

**RETHINKING FEDERAL RULE OF EVIDENCE 707: RELIABILITY AND
TRANSPARENCY IN AI-GENERATED EVIDENCE**

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ABSTRACT

As artificial intelligence continues to become an increasingly common tool in the modern legal profession, it is important for the United States to not fall behind in regulating it. Artificial intelligence is being relied upon more and more to support modern trials, but the current Federal Rules of Evidence do not address AI specific concerns, such as a lack of traceability, non-reproducibility, or algorithmic reliability. This regulatory gap leaves attorneys and fact finders uncertain about how such evidence should be evaluated.

This Article analyzes the current status of evidentiary rules regarding human and machine-generated expert witnesses and argues that the proposed Federal Rule of Evidence 707 should be amended to better fit the unique demands of artificial intelligence. Specifically, this Article argues that the current draft of the proposed rule does not sufficiently address concerns such as bias and hallucinations. Additionally, there are key distinctions between human and AI experts, such as AI's inability to be cross examined as a human typically is, that make admissibility determinations difficult. To better address these concerns, this Article recommends amending the proposed rule to include a four-part test requiring the AI-generated evidence to be relevant to the facts at issue, transparency in the use of AI, accurate and detailed record-keeping, and requiring the evidence to be based on sufficient inputs in the use of AI-generated evidence. This Article aims to demonstrate how the recommended amendment would more sufficiently address these concerns as well as promote reliability in the judicial system.

Table of Contents

<i>I. INTRODUCTION</i>	247
<i>II. CURRENT LEGAL FRAMEWORKS AND EMERGING APPROACHES TO AI-GENERATED EVIDENCE</i>	250
A. The Rise of AI-Generated Evidence and Its Impact on the Courts ..	250
B. Existing Federal Rules Provide the Current Framework for Assessing the Admissibility of AI-Generated Evidence	254
C. International Guidance: The European Union Artificial Intelligence Act	260
<i>i. Designation of “High-Risk” AI Systems in Legal Contexts</i>	261
<i>ii. Adoption Within the United States</i>	263
D. Scholarly and Policy Perspectives on Regulating AI Evidence	265
<i>III. REFORMING RULE 707 TO ENSURE RELIABILITY, TRANSPARENCY, AND FAIRNESS</i>	270
A. Rule 707 Should be Amended to Better Promote Reliability and Fairness in Civil Litigation	271
<i>i. Purpose and Scope of the Proposed Rule</i>	274
<i>ii. Addressing AI-Specific Reliability and Bias Concerns</i>	277
B. The United States Should Adopt the EU’s Transparency Requirements for AI-Generated Evidence	280
C. Existing Rules Fail to Address the Distinct Nature of AI-Generated Evidence	282

IV. CONCLUSION..... 285

I. INTRODUCTION

[1] Artificial intelligence (AI) is rapidly becoming more prevalent in both personal and professional lives across the globe.¹ By 2028, global spending on AI is expected to exceed \$632 billion.² This increase in use may be due to the ability of AI tools to make the performance of tasks more efficient, cost-effective, and easy.³ Despite these advantages, AI still has significant risks associated with its use, such as bias and hallucinations.⁴ These defects undermine evidentiary standards, such as reliability, falsifiability, and reproducibility, by generating outputs that are sometimes inaccurate or inconsistent.⁵ AI-generated evidence also raises unique concerns, such as a lack of traceability and non-reproducibility.⁶

¹ See Jeremiah Chew & Justin Davidson, *The Interaction Between Intellectual Property Laws and AI: Opportunities and Challenges*, NORTON ROSE FULBRIGHT (Nov. 2024), <https://www.nortonrosefulbright.com/en/knowledge/publications/c6d47e6f/> [<https://perma.cc/T86C-HQK8>].

² Kristen Libonati, *Man vs. Machine: Proposed Federal Rule of Evidence 707 Aims to Combat Artificial Intelligence Usage in the Courtroom Through Expert Testimony Standards*, VILLANOVA L. REV. ONLINE (Sept. 22, 2025), <https://www.villanovawlawreview.com/post/3458-man-vs-machine-proposed-federal-rule-of-evidence-707-aims-to-combat-artificial-intelligence-usage-in-the-courtroom-through-expert-testimony-standard> [<https://perma.cc/YEF5-G8L9>].

³ Marjorie Richter, *How AI Is Transforming the Legal Profession*, THOMSON REUTERS (Aug. 18, 2025), <https://legal.thomsonreuters.com/blog/how-ai-is-transforming-the-legal-profession/> [<https://perma.cc/6ZXX-VKRA>].

⁴ *When AI Gets It Wrong: Addressing AI Hallucinations and Bias*, MIT SLOAN TEACHING, https://mitsloanedtech.mit.edu/ai/basics/addressing-ai-hallucinations-and-bias/#Biased_Content.

⁵ See Matthew Hutson, *Artificial Intelligence Faces Reproducibility Crisis*, 359 SCIENCE 725, 725–26 (2018), <https://www.science.org/doi/10.1126/science.359.6377.725> [<https://perma.cc/6ZQJ-YSEE>].

⁶ *Id.*

[2] One of the sources of these evidentiary concerns is the black box nature of some AI systems.⁷ This problem arises from AI's reliance on complex machine learning algorithms that humans are not easily able to audit or understand.⁸ This issue, known as the black box problem, is "an inability to fully understand an AI's decision-making process and the inability to predict the AI's decisions or outputs" that results from a lack of transparency in the AI's algorithm.⁹ Without knowing how an AI algorithm generated a certain output, it is difficult, or even impossible, to determine whether that output is reliable, biased, or the result of a hallucination.¹⁰

[3] The unique risks associated with AI demand new regulations to address them effectively.¹¹ To ensure that AI-generated evidence meets the long-held standards for the admissibility of expert testimony, the Judicial Committee on Rules of Practice and Procedure (the Committee) proposed a new rule, Federal Rule of Evidence 707 (Proposed Rule 707), in April 2024.¹²

⁷ See Yavar Bathaee, *The Artificial Intelligence Black Box and the Failure of Intent and Causation*, 31 HARV. J.L. & TECH. 889, 901 (2018).

⁸ *Id.*

⁹ *Id.* at 901, 905.

¹⁰ *See id.* at 891–92.

¹¹ See JUDICIAL CONF. U.S., COMM. ON RULES PRAC. & PROC., *Standing Agenda Book 75–77* (2025), <https://www.uscourts.gov/sites/default/files/document/2025-06-standing-agenda-book.pdf> [<https://perma.cc/7E82-B9WW>].

¹² ADVISORY COMM. ON EVIDENCE RULES, AGENDA BOOK FOR MEETING OF APRIL 19, 2024, 25 (2024), https://www.uscourts.gov/sites/default/files/2024-04_agenda_book_for_evidence_rules_meeting_final_updated_5-8-2024.pdf [hereinafter April 2024 Evidence Rules Agenda Book] [<https://perma.cc/8D8G-U23R>].

[4] This Article addresses the issue of how existing evidentiary rules are insufficient to govern the use of AI-generated evidence.¹³ Part II provides a background in the current rules governing AI-generated evidence, including Federal Rule of Evidence 702.¹⁴ It describes gaps where the current rules leave courts without clear guidance, such as when AI-generated evidence is introduced with a lay witness or without an accompanying human expert at all.¹⁵ It also describes international efforts to regulate AI, such as the European Union Artificial Intelligence Act, and similar efforts within individual states in the United States, such as the Colorado Artificial Intelligence Act.¹⁶

[5] Part III then analyzes Proposed Rule 707, including its goals and limitations. Part III first argues that Proposed Rule 707 is necessary to avoid inconsistent applications of admissibility standards across jurisdictions and to promote reliability. Additionally, Part III argues that the current draft of Proposed Rule 707 does not adequately regulate the admissibility of AI-generated evidence because it fails to address the unique concerns surrounding such evidence.¹⁷ Part III then recommends a four-part test requiring AI-generated evidence to be relevant to understanding the facts at issue, transparency in the use of machine-generated outputs, detailed and

¹³ See FED. R. EVID. 702.

¹⁴ See *infra* Section II.B (discussing the current evidentiary framework for expert testimony).

¹⁵ See *infra* Section II.B (discussing the current evidentiary framework for expert testimony).

¹⁶ See *infra* Section II.C (describing the European Union Artificial Intelligence Act).

¹⁷ See Standing Agenda Book, *supra* note 11, at 75 (discussing concerns regarding reliability and bias in machine-generated evidence and the limitations of existing evidentiary rules).

accurate record keeping, and reliability disclosures.¹⁸ Finally, Part III explains how amending the rule will better promote the goals of fairness and reliability in civil litigation and recommends that the United States follow the European Union and Colorado's lead in regulating AI.¹⁹

II. CURRENT LEGAL FRAMEWORKS AND EMERGING APPROACHES TO AI-GENERATED EVIDENCE

[6] Like in many professions, AI is rapidly integrating into the legal profession.²⁰ This Part outlines the current regulations governing expert testimony as well as the progress being made towards regulating AI-generated evidence, then describes international efforts in regulating AI, including regulating its use in the judicial system.²¹

A. The Rise of AI-Generated Evidence and Its Impact on the Courts

[7] AI is widely being embraced as a tool to augment lawyers' skills in the legal profession.²² According to a Bloomberg Law survey, 63% of attorneys working either as in-house counsel or in a law firm have used AI

¹⁸ See *infra* Part III.A (proposing amendments to Federal Rule of Evidence 707 incorporating relevance, transparency, record-keeping, and reliability requirements).

