

FEDERAL RULES OF EVIDENCE

Working Draft Rule 707 · Working Draft Rule 901(c) · Status as of June 25, 2026

When a Machine’s Answer Becomes Proof

The federal judiciary’s evidence-rule committee is considering two different AI problems. One is an acknowledged AI output—an identification, comparison, prediction, enhancement, or inference—offered as proof without an expert who can explain it. The other is an ordinary-looking exhibit attacked as an AI fabrication. **Working Draft Rule 707 addresses the first. Working Draft Rule 901(c) addresses the second. Neither is current law.**^{3, 6}

1 What is the “evidence committee”?

The **Advisory Committee on Evidence Rules** is the specialist drafting body that studies how the Federal Rules of Evidence are operating and recommends changes within the Judicial Conference’s rulemaking system. “Advisory” is literal: the committee develops and vets proposals; it does not enact them.¹

The Chief Justice appoints its members for terms capped at six years. The present roster mixes federal trial and appellate judges, a state supreme court justice, private litigators, a Justice Department official, a federal defender, and an academic consultant. U.S. District Judge Jesse M. Furman chairs it. Professor Daniel J. Capra is the *reporter*—the law professor who researches proposals, drafts rule text and committee notes, and synthesizes public comment.¹

RELIABILITY LANE

Rule 707

The item is what the proponent says it is—an AI-produced result—but the method may be unreliable. Rule 707 asks whether the output is doing work that would be governed by Rule 702 if a human expert supplied the same conclusion.

AUTHENTICITY LANE

Rule 901(c)

The opponent says the item is not what the proponent claims: the image, audio, video, text, or other digital content was fabricated in whole or part by generative AI.

Existing rules still control. Rule 702 governs expert reliability. Rule 901 sets the ordinary authentication threshold. Rule 902(13) allows certified electronic-process records to be self-authenticating. The working drafts would address perceived gaps around AI output without a testifying expert and credible deepfake objections.³

ADVISORY ROLE IN RULEMAKING				
The Advisory Committee studies evidence-rule problems and drafts proposed amendments. It cannot amend the Federal Rules of Evidence on its own. Publication, final approval, Supreme Court promulgation, and congressional review are separate steps handled later in the rulemaking process. ²				
Advisory study + draft	Standing publish + review	Conference judiciary approval	Supreme Court promulgation	Congress may alter or stop

2 What problem is it trying to solve?

The committee has separated two questions that can sound alike in casual conversation but demand different evidentiary analysis: **Is this output reliable?** and **Is this exhibit authentic?**⁴

3 What kind of “machine output” matters?

Not every file a computer produces. The 2025 public-comment draft used the term “machine-generated evidence” and excluded basic scientific instruments. Commenters warned that this language could sweep in routine output—faxes, emails, ordinary device extractions, scales, thermometers, or other accepted systems. The May 2026 revision narrows the text to **artificial intelligence**, drops the instrument exception, and adds a Rule 201 judicial-notice carveout for facts whose reliability the court can accept without case-specific expert proof.^{4, 6}

<p>Identification</p> <p>A facial-recognition system returns a match, and an agent tells the jury that the system identified the defendant. The committee’s concern is the expert-like conclusion entering through a lay “button-pusher” witness.</p>	<p>Inference from extracted data</p> <p>Some forensic uses merely copy or extract data. Analytic features that infer patterns or relationships from that data raise a different problem. The Federal Defenders used that contrast in the May discussion.</p>
<p>Comparison or prediction</p> <p>Software analyzes trading patterns for causation, compares works for substantial similarity, or assesses code complexity to infer misappropriation. These were committee examples of conclusions that may resemble expert testimony.</p>	<p>Transformation</p> <p>AI sharpens or augments a video. The resulting exhibit may be authentic as an augmented video, yet still be unreliable because the enhancement method invented or distorted detail.</p>
<p>INTENDED TARGET</p> <p>The system predicts, recommends, identifies, compares, enhances, diagnoses, ranks, or infers—and a party offers that conclusion as true without an expert subject to Rule 702.</p>	<p>NOT THE CENTRAL TARGET</p> <p>The machine merely stores, copies, transmits, or extracts data, or produces a routine result whose reliability the court can accept without case-specific expert proof.</p>

