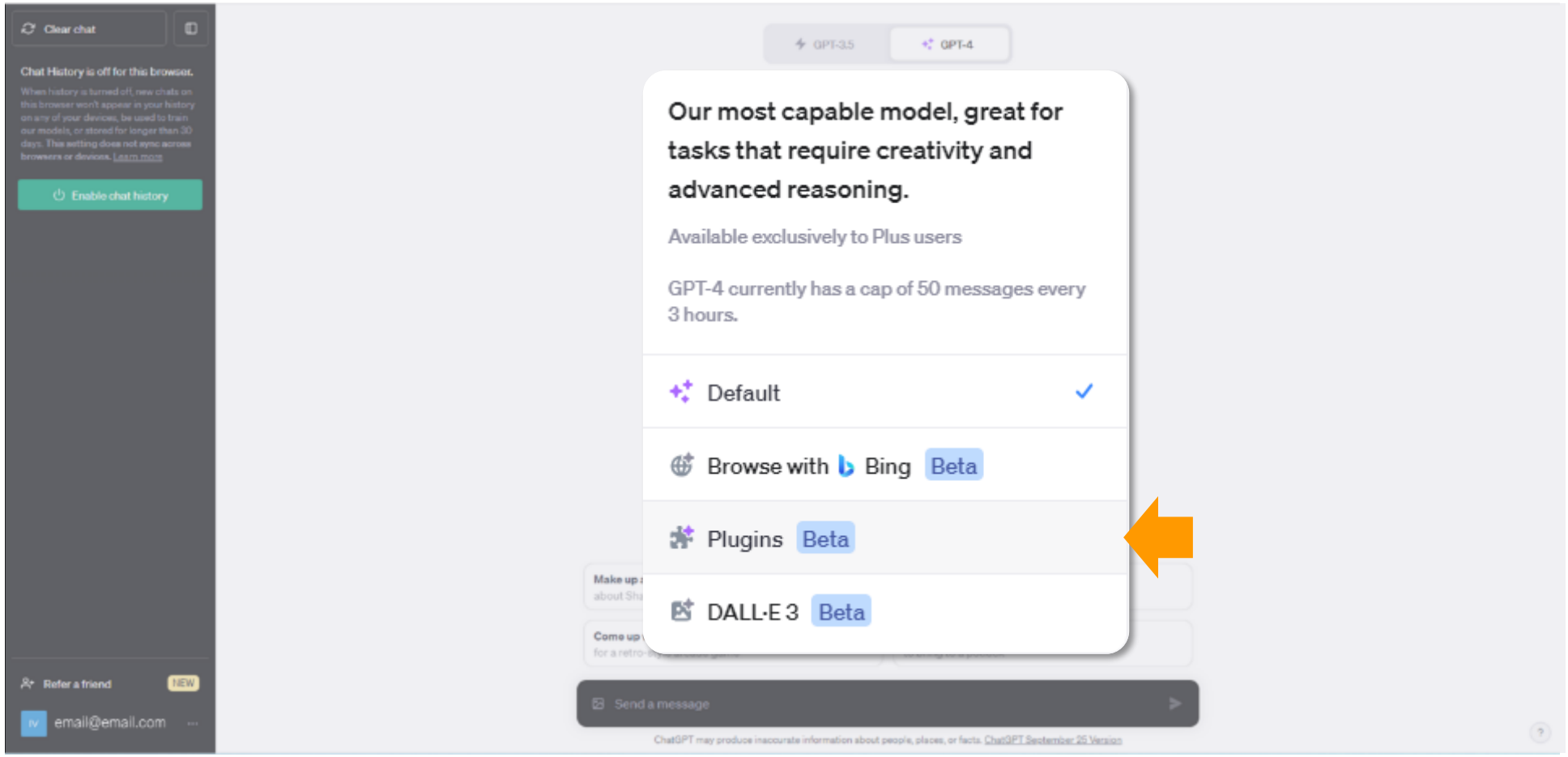
Least Accurate Data Source

Most Accurate Data Source



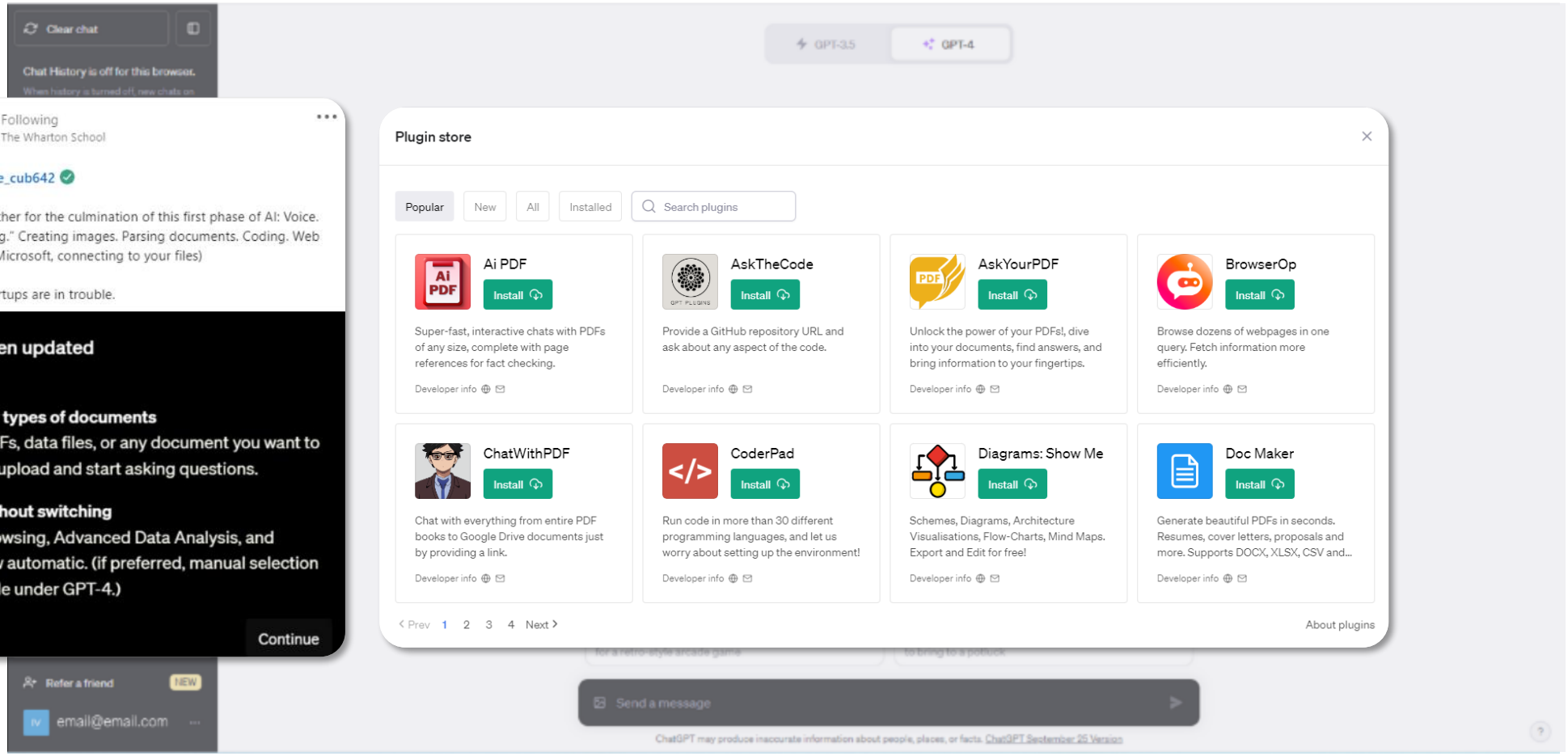