¹⁹ See *infra* Part III.A–C (proposing a four-part test for AI-generated evidence and discussing its necessity).

²⁰ See generally Richter, *supra* note 3.

²¹ See Standing Agenda Book, *supra* note 11, at 75–76; see also Council Regulation 2024/1689 of the European Parliament and of the Council of 13 June 2024 on Artificial Intelligence, 2024 O.J. (L) 1 [hereinafter EU AI Act].

²² See generally Richter, *supra* note 3; see also Janet Chanchal, *Analysis: Generative AI in Legal Practice—Who's Using It and How*, BLOOMBERG LAW (Aug. 14, 2025, at 10:00 ET), <https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-generative-ai-in-legal-practice-whos-using-it-and-how> [<https://perma.cc/8XXV-BA78>].

for work.²³ Around two-thirds of this reported use is for legal research.²⁴ This use is observed across all experience levels.²⁵ Attorneys with five to nine years of legal experience report the highest use of AI in their practice, with almost 80% using AI.²⁶ Even in the group reporting the lowest usage of AI, attorneys with 30 or more years of experience, over half of the attorneys reported using AI for work.²⁷ This high reliance on the use of AI means there is also a high risk of faulty machine outputs being utilized.

[8] Common examples of the ways attorneys use AI include drafting court filings, namely briefs and motions, and in e-discovery.²⁸ When drafting court filings, AI can suggest relevant authorities, arguments, and potential counterarguments.²⁹ This all happens within seconds, making the drafting process much more efficient.³⁰

[9] The application of AI to these tasks has had significant risks despite the advantages offered.³¹ In *Mata v. Avianca*, for example, an attorney was sanctioned under Rule 11 of the Federal Rules of Civil Procedure after filing

²³ Chanchal, *supra* note 22.

²⁴ Richter, *supra* note 3, at 6.

²⁵ Richter, *supra* note 3, at 6.

²⁶ Richter, *supra* note 3, at 6.

²⁷ Richter, *supra* note 3, at 6.

²⁸ Richter, *supra* note 3, at 6.

²⁹ Richter, *supra* note 3, at 6–7.

³⁰ Richter, *supra* note 3, at 6–7.

³¹ See *Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443, 448 (S.D.N.Y. 2023) (showing an example of an attorney misusing AI in the court system).

a motion that cited multiple hallucinated cases.³² The court later discovered that the attorney had relied on ChatGPT without verifying the cases it provided.³³ The court found that the inclusion of these hallucinated cases, along with the attorney's failure to admit fault when confronted, wasted judicial resources and opposing counsel's time and money.³⁴ The court also emphasized that relying on nonexistent cases threatened to damage the court's reputation and the public's confidence in the judicial process.³⁵

[10] When AI-generated results are relied on without transparency or verifying its accuracy, courts risk making decisions based on inaccurate authorities or incorporating unreliable information into the judicial record.³⁶ This would go against essential principles in civil litigation, such as reliability and fairness.

[11] Identifying, collecting, and reviewing discovery documents is another example of a time-consuming task that AI can help with.³⁷ Discovery often requires attorneys to sort through large amounts of lengthy documents.³⁸ In fact, some large firms may have millions of files to sort

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 448–49.

³⁵ *Id.* at 448–49.

³⁶ *See Mata*, 678 F. Supp. 3d at 448–49.

³⁷ Todd Itami, *AI Will Soon Transform The E-Discovery Industrial Complex*, LAW360, (Feb. 6, 2025, at 15:10 ET), <https://www.law360.com/healthcare-authority/articles/2291251/ai-will-soon-transform-the-e-discovery-industrial-complex> [<https://perma.cc/UFR6-84UW>].

³⁸ *How AI Enhances Legal Document Review*, A.B.A., L. TECH. TODAY, (Feb. 13, 2025), https://www.americanbar.org/groups/law_practice/resources/law-technology-today/2025/how-ai-enhances-legal-document-review/ [<https://perma.cc/QQ52-XMRV>].

through across their cases.³⁹ By quickly reviewing documents and summarizing relevant information, AI-assisted document review during e-discovery may be appealing to both attorneys and their clients.⁴⁰ For example, generative AI can quickly flag important information, such as names and dates, within a large set of documents.⁴¹ This can greatly reduce the time an attorney spends on discovery.⁴² In turn, this can also reduce costs for the client.⁴³

[12] Attorneys should remain aware of confidentiality, reliability, and hallucinations when using AI in e-discovery or drafting.⁴⁴ For example, privileged information could be revealed to other users of an AI system if an attorney does not take the proper steps to ensure the client's information is not used to train the AI model.⁴⁵ These examples show that courts are increasingly confronted with machine-generated content without a clear

³⁹ Itami, *supra* note 37.

⁴⁰ *How AI Enhances Legal Document Review*, *supra* note 38 (discussing how utilizing AI in document review can save time and reduce costs).

⁴¹ *How AI Enhances Legal Document Review*, *supra* note 38 (discussing how utilizing AI in document review can save time and reduce costs).

⁴² *How AI Enhances Legal Document Review*, *supra* note 38 (discussing how utilizing AI in document review can save time and reduce costs).

⁴³ *How AI Enhances Legal Document Review*, *supra* note 38 (discussing how utilizing AI in document review can save time and reduce costs).

⁴⁴ *AI and eDiscovery: A New Era in Legal Technology*, CELLEBRITE (Jan. 22, 2025), <https://cellebrite.com/en/ai-and-ediscovery-a-new-era-in-legal-technology/> [<https://perma.cc/FW46-BVCV>].

⁴⁵ David A. Shargel, *Avoiding Risk: AI's Double-edged Role in e-Discovery*, REUTERS (Oct. 8, 2025, at 10:08 ET), <https://www.reuters.com/legal/legalindustry/avoiding-risk-ais-double-edged-role-e-discovery--pracin-2025-10-08/> [<https://perma.cc/KRC2-3JDM>].

framework for evaluating its reliability.⁴⁶ In response to the concerns surrounding the use of AI by attorneys, the Judicial Committee on Rules of Practice and Procedure is aiming to revise the existing Federal Rules of Evidence to address the use of machine-generated evidence more effectively.⁴⁷

B. Existing Federal Rules Provide the Current Framework for Assessing the Admissibility of AI-Generated Evidence

[13] Expert witnesses have specialized skills and knowledge that are used in litigation to aid the trier of fact in “understanding complex technical or scientific issues.”⁴⁸ In modern litigation, expert testimony “increasingly relies on software or other machine-based conveyances of information.”⁴⁹ The admissibility of expert testimony is currently governed by Federal Rule of Evidence 702 (Rule 702) and the *Daubert* standard.⁵⁰ These standards have been in place since 1975 and 1993, respectively.⁵¹ Prior to *Daubert*, the *Frye* standard’s “general acceptance” test governed, which required that expert testimony be based on “well-recognized scientific principle[s]” that had “gained general acceptance in the particular field in which it belongs.”⁵² In *Daubert*, the court found that the “general acceptance” test in *Frye* was

⁴⁶ See, e.g., Itami, *supra* note 37; Shargel, *supra* note 45 (illustrating ways practitioners and courts are confronted with artificial intelligence).

⁴⁷ Standing Agenda Book, *supra* note 11, at 75.

⁴⁸ *Expert Witness*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/expert_witness [<https://perma.cc/M3SH-XB4F>].

⁴⁹ Standing Agenda Book, *supra* note 11, at 75.

⁵⁰ See FED. R. EVID. 702; *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993).

⁵¹ See FED. R. EVID. 702; *Daubert*, 509 U.S. 579.

⁵² *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).

inconsistent with Rule 702 and excessively rigid.⁵³ To provide courts with increased discretion in admitted expert testimony, the court stated that judges have a “gatekeeping” role that requires them to analyze principles and methodology supporting an expert’s conclusions.⁵⁴

[14] In 2000, Congress amended Rule 702 to clarify *Daubert*’s holding and emphasize judges’ gatekeeping authority.⁵⁵ The Rule was again amended in 2023 to clarify further the Rule’s requirements and promote uniformity in its application.⁵⁶ The 2023 amendment also emphasizes methodology reliability, mirroring current concerns with AI-generated evidence.⁵⁷ As amended, the rule states:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:

- (a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert’s opinion reflects a reliable application of the principles and methods to the facts of the case.⁵⁸

⁵³ *Daubert*, 509 U.S. at 588–89.

