

AI and Evidence: Proposed Rule 707

OCTOBER 2026

Benjamin Tietjen, Stephen J. Herman

Published by The Civil Justice Research Initiative, part of UC Berkeley School of Law

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About the Authors¹

Benjamin Tietjen graduated from the University of Wisconsin-Madison with a B.S. in Computer Science and Philosophy. His work at the Civil Justice Research Initiative focuses on legal research at the intersection of law and technology, with particular interests in civil liberties, AI policy, and technology regulation.

Stephen J. Herman received his J.D. from Tulane Law School, Order of the Coif, in 1994. He has been teaching the Advanced Torts Seminar on class actions as an adjunct professor at Loyola since 2006 and the Advanced Civil Procedure course at Tulane since 2009. A past president of the National Civil Justice Institute, Herman serves on the CJRI Board and is also the Chair of the AI Task Force for the American Association for Justice.

¹ The authors wish to thank Professors Richard Jolly, Andrea Roth, and Wayne Stacy for their comments on an earlier version of this report.

Introduction

The Advisory Committee on Evidence Rules, a federal committee that considers and proposes changes to the Federal Rules of Evidence, is currently considering two proposed new rules addressing evidentiary challenges posed by emerging technologies like artificial intelligence. The first, proposed Rule 707, aims to ensure that AI-generated conclusions offered as evidence undergo sufficient review for reliability before admission, while the second, proposed Rule 901(c), would formalize the procedure for authenticating evidence challenged as an AI-generated fabrication or “deepfake.”² There is much to be said about both proposals, but this report will focus on proposed Rule 707.

At first glance, proposed Rule 707 might appear as nothing more than a simple corrective measure; its proponents hope it will fix a perceived gap in the Rules that allows the output of certain machine processes to evade reliability scrutiny when offered as evidence without an accompanying expert witness.³ But as we will see, proposed Rule 707 is more than that—it represents the Advisory Committee’s first serious effort to grapple with the growing reliability concerns posed by modern machine output offered as evidence in court, and the proposal has generated significant controversy wading into this newfound territory. This report will provide an overview of this proposed new Rule—how it would work, the concerns behind it, and its potential impacts on evidentiary law. Where relevant, it will also look back to the proposal’s drafting history to understand points of controversy that continue to surround it.

“Proposed Rule 707...represents the Advisory Committee’s first serious effort to grapple with the growing reliability concerns posed by modern machine output offered as evidence in court.”

Proposed Rule 707 has been in development since late 2023, and, in May 2026, the Committee unveiled its latest iteration.⁴ The previous version drew significant criticism during a public comment period from August 2025 to February 2026, and this newest version incorporates a number of revisions in response.⁵

² Advisory Committee on Evidence Rules, Agenda Book (May 7, 2026), at 173-75, 221-23 (redraft of proposed Rule 707 with Committee Note) [hereinafter Agenda Book (May 7, 2026)], <https://www.uscourts.gov/sites/default/files/document/2026-05-evidence-rules-agenda-book.pdf>;

³ Advisory Committee on Evidence Rules, Agenda Book (Nov. 5, 2025), at 137 [hereinafter Agenda Book (Nov. 5, 2025)], https://www.uscourts.gov/sites/default/files/document/2025-11_evidence_rules_committee_agenda_book_final.pdf; Agenda Book (May 7, 2026), *supra* note 2, at 160.

⁴ Shortly before the publication of this report, the Committee released a new version of proposed Rule 707 ahead of its October 2026 meeting. This new version of the proposal makes a few minor changes that do not significantly impact the commentary in this report. Advisory Committee on Evidence Rules, Agenda Book (Oct. 27, 2023), at 81, 408 (earliest iteration of the proposal) [hereinafter Agenda Book (Oct. 27, 2023)], https://www.uscourts.gov/sites/default/files/2023-10_evidence_rules_agenda_book_final_10-5.pdf; Agenda Book (May 7, 2026), *supra* note 2, at 173-175 (redraft of proposed Rule 707 with Committee Note); Advisory Committee on Evidence Rules, Agenda Book (Oct. 15, 2026), at 173-76 (redraft released ahead of the October, 2026 meeting) [hereinafter Agenda Book (Oct. 15, 2026)], https://www.uscourts.gov/sites/default/files/document/2026-10_evidence_rules_agenda_book_9-23_final.pdf.

⁵ Federal Rules of Evidence Procedure, Public Comments (2025-26) [hereinafter Public Comments (2025-26)], <https://www.uscourts.gov/sites/default/files/document/ev-comments-0003-0075.pdf>; Agenda Book (May 7, 2026), *supra* note 2, at 131-79.

Still, further changes are likely; the Committee intends to continue refining the proposal before publishing it for another round of public comments beginning in August 2027.⁶

This report will proceed as follows. Part I will explain how the Evidence Rules, as they currently exist, govern the admission of machine output. Part II will introduce new Rule 707—what it does, why it was proposed, and how it would work in the existing admissibility framework. Finally, Part III will draw from the comments and testimony submitted during the 2025-2026 public comment period to explore three main topics of controversy surrounding proposed Rule 707: its necessity and timeliness, its scope, and the scrutiny it imposes. But first, a note on terminology.

Throughout the drafting process for proposed Rule 707, terminology has proven to be a significant source of controversy. The previous version of the proposal published for public comment was titled “Machine-Generated Evidence,” while the newest, May 2026 version is titled “Evidence Produced by Artificial Intelligence and Presented at Trial Without an Expert.”⁷ As will be thoroughly explored in Part III, neither title, read in isolation, accurately characterizes the machine output targeted by proposed Rule 707.⁸ For the sake of simplicity, however, this report—outside of that Part III discussion—will primarily refer to such output as “AI-generated evidence,” which is in line with the language of the most recent proposal. That said, this report will occasionally still use “machine-generated evidence” when describing public commenters’ thoughts on the previous version. On its face, “AI-generated evidence” can include a wide range of machine outputs. Until Part III, this phrase should be tentatively understood to mean any inferential, expert-like conclusion drawn by a machine process.

I. AI-Generated Evidence under the Current Rules

The admissibility of AI-generated evidence is currently governed by a number of Federal Rules of Evidence. A court may exclude the evidence if it fails to satisfy any applicable rule’s requirements. See Appendix, Flowchart of Rules Govern AI-Generated Evidence. This part describes these admissibility requirements as they currently operate.

As is the case with other types of evidence, Rule 104 operates as a threshold rule that controls the procedure by which courts determine whether a Rule’s requirements have been satisfied. By prescribing who decides these preliminary questions and under what evidentiary standard, Rule 104 plays a key part in every determination conditioning AI-generated evidence’s admissibility.⁹ These determinations fall under either Rule 104(a) or Rule 104(b), each prescribing a distinct procedure for the court to follow. Rule 104(a)’s

⁶ This year-long delay serves two purposes: (1) it will provide the Committee with sufficient time to align consideration of proposed Rule 707 with that of proposed Rule 901(c); and (2) it will allow more time to seek additional, less formal input on the proposed rules. To that end, the Committee will be holding a mini-conference this October to allow industry and practitioners to weigh in on both rules. Agenda Book (Oct. 15, 2026), *supra* note 4, at 28 (May 2026 meeting minutes).

⁷ Agenda Book (May 7, 2026), *supra* note 2, at 131-33, 173-75.

⁸ Agenda Book (Nov. 5, 2025), *supra* note 3, at 140; Agenda Book (May 7, 2026), *supra* note 2, at 160.

⁹ FED. R. EVID. 104; 21 WRIGHT & MILLER’S FEDERAL PRACTICE & PROCEDURE § 5056 at 1 (2d. ed. Sept. 2025 Update) [hereinafter WRIGHT & MILLER]; *id.* § 5057 at 1-2.

scope is comprehensive, covering “any preliminary question about whether ... evidence is admissible.”¹⁰ Rule 104(b) is the exception to this general rule, applying only to “questions of conditional relevancy”—that is, issues of fact on which the relevance of the evidence itself depends.¹¹ Evidence’s authenticity and a lay witness’s personal knowledge are quintessential examples of conditional facts evaluated under Rule 104(b).¹²

Preliminary questions that fall under Rule 104(a) are decided entirely by the judge under a preponderance-of-the-evidence standard. In making this more-likely-than-not determination, the judge “is not bound by evidence rules, except those on privilege.” This means that, other than privileged material, the judge can rely on inadmissible evidence.¹³ Under Rule 104(b), the judge tentatively admits the evidence if there is proof “sufficient to support a finding” that the conditional fact exists—that is, if a jury could “reasonably conclude” that the fact exists by a preponderance of the admissible evidence.¹⁴ To mirror the jury’s procedural limitations, the judge can only rely on admissible evidence in making this initial assessment.¹⁵ The jury would then determine during deliberations whether it is more likely than not that the conditional fact exists, and, absent such a finding, the jury would disregard the conditionally admitted evidence.¹⁶

Finally, two additional caveats to the broader admission process are worth noting. First, while some preliminary determinations naturally tend to precede others, courts are free to address them in almost any order. Accordingly, the structure of this section—and the accompanying flowchart—should not be understood as a strict chronological path. Second, these determinations typically arise only in response to objections, offers of proof, or other actions by counsel.¹⁷ If no such actions are taken, these determinations may never formally arise.

Rules 401 and 402—Relevance. Typically, the first step of an admissibility analysis for all evidence is determining relevance under Rules 401 and 402. To be found relevant under these Rules, AI-generated evidence, along with any accompanying expert testimony, must have “any tendency to make a fact more or less probable,” provided that the fact is “of consequence in determining the action.”¹⁸ Per Rule 104(a), this legal determination is made entirely by the judge, who assumes the existence of any conditional facts necessary for the evidence’s relevance, such as authenticity.¹⁹ In practice, this requirement is unlikely to

¹⁰ FED. R. EVID. 104(a); 21 WRIGHT & MILLER § 5056 at 1-2.

¹¹ This may be subject to change; a proposed amendment to Rule 104 was published for public comment in August 2026. This amendment would remove the concept of “conditional relevance” from Rule 104(b) and codify the preponderance standard under Rule 104(a). FED. R. EVID. 104(b) advisory committee’s note; 21 WRIGHT & MILLER § 5060 at 5. Agenda Book (May 7, 2026), *supra* note 2, at 333-34.

¹² 21 WRIGHT & MILLER § 5056 at 1.

¹³ FED. R. EVID. 104(a); *Bourjaily v. United States*, 483 U.S. 171, 176 (1987).

¹⁴ FED. R. EVID. 104(b); FED. R. EVID. 104(b) advisory committee’s note; 21 WRIGHT & MILLER § 5057 at 1.

¹⁵ 21 WRIGHT & MILLER § 5063 at 4.

¹⁶ *Id.* at 2.

¹⁷ 21 WRIGHT & MILLER § 5056 at 1.

¹⁸ FED. R. EVID. 401.

