

# AI Evidence Rule Tweaks Encourage Judicial Guardrails

By **John Siffert, Jillian Berman and Cindy Kuang** (December 9, 2025)

The Judicial Conference's Advisory Committee on Evidence Rules has crafted a proposed Rule 707 that would permit courts to admit evidence that is machine-generated, including evidence created by artificial intelligence.

If adopted, proposed Rule 707 would formalize how machine outputs — now increasingly common in both criminal investigations and civil litigation — may be used in the courtroom. The Evidence Rules Committee has asked trial lawyers and others to submit comments by Feb. 16, 2026.[1]

Rule 707 has been under consideration for several years, and after preliminary approval by the Evidence Rules Committee, the Standing Committee overseeing all judicial advisory committees gave its approval in June to proceed to the next phase of the rulemaking process. The proposed rule is scheduled for a vote at the next meeting of the Evidence Rules Committee on May 7, 2026.

This article summarizes how proposed Rule 707 is expected to work, and analyzes how recent additions to the draft of the proposed committee note are designed to encourage judges to ensure sufficient guardrails for the admission and use of machine-generated evidence.

Proposed Rule 707 does not reinvent the wheel — even though AI appears to be poised to challenge whether the wheel will remain the most important human invention. Instead, it borrows from the existing Rule 702 to establish a reliability threshold for admitting machine-generated evidence.

However, the text of proposed Rule 707 does not address how machine-generated evidence should be treated at trial once it has been admitted, when there is no expert to cross-examine regarding the reliability of the machine output. This is a scenario that can be reasonably anticipated given that machine-generated evidence may be self-authenticating,[2] or authenticated by lay testimony of a witness who is familiar only with the output of the machine.[3]

To deal with that issue, at its Nov. 5 meeting, the Evidence Rules Committee proposed additions to the previously circulated committee note to proposed Rule 707 in the form of recommendations for judges to control how machine-generated evidence would be received and used.

## How Proposed Rule 707 Operates

Proposed Rule 707 incorporates the reliability framework of Rule 702, which regulates expert testimony, but applies it to evidence generated by machines rather than human experts.[4]



John Siffert



Jillian Berman



Cindy Kuang

Proposed Rule 707 permits machine-generated evidence to be admitted if the evidence satisfies the following four-part test governing expert witnesses:

- (a) the [machine's] scientific, technical, or other specialized function will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the [machine's output] is based on sufficient facts or data;
- (c) the [machine's output] is the product of reliable principles and methods; and
- (d) the [machine's inference] reflects a reliable application of the principles and methods to the facts of the case.[5]

Reliability would be determined at a Daubert-style hearing outside the jury's presence, where the proponent argues for admissibility and the court — acting as a gatekeeper — decides whether the threshold is met.

Once the evidence is admitted, the procedure contemplated by proposed Rule 707 would look substantially different than existing practice under Rule 702, where the expert who establishes reliability under Daubert factors before the judge also appears before the jury to be examined — and cross-examined — at trial.

Under Rule 707, by contrast, the machine-generated evidence could be presented directly to the jury, or perhaps accompanied only by a lay witness — for example, a technician who operated the system but lacks insight into its reasoning.[6] No witness would necessarily take the stand to explain the machine's reasoning to the jury or be subjected to cross-examination, though the parties may still introduce reports and data, as well as expert testimony, to support or undermine the evidence.

### **The Challenge That Proposed Rule 707 Addresses in Committee Note**

The possibility of limited adversarial testing of machine-generated evidence poses a challenge to the fairness of a trial when such evidence is admitted. Existing evidentiary rules and case law that prohibit hearsay and require confrontation do not apply, because machine-generated evidence is not testimonial.[7]

Still, there is a danger that the lack of symmetry between how machine-generated evidence and witness testimony are presented will inappropriately affect how much weight the jury will give to machine outputs.

The draft committee note, with tentatively approved changes, seeks to mitigate this danger in two ways.[8]

First, the draft committee note emphasizes that judges should not allow an end run around the adversarial process by the parties, stating: "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."

If approved, the note would clarify that proposed Rule 707 contemplates rigorous application of the Daubert factors before machine-generated evidence is admitted. The newly added language from the Nov. 5 meeting states:

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.[9]

In this way, the draft committee note would encourage judges to perform the critical gatekeeping function and decline to admit machine-generated evidence that has not been tested in a manner similar to that achieved through cross-examination.