⁵⁴ *Id.* at 585–97.

⁵⁵ See *Recent Rule: Federal Rule of Evidence – Expert Testimony – Judicial Conference Amends Rule 702*, 138 HARV. L. REV. 899, 900 (2025).

⁵⁶ *Id.* at 901–02.

⁵⁷ See FED. R. EVID. 702 (referencing the advisory committee’s note to the 2023 amendment).

⁵⁸ FED. R. EVID. 702.

[15] Courts currently evaluate AI-generated evidence through two existing evidentiary rules: Rule 702 when the evidence is treated as expert testimony, and Federal Rule of Evidence 901 (Rule 901) when it is not.⁵⁹ Rule 901 governs the authentication of evidence presented in a federal court and requires the party presenting the evidence to show that the item of evidence is what they claim it is.⁶⁰ For example, a party presenting a document as evidence may have a witness with knowledge of it testify as to its authenticity.⁶¹ AI-generated evidence that does not get characterized as expert testimony, and is therefore governed by Rule 901, may include AI-enhanced images and videos or Google Earth “tacks.”⁶² To prove the authenticity of the latter, for example, the proponent is required to show that the “machine is reliable and correctly calibrated” and the inputted data (the GPS coordinates) is accurate.⁶³

[16] When AI-generated evidence rises to the level of expert testimony, Rule 702 currently governs its admissibility.⁶⁴ While Rule 702 and *Daubert* provide a comprehensive framework for courts to use when evaluating the admissibility of human expert testimony, they do not directly guide courts

⁵⁹ See generally FED. R. EVID. 702; FED. R. EVID. 901.

⁶⁰ FED. R. EVID. 901.

⁶¹ See FED. R. EVID. 901(b)(1).

⁶² *United States v. Lizarraga-Tirado*, 789 F.3d 1107, 1108, 1110 (9th Cir. 2015); Natalie Runyon, *Deepfakes on Trial: How Judges Are Navigating AI Evidence Authentication*, THOMSON REUTERS (May 8, 2025), <https://www.thomsonreuters.com/en-us/posts/ai-in-courts/deepfakes-evidence-authentication/> [<https://perma.cc/P6YB-GXZF>] [hereinafter Runyon, *Deepfakes on Trial*].

⁶³ *Lizarraga-Tirado*, 789 F.3d at 1110.

⁶⁴ Standing Agenda Book, *supra* note 11, at 75–76.

in handling the admissibility of machine outputs when they are presented without an expert witness.⁶⁵ Under the current rules, when a court evaluates a human expert who relied on AI, it examines the expert's methodology, which may include the expert's explanation of the AI system's methods.⁶⁶ When the evidence is presented without a testifying expert, the admissibility analysis becomes less clear.⁶⁷

[17] This issue could arise when a lay witness uses an AI program, without knowing its reliability, to reach a certain conclusion.⁶⁸ For example, AI can quickly analyze medical images, including MRIs, to assist in diagnosing conditions.⁶⁹ Although a radiology technician may be able to testify about how the scan was performed and how the AI system was used, they might not be able to verify the accuracy of the results.⁷⁰ While they may be able to describe the output, the machine itself is making inferences based on automated training data to form its conclusion. AI may also be used in accident reconstruction during a personal injury case.⁷¹ AI can be used to quickly analyze data, such as from event data recorders in a vehicle,

⁶⁵ Standing Agenda Book, *supra* note 11, at 76, 96.

⁶⁶ See FED. R. EVID. 702(c).

⁶⁷ See Standing Agenda Book, *supra* note 11, at 76.

⁶⁸ Standing Agenda Book, *supra* note 11, at 76.

⁶⁹ *10 Innovative Examples of AI in Medicine*, ST. GEORGE'S UNIV. SCH. MED. BLOG (Mar. 26, 2024), <https://www.sgu.edu/school-of-medicine/blog/ai-in-medicine-and-healthcare/> [<https://perma.cc/GF4J-H5YY>].

⁷⁰ Standing Agenda Book, *supra* note 11, at 75–76.

⁷¹ See Roselli & McNelis, *AI Evidence in Florida Injury Cases: How Technology Shapes the Courtroom* (Aug. 18, 2025), <https://www.rosellimcnelis.com/ai-evidence-in-florida-injury-cases-how-technology-shapes-the-courtroom/> [<https://perma.cc/JQ5A-4X3J>] (showing one example of a personal injury firm who advertises the use and benefit of AI in accident reconstruction).

and generate a model showing a potential sequence of events.⁷² If this model is generated by an insurance claims adjuster, rather than an expert in physics or engineering, Rule 702 does not apply.⁷³ Like the radiology technician described above, the insurance claims adjuster would have limited or no insight into the accuracy of the generated model.⁷⁴

[18] Because AI outputs lack transparent reasoning, neither Rule 702 nor 901 fully resolves admissibility concerns.⁷⁵ In April 2024, the Judicial Committee on Rules of Practice and Procedure proposed Federal Rule of Evidence 707 to govern the use of AI-generated evidence presented without a human expert.⁷⁶ The proposed rule takes the established rule, Federal Rule of Evidence 702, and applies it to AI-generated evidence.⁷⁷ Proposed Rule 707 aims to prevent parties from submitting AI-generated evidence without having to demonstrate its reliability.⁷⁸ The rule would apply in two scenarios: (1) where the AI-generated evidence is entered directly, or (2) where “it is accompanied by lay testimony,” such as with the radiology technician described above.⁷⁹ It would not apply when a human expert accompanies the evidence, as Rule 702 already addresses this scenario.⁸⁰

⁷² *Id.*

⁷³ *Id.*; FED. R. EVID. 702 (stating that an expert witness is one who is qualified by their knowledge, training, education, etc.).

⁷⁴ See Standing Agenda Book, *supra* note 11, at 75–76.

⁷⁵ See Standing Agenda Book, *supra* note 11, at 75–77.

⁷⁶ April 2024 Evidence Rules Agenda Book, *supra* note 12, at 25.

⁷⁷ Standing Agenda Book, *supra* note 11, at 75.

⁷⁸ Standing Agenda Book, *supra* note 11, at 76.

⁷⁹ Standing Agenda Book, *supra* note 11, at 76.

⁸⁰ Standing Agenda Book, *supra* note 11, at 76.

[19] In their May 2025 meeting, the Committee discussed amending the rule so that it better meet Proposed Rule 707’s goal of regulating “machines that learn things like humans.”⁸¹ This version of the proposed rule would specifically apply to machine learning processes or systems rather than applying broadly to machine-generated outputs.⁸² Machine learning under this rule would mean “an application of artificial intelligence that is characterized by providing systems the ability to automatically learn and improve on the basis of data or experience, without being explicitly programmed.”⁸³ This version of the rule was ultimately not the one chosen for publication, however, because the Committee was worried it would be underinclusive.⁸⁴ Instead, the Committee decided to allow courts to assess whether or not machine-generated evidence is an “expert-like” conclusion.⁸⁵

[20] In August 2025, the Committee voted 8–1 to publish the proposed rule for public comments.⁸⁶ The public comment period is scheduled to last until February 16, 2026.⁸⁷

⁸¹ ADVISORY COMM. ON EVIDENCE RULES, AGENDA BOOK FOR MEETING OF MAY 2, 2025, at 72 (2025), https://www.uscourts.gov/sites/default/files/2025-04/2025-05_evidence_rules_committee_agenda_book_final.pdf [<https://perma.cc/XFT2-XSSW>] [hereinafter May 2025 Evidence Rules Agenda Book].

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.* at 73.

⁸⁵ *Id.*

⁸⁶ Kaitlyn E. Stone et al., *New Evidence Rule 707 Would Set Standards for Ai-Generated Courtroom Evidence*, NAT’L L. REV. (Aug. 21, 2025), <https://natlawreview.com/article/new-evidence-rule-707-would-set-standards-ai-generated-courtroom-evidence> [<https://perma.cc/FHM4-7Q4H>].

⁸⁷ *Id.*

C. International Guidance: The European Union Artificial Intelligence Act

[21] Although rules surrounding the use of AI in litigation are still developing, the European Union (EU) is currently rolling out regulations for the use of AI systems.⁸⁸ These regulations, the European Union Artificial Intelligence Act (EU AI Act), seek to govern the use of various AI systems based on their applicable risk level.⁸⁹

[22] The EU AI Act was initially proposed by the European Commission in 2021 to ensure that AI use in the EU is “safe, transparent, traceable, non-discriminatory and environmentally friendly.”⁹⁰ The legislation was officially adopted in June 2024, but the implementation of its requirements is spread out across three years.⁹¹ For example, the requirements for high-risk AI systems are scheduled to go into effect after 36 months.⁹²

⁸⁸ *EU AI Act: First Regulation on Artificial Intelligence*, EUROPEAN PARLIAMENT, <https://www.europarl.europa.eu/topics/en/article/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence#what-parliament-wanted-in-ai-legislation-2> [<https://perma.cc/Q9ZU-FAE5>] (last updated June 8, 2023, at 17:46 ET).