4 Is the concern evidence—or investigation?

Primarily evidence. The Rule 707 working draft is not a general code governing whether police or prosecutors may use AI. Its revised title says “Evidence Produced by Artificial Intelligence and Presented at Trial Without an Expert,” and its trigger is an output offered to establish a proposition that would ordinarily require Rule 702 treatment if a witness supplied it.⁶

USE OF THE OUTPUT	WHAT IS HAPPENING	RULE 707 POSTURE
Investigative lead only	Facial recognition supplies a name; investigators corroborate it; the jury never hears the machine’s match.	Outside Rule 707
Warrant or grand jury	The output appears in a warrant application or before the grand jury. Evidence Rule 1101 generally excludes those proceedings from the Federal Rules of Evidence.	Other law governs
Trial proof through a lay witness	An agent testifies that software matched, ranked, or inferred something material—without an expert foundation.	Intended Rule 707 target
Expert uses the system	A qualified expert adopts an opinion based on the tool and explains the method and application.	Rule 702 already applies
Deepfake objection	A party offers an exhibit; the opponent presents a supported claim that generative AI fabricated it.	Rule 901(c) lane
Output offered for legal effect	An employer’s score is offered to show why the employer acted—not to prove the score was correct.	Purpose controls

The line is not where the machine ran. It is the proposition the proponent asks the judge or jury to accept.

UPSTREAM BLIND SPOT

Rule 707 would not itself decide whether investigators properly used a system, whether an AI lead supplied probable cause, whether a prosecutor should charge based on a score, or what model information must be disclosed when the output is never offered as proof. Those questions belong principally to constitutional law, criminal procedure, discovery, disclosure doctrine, agency policy, and regulation.⁷

5 Where does the proposal stand?

MAY–JUNE 2025

The Evidence Rules Committee voted 8–1 to publish Rule 707; the Justice Department dissented. The Standing Committee authorized publication.

AUG. 15, 2025–FEB. 16, 2026

The public-comment draft was open for six months. The committee held two January hearings. Its May report counted 59 written comments and described sharply mixed positions.

MAY 7, 2026

The committee did not recommend final action. It replaced “machine-generated” with a narrower AI focus, added notice, and preferred a revised “Version 2” in which expert explanation is ordinarily required but other proof may suffice in exceptional circumstances.

OCT. 15, 2026 · BOSTON

The official fall meeting will be held in person in a hybrid format. A planned morning mini-conference pairs technical experts with judges and civil and criminal practitioners; committee discussion follows. Rule 707 Version 2 and Rule 901(c) are planned to be considered together, with possible joint publication—not a predetermined package.⁹

Current Rule 702

Requires the proponent to demonstrate to the court, more likely than not, that expert testimony will help the trier of fact, rests on sufficient facts or data, uses reliable principles and methods, and reflects reliable application to the case.

2025 public-comment draft

Public comment is closed. The “machine-generated evidence” draft was not advanced for adoption in May 2026.

Working Draft Rule 707 · Version 2

Focused on AI presented without an expert; ordinarily calls for expert explanation, allows exceptional other proof, and requires notice. Not current law.

Working Rule 901(c)

Would make the opponent first support a fabrication claim; then require the proponent to prove the item more likely than not authentic. Not current law.

NOT “CANCELED”—AND NOT ENACTED

The 2025 text is the prior *published draft*. After comment, the committee declined to advance it for final approval and substantially revised it for further study. Rule 901(c) remains a working draft that has not yet been published for formal public comment.⁶

PRACTICE FILE

Before an AI output reaches an exhibit list, ask:

- Proposition:** What fact is the output offered to prove?
- Function:** Did the system copy or extract—or infer, compare, predict, or transform?
- Record:** Are model/version, inputs, prompts or queries, outputs, validation, and human review preserved?
- Foundation:** Who can explain reliability, and what notice and discovery timetable gives the other side a fair opportunity to test it?