Use a Plug-In that Points to a Source



Plugins are only available with GPT-4 with chat history enabled

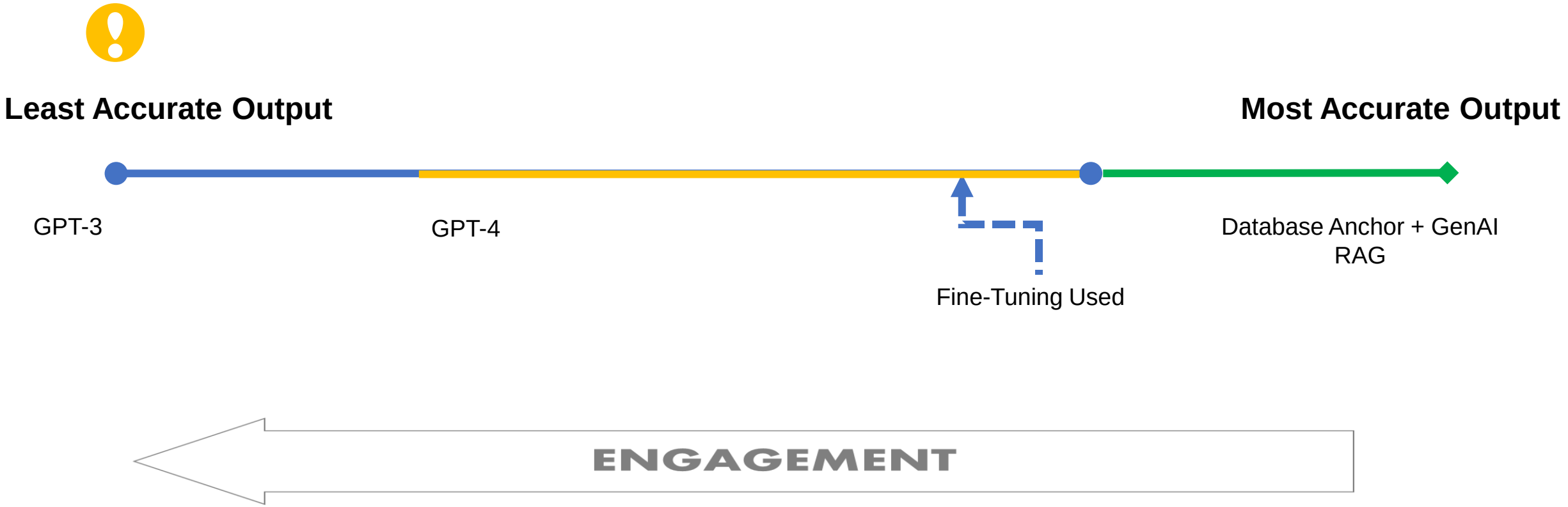
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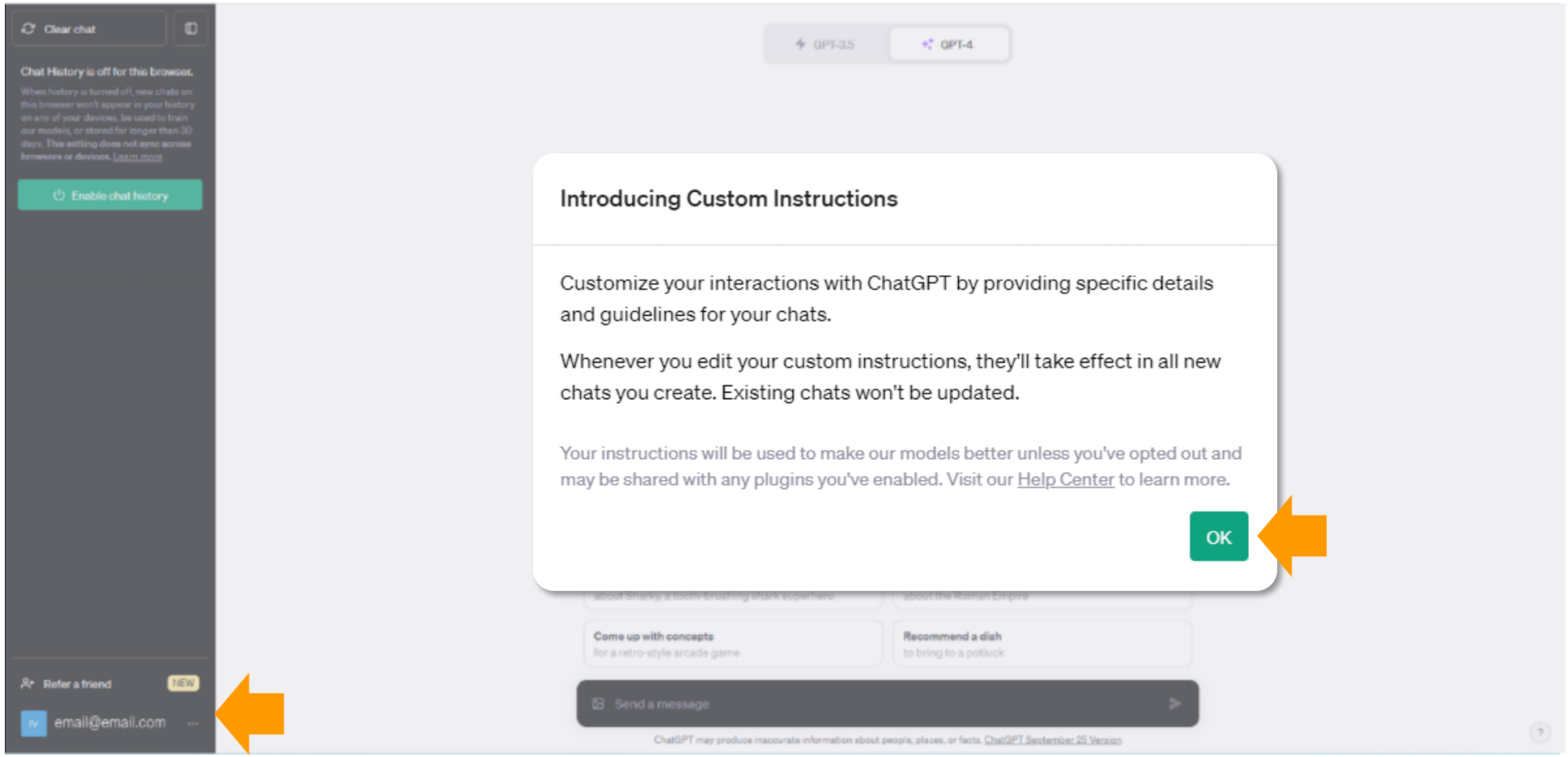