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

i. Designation of “High-Risk” AI Systems in Legal Contexts

[23] Under the EU AI Act, AI systems are divided into four groups according to their risk levels: unacceptable, high, limited, and minimal.⁹³ AI systems with an unacceptable risk level are banned from use.⁹⁴ Unacceptable AI systems include “social scoring” systems that classify people “based on their social behavior[]r or known, inferred or predicted personal or personality characteristics” when the social score leads to detrimental or unfavorable treatment.⁹⁵ High-risk AI systems are those that “negatively affect safety or fundamental rights” and are subject to requirements outlined in chapter three of the act.⁹⁶ High-risk systems include those used in education and vocational training; employment; and “migration, asylum, and border control management.”⁹⁷ Limited risk systems, such as AI chatbots, are subject only to light transparency requirements.⁹⁸ Minimal risk systems, although identified, are not regulated by this legislation.⁹⁹ The distinction between the different risk levels was intended to regulate to the extent necessary without inhibiting innovation.¹⁰⁰

⁹³ *EU AI Act: First Regulation on Artificial Intelligence*, *supra* note 88.

⁹⁴ *Id.*

⁹⁵ EU AI Act, *supra* note 21, at art. 5.

⁹⁶ *EU AI Act: First Regulation on Artificial Intelligence*, *supra* note 89; *High-Level Summary of the AI Act*, FUTURE OF LIFE INST., <https://artificialintelligenceact.eu/high-level-summary> [<https://perma.cc/RM5R-E3FG>] (last updated May 30, 2024).

⁹⁷ EU AI Act, *supra* note 21, at annex III.

⁹⁸ *High-Level Summary of the AI Act*, *supra* note 96.

⁹⁹ *Id.*

¹⁰⁰ *The Future of AI: The Parliament’s Roadmap for the EU*, EUROPEAN PARLIAMENT, [https://www.europarl.europa.eu/topics/en/article/20220422STO27705/the-future-of-ai-](https://www.europarl.europa.eu/topics/en/article/20220422STO27705/the-future-of-ai-261)

[24] One “high-risk” system that the legislation recognizes in Annex III is AI systems used “to assist a judicial authority in researching and interpreting facts and the law,” such as in litigation and alternative dispute resolution.¹⁰¹ This classification is due to the potential impact on fundamental rights, such as “the right to a fair trial and to an effective remedy.”¹⁰²

[25] Some of the key requirements set out in the EU AI Act are detailed record-keeping and transparency.¹⁰³ For example, Article 13 requires that high-risk AI systems have instructions allowing deployers¹⁰⁴ to appropriately interpret and use a system’s output, as well as outlines the requirements of such instructions.¹⁰⁵ These requirements were drafted to ensure that Parliaments’ goal of ensuring that the use of AI is “safe, transparent, traceable, non-discriminatory and environmentally friendly” is met.¹⁰⁶ Additionally, Article 12 mandates “the automatic recording of events (logs) over the lifetime of the system” and describes the minimum

the-parliament-s-roadmap-for-the-eu [<https://perma.cc/227C-9G37>] (last updated May 3, 2022, at 16:21 ET).

¹⁰¹ EU AI Act, *supra* note 21, at annex III.

¹⁰² Katerina Entcheva & Ioana Mazilescu, *Artificial Intelligence and the Digitalisation of Judicial Cooperation: The Main Provisions in Recent EU Legislation*, EUR. L. FORUM (Jan. 21, 2025), <https://eucrim.eu/articles/artificial-intelligence-and-digitalisation-of-judicial-cooperation/> [<https://perma.cc/4C77-23Q4>].

¹⁰³ EU AI Act, *supra* note 21, at art. 12, 13.

¹⁰⁴ EU AI Act, *supra* note 21, at art. 3 (defining a “deployer” as a natural or legal person, public authority, agency or other body using an AI system under its authority except where the AI system is used in the course of a personal non-professional activity).

¹⁰⁵ EU AI Act, *supra* note 21, at art. 13.

¹⁰⁶ EU AI Act: *First Regulation on Artificial Intelligence*, *supra* note 88.

requirements of these logs.¹⁰⁷ For example, the minimum record-keeping requirements for a high-risk AI system are:

- (a) recording of the period of each use of the system (start date and time and end date and time of each use);
- (b) the reference database against which input data has been checked by the system;
- (c) the input data for which the search has led to a match;
- (d) the identification of the natural persons involved in the verification of the results.¹⁰⁸

ii. Adoption Within the United States

[26] In contrast with the EU, the United States has historically taken a laissez-faire approach to AI regulation.¹⁰⁹ The goal of this approach is primarily to encourage innovation.¹¹⁰ The laissez-faire approach relies on self-regulation and assumes that technology companies are in the best position to evaluate and address risks.¹¹¹ Although AI regulations are not currently widespread in the United States, individual states have started to adopt legislation regulating AI.¹¹²

¹⁰⁷ EU AI Act, *supra* note 21, at art. 12.

¹⁰⁸ EU AI Act, *supra* note 21, at art. 12.

¹⁰⁹ Florence G'Sell, *Regulating Under Uncertainty: Governance Options for Generative AI 3*, STAN. CYBER POL'Y CENTER 15 (2024), <https://cyber.fsi.stanford.edu/content/regulating-under-uncertainty-governance-options-generative-ai> [<https://perma.cc/77NE-CSFE>].

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Stephanie-Solange Campbell, Analysis: *Why Colorado's New AI Law Is Set to Make a Splash*, BL (Aug. 18, 2025, at 10:00 ET), <https://news.bloomberglaw.com/bloomberglaw-analysis/analysis-why-colorados-new-ai-law-is-set-to-make-a-splash> [<https://perma.cc/L4P9-AWDA>].

[27] Colorado is the first state to model legislation based on the EU AI Act.¹¹³ In May 2024, the state enacted the Colorado Artificial Intelligence Act (CAIA), which is the first comprehensive regulation of AI within the United States.¹¹⁴ This legislation is narrower in scope than the EU AI Act.¹¹⁵ Unlike the EU AI Act's broad goal of ensuring the AI systems used within the EU are safe and trustworthy, the CAIA specifically addresses algorithmic discrimination against consumers.¹¹⁶

[28] Like the EU AI Act, the CAIA distinguishes between risk levels and focuses on transparency and fairness in the use of AI.¹¹⁷ It aims to protect against algorithmic discrimination in “high risk” systems, “defined as one used to make, or that plays a substantial role in making, a decision that materially impacts a person’s life.”¹¹⁸ These systems include those impacting education enrollment, employment, and housing.¹¹⁹ The CAIA is scheduled to take effect in February of 2026, making Colorado the first state in the United States to enact legislation regulating AI.¹²⁰

¹¹³ *Id.*

¹¹⁴ S.B. 24-205, 2024 Gen. Assemb., 74th Sess. (Colo. 2024); Campbell, *supra* note 112.

¹¹⁵ Campbell, *supra* note 112.

¹¹⁶ *EU AI Act: First Regulation on Artificial Intelligence*, *supra* note 88; Campbell, *supra* note 112, at 16–17.

¹¹⁷ Campbell, *supra* note 112, at 16.

¹¹⁸ Campbell, *supra* note 112, at 16.

¹¹⁹ Campbell, *supra* note 112, at 16; Stuart D. Levi, *Colorado’s Landmark AI Act: What Companies Need to Know*, SKADDEN INSIGHTS (June 24, 2024), <https://www.skadden.com/insights/publications/2024/06/colorados-landmark-ai-act> [<https://perma.cc/R4EA-RU9S>].

¹²⁰ Campbell, *supra* note 112, at 16.

[29] The CAIA imposes obligations on both deployers and developers that require them to use reasonable care to “protect consumers from any known or reasonably foreseeable risk of algorithmic discrimination” that arises from using high-risk AI systems.¹²¹ For example, developers are required to provide deployers and other developers with documentation that discloses the type of data used to train the AI system.¹²² Deployers’ responsibilities under the CAIA include implementing a risk management policy and notifying consumers when a high-risk AI system will be used in making a consequential decision relating to the consumer.¹²³ These requirements reflect the core principles of the CAIA: accountability, transparency, and fairness.¹²⁴

D. Scholarly and Policy Perspectives on Regulating AI Evidence

[30] Scholars and practitioners have differing views on whether a new evidentiary rule governing AI-generated evidence is necessary.¹²⁵ There are currently three primary perspectives: existing rules are sufficient to regulate admissibility, a new evidentiary rule is necessary, and transparency should be a focus in regulation.¹²⁶

¹²¹ Colo. S.B. 24-205, at 6.

¹²² S.B. 24-205 § 6-1-1702, 2024 Gen. Assemb., 74th Sess. (Colo. 2024).

¹²³ S.B. 24-205 § 6-1-1702, 2024 Gen. Assemb., 74th Sess. (Colo. 2024).

