

# Ethics of Generative AI

Scared Ethical

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## Prosecutor Used Flawed A.I. to Try to Keep a Man in Jail, His Lawyers Say

The case is among the first in which a prosecutor is accused of filing court papers marred by A.I.-generated mistakes.

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By Shaila Dewan

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When Kyle Kjoller, a 57-year-old welder, was ordered held without bail in Nevada County, Calif., in April, he protested. The charges against him — multiple counts of illegal gun possession — were not grave enough under California law to warrant keeping him in jail for months awaiting his trial, he argued.

## NEVADA PROSECUTORS USED AI TO WRITE FLAWED CRIMINAL FILING, DA CONFIRMS

WED. 11/26/2025

The Nevada County District Attorney's Office is the latest agency to face an artificial intelligence (AI) scandal — and this one could have serious implications for criminal justice.

A Nevada County prosecutor used AI to write a criminal court filing that [referenced fake legal cases and precedents](#). Nevada County District Attorney Jesse Wilson has confirmed. The criminal suspect in the case, Kalen Turner, was facing five felony counts and two misdemeanor counts for drugs. According to Wilson, "once the error was discovered, the filing was immediately withdrawn."

California

• This article is more than 1 month old

## California prosecutors' office used AI to file inaccurate motion in criminal case

Filing contained errors known as 'hallucinations', with attorneys arguing prosecutors' office used AI in other cases



Kyle Kjoller identified similar errors in a filing by the prosecutors' office in another case, said attorney Lipinski.

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## CALIFORNIA PROSECUTORS' AI MISTAKES RAISE CONCERN ABOUT DUE PROCESS RIGHTS

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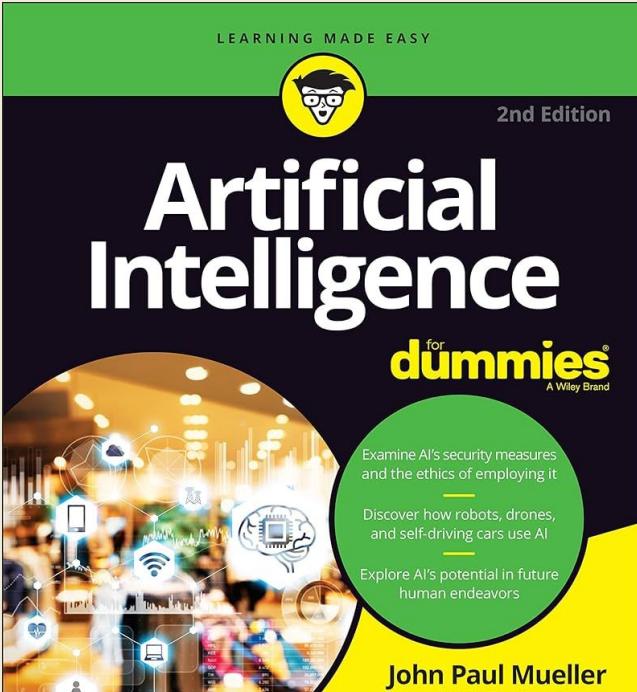
## AI caused errors in a criminal case, Northern California prosecutor says

By Sharon Bernstein

November 7, 2025 5:00 AM [Gift Article](#)



# In re Kjoller



**1.**

AI is a word-predicting machine.

**2.**

AI is especially poorly suited for predicting the right legal words.

**3.**

AI is most likely to hallucinate or misstate the holdings of state court of appeal decisions.

**4.**

Trial court criminal cases are the highest stake cases and opposing counsel and the bench are least equipped to catch the errors and the errors are least likely to be preserved.

Courts have routinely held that a vehicle parked for a prolonged period without an apparent legitimate reason can contribute to reasonable suspicion. *“The presence of a parked vehicle in an area known for drug activity, combined with behavior the officer recognized as consistent with drug dealing, was sufficient to justify a detention.”* (People v. Medina (2003) 110 Cal.App.4<sup>th</sup> 171). In her

Legislative history supports this narrower interpretation. In *United States v. Harris*, the court observed that the statute was designed to prevent the disclosure of specific identifying details, such as “names and addresses,” rather than general descriptors. 761 F. Supp. 409, 414 (D.D.C. 1991) (citing Congressman DeWine’s remarks during the statute’s enactment). ...

Officers may rely on prior contacts with individuals or addresses in developing reasonable suspicion. *“It is entirely appropriate for officers to consider prior arrests and known criminal associations in assessing the possibility of criminal activity.”* (People v. Jones (1991) 228 Cal.App.3d 519). In *People v. Jones*, the Court of Appeal upheld the lawfulness of a detention where the officer based his suspicion in part on his prior knowledge of the defendant and the address involved in the encounter. The court held that an officer may consider prior contacts with an individual or a specific location – such as a residence known for criminal activity – when determining whether reasonable suspicion exists to justify a detention. In that case, the officer had prior knowledge of the defendant’s gang affiliation and of drug activity associated with the location. When combined with the defendant’s presence in a suspicious situation, the officer’s previous contacts and knowledge contributed to the totality of circumstances. The Court noted:

*“Although the officer did not personally know defendant to be involved in criminal activity, he knew of defendant’s association with a residence from which drug sales had occurred, and this was a factor that could properly be considered in forming reasonable suspicion.”*

(People v. Jones, supra, 228 Cal.App.3d at p. 524.)

