

**PUBLIC COMMENT TO THE
ADVISORY COMMITTEE ON THE FEDERAL RULES OF
EVIDENCE**

Comment in Support of the Newly Proposed Rule 707

October 2, 2026

Submitted by: William Christy

I. INTRODUCTION

My name is William Christy, and I am a 3L student at Capital University Law School in Columbus, Ohio. I work as a research assistant for a professor who writes primarily in legal philosophy, and I have done work in environmental law and utility law with the Ohio Attorney General, and the Public Utility Commission of Ohio, respectively. I am currently employed by the Public Utility Commission of Ohio as a legal intern. Before this, I was a science and literature student at Ohio Wesleyan University, with experience working in greenhouses, plant nurseries, and nursing homes. As someone who once dreamed of becoming a scientist, I care deeply about expert witnesses and recognize the radical degree of change promised by A.I. systems. Due to this, I took an interest in Proposed Rule of Evidence 707 (“Proposed Rule 707” or “Rule 707”), upon discovering it in a class on Judicial Rulemaking.

Proposed Rule 707 has been in consideration for three years, as the Advisory Committee considers whether the current Rules are sufficient to ensure the reliability and authenticity of such evidence.¹ The Advisory Committee first considered whether to simply amend 702, or to create a new Rule.² The Advisory Committee ultimately published a Rule in 2025, proposed Rule

¹ JESSE M. FURMAN, REPORT OF THE ADVISORY COMMITTEE ON EVIDENCE RULES MAY 17, 2026 530 (2026) [hereinafter *2026 Committee Report*].

² *Id.*

707.³ That original version has been included as Appendix B. Rule 707 has since gone through its comment period, during which it received mixed feedback.⁴ The Advisory Committee has since revised Rule 707 in accordance with those comments, the contents of which are included in Appendix A.⁵ In the May Committee meeting, the Advisory Committee decided not to republish this Rule for a new comment and notice period; instead, the Committee is planning to consult with experts in the October meeting to further refine this Rule.⁶ I support this decision.

This Comment makes the case that the new draft of Rule 707 moves positively towards fixing critical issues with the prior Rule. The corrections the Advisory Committee made were: first, correcting the issues of overbreadth by changing the term “Machine-generated evidence” to an express mention of “A.I.” which better clarifies the scope of the rule; second, changing from “simple scientific evidence” to judicial notice, which likewise eliminates a dangerous overbreadth issue, and instead limits the Rule’s exception to evidence which cannot be reasonably disputed; third, adding a notice requirement, which eliminates the risk of litigants being unable to address A.I. evidence. After supporting these changes, I will address relevant topics from the comments which are not directly reflected in the amendments. Thus, fourth, I will also address the notion that proposed Rule 707 functions as a new avenue for admissibility, arguing that it is necessary given the developments in A.I.. Fifth, I will address the ripeness of the Rule. Finally, I will advocate for another round of editing proposed Rule 707 subsection e, because the ‘human-defined objective’ language in the new definition of A.I. evidence could be reworded for greater clarity.

³ *Id.*; JESSE M. FURMAN, REPORT OF THE ADVISORY COMMITTEE ON EVIDENCE RULES MAY 15, 2025 75 (2025) [hereinafter *2025 Committee Report*]; DANIEL J. CAPRA, ARTIFICIAL INTELLIGENCE, MACHINE-LEARNING, AND POSSIBLE AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE 32-33 (2024) [hereinafter CAPRA 2024].

⁴ *2026 Committee Report*, *supra* note 1 at 531.

⁵ *Id.*

⁶ *2026 Committee Report*, *supra* note 1, at 525.

II. BACKGROUND

A. Posture of the Committee's Work on Rule 707.

As discussed above, since 2023, the Advisory Committee on Evidence Rules has been considering proposals for how best to adapt the evidence Rules to evolution in artificial intelligence.⁷ The Committee published a Rule in August of 2025, which read, “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.”⁸ After receiving comments, the Committee analyzed them to determine what alterations needed be made.⁹

The results of that analysis were as follows. Commentors commonly agreed that the Rule included overly broad terms.¹⁰ Commentors also suggested the Committee ought to add a notice section to proposed Rule 707 to allow effective response.¹¹ Additionally, commentors discussed whether Rule 707 used language too permissive of entering A.I. opinion evidence without an expert. Finally, regarding the timeliness of the Rule, the various commentors disputed whether the issue of A.I. opinion testimony needed a rule now, or whether the Committee should wait for further developments.¹²

⁷ HON. PATRICK J. SCHILTZ, ADVISORY COMM. ON EVIDENCE RULES, REPORT OF THE ADVISORY COMMITTEE ON EVIDENCE RULES (DECEMBER 1, 2023).