¹⁹ 21 WRIGHT & MILLER § 5063 at 1.

present a significant obstacle to most AI-generated evidence, which—even when inadequately reliable—will usually have *some* bearing on the likelihood that a consequential fact exists.²⁰

Rules 901 and 902—Authenticity. Next, courts typically evaluate the authenticity of proffered evidence under Rules 901 and 902. Notably, testimony from a live witness is not subject to either Rule. Thus, when AI-generated evidence is introduced alongside expert testimony, only the former must be authenticated.²¹ For non-testimonial evidence, the framework provided by these rules is in many respects flexible. That said, to avoid exclusion under these rules, evidence must always be shown to be “what the proponent claims it is.”²² For evidence produced by a machine process, what that standard should demand is a topic of debate. To some, all that should be required is proof that the evidence was in fact produced by the machine and that the machine itself was working properly.²³ Others believe proof of the machine’s underlying accuracy should also be required.²⁴

Specific requirements aside, the authenticity of AI-generated evidence would typically be evaluated under the traditional framework provided by Rule 901. Under Rule 104(b)’s conditional relevance standard, the judge may exclude the evidence under Rule 901 unless its proponent presents proof “sufficient to support a finding” that it is authentic. With one exception—where the evidence itself supplies the basis for authentication—the judge can only consider admitted evidence in making this initial screening.²⁵ But Rule 901 leaves the ultimate determination of whether to consider the evidence to the jury, which may evaluate any admissible evidence supporting or contesting authenticity.²⁶

How, then, can a proponent demonstrate the authenticity of their proffered evidence under Rule 901? While Rule 901(b) provides a number of examples, this list is simply “illustrative” and does not prescribe any specific authentication method for any particular type of evidence.²⁷ To the extent testimony is offered in support of authenticity, it must comply with all other applicable Rules. Lay witnesses testifying to authenticity, for example, must have “personal knowledge of the matter” under Rule 602. Similarly, expert testimony must satisfy the requirements of Rules 702 and 703.²⁸

Of Rule 901(b)’s examples, the most relevant to AI-generated evidence would appear to be sub-section (9), which authenticates the output of a “process or system” through evidence “showing that it produces an accurate result.”²⁹ This example—originally introduced in 1968—was designed for computerized business records, but its text is broad enough to encompass far more complex technologies like machine learning.³⁰

²⁰ Paul W. Grimm, Maura R. Grossman & Gordon V. Cormack, *Artificial Intelligence as Evidence*, 19 NW. J. TECH. & INTELL. PROP. 9, 87 (2021).

²¹ 31 WRIGHT & MILLER § 7103 at 3.

²² FED. R. EVID. 901; 31 WRIGHT & MILLER § 7134 at 1.

²³ See, e.g., Andrea Roth, *Machine Testimony*, 126 YALE L. J. 1972, 2032 (2017); 31 WRIGHT & MILLER § 7103 at 3.

²⁴ See, e.g., Grimm, *supra* note 20, at 86; 31 WRIGHT & MILLER § 7114 at 2.

²⁵ FED. R. EVID. 901(a); 31 WRIGHT & MILLER § 7104 at 1-2.

²⁶ 31 WRIGHT & MILLER § 7103 at 2.

²⁷ FED. R. EVID. 901(b) advisory committee’s note; 31 WRIGHT & MILLER § 7105 at 2.

²⁸ FED. R. EVID. 602; 31 WRIGHT & MILLER § 7103 at 3.

²⁹ FED. R. EVID. 901(b)(9).

³⁰ Advisory Committee on Evidence Rules, Hearing on Proposed Amendments to Rule 609 and new Rule 707, Testimony Packet with Schedule and Witness List (Jan. 29, 2026), at 40 (letter from Prof. Andrea Roth, Jan.

Rule 901(b)(9) reflects, and has likely reinforced, the belief that authenticating machine output requires proof of the machine’s underlying accuracy.³¹

In 2023, some commentators proposed that Rule 901(b)(9) be amended to apply additional reliability requirements to evidence “generated by artificial intelligence.”³² The Advisory Committee failed to approve this proposal, however, arguing that Rule 901 is not the place for such requirements, as “authenticity is not about reliability,” and pointing to Rule 702 as “the better analog.”³³ More recently, the Committee affirmed another commentator’s position that Rule 901(b)(9)’s *existing* accuracy requirement is misplaced, and it made known that it may eventually consider abrogating the example altogether.³⁴ Of course, as AI tools are increasingly incorporated into the everyday landscape, much AI-generated evidence (understood more broadly) will presumably be authenticated under Rule 901(b)(1), as many underlying personal and business records are commonly authenticated in civil proceedings today.

The possibility of AI-generated evidence being authenticated under Rule 902 also warrants some attention. Rule 902 lists categories of evidence that require “no extrinsic evidence of authenticity.”³⁵ If the judge, pursuant to Rule 104(a), determines that evidence falls within one of these categories, it is treated as authenticated for purposes of admissibility, though the jury retains the ability to reject its authenticity during deliberations, and in no instance is the opposing party foreclosed from offering counter-evidence.³⁶ Of these categories, Rule 902(13)—“Certified Records Generated by an Electronic Process or System”—is the most facially applicable to AI-generated evidence, but its use in such instances remains largely speculative.³⁷ Rule 902(13) demands that the proponent demonstrate the accuracy of the “electronic process or system” that produced the evidence “by a certification of a qualified person.”³⁸ Like Rule 901(b)(9), (13) involves a demonstration of accuracy, but with two notable differences. First, it allows that foundation “to be established by a certification rather than the testimony of a live witness.”³⁹ Second, the necessary

15, 2026) [hereinafter Testimony Packet (Jan. 29, 2026)], <https://www.uscourts.gov/sites/default/files/document/jan-29-hearing-schedule-and-testimony-packet.pdf>.

³¹ See 31 WRIGHT & MILLER § 7114 at 2.

³² Advisory Committee on Evidence Rules, Agenda Book (Nov. 8, 2024), at 240 [hereinafter Agenda Book (Nov. 8, 2024)], https://www.uscourts.gov/sites/default/files/2024-11_evidence_rules_committee_meeting_agenda_book_final_10-24.pdf.

³³ *Id.* at 246.

³⁴ This commentator argues that Rule 104(b)’s procedure is best geared towards determinations of facts that “condition the logical relevance of an item of evidence in such an obvious, fundamental manner that if the lay jury decides that the fact does not exist, common sense will naturally lead the jury to disregard both the item and any related foundational testimony.” These issues usually present a binary choice, and are quick to resolve through the lay knowledge and experience of the fact-finder. The accuracy of an AI process, however, is a fact better suited for evaluation under Rule 104(a)’s judge-only procedure. Evaluating an AI process’s accuracy presents a far more open-ended question that can demand significant time and mental energy, all factors making foundational testimony more difficult to set aside. Thus, this commentator concludes that Rule 901(b)(9)’s accuracy requirement is misplaced. Agenda Book (Nov. 5, 2025), *supra* note 3, at 105-06, 146-47; Edward J. Imwinkelried, *The Challenge that the Advent of Artificial Intelligence (AI) Tools Poses to the Procedures for Determining the Existence of the Preliminary Facts that Condition the Admissibility of Items of Evidence*, 108 MARQ. L. REV. 621, 623, 628, 643-44 (2025).

³⁵ FED. R. EVID. 902.

³⁶ FED. R. EVID. 902; 31 WRIGHT & MILLER § 7134 at 1-2.

³⁷ James E. Baker, Laurie N. Hobart & Matthew Mittelsteadt, AN INTRODUCTION TO ARTIFICIAL INTELLIGENCE FOR FEDERAL JUDGES (Fed. Judicial Center, 2023), 50.

³⁸ FED. R. EVID. 902(13).

³⁹ FED. R. EVID. 902(13) advisory committee’s note to 2011 amendment.

admissibility determinations are handled entirely by the judge under Rule 104(a). As with Rule 901, other subsections of Rule 902 would likely be used for the AI-generated business documents that will be increasingly seen in court.

Rules 702—Expert Testimony. Rule 702 governs the admissibility of all expert testimony, and it plays a key role in evaluating the reliability of AI-generated evidence.⁴⁰ When such evidence is offered as the basis for an expert’s opinion, Rule 702 imposes a number of requirements, scrutinizing the testimony *and* its evidentiary foundation. But, *importantly*, AI-generated evidence offered by itself or alongside lay testimony is not subject to this rule. Thus, depending on the manner in which it is introduced, AI-generated evidence is subject to different standards of reliability—a “gap in the Rules” that proposed Rule 707 is intended to address.⁴¹

When Rule 702 does apply, it presents a significant obstacle for AI-generated evidence and the testimony accompanying it. It requires that the testifying witness be properly “qualified as an expert.” It further provides that the expert’s testimony must (a) “help the trier of fact to understand the evidence or to determine a fact in issue,” (b) be “based on sufficient facts or data,” (c) be “the product of reliable principles and methods,” and (d) reflect “a reliable application of the principles and methods to the facts of the case.”⁴² Aiding the court in these evaluations are the so-called “*Daubert* factors,” a list of reliability considerations such as testability and error rates, which Rule 702’s Committee Note describes as “neither exclusive nor dispositive.” These factors originate from *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), which Rule 702 was amended to accommodate in 2000.⁴³ Each of the requirements enforced by this rule is evaluated entirely by the judge in a preliminary determination under Rule 104(a).⁴⁴

In a traditional application of Rule 702, a proponent might offer expert testimony from a forensic accountant, who, after analyzing hundreds of financial documents, offers their opinion in a fraud case on whether the defendant’s public disclosures were materially inaccurate. In such a case, the expert arrives at their conclusion through their own experience and inferential reasoning, drawing on the financial documents as an evidentiary basis—the “sufficient facts or data.” With technology today, one might imagine a machine-learning forensic tool that, given those same financial documents, outputs a percentage likelihood that fraud has been committed. If such output were to be offered alongside an expert witness, the tool, its output, and the financial documents it processed would all fall under Rule 702’s scrutiny as the evidentiary basis of the expert’s opinion. The key difference in this example is that the machine-learning tool, not the expert, draws the inferential conclusion most helpful to the trier of fact (*i.e.* whether a fraud

⁴⁰ 31 WRIGHT & MILLER § 7103 at 3.

⁴¹ FED. R. EVID. 702, 703; Agenda Book (Nov. 5, 2025), *supra* note 3, at 137.

⁴² FED. R. EVID. 702.

⁴³ FED. R. EVID. 702 advisory committee’s note to 2000 amendment.

⁴⁴ A 2023 amendment to Rule 702 solidified Rule 104(a) as its governing procedure, but the judge’s role as “gatekeeper” in these reliability evaluations remains controversial. To some, judicial gatekeeping has strayed beyond what Rule 702 and *Daubert* prescribe; rather than performing a threshold reliability check of the expert’s methodology, some judges have tipped into evaluating weight and credibility. This deprives the jury of its proper role as factfinder, and—if it results in the exclusion of expert testimony—such an overreach can effectively determine the outcome of a case. 21 WRIGHT & MILLER § 5060.4 at 1; FED. R. EVID. 702 advisory committee’s note to 2000 amendment; FED. R. EVID. 702 advisory committee’s note to 2023 amendment; Brief for *Amici Curiae* Law Professors in Support of Plaintiffs-Appellants at 3, 7-8, *Rutledge v. Walgreen Co.*, 182 F.4th 168 (2d Cir. 2026) (No. 24-916-cv(L)) <https://civiljusticeinitiative.org/wp-content/uploads/2025/11/Law-Professors-Amici-Brief.pdf>.

has been committed). The expert serves primarily to explain the broad strokes of the software and vouch for its reliability. In this way, modern machine processes have strained the assumptions underlying Rule 702, which was designed with a human expert—not a machine—as the source of the inferential reasoning.