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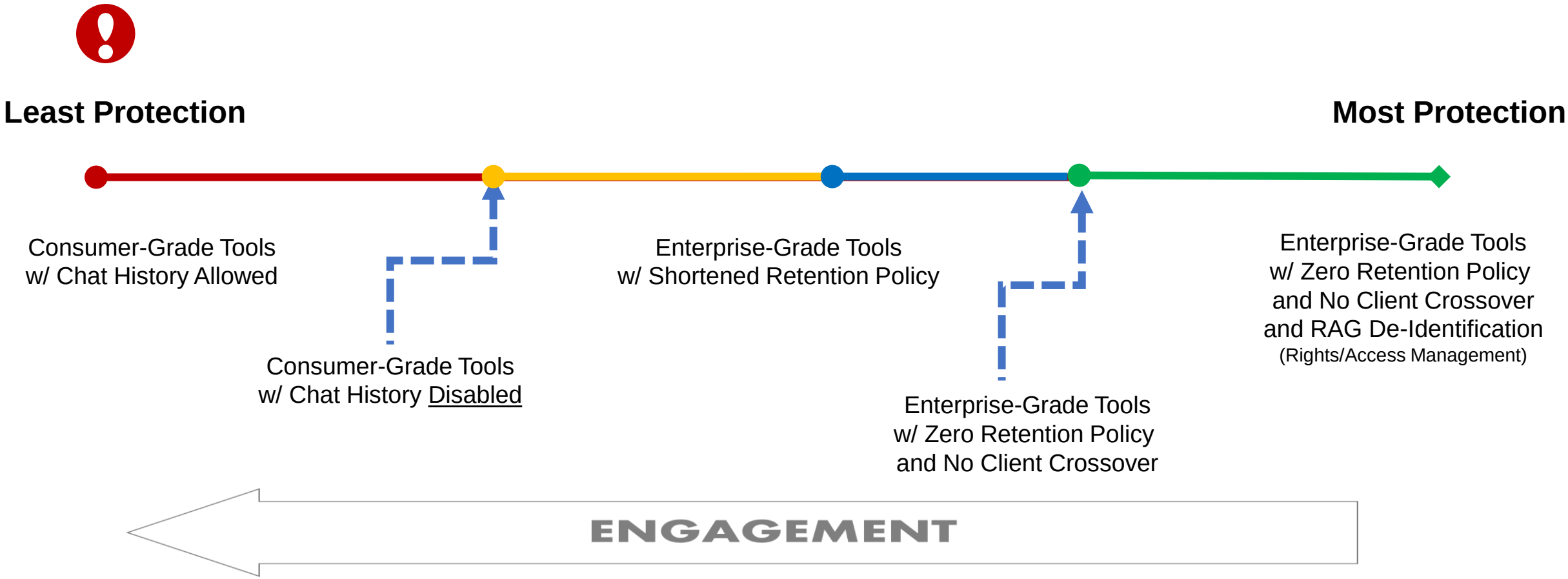
GenAI Output Accuracy / Predictability Spectrum