¹²⁴ Campbell, *supra* note 112, at 17.

¹²⁵ See *infra* Part II.D.i–iii (describing the three primary views on the necessity of the proposed rule).

¹²⁶ See *infra* Part II.D.i–iii (describing the three primary views on the necessity of the proposed rule).

[31] The first group of practitioners believes that the current standards governing the admissibility of expert testimony are sufficient to address AI-generated evidence.¹²⁷ This includes the United States Department of Justice (DOJ), the representative of which was the single dissenting vote for the publication of the proposed rule.¹²⁸ According to the DOJ, Rule 702 “already covers the use of machine-generated evidence,” making the proposed rule unnecessary.¹²⁹ In addition to believing Rule 702 sufficiently addresses AI-generated evidence, critics also believe the rule aims to predict and regulate a future need.¹³⁰ Because the current case law involving AI is extremely limited, this perspective emphasizes waiting to spend time and resources on a new rule because it may be premature.

[32] Critics of the proposed rule also argue that the scope of the rule is too narrow.¹³¹ The risks associated with AI, such as bias, are still present even when the AI-generated evidence is presented with a human expert.¹³² According to this group, a distinct rule for AI-generated evidence presented without an expert witness is unnecessary.¹³³

¹²⁷ See e.g. Standing Agenda Book, *supra* note 11, at 93 (discussing the DOJ’s reasons for opposing the publication of proposed Federal Rule of Evidence 707).

¹²⁸ See e.g., Standing Agenda Book, *supra* note 11, at 22.

¹²⁹ Standing Agenda Book, *supra* note 11, at 283.

¹³⁰ Standing Agenda Book, *supra* note 11, at 283.

¹³¹ Jarod Stewart & Henry Legg, *Rules Governing AI in Courtrooms Lag Behind Tech Advancement*, BL (July 22, 2025, at 04:30 ET), <https://news.bloomberglaw.com/us-law-week/rules-governing-ai-in-courtrooms-lag-behind-tech-advancement> [<https://perma.cc/Z6HG-CJF2>].

¹³² *Id.*

¹³³ James M. Beck, *Federal Judicial Conference Evidence Rules Committee Releases Possible New Rule Pertaining to Artificial Intelligence*, DRUG & DEVICE L. BLOG (June 2, 2025), <https://www.druganddevicelawblog.com/2025/06/federal-judicial-conference->

[33] The second perspective on the necessity of Proposed Rule 707 believes that the distinct nature of AI necessitates a new rule.¹³⁴ According to these practitioners, the current evidentiary rules don't adequately address the unique challenges caused by AI-generated evidence.¹³⁵ For example, proponents of a new rule point out that while a human expert can be cross-examined on their methods, the same cannot be done with an algorithm.¹³⁶ This viewpoint emphasizes the need for the evidentiary rules to keep up with rapidly advancing technology.¹³⁷

[34] One scholar under this perspective on the proposed rule is Andrea Roth, a Professor of Law and Barry Tarlow Chancellor's Chair in Criminal Justice at the University of California, Berkley School of Law.¹³⁸ Roth aided in the drafting process of the Proposed Rule by offering suggestions and feedback.¹³⁹ In her proposal to the Committee, Roth argues that a major concern is that machines are now thinking and making out-of-court statements like people would.¹⁴⁰ Despite this technological advancement,

evidence-rules-committee-releases-possible-new-rule-pertaining-to-artificial-intelligence.html [https://perma.cc/J3CG-6P8Z].

¹³⁴ See, e.g., Stewart & Legg, *supra* note 131 (arguing that the Federal Rules of Evidence were not designed for the challenges of artificial intelligence).

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ See April 2024 Evidence Rules Agenda Book, *supra* note 12, at 17.

¹³⁹ See ADVISORY COMM. ON EVIDENCE RULES, AGENDA BOOK FOR MEETING OF NOV. 8, 2024, at 250-51 (2025), https://www.uscourts.gov/sites/default/files/2024-11_evidence_rules_committee_meeting_agenda_book_final_10-24.pdf [https://perma.cc/QTU8-KK3C] [hereinafter Nov. 2024 Evidence Rules Agenda Book]; May 2025 Evidence Rules Agenda Book, *supra* note 81, at 72.

¹⁴⁰ Nov. 2024 Evidence Rules Agenda Book, *supra* note 139, at 250-51.

machines cannot be cross-examined like people can be.¹⁴¹ This makes applying the hearsay rule, which would apply to out-of-court statements made by humans, difficult and unhelpful.¹⁴²

[35] When proposing changes to the current evidentiary rules, Roth highlighted a few reliability problems that are inherent in machine-generated outputs.¹⁴³ These include “subjective selection and interpretation of data, contextual bias, applying learning to areas not originally envisioned, and inaccessibility to source codes and data collection practices.”¹⁴⁴

[36] Another major concern in this perspective is that under *Daubert*, judges act as gatekeepers to determine whether expert testimony is reliable and valid.¹⁴⁵ Attorneys who believe a new rule is necessary have indicated that “many judges may not be technologically savvy enough” to make this determination when it comes to AI.¹⁴⁶ From this perspective, a new rule is necessary to guide judges’ decisions in this area.¹⁴⁷

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ Jack Karp, *New AI Evidence Rule Is a Good Start, But More Is Needed*, LAW360 PULSE (Aug. 27, 2025, at 16:15 ET), <https://www.law360.com/pulse/articles/2381199/new-ai-evidence-rule-is-a-good-start-but-more-is-needed> [<https://perma.cc/VZ8S-C65N>].

¹⁴⁶ *Id.*

¹⁴⁷ *See id.*

[37] A third group of practitioners emphasize the importance of transparency in the use of AI-generated evidence.¹⁴⁸ While this view recognizes the usefulness of acknowledged AI in litigation, such as improving jurors' understanding of complex issues, it is also skeptical of the risk of unacknowledged AI.¹⁴⁹

[38] Unacknowledged AI may include fabricated or manipulated evidence known as deepfakes.¹⁵⁰ For example, a party in a family law case might attempt to persuade the decision maker to award them custody by producing an "AI-generated cellphone recording of their spouse."¹⁵¹ Deepfakes pose a unique evidentiary authenticity challenge because they are unable to be consistently and reliably identified.¹⁵² Because Rule 901 sets a low bar for admissibility, the authenticity of this AI-generated evidence is often left to the jury.¹⁵³ Without clear guidelines and

¹⁴⁸ Evelina Gentry, *The Challenges of Integrating AI-Generated Evidence Into the Legal System*, AKERMAN LLP (June 12, 2024), <https://www.akerman.com/en/perspectives/the-challenges-of-integrating-ai-generated-evidence-into-the-legal-System.html> [<https://perma.cc/75SV-BQDP>]; Natalie Runyon, *AI Evidence in Jury Trials: Navigating the New Frontier of Justice*, THOMSON REUTERS (Oct. 6, 2025), <https://www.thomsonreuters.com/en-us/posts/ai-in-courts/ai-evidence-trials/> [<https://perma.cc/F94M-LRAK>] [hereinafter Runyon, *AI Evidence in Jury Trials*].

¹⁴⁹ Runyon, *AI Evidence in Jury Trials*, *supra* note 148.

¹⁵⁰ Runyon, *AI Evidence in Jury Trials*, *supra* note 148.

¹⁵¹ Frank Young, *A Deepfake Evidentiary Rule (Just in Case)*, UNIV. OF ILLINOIS CHICAGO . LIBR. (July 3, 2025), <https://library.law.uic.edu/news-stories/a-deepfake-evidentiary-rule-just-in-case/> [<https://perma.cc/5BFQ-D5EL>]; Jack Karp, *AI Deepens 'Quicksand' Landscape For Evidentiary Measures*, LAW360 PULSE (April 16, 2025, at 16:27 ET), <https://www.law360.com/pulse/articles/2320591/ai-deepens-quicksand-landscape-for-evidentiary-measures> [<https://perma.cc/MD26-UFGT>].

¹⁵² James Bickford, *AI Is Coming, But the Rules Aren't Ready*, GEO. L. TECH. REV. (Jan. 2025), <https://georgetownlawtechreview.org/ai-is-coming-but-the-rules-arent-ready/GLTR-01-2025/> [<https://perma.cc/P23R-YKBZ>].

¹⁵³ Runyon, *Deepfakes on Trial*, *supra* note 62; Bickford, *supra* note 152.

transparency, there is a risk of evidence incorrectly being believed or disbelieved due to the jury's being unable to identify deepfakes.¹⁵⁴

[39] Disclosing how and when AI was used would allow other parties and judges to identify and evaluate AI-generated evidence, such as deepfakes, early on.¹⁵⁵ According to this view, mandating transparency when using AI is a major step towards a positive implementation of AI in enhancing modern litigation.¹⁵⁶

III. REFORMING RULE 707 TO ENSURE RELIABILITY, TRANSPARENCY, AND FAIRNESS

[40] This Article adopts the previously described necessity and reformist views on the proposed rule.¹⁵⁷ Because Proposed Rule 707 does not adequately address concerns with machine-generated evidence, it should be amended to ensure reliability, transparency, and fairness in litigation.¹⁵⁸

¹⁵⁴ Bickford, *supra* note 152.