Rule 403—Balancing. Finally, AI-generated evidence, like all evidence, must withstand Rule 403. Unlike Rule 702, Rule 403 applies regardless of how the evidence is introduced. In a Rule 104(a) determination favoring admissibility, Rule 403 permits the judge to exclude evidence if its probative value is “substantially outweighed” by a number of potential dangers: “unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”⁴⁵ Evidence produced by a machine process is not immune from these concerns—and the more complex the process, the more susceptible it may be to some of them.⁴⁶ That said, while Rule 403 could provide a solution to some of the evidentiary problems posed by modern machine processes, reliability is not one of them; in its May 2026 memo, the Committee states that Rule 403 “does not provide[] authority to exclude evidence on the ground that it is unreliable.”⁴⁷

II. AI-Generated Evidence under Proposed Rule 707

Having surveyed the rules governing the admission of AI-generated evidence, this part introduces proposed Rule 707 and situates it within that existing framework. The Advisory Committee proposed this new Rule to fix what it perceives to be a specific problem: a potential “gap” in the rules which might allow AI-generated evidence offered without an accompanying expert witness to be admitted while avoiding the reliability scrutiny imposed by Rule 702.⁴⁸ For some AI-generated evidence, that scrutiny could be invaluable. Consider the output of a probabilistic genotyping software like TrueAllele, which estimates the likelihood that an individual contributed to a mixed DNA sample.⁴⁹ If admitted as evidence, that output could significantly affect the outcome of a case. Moreover, TrueAllele’s source code is proprietary, and a party’s ability to independently scrutinize its methodology is limited, making Rule 702 one of the few meaningful checks on its reliability.⁵⁰

Under the current rules, however, Rule 702 is inapplicable to TrueAllele output offered without an accompanying expert witness—that is, by itself or alongside lay witness testimony. Moreover, such output could still possibly achieve admission, provided its proponent demonstrates its relevance and authenticity.⁵¹ As the Committee observed in its May 2026 agenda, this is because there is no rule of evidence enforcing a general reliability requirement—only rules targeting two specific reliability problems: hearsay and expert

⁴⁵ FED. R. EVID. 403; Christopher B. Mueller & Laird C. Kirkpatrick, 1 FEDERAL EVIDENCE RULE 104, § 1:27 at 1 (4th ed. July 2025 Update).

⁴⁶ Imwinkelried, *supra* note 34, at 656-57.

⁴⁷ *Id.*; Agenda Book (May 7, 2026), *supra* note 2, at 157.

⁴⁸ Agenda Book (Nov. 5, 2025), *supra* note 3, at 137.

⁴⁹ Decl. Mark W. Perlin, *State of Washington v. Emanuel Fair*, No. 10-1-09274-5 SEA (Sup. Ct. of Wash., King Cty, April 1, 2016), 2-3 [hereinafter Perline Decl.], <https://www.cybgcn.com/information/newsroom/2016/apr/files/A-Perlin-declaration.pdf>.

⁵⁰ *Id.*; Roth, *supra* note 23, at 2018 n.239; *id.* at 2019 n.248.

⁵¹ See Testimony Packet (Jan. 29, 2026), *supra* note 30, at 40 (letter from Prof. Andrea Roth, Jan. 15, 2026).

testimony.⁵²

The Committee’s solution to this problem is proposed Rule 707:

Rule 707. Evidence Produced By Artificial Intelligence and Presented at Trial Without an Expert
(May 2026 draft)

(a) General Rules. If evidence is a product of artificial intelligence and is offered without an expert witness, but would be subject to Rule 702 if testified to by a witness, the proponent must establish that the evidence:

- (i) will help the trier of fact;
- (ii) is based on sufficient facts or data;
- (iii) is the product of reliable principles and methods; and
- (iv) reflects a reliable application of the principles and methods to the facts of the case.

(b) Establishing Admissibility. Admissibility under this rule ordinarily requires the proponent to provide an expert to explain how the system of artificial intelligence reliably produced the evidence; but in exceptional circumstances, the court may find other proof that the output satisfies the requirements of (a)(ii)-(iv).

(c) Notice. The evidence is admissible only if the proponent gives an adverse party reasonable notice of the intent to offer the evidence — so that the party has a fair opportunity to meet it.

(d) Judicial Notice. This rule does not apply to facts that may be judicially noticed under Rule 201.

(e) Definition. In this rule, “artificial intelligence” means a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments.⁵³

⁵² This lack of an overarching requirement is perhaps by design; the rules generally leave the question of evidence’s reliability to the jury. It could also be argued that relevance under Rule 401 requires at least some minimal level of accuracy from AI-generated evidence. After all, if a machine process were not accurate in the slightest, its conclusions might have no bearing on the facts of a case. But even if this implicit requirement were actively enforced (which is no guarantee), AI-generated evidence could still possibly achieve admission without having to pass a Rule 702-like test for reliability. A showing of minimal accuracy could potentially be made during the authentication process, most obviously (but not necessarily) by fulfilling the accuracy requirements imposed by Rule 901(b)(9) or Rule 902(13). Agenda Book (May 7, 2026), *supra* note 2, at 157; Testimony Packet (Jan. 29, 2026), *supra* note 30, at 40 (letter from Prof. Andrea Roth, Jan. 15, 2026). There may, of course, be some situations in which the accuracy of underlying AI-generated evidence is not critical (e.g., where the evidence is offered primarily, or exclusively, to show notice or intent), and there may be situations in which the reliability of AI-generated evidence can be presumed or inferred from the fact that one of the parties or its agents or employees actually relied upon it. The authors wish to thank Professor Richard Jolly for drawing attention to the jury’s role in determining reliability.

⁵³ Agenda Book (May 7, 2026), *supra* note 2, at 173-75.

As its text makes clear, proposed Rule 707 would directly apply Rule 702’s reliability framework to proffered evidence that is the output of “artificial intelligence,” a term defined in section (e) and further elaborated upon in the Rule’s Committee Note.⁵⁴ To be subject to proposed Rule 707’s requirements, evidence meeting this definition must also satisfy two conditions. First, the AI-generated evidence must be offered without an accompanying expert witness—that is, as the Note explains, either “entered directly” or “accompanied by lay testimony,” such as from a “technician who... might have no expertise on the validity of the output.”⁵⁵ Second, the evidence must “be subject to Rule 702 if testified to by a witness”—a condition that, in simple terms, limits proposed Rule 707’s applicability to the output of AI processes that *function* like an expert.⁵⁶ Section (d) provides the only exception to this scope, exempting any evidence “that may be judicially noticed under Rule 201.”⁵⁷

In short, proposed Rule 707 would make all AI-generated evidence deserving of reliability scrutiny subject to Rule 702’s requirements, regardless of how it’s introduced. If such evidence were offered as the basis of expert testimony, Rule 702’s requirements would apply as they do now, but through proposed Rule 707, those same requirements would also extend to AI-generated evidence offered by itself or alongside lay testimony. In this way, the “gap” would be eliminated.⁵⁸

“Proposed Rule 707 would make all AI-generated evidence deserving of reliability scrutiny subject to Rule 702’s requirements, regardless of how it’s introduced.”

In the Committee’s view, it is appropriate to subject the output of expert-like AI processes to the requirements of Rule 702—as proposed Rule 707 does—since the reliability concerns posed by such processes are “akin” to those raised by expert witnesses.⁵⁹ Applying a framework designed for human witnesses to machine processes is not seamless, however, and the Committee, recognizing this, offers some guidance for the court in proposed Rule 707’s accompanying Committee Note—most notably, a non-exhaustive list of five reliability factors that “a Rule 707 analysis will usually involve.” These factors direct the court to look at input sufficiency, validation under similar circumstances, record-keeping and output reproducibility, and the availability of both independent evaluation and explanations of the process.⁶⁰

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 136, 160.

⁵⁷ *Id.* at 173-75.

⁵⁸ While not a complete solution, the Committee also believes that Rule 707 will mitigate the procedural issues created by Rule 901(b)(9). *See supra* note 34 and accompanying text. By making Rule 702’s requirements broadly applicable, proposed Rule 707 would also require that the reliability of AI-generated evidence always be evaluated under Rule 104(a)’s preponderance-of-the-evidence standard. As a practical matter, this means that Rule 901(b)(9)’s accuracy requirement—evaluated under Rule 104(b)’s lower “sufficient to support a finding” standard—would be made irrelevant to the evidence’s admissibility. As the Committee put it in its November 2025 agenda, “insofar as there is a concern about the reliability of [AI-generated] evidence, enactment of Rule 707 eclipses Rule 901(b)(9).” A November 2025 addition to the Committee Note explains this relationship. Agenda Book (Nov. 5, 2025), *supra* note 3, at 147; Agenda Book (May 7, 2026), *supra* note 2, at 173-75.

⁵⁹ Agenda Book (May 7, 2026), *supra* note 2, at 173-75.

⁶⁰ *Id.*

One significant difference between expert witnesses and AI processes is that the latter cannot be cross-examined at trial, and the Note acknowledges this as a “concern.”⁶¹ In light of this, the Note reminds opponents of available countermeasures—counter-evidence and impeachment—and suggests the court consider a limiting instruction cautioning the jury that AI-generated evidence can be erroneous and should not be presumed reliable merely because of its source.⁶²

The text and Note provide two more cautionary considerations. First, section (b) states that to satisfy proposed Rule 707’s requirements at foundation, the proponent will “ordinarily” have to provide expert testimony to “explain how the system of artificial intelligence reliably produced the evidence.” Second, the Note warns that the way some AI processes produce their results cannot be fully explained, even by an expert; for the output of such processes, the Note instructs the court to “in most cases find that the proponent has not established more likely than not that the methodology is reliable.” The Committee leaves room for proponents to overcome both presumptions—in the case of an absent expert, through evidence like “convincing validation tests ... indicating a low rate of error,” and for inexplicable processes, through expert testimony on how the machine was trained, supported by similar validation evidence.⁶³

III. Commentary and Controversies

Proposed Rule 707 has generated disagreement on three fronts—its necessity and timeliness, its scope, and the scrutiny it imposes. This part will dedicate a section to each. Understanding these disputes requires revisiting the drafting process—most importantly, the version of proposed Rule 707 published for public comment in 2025. For reference, here is the text of that earlier version (its accompanying Note appears in the appendix):

“Proposed Rule 707 has generated disagreement on three fronts—its necessity and timeliness, its scope, and the scrutiny it imposes.”

Rule 707. Machine-Generated Evidence

(August 2025 draft)

When machine-generated evidence is offered without an expert witness and would be subject to Rule 702 if testified to by a witness, the court may admit the evidence only if it satisfies the requirements of Rule 702(a)-(d). This rule does not apply to the output of simple scientific instruments.⁶⁴

When there is a need to distinguish between this version and the one currently being considered—as will often be the case in this part—this report will use “the 2025 proposal” and “the 2026 proposal” as a shorthand, and “Rule 707” when referring to the proposal generally.

⁶¹ Indeed, this could be a basis for excluding the evidence under the hearsay rule. Some have suggested that AI-generated material is technically not hearsay, because it is not an out-of-court statement by a human being. *See, e.g.,* Edward K. Cheng & G. Alexander Nunn, *Beyond the Witness: Bringing a Process Perspective to Modern Evidence Law*, 97 TEX. L. REV., No. 6, 34 (2019); Testimony Packet (Jan. 29, 2026), *supra* note 30, at 40 (letter from Prof. Andrea Roth, Jan. 15, 2026). Presumably, lawyers would nevertheless challenge such evidence as the written assertion of one or more “declarants” who either prompted, programmed, elicited, or otherwise generated the opinion.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 131-33.