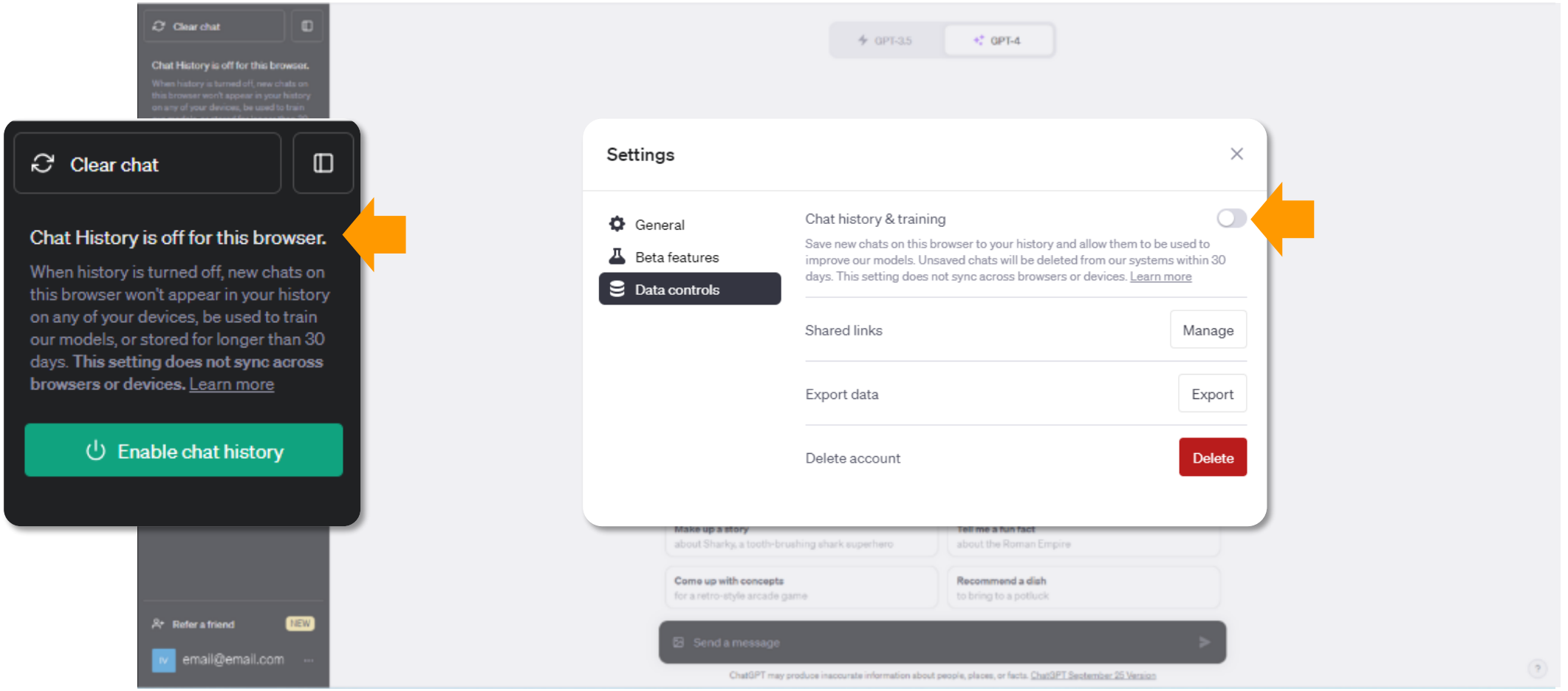
Turn On Custom Instructions



GenAI Data Protection Spectrum



Disable Chat History

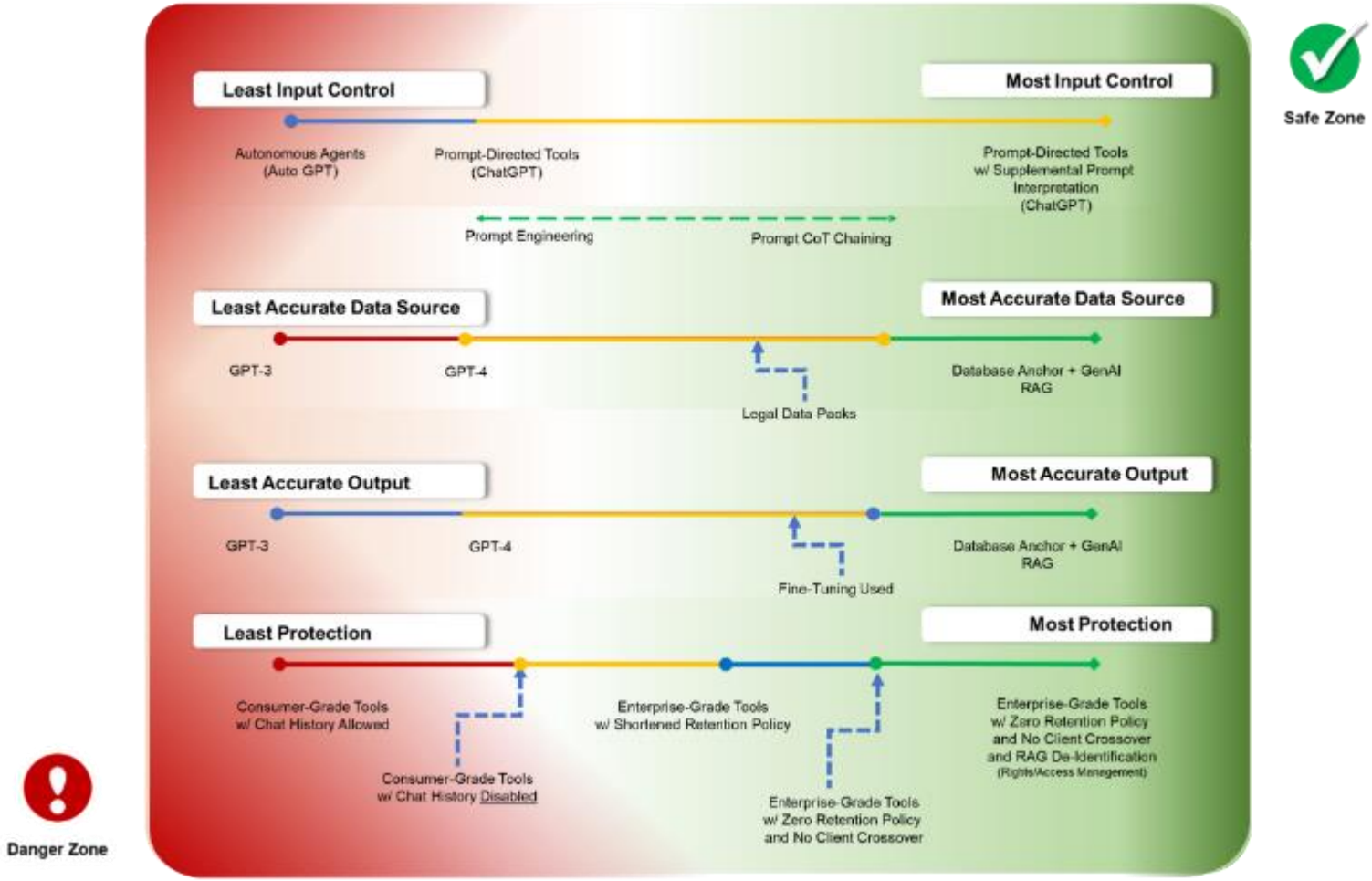


Privacy Comes at a Cost to Performance

- Context: When chat history is disabled, each chat session is independent, which means ChatGPT cannot maintain context across multiple sessions. It also reduces cohesiveness of responses. When chat history is enabled, session memory can extend to past sessions, providing a form of long-term memory.
- Drift: Disabling chat history increases the likelihood of context drift, which means straying from the original topic or loses the context of the conversation. Since the model cannot refer back to previous sessions, there's a higher chance of context drift when talking about complex subjects over multiple sessions.
- Quality: ChatGPT's quality declines the more messages you exchange in your session due to token limitations. This is called conversation degradation. It happens about twice as fast when chat history is turned off, especially if you reach token limits within a single session.
- Plug-ins: Disabling chat history means you can't use plug-ins because they rely on chat history to function. Since plug-ins are disabled, users must manually incorporate any functionality, context, or source material they need.

Recognizing Your Levers

Putting It All Together



A Roadmap for Legal Professionals Using AI Responsibly

- Engage Actively: Actively engage with content and double-check the work, using AI as a tool, not a replacement. Regardless of the AI's sophistication, oversight remains important. Just like humans, AI can get things wrong.