⁸ 2025 Committee Report, *supra* note 3.

⁹ 2026 Committee Report, *supra* note 1, at 530-531.

¹⁰ *Id.*

¹¹ BRENDAN CHESTNUT, RE: PROPOSED FEDERAL RULE OF EVIDENCE 707 8-10 (2026); 2026 Committee Report, *supra* at 531-532.

¹² See generally LAUREN YU & NATHAN F. WESSLER, ACLU COMMENT ON PROPOSED RULE 707 CONCERNING THE ADMISSIBILITY OF MACHINE GENERATED EVIDENCE; BRENDAN, *supra* note 11 at 2.

As to timeliness, the Lawyers for Civil Justice said that the Committee should take time to ensure it the Rule a well-drafted one, fit for purpose.¹³ The American Civil Liberties Union said that the Rule would be beneficial in the current environment, given ongoing entry of A.I. evidence.¹⁴ Meanwhile, the Federal Magistrate Judges Association called the Rule premature, and that the Committee should leave this evidence to the pre-existing Rules of evidence while we see how the technology develops, the Department of Justice shared this sentiment.¹⁵ Ultimately, the Committee decided to continue investigation of the Rule.¹⁶

B. The Currently Proposed Rule, and its Objectives.

The most recent proposal, published in the notes for the May 2026 meeting of the Committee, makes several beneficial substantive changes to the Rule.¹⁷ The 2026 Rule, as it stands, accomplishes the following: First, the proposed rule establishes that evidence produced by A.I. should be subject to the expert witness Rule.¹⁸ Second, the Rule establishes the admissibility standard of A.I. evidence and creates a provision for admissibility should self-authenticating A.I. be developed in the future.¹⁹ Third, the Rule demands reasonable notice that a party intends to admit evidence generated by an A.I.²⁰ Finally, the Rule preserves the ability for A.I.-evidence to be admitted by judicial notice, if it is applicable.²¹ Together, this constructs a thorough model for ensuring the authenticity and reliability of A.I. evidence, which is the stated

¹³ LAWYERS FOR CIVIL JUSTICE, MATCHING TEXT TO INTENT: REVISING PROPOSED RULE 707 TO CLOSE THE RULE 702 GAP AND DEFINE RELIABILITY STANDARDS FOR MACHINE OPINIONS 4 (2026). [hereinafter LCJ 2026]

¹⁴ See generally YU & WESSLER, *supra* note 13.

¹⁵ FEDERAL MAGISTRATE JUDGES ASSOCIATION, COMMENTS ON THE PROPOSED AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE, CIVIL PROCEDURE, AND CRIMINAL PROCEDURE SET FORTH IN THE PRELIMINARY DRAFT DATED AUGUST 2025 10-11 (2025) [hereinafter JUDGES]; BRENDAN, *supra* note 11, at 1-2.

¹⁶ See generally YU & Wessler, *supra* note 13.; BRENDAN, *supra* note 11, at 2. 2026 Committee Report, *supra* note 1, at 531

¹⁷ 2026 Committee Report, *supra* note 1, at 531-532.

¹⁸ Fed. R. Evid. 702.

¹⁹ *Id.* at 532.

²⁰ *Id.*

²¹ *Id.*

goal.²² The Committee is continuing to consider Proposed Rule 707 in the upcoming October meeting, with these goals in mind.

C. Treatment of A.I. Evidence Without Proposed Rule 707.

Currently, A.I. evidence is handled under the general Rules of Evidence, particularly Federal Rule of Evidence Rule 702 (expert witnesses), 901 (Authentication), and 403 (relevancy).²³ However, A.I. grows in prominence, complexity of ability, and output each year. There is a threat that A.I. opinions may enter the court without having ever seen the hand of an expert.²⁴ Historically, there has been a high diversity in methods for the treatment of expert testimony, owing to improper implementation of the pre-amendment federal Rule of Evidence 702, and the differences in State-level Jurisprudence on the subject.²⁵ Turning Proposed Rule 707 into a unique rule encourages independent consideration of the methods of evaluating A.I. evidence, which seems beneficial to the principle of ensuring evidentiary reliability.