A. Rule 707's Necessity

This section investigates the necessity and timeliness of the new Rule 707 proposal. By now, the existence of the gap in the rules—at least in the eyes of the Committee—seems all but settled. In their objections to the 2025 proposal, a few public commenters contested the gap's existence and, consequently, the necessity of a new rule, but the Committee refuted these arguments in its May 2026 memo, reiterating its assessment that the current rules allow AI-generated evidence offered by itself or alongside lay testimony to achieve admission without independent reliability scrutiny.⁶⁵

But even if the gap exists, it's possible that no proponent would ever be incentivized to take advantage of it. In such a case, proposed Rule 707 could still be seen as unnecessary. One public commenter's written testimony took this angle—contesting the practical necessity of proposed Rule 707 because a proponent's use of the gap is “improbable.”⁶⁶ This testimony cited a 2025 article arguing that it is simply in the best interest of any competent lawyer to pursue expert validation, as it “would be much more persuasive than some lay witness who would be destroyed on cross examination by being unable to explain the technology.”⁶⁷

Another commenter's written testimony explained why this might not be the case. Nowadays, when output from a complex machine process is offered alongside an expert witness, the machine is often what makes inferences from the data and draws the most impactful conclusions. The expert, on the other hand, is often reduced to relaying those conclusions, explaining how the software works, and attesting to its reliability. These are not worthless contributions, and the proponent may sacrifice some persuasive weight by leaving out the expert, but—in addition to saving the cost of hiring one—what they potentially stand to gain is immunity from a *Daubert* challenge that might get their evidence excluded entirely.⁶⁸

As for the extent to which proponents are currently taking advantage of the gap—specifically for AI-generated evidence—there does not appear to be a concrete answer. The Committee was able to identify only one such case in its November 2025 agenda, at the state level. In *State v. Deloney* (Ohio App. 2025), the results of facial recognition software were admitted after a Cincinnati Police Department criminalist testified that he had run surveillance images through the software and that it returned a match with the

⁶⁵ Public Comments (2025-26), *supra* note 5, at 57-60 (comments of Jeannine Kenney, Jan. 5, 2025); Public Comments (2025-26), *supra* note 5, at 373-74 (comments of U.S. Department of Justice, Feb. 13, 2026); Agenda Book (May 7, 2026), *supra* note 2, at 157-60.

⁶⁶ Advisory Committee on Evidence Rules, Hearing on Proposed Amendments to Rule 609 and new Rule 707, Testimony Packet with Schedule and Witness List (Jan. 15, 2026), at 6 (letter from Thomas Y. Allman, Jan. 15, 2026) [hereinafter Testimony Packet (Jan. 15, 2026)], <https://www.uscourts.gov/sites/default/files/document/jan-15-hearing-schedule-and-testimony-packet-final.pdf>.

⁶⁷ *Id.* at 6-7 (quoting James M. Beck, “Federal Judicial Conference Evidence Rules Committee Releases Possible New Rule Pertaining to Artificial Intelligence,” June 2, 2025, <https://www.druganddevicelawblog.com/2025/06/federal-judicial-conference-evidence-rules-committee-releases-possible-new-rule-pertaining-to-artificial-intelligence.html>).

⁶⁸ This commenter pointed to a case, *United States v. Daniels* (S.D. Cal. 2023), in which the federal government opted for this approach, attempting (albeit unsuccessfully) to offer Cellebrite software alongside the affidavit of an FBI forensic examiner, a lay witness. In this affidavit, the forensic examiner claimed “[b]asic mobile phone extraction and processing is a user level task that takes about 5 minutes of instruction and minimal guidance. The software does all the work.” Testimony Packet (Jan. 29, 2026), *supra* note 30, at 41-42 (letter from Prof. Andrea Roth, Jan. 15, 2026).

defendant. The officer was not qualified as an expert on facial recognition technology and neither explained how it worked nor attested to its reliability. As the Committee put it, “[i]f Rule 707 were applicable, it seems unlikely that the testimony would be admissible.”⁶⁹ Beyond this one example, however, there does not appear to be much of a written record of such incidents, although a number of commenters recounted their own experiences, particularly in the criminal context.⁷⁰ One of these commenters, who believes the problem is already prevalent, offered a possible reason for this absence: such issues of admissibility are being inconsistently decided by trial courts “on an ad hoc basis” and “without written opinions or appellate review.”⁷¹

With all this in mind, it makes sense that, even for those who believe the gap poses a real problem, the timeliness of proposed Rule 707 remains up for debate. Many commenters advocated for proposed Rule 707’s postponement, and one notable proponent for closing the gap—acknowledging the proposal as being “somewhat anticipatory in its reach”—stated that delaying the proposal for a year or two would be a “reasonable approach.” In this commenter’s view, the Committee would be better equipped to formulate an effective rule if these emerging issues were allowed to develop further in the courts.⁷² After all, as other commenters pointed out, the stakes of getting it wrong are significant. Lawyers for Civil Justice cautioned that rushing out an “incomplete or inadequate rule is certain to cause more harm.”⁷³ Likewise, another commenter, pointing to the rapid pace of technological advancement, argued that the Committee’s proposal, if enacted, “risks cementing outdated technological concepts in the Federal Rules of Evidence,” a problem

⁶⁹ Agenda Book (Nov. 5, 2025), *supra* note 3, at 131-32 (comment on *State v. Deloney*, 2025 WL 1911860 (Ohio Ct. App. 2025)).

⁷⁰ Commenter Nicole Owens, executive director of the Federal Defender Services of Idaho, reported that the gap was already being exploited, particularly in the criminal context, where complex forensic tools generating expert-like conclusions were proliferating. She claimed that the outputs of “machine-assisted analytical tools” were being “increasingly introduced through law enforcement witnesses, custodians, or case agents who did not design, test, or validate the underlying systems and who cannot explain their analytical foundations.” Commenters Judge Paul W. Grimm and Professor Maura R. Grossman—recounting the experience of a federal judge and signatory to their public comment—noted that it is “not at all unusual” for parties to offer technical evidence without a witness who can speak to the tool’s underlying reliability. In Owens’ verbal testimony, she claimed that this problem had extended to emerging machine-learning technologies like facial recognition and ShotSpotter, but it’s not clear to what extent. At the Committee’s November 2025 meeting, commenter Professor Andrea Roth also affirmed Owens’ broader claim, but observed that courts were not yet fully engulfed in the approaching wave of AI software outputs. Testimony Packet (Jan. 29, 2026), *supra* note 30, at 31-32 (written testimony from Nicole Owens for the Federal Defender Services of Idaho, Jan. 15, 2026); Public Comments (2025-26), *supra* note 5, at 110 (comments of Hon. Paul W. Grimm & Prof. Maura R. Grossman, Jan. 25, 2026); Meeting of the Advisory Committee on Evidence Rules Re: Proposed Amendments to Rule 609 and New Rule 707, Transcript of Proceedings (Jan. 29, 2026), at 52 (testimony of Nicole Owens) [hereinafter Transcript of Proceedings (Jan. 29, 2026)], <https://www.uscourts.gov/sites/default/files/document/2026-01-29-evidence-rules-hearing-transcript.pdf>; Agenda Book (May. 7, 2026), *supra* note 2, at 17 (November 2025 meeting minutes).

⁷¹ Testimony Packet (Jan. 29, 2026), *supra* note 30, at 31-32 (written testimony from Nicole Owens for the Federal Defender Services of Idaho, Jan. 15, 2026).

⁷² Testimony Packet (Jan. 29, 2026), *supra* note 30, at 43 (letter from Prof. Andrea Roth, Jan. 15, 2026).

⁷³ Testimony Packet (Jan. 15, 2026), *supra* note 66, at 22 (comments of Lawyers for Civil Justice, Jan. 5, 2026).

compounded by the many states that would likely follow suit with their own versions of proposed Rule 707.⁷⁴

The Committee appears to have heeded these warnings, and proposed Rule 707 won't see another round of public comments until August 2027.⁷⁵ That said, in its May 2026 agenda, the Committee gave its own warning—that, given the length of the rulemaking process, the effective date of any version of proposed Rule 707 will be at least a couple years out. By then, it expects courts will likely be encountering far more AI-generated evidence than they are today.⁷⁶

B. Proposed Rule 707's Scope

This section explores the topic of scope, which has been a source of significant confusion and controversy. The very first iteration of the proposal, presented to the Committee in 2023, targeted “machine-generated output that, if testified to by a human expert, would be subject to [Rule] 702.”⁷⁷ As the Committee developed the proposal over the next year and a half, however, its focus drifted from “machine-generated output” to “machine learning output.” At times the Committee used the two terms seemingly interchangeably, and it wrote at length about the reliability concerns posed by machine learning specifically.⁷⁸ Eventually, the Committee was dissuaded from centering the language of proposed Rule 707 around the term “machine learning” after it was informed by one commenter that doing so would render the proposal underinclusive.⁷⁹ Following this correction, the Committee moved forward with a version of the proposal it described as “draw[ing] the line between expert-like conclusions and non-expert-like conclusions,”⁸⁰ and by the time the proposal was published for public comment in 2025, that intended scope had not changed.⁸¹

⁷⁴ A few commenters argued that Rule 707 should be delayed until corresponding updates can be made to the notice requirements in the Federal Rules of Criminal Procedure and Civil Procedure. The 2025 proposal's Committee Note states that “the notice principles that would be applicable to expert opinions and reports of examinations and tests should be applied to output offered under this rule,” but these commenters found this to be insufficient. In response, the Committee argued that coordination with the other sets of Federal Rules is unnecessary. It did, however, concede that Rule 707's notice provisions should be more prominently displayed in the Rule's text, and it had the 2026 proposal address this in a new section (c). Public Comments (2025-26), *supra* note 5, at 344-45 (comments of the Federal Courts Committee of the New York City Bar Association, Feb. 13, 2026), 455-56 (comments of National Association of Criminal Defense Lawyers, Feb. 16, 2025); Transcript of Proceedings (Jan. 29, 2026), *supra* note 70, at 15; Agenda Book (May 7, 2026), *supra* note 2, at 47-48, 131-33, 173-75.

⁷⁵ Agenda Book (Oct. 15, 2026), *supra* note 4, at 28 (May 2026 meeting minutes).

⁷⁶ Agenda Book (May 7, 2026), *supra* note 2, at 156.

⁷⁷ Agenda Book (Oct. 27, 2023), *supra* note 4, at 81.

⁷⁸ Advisory Committee on Evidence Rules, Agenda Book (Apr. 19, 2024), at 25 [hereinafter Agenda Book (Apr. 19, 2024)], https://www.uscourts.gov/sites/default/files/2024-04_agenda_book_for_evidence_rules_meeting_final_updated_5-8-2024.pdf; Agenda Book (Nov. 5, 2025), *supra* note 3, at 133-37.