- Prioritize Explainability & Transparency: Especially in legal matters, understanding how an AI tool reaches its conclusions is important. If you don't know how an AI tool got an answer, ask, or investigate, working your way back to the original source. Understand the process and your resources.
- Choose Wisely: Know your tools and their strengths. Understand how needs may shift during your document creation process. Set aside your excitement and ask whether GenAI is the right tool for this task, or whether an earlier more reliable or predictable tool may better serve your needs.
- Be the Leader: Technology should facilitate, not replace, legal knowledge. Tools are great for efficiency but shouldn't overshadow legal judgment or replace legal advice.

You control your choices and are responsible for your outcomes.

Resources & Further Reading

Legal Frameworks

How to Think About AI

AI Readiness Model from Ed Sohn at Factor and Jae Um at Six Parsecs

Uses six dimensions to create three archetypes that represent common traits of legal teams and guide them to prepare for an AI-integrated future

AI Ethical Spectrum from Joshua Kubicki at Brainyacts

Based on five representative viewpoints on a spectrum, this framework offers questions to help people become more thoughtful, responsible, and effective participants in conversations about AI

AI Requirements Template from Nikki Shaver at LegalTechnology Hub

Includes 70 datapoints to guide decision-making and streamline procurement processes for AI

AI Audit: Best Practices from Olga V. Mack and Emili Budell-Rhodes

Suggests 14 points to evaluate AI systems based on organizational objectives such as compliance, risk management, productivity, and accuracy