D. A.I. is Evolving into an Expert Capacity.

To fully understand the discussion, and particularly why expert testimony is at issue, it is important to have basic knowledge of the developments in A.I. itself. Soon, A.I. might itself need to be treated as an expert. Even though this has yet to fully metastasize as a problem, it will likely soon become one. A.I., which is a term referring to a group of software programs capable of performing thinking tasks, is rapidly surpassing human experts in intelligence exams.²⁶ A.I. systems have increasingly accurate abilities to create video; perform computer-based tasks, and

²² *See generally Id.*

²³ TODD BERGER ET AL., COMMENTS ON THE PROPOSED FEDERAL RULE OF EVIDENCE 707 2-3 (2026).

²⁴ *see generally* MICROSOFT AI ECONOMY INSTITUTE, GLOBAL AI ADOPTION IN 2025 A WIDENING DIGITAL DIVIDE, 2 (2025). (One-sixth of people globally now use AI) [hereinafter MICROSOFT]; *See generally* INSTITUTE FOR HUMAN-CENTERED AI, STANFORD UNIVERSITY, AI INDEX REPORT, (Nestor Maslej et al. eds., 2025) [hereinafter STANFORD]; Sara Williams, *Rethinking Federal Rule Of Evidence 707: Reliability and Transparency in AI-Generated Evidence*, 32 RICH. J.L. & TECH. 243, 274 (2026).

²⁵ *see generally* SCOTT PATRIDGE, BAYER, BAYER CORPORATION'S COMMENTS TO THE RULE 702 SUBCOMMITTEE OF THE ADVISORY COMMITTEE ON EVIDENCE RULES.; Fed. R. Evid. 702.

²⁶ STANFORD, *supra* note 25, at 71

power computing decisions in robots.²⁷ This is even though these programs were significantly worse in many fields just a few years ago, such as in scientific and mathematical reasoning.²⁸ Indeed, these programs are developing beyond our capacity to test their intelligence.²⁹ There is no known stopping point for these trends.

For examples of the specific domains of growth, A.I. has become competitive with human experts in analyzing tables and figures to answer word problems, integral to scientific knowledge formation.³⁰ A.I. is also improving at generalizing from prior obtained knowledge, and at solving math equations— which requires the models not only to get correct results, but for the right reasons.³¹ Generative A.I. is being developed for finances, tax, and law.³² As A.I. improves at this, and in performing ordinary human tasks, the notion that A.I. might become the best available expert in a domain increases dramatically.³³ Even if A.I. models fail to become better than the best human experts, the chances that we may need to introduce A.I. evidence employed by a layman who did not consult an expert for their analysis is already non-zero.³⁴ However, there is no way of knowing when A.I. models will stop improving.

Despite this, the Rule would not be necessary if not for the reliability issues which plague Artificial Intelligence services. A.I. is not an expert; it lacks an error rate, or any sort of real accountability.³⁵ Further, some A.I. models (so called “Black box” models) operate without any oversight into their processes.³⁶ While systems with understandable processes exist (so called

²⁷*Id.*

²⁸ *Id.* at 72.

²⁹ *Id.* at 79-80.

³⁰ *Id.* at 93-94.

³¹ *Id.* at 95-104.

³² *Id.* at 104-110.

³³ *See generally Id.*

³⁴ *See generally* YU & WESSLER, *supra* note 13.; BRENDAN, *supra* note 11.

³⁵ BERGER ET AL., *supra* note 24, at 8.

³⁶ Sabine Gless, *Ai in the Courtroom: A Comparative Analysis of Machine Evidence in Criminal Trials*, 51 GEO. J. INT'L L. 195, 207 (2020).