⁷⁹ This commenter later characterized the type of machine output deserving of proposed Rule 707's scrutiny as “any algorithm-generated conclusion that is sufficiently analytical/evaluative in nature that if uttered by a human it would be expert testimony.” Advisory Committee on Evidence Rules, Agenda Book (May 2, 2025), at 199-200 [hereinafter Agenda Book (May 2, 2025)], https://www.uscourts.gov/sites/default/files/document/2025-05_evidence_rules_committee_agenda_book_final.pdf (Professor Andrea Roth told the Committee, “an algorithm need not involve machine learning to be the sort of process or system that produces a machine-generated result and that would raise the issues underlying a proposed 707-like rule”); Public Comments (2025-26), *supra* note 5, at 387 (comments of Prof. Andrea Roth, Feb. 16, 2026).

⁸⁰ Agenda Book (May 2, 2025), *supra* note 79, at 200.

⁸¹ Agenda Book (May 7, 2026), *supra* note 2, at 136.

Thus, while the 2025 proposal was titled “Machine-Generated Evidence,” the Committee recognized not all evidence encompassed by a literal understanding of that phrase deserved scrutiny under Rule 702. To account for this overinclusivity and to approximate the intended scope, the Committee built into proposed Rule 707 several limitations on its application. First, and most notably, the 2025 proposal’s text narrows its application to only machine-generated evidence that “would be subject to Rule 702 if testified to by a witness” (hereinafter the “expert-equivalence requirement”). Second, the 2025 proposal’s text states that it “does not apply to the output of simple scientific instruments.” The Note further characterizes these exempted machines as those “relied upon in everyday life” and also provides a short list of examples: “a mercury-based thermometer, an electronic scale, or a battery-operated digital thermometer.” Third, a final exception appears only in the Note, which states, “[Rule 707] does not apply when the court can take judicial notice that the machine output is reliable.”⁸²

These limitations, combined with some additional explanatory language at the beginning of the Note, may explain why the Committee did not feel the need to include a definition of “Machine-Generated Evidence” in the 2025 proposal. The Committee never intended that phrase alone to define proposed Rule 707’s scope, and no matter how broadly the reader construed it, the Committee believed that these three limitations would properly rein in the proposal’s applicability. In its November 2025 agenda, the Committee expressed confidence that these provisions—combined with “the good sense of the courts”—would ensure that the Rule would “be applied only where it was intended.”⁸³

The expert-equivalence requirement warrants closer examination—what does it mean for machine-generated evidence to “be subject to Rule 702 if testified to by a witness”? While this requirement did the most to define the effective boundaries of the 2025 proposal’s scope, it went relatively underexplained. The Committee Note provides little instruction or elaboration on the evaluation it asked the courts to complete.⁸⁴ The expert-equivalence requirement does not ask the court to determine whether Rule 702 would be triggered in an imagined scenario where the machine output in question is being “testified to by a witness” offered alongside it. Rather, it asks whether Rule 702 would govern a witness who performed the same underlying analysis as the machine and testified to the resulting conclusion—that is, whether such an analysis would require a human to have scientific, technical, or other specialized knowledge. In other words, the question is whether the machine process *functions* like an expert.⁸⁵ The 2025 proposal’s Committee Note implicitly describes this sort of process as one that “make[s] predictions or draw[s] inferences from existing data.”⁸⁶

For example, take the aforementioned software TrueAllele, which, in over 170,000 lines of code, estimates the likelihood that an individual is a contributor to a mixed DNA sample. To do so, it draws statistical inferences from DNA data—precisely the kind of analytical work that, if performed by a human, would require scientific or technical expertise. Thus, its output would certainly satisfy the expert-equivalence requirement, thereby falling under the scope of the 2025 proposal.⁸⁷ In contrast, a server access log, though

⁸² *Id.* at 131-33.

⁸³ Agenda Book (Nov. 5, 2025), *supra* note 3, at 140.

⁸⁴ Agenda Book (May 7, 2026), *supra* note 2, at 131-33.

⁸⁵ *Id.* at 136, 160.

⁸⁶ *Id.* at 131-33.

⁸⁷ Perlin Decl., *supra* note 49, at 2-3; Public Comments (2025-26), *supra* note 5, at 387 (comments of Prof. Andrea Roth, Feb. 16, 2026).

a complex piece of technology, does not function like an expert and would presumably be exempt from the 2025 proposal. It simply records requests made to a web server—capturing the IP address, the time of the request, the resource accessed, and the server’s response code—without performing any analysis or drawing any inferences from that data.⁸⁸

Of course, the expert-equivalence requirement does not draw a perfectly clear line in the sand either, and it is somewhat overinclusive itself. For example, Google Maps data—such as the estimated travel time between two points—is commonly understood not to require expert testimony, yet might be argued or deemed to fall within this requirement.⁸⁹ It appears that the Committee anticipated that such cases would be handled by either the simple scientific instruments exception or, more likely for Google Maps data, the judicial notice exception.⁹⁰

When the 2025 proposal was published for public comment, commenters overwhelmingly disapproved of the exception for “simple scientific instruments,” fearing that the ambiguity of that phrase would cause needless litigation, confusion, and inconsistency among courts.⁹¹ One noted that the relevant question is not the nature of the instrument but the nature of the task it performs,⁹² while another argued that anything “truly simple” would surely be subject to judicial notice under Rule 201. At its January 29th meeting, the Committee arrived at a parallel conclusion: the output of any machine simple enough to qualify would surely not “be subject to Rule 702 if testified to by a witness.”⁹³ Thus, the Committee chose not to include the exception in the 2026 proposal.⁹⁴

Few commenters opposed inclusion of the judicial-notice exception, but the American Association for Justice (AAJ) did argue that this “essential component of the Rule’s application” should appear in the rule text itself, rather than at the end of the Note—a suggestion the Committee accepted for the 2026 proposal.⁹⁵ The Committee did not, however, address concerns that the proposal listed no examples of machine output that would qualify for judicial notice.⁹⁶ Examples might be helpful; while common practices have emerged for the output of machine processes with well-established reliability, such as Google Maps, judicial notice is designed to be decided by the judge on an ad hoc basis, and one might fear the same inconsistent

⁸⁸ Public Comments (2025-26), *supra* note 5, at 400 (comments of Center for Democracy & Technology, Feb. 16, 2026).

⁸⁹ Jeffrey Bellin & Andrew Guthrie Ferguson, *Trial by Google: Judicial Notice in the Information Age*, 108 NW. U. L. REV. 1137, 1163 (2014).

⁹⁰ Agenda Book (Nov. 5, 2025), *supra* note 3, at 140.

⁹¹ Testimony Packet (Jan. 29, 2026), *supra* note 30, at 22 (letter from Stephen Herman, Jan. 14, 2026), 43 (letter from Prof. Andrea Roth, Jan. 15, 2026), 66 (comment of ACLU, Jan. 15, 2026); Testimony Packet (Jan. 15, 2026), *supra* note 66, at 22 (comment of Lawyers for Civil Justice, Jan. 5, 2026), 29 (letter from Jeannine Kenney, Jan. 5, 2026); Public Comments (2025-26), *supra* note 5, at 400 (comments of Center for Democracy & Technology, Feb. 16, 2026), 488 (letter from Innocence Project, Feb. 16, 2026).

⁹² Public Comments (2025-26), *supra* note 5, at 488 (comments of Innocence Project, Feb. 16, 2026).

⁹³ Testimony Packet (Jan. 29, 2026), *supra* note 30, at 43 (letter from Prof. Andrea Roth, Jan. 15, 2026); Transcript of Proceedings (Jan. 29, 2026), *supra* note 70, at 59 (comment of Prof. Daniel J. Capra).

⁹⁴ Agenda Book (May 7, 2026), *supra* note 2, at 162.

⁹⁵ Testimony Packet (Jan. 29, 2026), *supra* note 30, at 53 (statement of Tad Thomas for American Association for Justice, Jan. 29, 2026).

⁹⁶ *Id.* at 29 (letter for David Nagdeman for the National Association of Consumer Advocates, Jan. 15, 2026).

application that threatened to plague the “simple scientific instruments” exception.⁹⁷ To this point, one commenter expressed hope that courts would eventually develop a consistent framework but acknowledged that developing this common law would likely involve a difficult period of transition.⁹⁸

Some commenters, considering the 2025 proposal to be overinclusive, pointed to a wide variety of machine outputs with historically uncontested reliability that they believed would be unjustly swept up and subject to Rule 702’s requirements, thereby burdening proponents. For many of these outputs, while they are indeed “machine-generated evidence” falling outside both the “simple scientific instrument” and judicial notice exceptions, they would still fail the expert-equivalence requirement.⁹⁹ For instance, one commenter offered as an example the output of a server access log, which, as previously explained, would fall outside proposed Rule 707’s scope for this reason.¹⁰⁰ The same can be said for other given examples, such as surveillance camera recordings and timestamps on text messages; in neither case is the machine process behind the output doing anything functionally equivalent to a human expert.¹⁰¹

Still, concerns about overinclusivity are understandable: not all machine output falls squarely in or out of proposed Rule 707’s scope, and, for output swept in, its requirements could prove costly for proponents. Under Rule 702, for a party that already plans to call an expert at trial, having to present that expert at a foundation hearing is not a heavy burden. Under proposed Rule 707, however, if a party’s proffered machine output were objected to as unreliable, that party might have to hire an expert solely to provide foundation testimony the jury will never hear.¹⁰² Of course, judicial notice of the output’s reliability would avoid this, but since a proponent can’t count on that, proper preparation would generally require the party to retain an expert out of an abundance of caution. This would be taxing for any party, and it could be prohibitively expensive for average litigants in low-dollar cases.¹⁰³

Acknowledging some of the concerns about overinclusivity in its May 2026 agenda, the Committee concluded that “the politics of rulemaking, at this point, counsel a shift from the term ‘machine-generated.’” Hoping that a “narrower term at the outset of the rule” would clear up some of the confusion, the Committee shifted to “Evidence Produced by Artificial Intelligence” as the title and “AI-generated evidence” as a shorthand. While the “simple scientific instrument” exception is absent, the expert-equivalence requirement and the judicial notice exception remain. To address the amorphous nature of the term “artificial intelligence,” the Committee included a definition in the 2026 proposal, split between the text and note, and

⁹⁷ Bellin & Guthrie Ferguson, *supra* note 89, at 1163.

⁹⁸ As one indication that consistency might be achievable, this commenter points to an article that provides an analytical framework through which judges can consistently apply judicial notice to “unfamiliar forms of online evidence.” Agenda Book (Oct. 15, 2026), *supra* note 4, at 27 (May 2026 meeting minutes); Transcript of Proceedings (Jan. 29, 2026), *supra* note 70, at 70 (comment by Prof. Andrea Roth); Bellin & Guthrie Ferguson, *supra* note 89, at 1167.

⁹⁹ Public Comments (2025-26), *supra* note 5, at 417-18, 420 (comment of American Association for Justice, Feb. 16, 2026), 459 (comments of National Association of Criminal Defense Lawyers, Feb. 16, 2026), 400 (comments of Center for Democracy & Technology, Feb. 16, 2026).

¹⁰⁰ *Id.* at 400 (comments of Center for Democracy & Technology, Feb. 16, 2026).

¹⁰¹ *Id.* at 417 (comment of American Association for Justice, Feb. 16, 2026).

¹⁰² This, in turn, might prompt a *Daubert* challenge to the foundation expert.