Second, the Evidence Rules Committee also tentatively approved language in the note that recommends judges instruct the jury on how to treat machine-generated evidence and what weight to afford this evidence that has not been subjected to cross-examination.

The dissimilarity between machine-generated evidence and witness testimony risks confusing jurors into accepting or rejecting machine evidence without independent evaluation.

Machine-generated evidence can take a variety of forms, including aggregations of large datasets, evaluations of data based on probabilities or predictions of future outcomes. This type of evidence is different in nature than direct and circumstantial evidence, which is primarily admitted through witness testimony or documents authenticated by witnesses.

Jurors are currently instructed to use their common sense when evaluating testimony-based evidence, and not to accept a witness's testimony merely because the witness has been deemed or accepted as an expert.[10] That guidance is not helpful in the case of machine-generated evidence, where no witness with firsthand knowledge of the inputs or outputs is necessarily called.

As articulated by the draft committee note,

Under this rule, machine learning 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-based 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.

Though the "opponent may be able to introduce reports and data, as well as expert testimony, to undermine the output ... in the end, the inability to cross-examine is a concern," the note continues.

As such, the draft committee note recommends that judges "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."

Notably, the draft committee note in its current formulation does not prescribe what standard the jury should apply when evaluating machine-generated evidence. It leaves to the court's discretion whether to formulate a charge that suggests a particular standard, such as common sense-plus — e.g., corroboration — or care and caution.[11]

The expectation is that one size will not fit all, and over time, the courts will determine what standard is best in which situation.

## **Conclusion**

Proposed Rule 707's structure for the admissibility of, and guardrails for, machine-generated evidence will be ripe for the Evidence Rules Committee to act in May 2026 at its spring meeting.

The request for public comment on proposed Rule 707 offers an important opportunity for practitioners and judges to give input on whether the rule should be adopted, modified or rejected.

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*John S. Siffert is a founding partner at Lankler Siffert & Wohl LLP.*

*Jillian Berman is a partner at the firm. She previously served as a federal prosecutor in the U.S. Attorney's Office for the Southern District of New York.*

*Cindy X. Kuang is a law clerk at Lankler Siffert & Wohl.*

### ***Disclosure: Siffert is a member of the Judicial Advisory Committee on Evidence Rules.***

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[1] Comments can be submitted at: <https://www.uscourts.gov/forms-rules/proposed-amendments-published-public-comment>.

[2] Fed. R. Evid. 902(13) (Evidence That Is Self-Authenticating—Certified Records Generated by an Electronic Process or System).

[3] Fed. R. Evid. 901(b)(9) (Authenticating or Identifying Evidence—Evidence About a Process or System).

[4] Proposed Fed. R. Evid. 707 (Aug. 2025) (Machine-Generated Evidence).

[5] See *id.*; Fed. R. Evid. 702 (Testimony by Expert Witnesses).

[6] Draft Committee Note to Proposed Fed. R. Evid. 707.

[7] See, e.g., *United States v. Washington*, 498 F.3d 225, 230 (4th Cir. 2007); *United States v. Lamons*, 532 F.3d 1251, 1265 (11th Cir. 2008) (holding that machines are not witnesses within the meaning of the Confrontation Clause).

[8] The draft of the Committee Note to Proposed Rule 707 that was tentatively approved during the Evidence Rules Committee's November 5, 2025 meeting includes additional language not previously published. The newly added language is expected to be included when the Draft Committee Note comes up for a final vote in May 2026.

[9] Draft Committee Note to Proposed Fed. R. Evid. 707.

[10] See e.g., Sand, Modern Federal Jury Instructions—Criminal § 7.01[5], instr. 7-21 providing, in part: "You may give the opinion evidence whatever weight, if any, you find it deserves in light of all the evidence in this case. You should not, however, accept testimony merely because I allowed the witness to testify concerning his or her opinion. Nor should you substitute it for your own reason, judgment and common sense. The determination of the facts in this case rests solely with you."

[11] To craft jury instructions addressing machine-generated evidence, courts can adapt established principles from existing jury instructions. In the case of accomplice testimony, for example, jurors are told that such evidence should be "scrutinized with great care and viewed with particular caution." *Id.*, instr. 7-6.