¹⁵⁵ *C.f.* Bickford, *supra* note 152 (discussing how undetected AI-generated evidence is often left for the jury, who may not be equipped to analyze such evidence, to determine whether it is authentic).

¹⁵⁶ *See* Gentry, *supra* note 148.

¹⁵⁷ *See supra* Part II.D (describing the necessity and sufficiency views on the necessity of the proposed rule).

¹⁵⁸ *See* Standing Agenda Book, *supra* note 11, at 75–77; *see generally* Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 589–95 (1993).

A. Rule 707 Should be Amended to Better Promote Reliability and Fairness in Civil Litigation

[41] The current draft of Proposed Rule 707 takes an established rule, Federal Rule of Evidence 702, and applies it to machine-generated evidence.¹⁵⁹ It states that such evidence may be admitted “only if it satisfies the requirements of Rule 702 (a–d).”¹⁶⁰ Although Proposed Rule 707 is essential for the judicial system to keep up with increasingly advanced and prevalent technology, the current draft of the rule is insufficient to address specific concerns with AI, such as reliability issues and inaccurate information.¹⁶¹

[42] To better address specific concerns regarding AI-generated evidence, this Article proposes that the committee amends Proposed Rule 707 as follows:

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 following requirements:

- (a) the machine’s inferences or predictions “will help the trier of fact to understand the evidence or to determine a fact in issue”,¹⁶²
- (b) the parties are transparent in the use of a machine;
- (c) the parties keep detailed and accurate records of the prompts and responses given; and
- (d) the machine’s inferences or predictions result from inputs sufficient for ensuring the validity of the machine’s outputs.

¹⁵⁹ Standing Agenda Book, *supra* note 11, at 77.

¹⁶⁰ *Id.* at 75.

¹⁶¹ *See id.* at 75–77.

¹⁶² FED. R. EVID. 702.

This rule does not apply to the output of basic scientific instruments.¹⁶³

[43] Amending Rule 707 to include the above requirements will better serve the purpose of the proposed rule.¹⁶⁴ Each requirement mirrors existing reliability considerations under Rule 702 while directly addressing the unique concerns raised by AI.¹⁶⁵

[44] First, the AI-generated evidence must be relevant to the trier of fact's understanding of the facts at issue.¹⁶⁶ Like with Rule 702 expert witness testimony, the evidence presented should assist the trier of fact in understanding potentially complex issues, not cause further confusion or be distracting.¹⁶⁷

[45] Second, requiring transparency will help courts ensure the evidence presented is based on "reliable principles and methods" as required by Rule 702(c).¹⁶⁸ If a party does not disclose the use of a machine, the court cannot

¹⁶³ See Standing Agenda Book, *supra* note 11, at 77.

¹⁶⁴ *Id.* at 75–76 (describing the Committee's goal of preventing parties from evading Rule 702 requirements when presenting AI-generated evidence).

¹⁶⁵ See FED. R. EVID. 702; *When AI Gets It Wrong: Addressing AI Hallucinations and Bias*, *supra* note 5 (describing unique concerns associated with AI, such as bias and hallucinations).

¹⁶⁶ See FED. R. EVID. 702(a).

¹⁶⁷ See FED. R. EVID. 702(a); FED. R. EVID. 702 advisory committee's notes on proposed rules (emphasizing that expert testimony must assist the trier of fact in understanding a topic they likely would not otherwise).

¹⁶⁸ See FED. R. EVID. 702(c).

determine whether the evidence is reliable without unnecessary delay or difficulty.¹⁶⁹

[46] Third, record keeping requirements allow other parties and the court to determine whether the evidence “reflects a reliable application of the principles and methods” to the facts at issue, as required by Rule 702(d).¹⁷⁰ Under Rule 702(d), the expert can explain the method they chose and how the method was applied to the particular facts.¹⁷¹ An AI system, however, cannot be examined in the same manner.¹⁷² Additionally, some AI systems, such as generative AI, typically do not produce the same response when given the same or a similar prompt.¹⁷³ By requiring parties to keep an accurate and detailed record of the inputs and outputs, parties have the opportunity to assess the system’s reliability.¹⁷⁴

[47] Finally, ensuring that the machine’s conclusions are the result of valid inputs mirrors the requirement in Rule 702(b) that testimony is “based on sufficient facts or data.”¹⁷⁵ This change in language is necessary to allow

¹⁶⁹ See *Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443, 448–49 (S.D.N.Y. 2023) (stating that the respondent wasted the time of both opposing counsel and the court by using undisclosed AI).

¹⁷⁰ See FED. R. EVID. 702(d).

¹⁷¹ See FED. R. EVID. 702 (emphasizing the advisory committee’s note (2000)).

¹⁷² See *Stewart & Legg*, *supra* note 131.

¹⁷³ See *Hutson*, *supra* note 5.

¹⁷⁴ See EU AI Act, *supra* note 21, at art. 12 (requiring logging of AI system operations to ensure traceability).

¹⁷⁵ See FED. R. EVID. 702(b).

courts to ensure the outputs are reliable without the ability to cross examine the machine.¹⁷⁶

i. Purpose and Scope of the Proposed Rule

[48] Proposed Rule 707 is intended to govern the use of machine-generated evidence when offered without a human expert witness.¹⁷⁷ Rule 707 would apply when machine-generated evidence is offered on its own or when accompanied by lay witness testimony.¹⁷⁸ In cases where a human expert is present to testify as to the use and reliability of a machine, Rule 702 is still sufficient to govern the human expert's testimony.¹⁷⁹

[49] Some critics of the proposed rule, most notably the United States Department of Justice, argue that it is unnecessary because the scope and purpose of Rule 702 already sufficiently addresses concerns regarding the admissibility of machine-generated evidence.¹⁸⁰ Also, they argue that the proposed rule is seeking to predict and regulate future needs.¹⁸¹ However, as technology is quickly changing and being adopted within the judicial system, clear guidance is needed to regulate its use.¹⁸² Additionally, Rule

¹⁷⁶ See Stewart & Legg, *supra* note 131.

¹⁷⁷ Standing Agenda Book, *supra* note 11, at 75–76.

¹⁷⁸ Standing Agenda Book, *supra* note 11, at 75–76.

¹⁷⁹ See ADVISORY COMM. ON EVIDENCE RULES, AGENDA BOOK FOR MEETING OF NOV. 5, 2025, at 117 (2025), https://www.uscourts.gov/sites/default/files/document/202511_evidence_rules_committee_agenda_book_final.pdf [<https://perma.cc/6NEK-EQFS>] (confirming that Rule 702 still governs when AI-generated evidence is accompanied by a human expert witness) [hereinafter Nov. 2025 Evidence Rules Agenda Book].

¹⁸⁰ Standing Agenda Book, *supra* note 11, at 93.

¹⁸¹ Standing Agenda Book, *supra* note 11, at 93.

¹⁸² See Standing Agenda Book, *supra* note 11, at 75.

702 does not sufficiently address the type of evidence that the proposed rule aims to regulate.¹⁸³ Other critics argue that the rule is overly narrow.¹⁸⁴ These critics argue that Proposed Rule 707 is likely to rarely be applicable and suggest broadening the rule to include all evidence generated by AI instead.¹⁸⁵

[50] The critiques raised by those opposed to the proposed rule overlook regulatory gaps in the current rules of evidence and misinterpret the scope of the rule. While Rule 702 does provide a broad evidentiary rule that judges can use to evaluate expert testimony, it does not address the unique challenges of AI.¹⁸⁶ As discussed above, Rule 702 assumes that the expert will be able to testify about the methods they applied and how such method was applied.¹⁸⁷ However, as noted, AI is unable to explain its methodology in a similar manner.¹⁸⁸

[51] Additionally, although machine-generated evidence has reliability concerns whether or not it is accompanied by a human expert, Rule 702 is sufficient to govern a human expert testifying alongside machine-generated

¹⁸³ Standing Agenda Book, *supra* note 11, at 75–77.

¹⁸⁴ See Beck, *supra* note 133.

¹⁸⁵ See Beck, *supra* note 133.

¹⁸⁶ See Stewart & Legg, *supra* note 131.

¹⁸⁷ See *supra* Part II.A (discussing AI’s inability to explain its methods and how such methods were applied).

¹⁸⁸ See *supra* Part II.A (discussing AI’s inability to explain its methods and how such methods were applied).

evidence.¹⁸⁹ In that scenario, the human expert's reliability is the main concern.¹⁹⁰ This critique, however, misunderstands the purpose of the proposed rule.¹⁹¹ Proposed Rule 707 was intentionally drafted to apply only when AI-generated evidence is presented without an accompanying human expert witness.¹⁹² The Committee aims to prevent parties from evading the requirements of Rule 702 by offering AI-generated evidence either directly or with a lay witness.¹⁹³

[52] While the requirements of Proposed Rule 707 may lead to increased costs by creating additional disclosure and record keeping obligations, it is still necessary for the Committee to provide clear guidance on the admission of AI-generated evidence.¹⁹⁴ This guidance is essential for maintaining fairness and reliability in the judicial system.