¹⁰³ Testimony Packet (Jan. 29, 2026), *supra* note 30, at 19 (letter from Stephen Herman, Jan. 14, 2026); Public Comments (2025-26), *supra* note 5, at 158 (letter from Stephen Herman, Jan. 30, 2026).

drawn from Congress’s National Artificial Intelligence Initiative Act of 2020:¹⁰⁴

“The term ‘artificial intelligence’ means a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments. Artificial intelligence systems use machine and human-based inputs to—

- (A) perceive real and virtual environments;
- (B) abstract such perceptions into models through analysis in an automated manner; and
- (C) use model inference to formulate options for information or action.”¹⁰⁵

Under a more common understanding of the term “artificial intelligence,” this newest version of the proposal would arguably be underinclusive. For example, TrueAllele, a complex machine process that produces expert-like conclusions, should arguably be covered by proposed Rule 707, but it “does not involve machine learning or generative AI and many computer scientists would not call it ‘artificial intelligence.’”¹⁰⁶ The Committee appears to recognize this, however, and has chosen a particularly broad definition that might, depending on one’s interpretation, include TrueAllele, blood-alcohol analysis software like the Intoxilyzer 9000, and other technologies not conventionally understood as “artificial intelligence” but still warranting *Daubert* scrutiny. Ultimately, with the switch to this new title, it does not appear that the Committee has changed its vision for the type of evidence it thinks should be subject to proposed Rule 707, only the terminology used to approximate that scope.¹⁰⁷

If the Committee ultimately concludes that the 2026 proposal’s title and accompanying definition do not include what it hopes to cover with proposed Rule 707, it might shift to a new title. A number of commenters responded to the 2025 proposal with their own, narrower titles, such as “Computer-Generated Conclusions,” “Machine-Generated Opinions,” and “Machine-Generated Inferential Evidence.”¹⁰⁸ In practice, none of these alternatives would impact the Rule’s applicability, and each would likely require further elaboration in the text or Note. However, they share a semantic virtue the 2025 title lacked: words like “conclusions,” “opinions,” and “inferential” signal up front that the Rule does not apply to everything a machine produces, but only to output of processes that, like expert witnesses, draw inferences and reach conclusions.¹⁰⁹

Lastly, another form of overinclusivity persists even with the 2026 proposal: proposed Rule 707 does not distinguish between AI output generated for litigation purposes and AI output generated in the ordinary

¹⁰⁴ Agenda Book (May 7, 2026), *supra* note 2, at 160-61, 173-74; National Artificial Intelligence Initiative Act of 2020, Pub. L. 116-283, 134 Stat. 3388 (2021) (codified at 15 U.S.C. §§ 9401-61).

¹⁰⁵ Agenda Book (May 7, 2026), *supra* note 2, at 160-61, 173-74; National Artificial Intelligence Initiative Act of 2020, Pub. L. 116-283, 134 Stat. 3388 (2021) (codified at 15 U.S.C. §§ 9401-61).

¹⁰⁶ Public Comments (2025-26), *supra* note 5, at 387 (comments of Prof. Andrea Roth, Feb. 16, 2026).

¹⁰⁷ Agenda Book (May 7, 2026), *supra* note 2, at 161; Agenda Book (Nov. 5, 2025), *supra* note 3, at 142 (on blood-alcohol software belonging under proposed Rule 707); Public Comments (2025-26), *supra* note 5, at 388 (comments of Prof. Andrea Roth, Feb. 16, 2026).

¹⁰⁸ Testimony Packet (Jan. 29, 2026), *supra* note 30, at 45 (letter of Prof. Andrea Roth, Jan. 15, 2026); Testimony Packet (Jan. 15, 2026), *supra* note 66, at 21 (comments of Lawyers for Civil Justice, Jan. 5, 2026); Public Comments (2025-26), *supra* note 5, at 487-88 (comments of Innocence Project, Feb. 16, 2026), 344 (comments of the Federal Courts Committee of the New York City Bar Association, Feb. 13, 2026).

¹⁰⁹ Agenda Book (May 7, 2026), *supra* note 2, at 160.

course of business. Where, like a conventional expert, a party resorts to a machine process to develop analyses, opinions, or other inferences that are likely to assist it at trial, a 702-like analysis makes sense. But where a party actually relied on the output in the ordinary course of business or as the events at issue unfolded, that reliance is itself a strong indication of reliability.¹¹⁰ The use of AI in such circumstances will only become more frequent as businesses continue to adopt emerging technology to enhance growth and profits. Moreover, some AI-generated evidence may not be offered for its accuracy at all, but to establish notice, motive, intent, or some other relevant purpose.

C. Proposed Rule 707's Reliance on Rule 702

This section explores the scrutiny imposed by proposed Rule 707 and its reliance on Rule 702's existing framework. While Rule 702 is geared toward evaluating testimony from a human expert, proposed Rule 707 applies its requirements directly to the output of an expert-like process. This cannot be done without some level of tension.

On a merely semantic level, a few commenters pointed out a problem with the 2025 proposal's approach of simply directing the reader to apply "Rule 702(a)-(d)": as written, these requirements contain language that is confusing when applied to machines, such as "the expert's scientific, technical, or other specialized knowledge" and "the testimony."¹¹¹ The Committee acknowledged this incongruence, and updated the 2026 proposal's language to directly include an adapted version of Rule 702's requirements—one with streamlined language but no substantive changes.¹¹²

Commenters' concerns went beyond this linguistic mismatch, however, with some arguing that Rule 702's testimony-focused framework is simply an improper fit for the output of machine processes. One commenter, for example, voiced concerns about the "critical and fundamental differences" between these two kinds of evidence. In its view, Rule 702 is not built to evaluate the reliability of "AI-generated evidence," which is "not a function of expertise in the human sense, but of upstream system-level choices about how the AI system is developed and tested, and downstream choices about how the AI system is deployed."¹¹³ A few of these commenters went further, proposing that proffered output be governed by a new rule with independent requirements specifically tailored to evaluating machine processes, with some even providing their own list of reliability factors for such a rule to consider.¹¹⁴ One of these commenters, Lawyers for Civil Justice, raised another, more practical problem with relying on Rule 702, arguing that doing so would cause "caselaw and practice" under proposed Rule 707 to develop entangled with Rule

¹¹⁰ See, e.g., Testimony Packet (Jan. 29, 2026), *supra* note 30, at 19 (letter from Stephen Herman, Jan. 14, 2026); Public Comments (2025-26), *supra* note 5, at 61 (comments of Jeannine Kenney, Jan. 5, 2026), 158 (letter from Stephen Herman, Jan. 30, 2026).

¹¹¹ FED. R. EVID. 702. See Testimony Packet (Jan. 29, 2026), *supra* note 30, at 11 (comments of William Carlucci, Jan. 15, 2026); Testimony Packet (Jan. 15, 2026), *supra* note 66, at 19-20 (comments of Lawyers for Civil Justice, Jan. 5, 2026); Public Comments (2025-26), *supra* note 5, at 458-59 (comments of National Association of Criminal Defense Lawyers, Feb. 16, 2026).

¹¹² Agenda Book (May 7, 2026), *supra* note 2, at 167, 173.

¹¹³ Public Comments (2025-26), *supra* note 5, at 401 (comments of Center for Democracy & Technology, Feb. 16, 2026).

¹¹⁴ Testimony Packet (Jan. 15, 2026), *supra* note 66, at 20 (comments of Lawyers for Civil Justice, Jan. 5, 2026); Public Comments (2025-26), *supra* note 5, at 402 (comment of Center for Democracy & Technology, Feb. 16, 2026), 490 (comments of Innocence Project, Feb. 16, 2026).

702’s framework—meaning any future attempt to amend proposed Rule 707 would risk forcing changes to Rule 702 as well.¹¹⁵

In its May 2026 agenda, the Committee responded to some of these more substantial critiques, stating that “there is little to be gained from untethering Rule 707 from the Rule 702 reliability standards, and much to be lost in light of the confusion that would be wrought.”¹¹⁶ As two commenters pointed out in their public comment, there is a lot of benefit to working with a preexisting framework like Rule 702’s, which offers “a tested and familiar method of assessing the validity and reliability of scientific, technical, or specialized evidence” that is “well known to both judges and lawyers.”¹¹⁷ The Committee’s agenda echoed this argument, expressing confidence in judges’ ability to evaluate machine processes under “the flexible Rule 702 standards,” and it pointed out that judges are already doing so when the output of such processes is offered as the basis of expert testimony.¹¹⁸

Moreover, the Committee asserted that the standards of an independent rule, if created, wouldn’t “differ much” from Rule 702’s existing framework. In its view, Rule 702’s requirements “do, in fact, match up well” with the reliability concerns posed by the output of expert-like machine processes, and, thus, many of the substantive changes suggested by commenters are largely unnecessary. To illustrate this, the Committee walked through the list of process-tailored reliability factors provided by one commenter, showing how each can already “be properly evaluated under the reliability requirements of Rule 702.” At the same time, however, the Committee worried that any discrepancies that *did* exist would create “two different reliability regimes,” under which the same AI-generated evidence—depending on whether it’s offered as the basis of expert testimony—“might be found excluded under one rule but not the other.”¹¹⁹

Still, the Committee does not deny that there are reliability concerns specific to the output of expert-like processes; it simply maintains that a freestanding rule is not needed to address them. Instead, the Committee believes that it is sufficient to simply include in proposed Rule 707’s Note, among other guiding commentary, a list of suggested factors for courts to consider when evaluating the reliability of machine processes.¹²⁰ The 2025 proposal’s list had only two factors, but the Committee, drawing from suggestions

¹¹⁵ On the other hand, *Daubert* factors are nonexhaustive and have always been catered to the particular field or method, some of which are “scientific” and others of which are “technical,” without requiring amendments to Rule 702 (see, e.g., *Kumho Tire*). Testimony Packet (Jan. 15, 2026), *supra* note 66, at 20 (comments of Lawyers for Civil Justice, Jan. 5, 2026). Many thanks to Professor Andrea Roth for bringing this point to our attention.

¹¹⁶ Agenda Book (May 7, 2026), *supra* note 2, at 164-66.

¹¹⁷ Public Comments (2025-26), *supra* note 5, at 109 (comments Hon. Paul W. Grimm & Prof. Maura R. Grossman, Jan. 25, 2026).

¹¹⁸ Agenda Book (May 7, 2026), *supra* note 2, at 164-66.