“gray-box” and “white-box” models) their results are typically less reliable due to reduced complexity in design.³⁷ When the inverse relationship between reliability and complexity is paired with most A.I. programs being proprietary technology, the precise details of which remain shrouded from the public, this miasma of uncertainty is only furthered.³⁸ Regardless, the Committee has seen, and discussed, plenty of examples of the unreliability of A.I., which undermines its quality as an expert.³⁹

III. ARGUMENT

In the following argument, I intend to achieve four objectives. First, I will describe why I feel the Revised Rule 707 employs language which more perfectly captures the issues presented by A.I. evidence, particularly regarding the changes to “Machine-generated” evidence, and “Simple scientific instruments.” Also, I will discuss the new Notice requirement, and why I believe it to be a virtuous idea. Additionally, I will state expressly why I believe this issue should be discussed, and why a new rule is necessary— something which I ultimately believe the entirety of this document attests to. Finally, briefly, I’ll discuss the areas where I think the most fruitful work can yet be done. These four objectives are the crux of everything to follow.

A. Machine-Generated Evidence is Exterminated: Directly Addressing A.I. Appropriately Limits the Scope.

1. Nobody Knew What “Machine-Generated” Meant.

One major area of improvement in the Revised Proposed Rule 707 is with word choice clarity. In the old drafts of the Proposed Rule 707, it discussed ‘Machine-generated evidence’, which was not ‘simple scientific instruments.’⁴⁰ This confused commentators, since the terms were

³⁷ See generally Janet Stacey et al., *A responsible artificial intelligence framework for forensic science*, 375 *Forensic Sci. Int’l* 4 (2025). Gless, *supra* note 36, at 212.

³⁸ Gless, *supra* note 36, at 217.

³⁹ See generally e.g., CAPRA 2024, *supra* note 3 (discussion of several works detailing issues of A.I. hallucinations; and errors with self-driving cars); DANIEL J. CAPRA, MACHINE-LEARNING AND PROPOSED RULE 707 (2025) [hereinafter ‘Capra Agenda Book’] (discussion of several works, particularly discussing the hidden structural reasons for A.I. error, and false positives in facial recognition technology).

⁴⁰ 2025 Committee Report, *supra* note 3.

vague enough to allow multiple interpretations of what the Advisory Committee meant, examples of which will be provided below.⁴¹ However, I believe the Revised Rule 707 eliminates this problem through the express use of Artificial Intelligence, rather than employing the term ‘machine generated.’⁴² This, I believe, constitutes an improvement to the word choice of the rule.

2. Non-AI Electronic Records Are “Machine-Generated,” and That Was a Problem in the Original Draft.

Though this issue is grammatical, it manifests in tangible fashion. Examples of types of evidence which may have been implicated by the prior draft of Rule 707 include: Geolocation data, video recordings, and digital banking information.⁴³ While this information is machine-generated, it is not “A product of [a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments.],” even disregarding the context.⁴⁴ This definition excludes geolocation data, video recordings, or digital banking, because neither of the three make predictions, recommendations, or decisions.⁴⁵ These machines are record-making, not opinion-forming.⁴⁶ Contrast this to a drowsiness detection system, which analyzes human behavior and facial features to detect signs of drowsiness.⁴⁷ Detecting drowsiness by facial features requires the machine to make a decision: whether the person it is analyzing is alert, or drowsy.⁴⁸ Thus, the ability for electronic records like geolocation data, video recordings, or digital banking

⁴¹ 2026 Committee Report, *supra* note 1, at 531-532.

⁴² *Id.*

⁴³ BRUCE PLAXEN, PROPOSED RULE 707 MACHINE GENERATED EVIDENCE 3 (2026).

⁴⁴ See Appendix A (the rule); Gless, *supra* note 36, at 209

⁴⁵ See Appendix A (the rule); Gless, *supra* note 36, at 209

⁴⁶ *Id.*

⁴⁷ Gless, *supra* note 36, at 225.