AI Engagement Framework from Ivy B. Grey at WordRake

Sets up a flexible four-quadrant framework that can be used to assess the level of engagement and oversight required for AI and algorithmic technology where guardrails and responsible use can decrease the need for regulation and the potential for risk

Non-Law Framework

Gartner Generative AI Framework

Desired Content Type	Non-Sensitive Text	PII/Enterprise IP Included	Enterprise Data and Model Instructions Needed	Model Fine Tuning to Improve Use/ Performance	Custom Model Is Created for Unique Use Case
Enterprise Control Level	No Controls Needed	LLM With Privacy	LLM With Privacy, Policies and Data	LLM w/Privacy, Policies, Data and Added Model Layers	Enterprise Hosted Custom Differentiated Model
Solution Needed	ChatGPT	LLM API Accessed via Application Frame	LLM API With Standard Privacy, Policy and Per Incident Data Injection	Modified LLM With Transfer Learning/Added Layers to Adjust Model Output	Custom Build LLM Using Enterprise Accessible Data
Required/ Recommended Technologies	Open AI Hosted Application	Cloud Instance With LLM APIs	Cloud Instance With LLM APIs, Prompt Engineering, Custom Policies, Indexed Database	Licensed Customizable Model/ Proprietary Model, Data, ML Platform	Custom Build Proprietary Model, Data, ML Platform
Cost	Negligible	$	$$$$	$$$$$$$	$$$$$$$$$$$

Source: Gartner

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Gartner

Source: Gartner LinkedIn Post (dated November 6, 2023) and Gartner Business Quarterly Report Q3 2023

Resources to Follow

Prof. Ethan Mollick: One Useful Thing on Substack

Translating academic research into mostly useful insights, with some ephemera on the side. Mostly AI stuff recently.