[53] Examples of the proposed rule's applicability may include analysis reports in products liability cases or diagnostic tools in medical malpractice cases.¹⁹⁵ Proposed Rule 707 prevents parties from using lay witnesses to introduce potentially unreliable evidence, such as a technician who simply

¹⁸⁹ See Nov. 2025 Evidence Rules Agenda Book, *supra* note 179, at 117 (confirming that Rule 702 still governs when AI-generated evidence is accompanied by a human expert witness).

¹⁹⁰ See FED. R. EVID. 702

¹⁹¹ See Standing Agenda Book, *supra* note 11, at 76.

¹⁹² See Standing Agenda Book, *supra* note 11, at 76.

¹⁹³ See Standing Agenda Book, *supra* note 11, at 76.

¹⁹⁴ See Libonati, *supra* note 2.

¹⁹⁵ Frank Young, *Proposed New FRE 707*, UNIV. ILL. CHI. L. LIBR. (July 3, 2025), https://library.law.uic.edu/news-stories/proposed-new-fre-707/#_ednref10 [<https://perma.cc/8F5J-TGQ8>].

printed an AI-generated report but has limited knowledge as to the program's reliability in the above medical malpractice example.¹⁹⁶

[54] As stated in the current version of the rule, Proposed Rule 707 does not apply to basic machines such as thermometers.¹⁹⁷ These instruments offer objective data points rather than predictions or opinions.¹⁹⁸ Instead, the admissibility of the results from these instruments is governed by Federal Rule of Evidence 901.¹⁹⁹ The exclusion of these basic, objective scientific instruments shows that rule 707 is intended to apply to AI and machine learning because of its ability to present an "opinion," similar to an expert witness.²⁰⁰ The rule should therefore be drafted to address concerns relating to the use of AI.

ii. Addressing AI-Specific Reliability and Bias Concerns

[55] As amended, Proposed Rule 707 would more efficiently address reliability and bias concerns. Although AI can increase efficiency and convenience in legal research, it also has risks such as bias and hallucinations.²⁰¹ "Hallucinations" refer to fabricated information produced by AI tools that can appear to be authentic.²⁰² In the legal profession, AI

¹⁹⁶ See Standing Agenda Book, *supra* note 11, at 76.

¹⁹⁷ See Standing Agenda Book, *supra* note 11, at 76.; FED. R. EVID. 901.

¹⁹⁸ See FED. R. EVID. 702.

¹⁹⁹ See FED. R. EVID. 901.

²⁰⁰ See Nov. 2024 Evidence Rules Agenda Book, *supra* note 179, at 250–51.

²⁰¹ See *What Are the Risks of AI in Law Firms?*, BL (May 23, 2024), <https://pro.bloomberglaw.com/insights/technology/what-are-the-risks-of-ai-in-law-firms/#litigation-risks> [<https://perma.cc/EGT6-RB5S>] (identifying risks of AI use in litigation such as unintended biases).

²⁰² *When AI Gets It Wrong: Addressing AI Hallucinations and Bias*, *supra* note 4.

hallucinations are beginning to be a reoccurring problem as lawyers are, sometimes inadvertently, incorporating non-existent cases within legal documents filed with the court.²⁰³ Hallucinated sources, such as those discussed in *Mata v. Avianca*, are misleading to the trier of fact, unnecessarily take time from the opposing party in discovering and contesting the fabricated information, and may deprive the clients of competent representation.²⁰⁴ Additionally, the hallucinated sources may harm the reputation of the court or judicial system entirely.²⁰⁵ Transparency requirements would allow parties to litigation to identify any hallucinations and may discourage parties from relying on machine-generated evidence without ensuring its reliability.

[56] Bias in generative AI is another major concern.²⁰⁶ Various sources, such as certain training data or algorithmic errors, can influence the processing of information and produce a biased result.²⁰⁷ Although the Advisory Committee on Evidence Rules mentions the risk of bias, the current draft of rule 707 does not demonstrate how to reduce the potential impacts of bias.²⁰⁸ While bias in AI outputs is unlikely to be entirely eliminated, the amended rule's requirements of heightened transparency and record-keeping would allow all parties to identify and address it. For example, a plaintiff's attorney that relies on an AI-generated accident reconstruction model may use prompts that influence the outcome, such as

²⁰³ See, e.g., *Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443, 448 (S.D.N.Y. 2023) (showing an example of an attorney relying on hallucinated case law in a court filing).

²⁰⁴ *Id.* at 448–49.

²⁰⁵ *Id.*

²⁰⁶ See *What Are the Risks of AI in Law Firms?*, *supra* note 201.

²⁰⁷ Richter, *supra* note 3.

²⁰⁸ Standing Agenda Book, *supra* note 11, at 75.

including “driving at high speeds” instead of a more objective prompt. By requiring parties to keep accurate and detailed records of the AI logs, attorneys will be discouraged from offering biased inputs when using AI models.

[57] Another common problem with the use of AI is inconsistent results despite using the same or similar prompts.²⁰⁹ This challenge means that a party in litigation, the opposing party, and the judge would likely get different results when using AI.²¹⁰ This potential discrepancy makes proper record-keeping essential when using machine-generated evidence in litigation. Without a record of what type of machine was used and how it was used, other parties or decision makers would not know how a conclusion was reached.²¹¹

[58] By providing a clear framework for the admission of machine-generated evidence, the amended draft of Proposed Rule 707 ensures fairness in litigation by discouraging parties from unduly relying on AI-generated outputs and promoting uniformity in its application.²¹² This approach balances the use and development of modern technology with ensuring the evidence considered by factfinders is reliable.

²⁰⁹ See Hutson, *supra* note 5.

²¹⁰ See Hutson, *supra* note 5.

²¹¹ See Hutson, *supra* note 5 (discussing the inconsistent results produced by AI models); Bathaee, *supra* note 7 (discussing the inability to fully understand the decision-making process of AI).

²¹² See *supra* Part III (describing the proposed amendment to Proposed Rule 707 and the necessity of each element).

B. The United States Should Adopt the EU's Transparency Requirements for AI-Generated Evidence

[59] The high-risk classification of judicial uses of AI implies that the EU may have anticipated evidentiary problems similar to those that Rule 707 seeks to regulate.²¹³ Under the EU AI Act, high-risk AI systems are classified due to their potential to impact fundamental rights.²¹⁴ The requirements associated with these systems, such as heightened transparency and record-keeping, show that the drafters may have been concerned about potential bias and errors.²¹⁵ These concerns are consistent with those presented by the drafters of Proposed Rule 707.²¹⁶

[60] In addition to revising Proposed Rule 707, the legislature should adopt a broad rule governing the use of AI in litigation to ensure it is safe and in line with Constitutional protections, such as privacy.²¹⁷ Like the CAIA, this EU AI Act should guide the drafting for this legislation.²¹⁸ As in the EU AI Act and CAIA, the legislation should regulate AI according to risks associated with its use.²¹⁹ For example, requiring increased

²¹³ See EU AI Act, *supra* note 21, at annex III; EU AI Act, *supra* note 21, at recital 61.

²¹⁴ EU AI Act: *First Regulation on Artificial Intelligence*, *supra* note 88.

²¹⁵ EU AI Act, *supra* note 21, at recital 61.

²¹⁶ See Standing Agenda Book, *supra* note 11, at 75 (discussing the reliability concerns related to machine-generated inferences and predictions).

²¹⁷ EU AI Act: *First Regulation on Artificial Intelligence*, *supra* note 88.

²¹⁸ Campbell, *supra* note 112, at 16.

²¹⁹ See EU AI Act: *First Regulation on Artificial Intelligence*, *supra* note 88; Campbell, *supra* note 112, at 16.

transparency in the use of AI in the judicial system because of its potential impact on the outcomes of both civil litigation and criminal trials.²²⁰

[61] “High-risk” AI systems, such as those used “to assist a judicial authority in researching and interpreting facts and the law,” have heightened requirements for record-keeping, data governance, and quality management,²²¹ due to their ability to impact fundamental rights if misused.²²² If similar standards were adopted in the United States, courts could better ensure the reliability and fairness of AI use in litigation. The requirements of the EU AI Act complement the requirements of Proposed Rule 707 by highlighting specific transparency and record-keeping standards.²²³ Applied along with Proposed Rule 707, the requirements provided in the legislation provide courts with clear guidance on the use of AI-generated evidence.