⁴⁸ *Id.*

information, to be entered shall not be disrupted, since they do not think. These records do not make predictions, recommendations, or decisions at all.⁴⁹

B. Simple Scientific Evidence Made Simple: Fixing Overbreadth Through Judicial Notice of Judicial Notice.

1. Simple Scientific Evidence Caused Issue Misidentification.

Conjoined to the problem of uncertainty over what qualified as “machine-generated evidence,” there was also uncertainty over what qualified as “simple scientific evidence.” The 2024 Rule generated the minimum floor for what evidence the Rule applied to through the phrase “This does not apply to the results of simple scientific evidence.”⁵⁰ In 2026, that language has been changed to spell out that the Advisory Committee intends to govern exclusively that which can be “judicially noticed,” in section d. Now, concern over what qualifies as sufficient ‘simplicity’ evaporates. To contrast the two: whereas the 2024 Rule flagged the reader to test the entire universe of machine-evidence against a standard of simplicity, to consider whether it requires an Federal Rules of Evidence 702 (“702”) hearing; now, the Rule is clearly discussing the product of A.I., when it is doing something other than giving easily established, commonly known, facts.⁵¹ As such, it should be easy to distinguish whether evidence this Rule applies to can, or cannot, be entered without a 702 hearing⁵².

2. This is a Reliability Issue, Not a Complexity Issue.

I think discussing this topic in the framework of reliability versus complexity is useful for understanding why the new phrasing is superior. It does not particularly matter how simple a form of evidence is, for the purpose of court admissibility, so long as it is reliable and probative.

⁴⁹ HERITAGE REPORTING CORPORATION, MEETING OF THE ADVISORY COMMITTEE ON EVIDENCE RULES RE: PROPOSED AMENDMENTS TO RULE 609 AND NEW RULE 707 94 (2026). BRENDAN, *supra* note 11 at 5.

⁵⁰ *Appendix B*.

⁵¹ USCS Fed Rules Evid R 201; USCS Fed Rules Evid R 702.

⁵² *Id.*

Simplicity and reliability are related, but not identical, subjects.⁵³ Reframing this under the judicial notice lens shifts the focus away from the specifics of the tool used, to the reliability of the information included. Thus, the focus upon evidentiary reliability directs focus directly towards the primary issue.

C. Noteworthy Notice: Why a Notice Requirement Enables Meaningful Response.

1. Requirements to Respond to A.I. Evidence is Unique Among Expert Testimony.

The Advisory Committee received criticism from the written comments that analogy to the disclosure and notice standards of expert witnesses may not be sufficient to avoid confusion or allow parties to address the evidence they are confronted with, and so the Committee has made changes which address these concerns.⁵⁴ I agree with these changes.

The criticism pointed out that 702's expert requirements imprecisely fit because some information that is needed for authentication of experts— like the curriculum vitae— may be difficult or impossible to take from A.I..⁵⁵ Likewise, there is information needed to appropriately deal with A.I. opinion-evidence, which won't be needed for expert opinion.⁵⁶ Finally, the critics point to the idea that, if the disclosures occur according to 702's schedule, then parties may find out about A.I. generated evidence too late to meaningfully respond to it.⁵⁷

Together, these three issues influenced the need for a notice requirement. I think a notice requirement must exist, so that parties know they must respond to this evidence.⁵⁸ It must be done in a timely fashion, because responding to this evidence can be an involved process, and

⁵³ Gless, *supra* note 36, at 211.

⁵⁴ BRENDAN, *supra* note 11, at 8-10.

⁵⁵ *Id.*; Fed. R. Evid. 702.

⁵⁶ BRENDAN, *supra* note 11, at 8-10; Fed. R. Evid. 702.

⁵⁷ BRENDAN, *supra* note 11, at 8-10; Fed. R. Evid. 702.

⁵⁸ BRENDAN, *supra* note 11, at 8-10; Fed. R. Evid. 702.

allowing the evidence to be entered into evidence too late allows it to be entered in without sufficient time to respond.⁵⁹ The amendment makes a positive step towards resolving these issues, though, this is an area where more investigation is necessary.

2. How the Current Proposal Addresses These Issues.

The Revised Rule 707 takes appropriate steps towards addressing many of the issues with disclosure. Under the current version, disclosure **must** occur.⁶⁰ Further, disclosure must occur within a **reasonable time** for the parties to be able to respond to it.⁶¹ As such, the revised rule responds to all three issues pointed out above. The evidence affects the reasonableness of the timing, and whether anything else may need to be disclosed. Though the Rule does not give guidance on the precise timing of the notice, it recognizes and affirms this issue. Thus, I hold this addresses the concerns around disclosure.