¹¹⁹ There are ways to minimize this disparity while maintaining freestanding requirements. First, proposed Rule 707 could apply to *all* output of expert-like processes. Under this change, both Rule 702 and proposed Rule 707 would apply when such output is offered as the basis of expert testimony—a possibility the Committee made clear it opposes. A further change—making Rule 702 inapplicable to any expert testimony based on such output—would leave proposed Rule 707 as the sole gatekeeper, thereby solving this problem. Doing so, however, would require an amendment to Rule 702—something the Committee is reluctant to do so soon after its 2023 amendment, especially for a solution that, as it put it, is “very user-unfriendly” and “undermines [Rule 702] as the Rule to cover all expert testimony.” *Id.*

¹²⁰ *Id.*

from commenters, expanded the list to five for the 2026 proposal.¹²¹ Lawyers for Civil Justice, an advocate for independent requirements, called the 2025 proposal's list "over-reaching for a Note," but the Committee did not appear to respond to this complaint.¹²²

It's worth noting that many of the factors in this list are just as relevant to evaluating machine output under Rule 702 as under proposed Rule 707. In other words, they address issues that are not solved by the mere presence of an accompanying expert.¹²³ Thus, it could be beneficial, as one commenter suggested, to make these factors applicable to Rule 702 evaluations as well.¹²⁴ This commenter, acknowledging the Committee's opposition to amending Rule 702, proposed that this could be done through Rule 707's Note, a suggestion which, as of now, the Committee does not appear to have weighed in on. If these factors apply only to proposed Rule 707, that could create the same kind of "two different reliability regimes" problem the Committee feared would be caused by independent requirements.¹²⁵

Public commenters also expressed confusion over what the 2025 proposal demanded from its proponents—that is, what kind of showing they would need to make to satisfy its requirements. The 2025 proposal's Note provided little guidance, merely stating that proponents would ordinarily need to provide expert testimony at foundation, because without it, "these reliability standards will be difficult ... and sometimes impossible to meet."¹²⁶ This instruction did not preclude proponents from meeting the rule's standards without an expert, however, and some commenters questioned how that could be done.¹²⁷ Others argued that the possibility should not exist at all—that proposed Rule 707 should *require* an expert to testify at foundation.¹²⁸

The Committee's May 2026 agenda, while amenable to this idea, offered two reasons for hesitation. First, there is the possibility that there might be, now or in the future, other legitimate means of establishing the reliability of expert-like processes. Second, the Committee noted expense to proponents as a concern, but

¹²¹ Agenda Book (May 7, 2026), *supra* note 2, at 174; Testimony Packet (Jan. 29, 2026), *supra* note 30, at 44 (letter from Prof. Andrea Roth, Jan. 15, 2026); Public Comments (2025-26), *supra* note 5, at 176 (comments of Robert Thies, Feb. 6, 2026).

¹²² Testimony Packet (Jan. 15, 2026), *supra* note 66, at 20 (comments of Lawyers for Civil Justice).

¹²³ For example, the list instructs courts to consider "whether the process has been validated in circumstances sufficiently similar to the case at hand." In a 2017 article, the commenter who later went on to suggest this factor observed that under Rule 702, courts often evaluate a process's accuracy based on validation studies that are "conducted under idealized conditions unrepresentative of the challenges of real casework." Agenda Book (May 7, 2026), *supra* note 2, at 174; Agenda Book (Oct. 27, 2023), *supra* note 4, at 408; Roth, *supra* note 23, at 2033.

¹²⁴ Testimony Packet (Jan. 29, 2026), *supra* note 30, at 44 (letter from Prof. Andrea Roth, Jan. 15, 2026).

¹²⁵ It's worth asking whether the presence of an accompanying expert assuages the Committee's concerns about unexplainable machine processes. If not, the Note's warning about such processes might be worth extending as well.

¹²⁶ Agenda Book (May 7, 2026), *supra* note 2, at 132.

¹²⁷ Testimony Packet (Jan. 29, 2026), *supra* note 30, at 58 (comments of the American Civil Liberties Union, Jan. 15, 2026); Public Comments (2025-26), *supra* note 5, at 458 (comments of National Association of Criminal Defense Lawyers, Feb. 16, 2026), 343 (comments of Federal Courts Committee of the New York City Bar Association, Feb. 13, 2026).

¹²⁸ Testimony Packet (Jan. 29, 2026), *supra* note 30, at 57-58 (comments of the American Civil Liberties Union, Jan. 15, 2026) ("there needs to be an opportunity to ask questions of someone with the adequate knowledge and understanding to explain how the computer produced its output," and that "only an expert witness" can facilitate that); see also Public Comments (2025-26), *supra* note 5, at 343 (comments of Federal Courts Committee of the New York City Bar Association, Feb. 13, 2026), 491 (comments of Innocence Project, Feb. 16, 2026).

it also explained why such an obstacle might actually be appropriate. The Committee admitted that “[t]he very hope behind Rule 707 is that [it] will not be used,” that—“like a road sign that says ‘Go Back’”—it will encourage proponents to offer machine output alongside expert testimony at trial instead. If proposed Rule 707 were to offer no way around paying for an expert, proponents may be even more motivated to do so.¹²⁹

Ultimately, the May 2026 agenda offered an alternative draft of proposed Rule 707 requiring expert testimony at foundation, but the Committee chose not to move forward with it.¹³⁰ Instead, the 2026 proposal’s newly added subsection (b), much like the 2025 proposal, makes an expert “ordinarily” required, while leaving open the possibility that, “in exceptional circumstances,” a proponent could satisfy the rule through other means. Unlike the 2025 proposal, however, the 2026 proposal’s Note elaborates on what those other means might look like, offering as an example “convincing validation tests and objective studies indicating a low rate of error.”¹³¹ That said, given how amenable the Committee was to a mandatory expert requirement, such a change may not be off the table in the future.

In its May 2026 agenda, the Committee entertained another suggestion—that proposed Rule 707 should require expert testimony to accompany machine output offered *at trial*. As for what this testimony would actually need to cover, the Committee concluded that it would be enough to simply require that the expert be “subject to cross-examination,” since that’s what its proponents appear to be most concerned about. Though it acknowledges that requiring testimony at trial for a certain kind of evidence “would be a first in the Federal Rules of Evidence,” the Committee did not dismiss this idea outright, and the agenda includes another alternative draft of proposed Rule 707, one which requires a qualified expert to both testify at the foundation hearings and be “subject to cross-examination at trial.”¹³²

This draft, like the other ones in the agenda, directly includes an adapted version of Rule 702’s requirements.¹³³ It could be argued that this is not necessary; by requiring an expert to testify to the output at trial, this version of proposed Rule 707 would automatically implicate Rule 702, and the output would thereby be scrutinized under its requirements as the basis of that testimony. Thus, this requirement alone could close the gap in the rules, and without having to apply Rule 702’s requirements in a new manner. While the Committee does not go quite this far, it does acknowledge that this draft “leads to exactly the same result” as Rule 702—describing it as a “balky way” of reaching that outcome.¹³⁴ Ultimately, however, the Committee chose to proceed with the draft described in Part II, which requires neither foundation testimony nor an expert at trial.¹³⁵

¹²⁹ Agenda Book (May 7, 2026), *supra* note 2, at 167-68.

¹³⁰ *Id.* at 170-72; Agenda Book (Oct. 15, 2026), *supra* note 4, at 28 (May 2026 meeting minutes).

¹³¹ Agenda Book (May 7, 2026), *supra* note 2, at 173-75.

¹³² *Id.* at 168-69, 176-79.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Agenda Book (Oct. 15, 2026), *supra* note 4, at 28 (May 2026 meeting minutes).

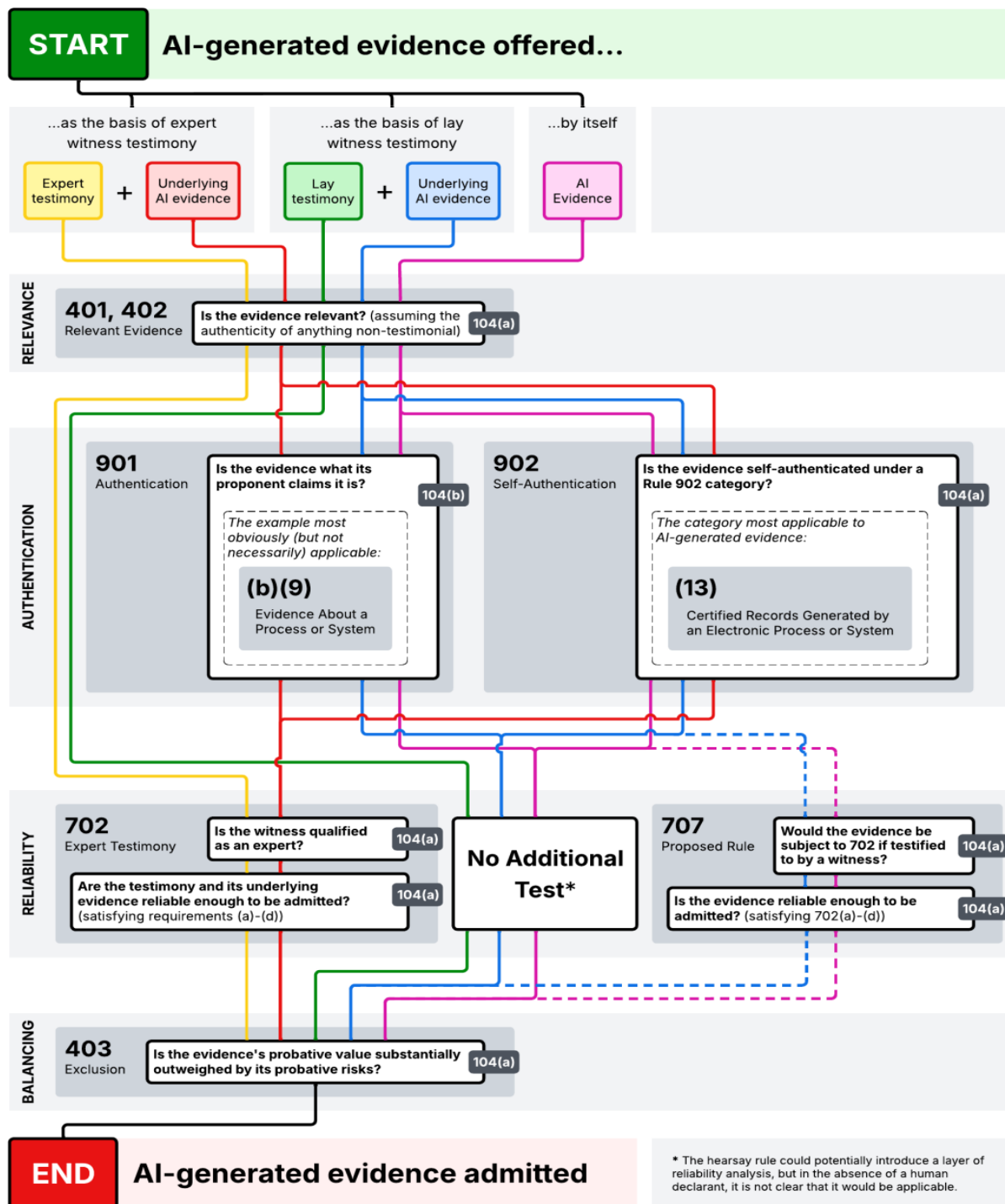
Conclusions and Next Steps

As this report has made clear, proposed Rule 707 has had a lengthy and complicated drafting process, and while much has changed since the May 2025 proposal, the Rule remains a work in progress. As the Advisory Committee on Evidence Rules continues refining the proposal ahead of the 2027 comment period, the questions raised here—over timeliness, scope, and reliance on Rule 702—will likely remain at the center of that conversation.

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Appendix

Flowchart of Rules Governing AI-Generated Evidence



May 2026 Proposal

Rule 707. Evidence Produced By Artificial Intelligence and Presented at Trial Without an Expert

(a) General Rules. If evidence is a product of artificial intelligence and is offered without an expert witness, but would be subject to Rule 702 if testified to by a witness, the proponent must establish that the evidence:

- (i) will help the trier of fact;
- (ii) is based on sufficient facts or data;
- (iii) is the product of reliable principles and methods; and
- (iv) reflects a reliable application of the principles and methods to the facts of the case.

(b) Establishing Admissibility. Admissibility under this rule ordinarily requires the proponent to provide an expert to explain how the system of artificial intelligence reliably produced the evidence; but in exceptional circumstances, the court may find other proof that the output satisfies the requirements of (a)(ii)-(iv).