[62] Even if Proposed Rule 707 is not amended as recommended to address specific concerns with AI-generated evidence, legislation modeled after the EU AI Act would still benefit courts in determining the admissibility of AI-generated evidence. The United States’ adoption of legislation modeled after the EU AI Act would provide strong requirements for principles such as transparency, record-keeping, and risk management.²²⁴ These requirements, when enforced by courts when deciding whether to admit AI-generated evidence, may exclude evidence based on unreliable methods by discouraging parties from not disclosing

²²⁰ See EU AI Act, *supra* note 21, at recital 61.

²²¹ See EU AI Act, *supra* note 21, at recital 61.

²²² See EU AI Act, *supra* note 21, at recital 61, art. 7.

²²³ See EU AI Act, *supra* note 21, at ch. III, § 2.

²²⁴ See EU AI Act, *supra* note 21, at ch. III, § 2.

AI-generated evidence or from introducing AI-generated evidence that was produced by biased or dishonest training data.

[63] Adopting transparency requirements similar to those in the EU AI Act may also help limit the impact of the black box problem on courts.²²⁵ Under this framework, AI systems that are designated as high-risk must be transparent enough “to enable deployers to interpret a system’s output and use it appropriately.”²²⁶ By allowing courts to examine the capabilities and limitations of the AI system, including its accuracy, these transparency requirements allow judges to make admissibility determinations without blindly relying on opaque machine reasoning.²²⁷

C. Existing Rules Fail to Address the Distinct Nature of AI-Generated Evidence

[64] AI-generated evidence presents unique challenges, such as bias and hallucinations.²²⁸ These challenges are distinct from those presented by human expert witnesses, such as misrepresentations of facts or the use of unreliable methods. For these reasons, rules that are sufficient to govern human expert witnesses are insufficient to govern machines.²²⁹

²²⁵ See Bathaee, *supra* note 8, at 901, 905 (describing the black box problem); EU AI Act, *supra* note 22, at art. 13 (outlining the transparency requirements of high-risk AI systems under the EU AI Act).

²²⁶ EU AI Act, *supra* note 21, at art. 13.

²²⁷ See EU AI Act, *supra* note 21, at art. 13 (outlining the transparency requirements of high-risk AI systems under the EU AI Act).

²²⁸ See *When AI Gets It Wrong: Addressing AI Hallucinations and Bias*, *supra* note 4.

²²⁹ See Stewart & Legg, *supra* note 131.

[65] Human expert witness rules are not adequate to address machine reasoning.²³⁰ For example, the current version of rule 707 does not clarify how courts will determine if the evidence “reflects a reliable application of the principles and methods to the facts of the case” as required by Rule 702(d).²³¹ While a human can be cross examined to determine if the requirements of Rule 702(d) are met, a machine cannot be.²³² Under Rule 702, the expert is assumed to understand and be able to explain the methods they used to reach a conclusion and therefore can justify it.²³³ A lay witness presenting AI-generated evidence, however, often would not understand the underlying methods leading to the conclusion presented.²³⁴ Under the current draft of Proposed Rule 707, the lay witness cannot satisfy the requirements of Rule 702(c) or (d).

[66] By clarifying the rule itself or adding a comment explaining the standard, Proposed Rule 707 could more directly address concerns raised by machine reasoning. For example, an explanatory comment could instruct judges to consider the training data used by a machine when evaluating the reliability of its outputs.²³⁵ This guidance would help judges determine how to evaluate the reliability of machine reasoning without requiring them to become more “technologically savvy.”²³⁶

²³⁰ *Id.*

²³¹ *See* FED. R. EVID. 702.

²³² Nov. 2024 Evidence Rules Agenda Book, *supra* note 139, at 250–51; Stewart & Legg, *supra* note 131.

²³³ *See* FED. R. EVID. 702.

²³⁴ *See* Standing Agenda Book, *supra* note 11, at 76.

²³⁵ *See generally* *AI Tools & Resources: Introduction to Generative AI Concepts and Tools*, UNIV. S. FLA. LIBRS., <https://guides.lib.usf.edu/AI/reliability> [<https://perma.cc/P9C8-HUDR>] (last updated Mar. 4, 2026, at 15:58 ET).

²³⁶ *Id.*

[67] Lack of clarity in procedural rules can lead to inconsistent applications across jurisdictions.²³⁷ For example, Rule 702 itself was inconsistently applied prior to its 2023 amendment.²³⁸ This inconsistent application was due to several courts, such as the Fifth, Eighth, and Ninth Circuits, ignoring the added requirements of the rule following its prior amendment in 2000.²³⁹

[68] In a research study examining the 1,059 federal cases decided in 2020 that addressed the admissibility of expert testimony, Lawyers for Civil Justice found that 65% of opinions did not “mention the proponent’s burden of proof or preponderance standard” as required under Rule 702.²⁴⁰

[69] The 2023 amendment, in codifying the standard outlined in *Daubert*, sought to address this issue by providing courts with additional clarity for the evaluation of human expert testimony.²⁴¹ This was accomplished by adding more detail to the rule itself, such as the requirement that expert testimony “reflects a reliable application of the principles and methods to the facts of the case” and extensive

²³⁷ See Mark A. Behrens & Andrew J. Trask, *Federal Rule of Evidence 702: A History and Guide to the 2023 Amendments Governing Expert Evidence*, 12 TEX. A&M L. REV. 43, 44, 50, 52 (2024).

²³⁸ *Id.*

²³⁹ *Id.* at 50.

²⁴⁰ Kateland R. Jackson & Andrew J. Trask, FEDERAL RULE OF EVIDENCE 702: A ONE-YEAR REVIEW AND STUDY OF DECISIONS IN 2020, 2 (2021), <https://www.lfcj.com/document-directory/federal-rule-of-evidence-702a-one-year-review-and-study-of-decisions-in-2020> [<https://perma.cc/33SE-5E33>].

²⁴¹ Behrens & Trask, *supra* note 237, at 66.

commentary.²⁴² This clarification was intended to increase consistency across jurisdictions, which promotes a uniform application of the law and fairness.²⁴³

[70] Without amendments, Proposed Rule 707 risks reproducing the same inconsistencies. Like pre-amendment Rule 702, the current draft of Proposed Rule 707 provides limited guidance to judges.²⁴⁴ Although it references the detailed Rule 702, Proposed Rule 707 itself lacks clarifying language on how to consistently evaluate the reliability of machine-generated evidence.²⁴⁵ Unless the rule is amended to include clearer standards or explanatory commentary, judges may be left to decide how to apply the rule.

IV. CONCLUSION

[71] AI is only becoming more prevalent in the legal profession.²⁴⁶ As courts are increasingly confronted with the use of AI, regulating its use is becoming increasingly important, which is Proposed Rule 707's aim.²⁴⁷ Although the proposed rule takes an important step toward regulating AI-generated evidence, it should be amended to better address the reliability concerns presented by AI.²⁴⁸ Amending Proposed Rule 707 to require the

²⁴² Behrens & Trask, *supra* note 237, at 47; FED. R. EVID. 702.

²⁴³ See Behrens & Trask, *supra* note 237, at 68.

²⁴⁴ See Standing Agenda Book, *supra* note 11, at 75–77.

²⁴⁵ See Standing Agenda Book, *supra* note 11, at 75–77.

²⁴⁶ See Richter, *supra* note 3; Chanchal, *supra* note 22, at 65.

²⁴⁷ Standing Agenda Book, *supra* note 11, at 75–76.

²⁴⁸ See *supra* Part III.A (discussing the proposed amendments to Proposed Rule 707 and explaining how it addresses concerns surrounding the reliability of AI).

evidence to be helpful for the fact finder, to mandate heightened transparency and detailed record keeping, and to ensure that the evidence is based on sufficient inputs gives courts clearer guidance in the admission of AI-generated evidence.²⁴⁹

[72] These amendments would promote reliability and fairness in civil litigation by giving parties and judges an opportunity to assess the AI-generated evidence.²⁵⁰ Additionally, the amended rule reflects international efforts in regulating AI, such as the European Union's emphasis on transparency and record keeping under the EU AI Act.²⁵¹

[73] Clarifying the scope and applicability of Proposed Rule 707 now would help the judicial system keep up with rapidly evolving technology as it becomes available and widely used. Without adopting the proposed rule as amended above, courts are left without clear guidance on the admissibility of AI-generated evidence.²⁵² Lack of guidance increases the risk of inconsistent applications across courts, as seen in the past with Rule 702 prior to the 2023 amendment.²⁵³

²⁴⁹ See *supra* Part III.A (discussing the proposed amendments to Proposed Rule 707 and explaining how it addresses concerns surrounding the reliability of AI).

²⁵⁰ See *supra* Part III.A (discussing the proposed amendment to Proposed Rule 707 and explaining how each element addresses concerns surrounding the reliability of AI).

²⁵¹ See *supra* Part II.C (discussing the background and requirements of the EU AI Act); EU AI Act, *supra* note 22, at arts. 12–13).

²⁵² See Standing Agenda Book, *supra* note 11, at 75–76 (discussing concerns regarding reliability and bias in machine-generated evidence and the limitations of existing evidentiary rules).

²⁵³ Behrens & Trask, *supra* note 237, at 48–50.