The current draft also addresses better how reliability determinations should be performed. The new Rule provides for an expert who can help judges arrive at what is necessary for a reliability determination.⁶² It should be noted that a single individual may be incapable of explaining *why* the machine decided something.⁶³ Indeed, it may take multiple people to fully explain this, if it is possible at all.⁶⁴ However, the experts should at least be able to provide assistance in the task of determining what is necessary, which will help Judges determine what evidence is necessary to show reliability. As such, it appears to me that the current draft better addresses how judges can determine what is necessary for a reliability determination.

⁵⁹ BRENDAN, *supra* note 11, at 8-10; Fed. R. Evid. 702.

⁶⁰ Appendix A

⁶¹ *Id.*

⁶² Williams, *supra* note 25.

⁶³ Gless, *supra* note 36, at 233

⁶⁴ *Id.* at 238.

D. A New Avenue for Admissibility: Why the Evolution of A.I. May Inevitably Require Procedures for Admitting *it* as an Expert.

1. Challenging the Notion that a New Admissibility Pathway is Bad.

The Committee has addressed another criticism about the language of the original Proposed Rule 707.⁶⁵ In one of LCJ’s comments, they discuss how the language of the prior proposed Rule 707 (“the court may admit”) invites people to enter evidence without an expert witness, through the Proposed Rule, turning the rule into a “pathway” for admission.⁶⁶ The revised version has addressed this criticism in two ways: first, by changing to stronger barrier language in section A (“The proponent must”), and second, by buttressing it with the express expectation of an expert being introduced who can testify about the A.I.’s reliability in section b.⁶⁷ I think this is an improvement, because it makes the language more express as to the expectations upon the person entering the evidence.

Despite the benefit of the changed language, I think the Proposed Rule 707 needs to be commonly understood as a pathway to admission regardless of any concern, or alteration.⁶⁸ I believe Proposed Rule 707 acts as a new avenue to admissibility regardless of whether the language used is permissive, or exclusive.⁶⁹ The function of the rule is to provide guidance for how to admit A.I. opinion testimony, with or without an expert.⁷⁰ Without it, there is not a clear-cut pathway to the admission of such evidence.⁷¹ Thus, this rule should properly exist within a tightrope of restriction and permissibility, to provide guardrail for admission when necessary, and

⁶⁵ USCS Fed Rules Evid R 702

⁶⁶ LCJ 2026, *supra* note 13 at 4.

⁶⁷ *Id.*; *Appendix A*.

⁶⁸ LCJ 2026, *supra* note 13 at 4; *Appendix A*.

⁶⁹ *See generally* LCJ 2026, *supra* note 13

⁷⁰ *Appendix A*

⁷¹ *See generally* YU & WESSLER, *supra* note 13.

the Committee cannot create an impermeable barrier, to enable the rule acting as a pathway to admission.

The Committee is correct to consider an independent pathway to the admission of A.I. evidence, because it exists. It is unlike the other forms of evidence which might otherwise need to be admitted, and that is a problem.⁷² As A.I. grows more sophisticated, the ability for any one expert to testify as to its reliability will decrease; as its competency *increases*.⁷³ Assuming that trends continue, it should eventually become untenable to have any one expert testify as to the reliability of the most reliable A.I. systems. Giving guidance to the unique way that this evidence needs to be treated is a fundamentally virtuous aim.⁷⁴ As such, I suggest that Proposed Rule 707 should be an independently standing rule of evidence.

2. Proposed Rule 707 May Also Suffer From Improper Enforcement.

Another benefit of the Committee's work drafting Proposed Rule 707 as an independently standing rule of evidence is that it will encourage Judicial adoption. One potential danger to consider is that absent the independence of this rule, like Federal Rule of Evidence 702 itself, Judges may try to refuse conducting investigations into the reliability of A.I. evidence before allowing its admission. Judges may neglect to appropriately vet evidence for reliability especially where that A.I. evidence is deemed generally to be safe, regardless of the actual reliability thereof.⁷⁵ Just as with Rule of Evidence 702: here, Judges might elect to simply not enforce the reliability standard, and allow any evidence as admissible, since they do not

⁷² Gless, *supra* note 36, at 211.

⁷³ Gless, *supra* note 36, at 207; *see generally* STANFORD, *supra* note 25.

⁷⁴ LCJ 2026, *supra* note 13, at 7-8.