AI Law Librarians: A collaborative blog

A blog about all things AI law librarian-ish, generative AI, and legal research, education, and technology.

Liz Chase: AI Resources for Lawyers

Australian lawyer sharing tips on prompts and prompt-engineering for lawyers and discussing practical use cases for generative AI in law.

Prof. Joshua Kubicki: The Brainyacts on Beehive

Pragmatic insight and tips on generative AI use in legal services. Plus, the AI Ethical Spectrum.

Legal Generative AI Group on LinkedIn

Terri Mottershead, Executive Director of the Centre for Legal Innovation (Australia, New Zealand and Asia Pacific) moderates this active group on LinkedIn.

More Resources to Follow

Jennifer Marsh: Legalytical on Medium

Former practicing lawyer writing about legal technology, data, and product management.

Kelvin Legal Data Blog by 273 Ventures

Blog by entrepreneurs applying analytics, artificial intelligence, and computational analysis to linguistic legal data.

Stephen Wolfram: Writings on Computational Thinking

Highly technical writings on artificial intelligence and computational thinking based on decades of research and invention.

Robert Dale on Medium

Analysis of applied technology. Principal Consultant at the Language Technology Group, a company that provides unbiased advice on Natural Language Processing solutions.

White Papers, Research Papers, and Presentations

Is Disclosure and Certification of the Use of Generative AI Really Necessary?

Maura R. Grossman, J.D., Ph.D. and Daniel G. Brown, Ph.D. (University of Waterloo); Dr. Grossman (Osgoode Hall); Hon. Paul W. Grimm (Bolch Judicial Institute and Duke Law)

Generative AI and Courts: How Are They Getting Along?

Hon. Bernice Bouie Donald (Sixth Cir. Court of Appeals); Hon. James C. Francis IV (JAMS); Ronald J. Hedges; Kenneth J. Withers (The Sedona Conference®)

Sense and Sensibility, Part 1: General Counsel have the power to make good sense of generative AI

Ed Sohn (Factor) and Jae Um (Six Parsecs)

Why Lawyers Must Responsibly Embrace Generative AI

Natalie A. Pierce and Stephanie L. Goutos (Gunderson Dettmer)

AI Classifications for Law and Regulation

Theodore F. Claypoole (Womble Bond Dickinson)

More White Papers, Research Papers, and Presentations

Ethical Considerations for Lawyers Using Generative AI in Delivering Legal Services

by James Gatto (Sheppard Mullin) and Jerry Levine (ContractPodAi)

New Learning Curve: Knowing When and How to Pick Generative AI

Cassandre Coyer summarizing a Debevoise & Plimpton webinar

Adding a 'Group Advisory Layer' to Your Use of Generative AI Tools Through Structured Prompting: The G-A-L Method

by Dennis Kennedy

Will you still need an editor if you use ChatGPT? Why human editors are the best choice for plain language communications

by the Plain English Foundation

Why AI-Generated Text Sounds Wordy and Choppy

by Ivy B. Grey and Danielle Cosimo (WordRake)

Free Tech Training Resources

The Effectiveness Project

https://ltc4.org/effectiveness-project/

Microsoft office Unlocked:
Tech Training Video Series

https://www.wordrake.com/technology-training-video

Technology Competence White Paper

https://www.wordrake.com/tech_competence

MS Word Articles

Using the Table of Contents for Advocacy and Persuasion

https://www.wordrake.com/blog/table-of-contents

Persuasive Legal Writing: Making the Most of Citations, Editing, and the Table of Authorities

https://www.wordrake.com/blog/table-of-authorities

Creating Clarity through Document Structure

https://www.wordrake.com/blog/creating-clarity-through-document-structure

Using Track Changes and Comments for Collaborative Editing in Microsoft Word

https://www.wordrake.com/blog/using-track-changes-and-comments-for-collaborative-editing-in-microsoft-word

Other offerings from WordRake

WordRake's in-depth blogs reinforce the connection between technology, form, and substantive legal writing skills:

- How Email Defines Your Writing Reputation
- Edit Your Legal Memos for Screen Reading
- Ethically Meeting Word and Page Limits

Plus eBooks: advice from Gary Kinder, WordRake founder and legal writing expert, for writing briefs and memos

Your feedback is welcome!



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