(c) Notice. The evidence is admissible only if the proponent gives an adverse party reasonable notice of the intent to offer the evidence — so that the party has a fair opportunity to meet it.

(d) Judicial Notice. This rule does not apply to facts that may be judicially noticed under Rule 201.

(e) Definition. In this rule, “artificial intelligence” means a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments.

Committee Note

The admissibility of evidence generated by artificial intelligence (AI) raises questions about reliability. AI involves the use of a computer-based process or system to make predictions or draw inferences from existing data. The concerns about the reliability of that process are akin to the reliability concerns about expert witnesses. Problems include using the process for purposes that were not intended (function creep); analytical error or incompleteness; inaccuracy or bias built into the underlying data or formulas; and lack of interpretability of the machine’s process. Where a testifying expert relies on AI, the validity of that reliance will be scrutinized under the reliability requirements of Rule 702. But if AI is proffered without the accompaniment of a human expert (for example through a witness who applied the program but knows little or nothing about its reliability), Rule 702 is not obviously applicable. Yet it cannot be that a proponent can evade the reliability requirements of Rule 702 by offering AI output directly or through a lay witness, where the output would be subject to Rule 702 if rendered as an opinion by a human expert. Therefore, new Rule 707 provides that if AI is offered without the accompaniment of an expert, and where the output would be treated as expert

testimony if coming from a human expert, its admissibility is subject to requirements that are the same as imposed by Rule 702.

The rule applies when AI-generated evidence is entered directly, but also when it is accompanied by lay testimony. For example, the technician who enters a question and prints out the answer might have no expertise on the validity of the output. Rule 707 would require the proponent to make the same kind of showing of reliability as would be required when an expert testifies on the basis of AI-generated information.

If the AI output is the equivalent of expert testimony, it is not enough that it is self authenticated under Rule 902(13). That rule covers authenticity, but does not assure reliability under the preponderance of the evidence standard applicable to expert testimony — and of course applicable under Rule 707. See Adv. Comm. Note to Rule 902(13) (noting certification authenticating computer output “does not preclude an objection that the information produced is unreliable”).

This rule is not intended to encourage parties to opt for AI evidence over live expert witnesses. Indeed the point of this rule is to provide reliability-based protections when a party chooses to proffer AI evidence instead of a live expert. These reliability standards will ordinarily be impossible to meet without presenting an expert. It is possible, however, that the proponent can establish the requirements of the rule through other evidence, such as convincing validation tests and objective studies indicating a low rate of error.

It is anticipated that a Rule 707 analysis will usually involve the following, among other things:

- Considering whether the inputs into the process are sufficient for purposes of ensuring the validity of the resulting output. For example, the court should consider whether the training data for an AI process is sufficiently representative to render an accurate output for the population involved in the case at hand.
- Considering whether the process has been validated in circumstances sufficiently similar to the case at hand.
- Reviewing information about what records the system keeps, what is deleted, and whether the output can be reproduced or audited.
- Considering whether the process or system has been subject to evaluation by entities independent of the developer, and whether the opponent and independent evaluators have access to the system, e.g., through meaningfully available research licenses.
- Considering whether the opponent has received sufficient information about how and why the process works, including information analogous to that which would be disclosed if the conclusion were that of a human expert.

An AI process can sometimes develop in such a way that nobody is able to explain how the system has reached a result, because the machine has developed the ability to program itself. If the process cannot be explained then the court should in most cases find that the proponent has not established more likely than not that the methodology is reliable. As with experience-based testimony, the proponent is required to show how the methodology leads to a reliable conclusion. See Committee Note to the 2000 amendment to Rule 702 (“If the witness is relying solely or primarily on experience,

then the witness must explain how that experience leads to the conclusion reached, why that experience is a sufficient basis for the opinion, and how that experience is reliably applied to the facts.”). That said, the proponent of AI output may overcome the problem of inexplicability by showing through an expert how the machine got trained and establishing, for example through validation studies, that the process leads to a low rate of error.

Rule 901(b)(9)’s requirement that the process or system “produces an accurate result” is subsumed by the reliability requirements that must be established by a preponderance of the evidence under Rule 702 or 707. Given the fact that the threshold requirement for authenticity is significantly lower than that for reliability, it follows that if machine-generated evidence is qualified under Rule 702 or 707, then it automatically satisfies the lesser requirements of Rule 901(b)(9). In contrast, satisfying Rule 901(b)(9) does not suffice for admissibility.

Under this rule, AI-generated output will be regulated pre-trial by the court in essentially the same way as expert testimony. But there may well be a difference at trial when AI evidence is found by the court to be admissible under this rule, because while an expert is ordinarily required to provide the foundation for admissibility, it would be possible for a proponent to offer that evidence at trial without an expert. A human expert can be cross-examined, and the jury will be able to weigh the expert’s testimony accordingly. But it may be more difficult to attack the weight of AI output. The opponent may be able to introduce reports and data, as well as expert testimony, to undermine the output. Or the opponent might be able to impeach the conclusion by showing prior inconsistencies or specific contradiction, akin to Rule 806. But in the end, the inability to cross-examine is a concern. Accordingly, the court should consider providing a limiting instruction that machine-generated evidence is subject to error and that evidence should not be assumed to be reliable simply because it was produced by a machine.

The rule provides for pre-trial notice, as it is important that the significant reliability issues attend to AI evidence be handled before the trial. The notice provision is intentionally flexible. See the notice provisions in Rules 404(b) and 807. The proponent of AI evidence must also consult the Federal Rules of Civil and Criminal Procedure to determine pretrial obligations.

Rule 707(d) specifically provides that the rule is not applicable if the reliability of an AI process is subject to judicial notice.

The definition of “artificial intelligence” in Rule 707 is taken from the National Artificial Intelligence Initiative Act of 2020 (116 Pub. L. 283 (2021)). That Act also notes that “[a]rtificial intelligence systems use machine and human-based inputs to—(A) perceive real and virtual environments; (B) abstract such perceptions into models through analysis in an automated manner; and (C) use model inference to formulate options for information or action.” This further elaboration by Congress should be considered in determining whether proffered computer-based information is subject to this rule.

August 2025 Proposal

Rule 707. Machine-Generated Evidence

When machine-generated evidence is offered without an expert witness and would be subject to Rule 702 if testified to by a witness, the court may admit the evidence only if it satisfies the requirements of Rule 702(a)-(d). This rule does not apply to the output of simple scientific instruments.

Committee Note

Expert testimony in modern trials increasingly relies on software- or other machine-based conveyances of information. Machine-generated evidence can involve the use of a computer-based process or system to make predictions or draw inferences from existing data. When a machine draws inferences and makes predictions, there are concerns about the reliability of that process, akin to the reliability concerns about expert witnesses. Problems include using the process for purposes that were not intended (function creep); analytical error or incompleteness; inaccuracy or bias built into the underlying data or formulas; and lack of interpretability of the machine's process. Where a testifying expert relies on such a method, that method—and the expert's reliance on it—will be scrutinized under Rule 702. But if machine or software output is presented without the accompaniment of a human expert (for example through a witness who applied the program but knows little or nothing about its reliability), Rule 702 is not obviously applicable. Yet it cannot be that a proponent can evade the reliability requirements of Rule 702 by offering machine output directly [or through a lay witness], where the output would be subject to Rule 702 if rendered as an opinion by a human expert. Therefore, new Rule 707 provides that if machine output is offered without the accompaniment of an expert, and where the output would be treated as expert testimony if coming from a human expert, its admissibility is subject to the requirements of Rule 702(a)-(d).

The rule applies when machine-generated evidence is entered directly, but also when it is accompanied by lay testimony. For example, the technician who enters a question and prints out the answer might have no expertise on the validity of the output. Rule 707 would require the proponent to make the same kind of showing of reliability as would be required when an expert testifies on the basis of machine-generated information.

If the machine output is the equivalent of expert testimony, it is not enough that it is self authenticated under Rule 902(13). That rule covers authenticity, but does not assure reliability under the preponderance of the evidence standard applicable to expert testimony.

This rule is not intended to encourage parties to opt for machine-generated evidence over live expert witnesses. Indeed the point of this rule is to provide reliability-based protections when a party chooses to proffer machine-generated evidence instead of a live expert. It is anticipated that these reliability standards will be difficult to meet — and sometimes impossible to meet — without presenting expert testimony. For example, without expert testimony it may be very difficult for a proponent to establish that the data used in the process is not biased and is sufficient for the task

performed. Likewise, it may be difficult to establish a rate of error, and the explicability of the process, in the absence of expert testimony.

It is anticipated that a Rule 707 analysis will usually involve the following, among other things:

- Considering whether the inputs into the process are sufficient for purposes of ensuring the validity of the resulting output. For example, the court should consider whether the training data for a machine learning process is sufficiently representative to render an accurate output for the population involved in the case at hand.
- Considering whether the process has been validated in circumstances sufficiently similar to the case at hand.

A machine learning process can sometimes develop in such a way that nobody is able to explain how the system has reached a result, because the machine has developed the ability to program itself. If the process cannot be explained then the court should in most cases find that the proponent has not established more likely than not that the methodology is reliable. As with experience-based testimony, the proponent is required to show how the methodology leads to a reliable conclusion. See Committee Note to the 2000 amendment to Rule 702 (“If the witness is relying solely or primarily on experience, then the witness must explain how that experience leads to the conclusion reached, why that experience is a sufficient basis for the opinion, and how that experience is reliably applied to the facts.”). That said, the proponent of machine learning output may overcome the problem of inexplicability by showing how the machine got trained and establishing, for example through validation studies, that the process leads to a low rate of error.

The final sentence of the rule is intended to give trial courts sufficient latitude to avoid unnecessary litigation over the output from simple scientific instruments that are relied upon in everyday life. Examples might include the results of a mercury-based thermometer, an electronic scale, or a battery-operated digital thermometer. Moreover, the rule does not apply when the court can take judicial notice that the machine output is reliable. See Rule 201. The

Rule 702(b) requirement of sufficient facts and data, as applied to machine-generated evidence, should focus on the information entered into the process or system that leads to the output offered into evidence.

All questions regarding the reliability of machine-generated evidence are now regulated under Rules 702 and 707. Rule 901(b)(9)’s requirement that the process or system “produces an accurate result” is subsumed by the reliability requirements that must be established by a preponderance of the evidence under Rule 702 or 707. Given the fact that the threshold requirement for authenticity is significantly lower than that for reliability, it follows that if machine-generated evidence is qualified under Rule 707 or 702, then it automatically satisfies the lesser requirements of Rule 901(b)(9). In contrast, satisfying Rule 901(b)(9) does not suffice for admissibility.

Under this rule, machine-generated output will be regulated pre-trial by the court in essentially the same way as expert testimony. But there may well be a difference at trial when machine-generated evidence is found by the court to be admissible under this rule. A human expert can be cross-

examined, and the jury will be able to weigh the expert's testimony accordingly. But it may be more difficult to attack the weight of machine output. The opponent may be able to introduce reports and data, as well as expert testimony, to undermine the output. But in the end, the inability to cross-examine is a concern. Accordingly, the court should consider providing a limiting instruction that machine-generated evidence is subject to error and that evidence should not be assumed to be reliable — or unreliable — simply because it was produced by a machine.

Because Rule 707 applies the requirements of admitting expert testimony under Rule 702 to machine-generated output, the notice principles that would be applicable to expert opinions and reports of examinations and tests should be applied to output offered under this rule.