⁷⁵ Gless, *supra* note 36, at 216.

understand the subject adequately.⁷⁶ Treating this as a new avenue of admissibility may cause Judges with entrenched inaccuracies about 702 to take heed and obey the dictate.

E. Ripe or Riparian: Now is Either the Moment for this Rule, or to Begin Studying to Draft it.

The Advisory Committee should take the time necessary to prudently draft this rule. LCJ is correct in stating that ensuring this Rule is well formulated is more important than passing a Rule—this is not yet a full emergency.⁷⁷ However, simultaneously, it seems to me that the time is ripe for this Rule, or, if it is not, then we are on the very cusp of its necessity.⁷⁸ A.I. is only becoming more prolific, more sophisticated, and more reliable.⁷⁹ It is only a matter of time until the banks of the evidentiary river overflow. A.I. evidence is already seeing widespread use.⁸⁰ Further, there is no reason to assume A.I.’s expertise level will cease improving.⁸¹ Arguments that it is too early because it is not yet a demonstrated issue, and the Committee should wait to see how A.I. evolves, therefore ring rather hollow.⁸² The emptiness of these arguments becomes even starker when viewed within the light of the current unreliability of A.I., because the admission of unreliable evidence is directly adverse to the Court’s values of fairness and reliability.⁸³ As such, it at least merits discussion, even if it is not such an emergency as to require rushing out a Rule. Given the national-level scale of the issue, the complexity of the subject, and the potential size of the impact, I think a centralized, national inquiry into this subject is superior

⁷⁶ See generally PATRIDGE, *supra* note 26.

⁷⁷ LCJ 2026, *supra* note 13, at 10.

⁷⁸ See generally STANFORD, *supra* note 25.

⁷⁹ *Id.*; see generally MICROSOFT, *supra* note 25 (One-sixth of people globally now use AI).

⁸⁰ See generally YU & Wessler, *supra* note 13 (A.I. is being used by police for facial recognition); see generally MICROSOFT; Gless, *supra* note 36, at 225; DANIEL J. CAPRA, ARTIFICIAL INTELLIGENCE, MACHINE-LEARNING, AND POSSIBLE AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE 37-39 (2025) (A.I. evidentiary dispute due to A.I. evidence used by expert who doesn’t understand it); Capra Agenda Book *supra* note 41 at 29-31 (2025) (Case examples of Facial Recognition technology used in court rooms).

⁸¹ See generally STANFORD, *supra* note 25.

⁸² JUDGES, *supra* note 16; BRENDAN, *supra* note 11, at 1-2.

⁸³ Williams, *supra* note 25, at 283.

to leaving the issue to each individual jurisdictions to puzzle through, each with their individually limited resources.

F. A Human-Defined Objection: Alter Human-Defined Objective.

Before concluding, I would like to request further clarification to subsection e of the Revised Proposed Rule 707.⁸⁴ I think “for a given set of human-defined objectives” is overbroad, or at least unclear. Depending upon what is meant by “defining” the “objectives” with which the A.I. makes “decisions,” many computer programs might do this. Does the mere act of programming define objectives, such that anything displayed on the screen is a “decision?”⁸⁵ I suspect the best way to clarify what is meant by “human-defined objectives” is through guidance in the comments, though, because perfectly clear word choice here seems very difficult.

IV. CONCLUSION

Ultimately, I believe that the revisions to proposed Rule 707 are fundamentally good: the amendments have turned attention to the requirements for dealing with this novel brand of evidence through reasonable notice; have cured several overbreadth issues; have specified that an expert should normally be used; and have better tailored Federal Rule of Evidence to the new use. The issue is ripe, and there should be a separate Rule governing how to admit this unique form of evidence. As such, I hope that the Committee continues to work on proposed Rule 707—and it should be congratulated for the significant improvement in the present draft.

Dated: October 2, 2026

Respectfully submitted,

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⁸⁴ Appendix A.

⁸⁵ *Id.*

APPENDIX A

Current Version: 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:

- (1) will help the trier of fact;
- (2) is based on sufficient facts or data;
- (3) is the product of reliable principles and methods; and
- (4) 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 rely upon other proof to find that the output satisfies the requirements of (a)(2)-(4).

(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.

APPENDIX B

Exhibit B: Old Version: 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