# AI-Generated Hallucinations

# Ethical Obligations

# State Bar Guide to Use of AI

*Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law, State Bar of CA Standing Committee on Professional Responsibility and Conduct*

“This Practical Guidance should be read as guiding principles rather than as ‘best practices.’”

<https://www.calbar.ca.gov/sites/default/files/portals/0/documents/ethics/Generative-AI-Practical-Guidance.pdf>

# State Bar Guide to Use of AI

## Duty of Competence & Diligence (RPC 1.1, 1.3)

- “AI-generated outputs can be used as a starting point but must be carefully scrutinized. They should be critically analyzed for accuracy and bias, supplemented, and improved, if necessary. A lawyer must critically review, validate, and correct both the input and the output of generative AI to ensure the content accurately reflects and supports the interests and priorities of the client in the matter at hand, including as part of advocacy for the client...”

# State Bar Guide to Use of AI

Duty of Competence & Diligence (RPC 1.1, 1.3)

- "...[t]he duty of competence requires more than the mere detection and elimination of false AI-generated results. A lawyer's professional judgment cannot be delegated to generative AI and remains the lawyer's responsibility at all times."

# State Bar Guide to Use of AI

## Candor to the Tribunal (RPC 3.1, 3.3)

- “A lawyer must review all generative AI outputs, including, but not limited to, analysis and citations to authority for accuracy before submission to the court, and correct any errors or misleading statements made to the court.”
- “A lawyer should also check for any rules, orders, or other requirements in the relevant jurisdiction that may necessitate the disclosure of the use of generative AI.”

# State Bar Guide to Use of AI

## Duty to Supervise Subordinate Lawyers and Non-Lawyers

- Managerial and supervisory lawyers should establish clear policies regarding the permissible uses of generative AI and make reasonable efforts to ensure that the firm adopts measures that give reasonable assurance that the firm's lawyers and non lawyers' conduct complies with their professional obligations when using generative AI. This includes providing training on the ethical and practical aspects, and pitfalls, of any generative AI use. A subordinate lawyer must not use generative AI at the direction of a supervisory lawyer in a manner that violates the subordinate lawyer's professional responsibility and obligations.

# State Bar Guide to Use of AI

## Communication Regarding Generative AI Use

- A lawyer should evaluate their communication obligations throughout the representation based on the facts and circumstances, including the novelty of the technology, risks associated with generative AI use, scope of the representation, and sophistication of the client. The lawyer should consider disclosure to their client that they intend to use generative AI in the representation, including how the technology will be used, and the benefits and risks of such use. A lawyer should review any applicable client instructions or guidelines that may restrict or limit the use of generative AI.

# Duties of Candor

## Business and Professions Code

- **BP§6068(d)** (to employ . . . “those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.”)
- **BP§6106** (commission of any act involving dishonesty; see, e.g., *In the Matter of Wyrick* (Review Dept. 1992) 2 Cat. State Bar Ct. Rptr. 83, 91 (gross negligence may violate § 6106))

# Rules of Professional Conduct

- **RPC 3.3(a)(1) (“A lawyer shall not ... knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.”) (candor toward tribunal)**
- **RPC 3.3(a)(2) (duty to not “knowingly misquote to a tribunal the language of a book, statute, decision or other authority”)**
- **RPC 3.8 (Comment 1) “A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice . . . ”**

## **Rules of Professional Conduct (cont'd)**

- **RPC 4.1 (false statement of fact or law to a third person)**
- **RPC 8.4 (conduct involving dishonesty, whether intentional or involving gross negligence)**

# Rules of Court & Local Rules

Rule of Court 8.204 (civil appeals, including habeas petitions): briefs must “support each point by argument and, if possible, by citation of authority; and . . . [s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears.”) (see *Noland v. Land of the Free, L.P.* (2025) 114 Cal.App.5th 426 (finding reliance on AI-generated authority violates rule 8.204(a)(1)(B))).

## **Rules of Court & Local Rules**

**Rule of Court 8.1115(a) “Opinion of a California Court of Appeal or superior court appellate division that is not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action.”**



“To state the obvious, it is a fundamental duty of attorneys to *read* the legal authorities they cite in appellate briefs or any other court filings to determine that the authorities stand for the propositions for which they are cited.”

“Plainly, counsel did not read the cases he cited before filing his appellate briefs: Had he read them, he would have discovered, as we did, that the cases did not contain the language he purported to quote, did not support the propositions for which they were cited, or did not exist.”

*Noland v. Land of the Free, L.P. (2025) 114 Cal.App.5th 426, 445.*

## **Case Example : People v. Alvarez (2025) 114 Cal.App.5th 1115, 1120 (criminal defense appeal)**

- Quotation attributed to a case where it did not appear
- One citation to a non-existent case
- Two cases cited for issues that the cases don't address
- Attorney apologized, did not verify accuracy of citations, was rushed, relies on staff to help w/ drafting

- Court concluded attorney violated RPC
- BP 6068(d), Rule 3.3(a)(1) and (2), Rules of Court 8.1115(a) (“which prohibits citation to unpublished opinions, because he cited a non-existent case”)
- Court says this is particularly egregious because rights of a criminal defendant were at stake
- “We infer that [attorney] knowingly made a false statement...”
- Relied on Canon 3D(2) in publishing the opinion
- Ordered \$1,500 fine paid to the Court of Appeal
- Referred to State Bar