HOW TO OBSERVE OCT. 15

Boston · hybrid. The meeting is open to the public for observation, not participation. For in-person observation, contact Rules Committee Staff by **5 p.m. ET on Oct. 8**; after that, only remote observation is available. Remote registration remains open through the meeting date if completed before the projected end time. The [agenda and materials](#) must post at least seven days beforehand. The notice does not identify the venue: RulesCommittee_Secretary@ao.uscourts.gov · (202) 502-1820.⁹

SELECTED SOURCE RECORD

- [Committee Membership Selection](#) | [Current Evidence Rules Committee Roster](#). Supports committee role, appointment structure, chair, reporter, and membership categories.
- [How the Rulemaking Process Works](#) | [Procedures Governing the Rulemaking Process](#). Supports the advisory, Standing Committee, Judicial Conference, Supreme Court, and congressional sequence.
- [Federal Rules of Evidence, Dec. 1, 2025](#). Current Rule 702, Rule 901, Rule 902(13), and Rule 1101 baseline.
- [May 15, 2025 Evidence Rules Committee Report](#) | [August 2025 Preliminary Draft](#). Supports the 2025 published Rule 707 text, examples, publication vote, and reliability/authenticity distinction.

Full source record follows on page 4.

- [May 17, 2026 Report to the Standing Committee](#). Principal source for Working Draft Rule 707 Version 2, the AI definition, notice and foundation language, no-final-action status, and Working Draft Rule 901(c).
- [Current Rule 1101\(d\)](#) | [May 2026 Committee Discussion](#). Supports excluded proceedings and the point that Rule 707 is evidence-facing, not a general investigative-AI code.
- [May 2026 Report and Meeting Record](#) | [Official Oct. 15 Meeting Notice](#) | [Agenda Books](#). Supports the Boston hybrid meeting, observation details, and planned joint consideration.

Full Source Record

Full source record · Status as of June 25, 2026

These entries expand the selected source record on page 3. Links are embedded in the source titles. Page references refer to the linked PDF source where available.

1. Committee Membership Selection | Current Evidence Rules Committee Roster.

Claim map: Supports the Advisory Committee's institutional role, Chief Justice appointment structure, six-year cap, membership categories, chair, reporter, consultant, and liaison roles.

Page refs: membership page unpaginated; roster PDF p. 2 for chair and reporter, pp. 12-13 for members, consultant, and liaisons.

2. How the Rulemaking Process Works | Procedures Governing the Rulemaking Process.

Claim map: Supports the institutional sequence from advisory committee study through Standing Committee publication/review, Judicial Conference action, Supreme Court promulgation, and congressional review.

Page refs: overview page unpaginated; Procedures §§ 440.20.30, 440.20.40, 440.20.50, and 440.30.

3. Federal Rules of Evidence, Dec. 1, 2025.

Claim map: Supplies current-law baseline for Rule 702's proponent burden and reliability requirements, Rule 901 authentication, Rule 902(13) certified electronic-process records, and Rule 1101 excluded proceedings.

Page refs: Rule 702 PDF pp. 30-31; Rule 901 p. 39; Rule 902(13) p. 41; Rule 1101 p. 44.

4. May 15, 2025 Evidence Rules Committee Report | August 2025 Preliminary Draft.

Claim map: Supports the 2025 published Rule 707 text, the reliability/authenticity distinction, the facial-recognition, comparison, prediction, and video-augmentation examples, and the publication vote with DOJ dissent.

Page refs: May report PDF pp. 4-5 and 39-43; August preliminary draft PDF pp. 109-111.

5. Official Public-Comment Page | Jan. 15 Testimony Packet | Jan. 15 Transcript | Jan. 29 Testimony Packet | Jan. 29 Transcript.

Claim map: Supports the public-comment posture, hearing record, objections that the 2025 draft was premature or overbroad, disclosure/procedure concerns, and arguments for a stronger expert-foundation requirement.

Page refs: Jan. 15 packet PDF pp. 6 and 26-29; Jan. 29 packet PDF pp. 15-17 and 65-66; transcripts are verbatim hearing records.

6. May 17, 2026 Report to the Standing Committee.

Claim map: Principal current source for Working Draft Rule 707 Version 2, the narrowed AI definition, notice and expert-foundation language, the judicial-notice carveout, the no-final-action status, and Working Draft Rule 901(c).

Page refs: report PDF pp. 1, 7-14, 28, and 31; Boston meeting reference p. 45.

7. Current Rule 1101(d) | May 2026 Committee Discussion.

Claim map: Supports the point that Rule 707 is evidence-facing rather than a general investigative-AI code, and that warrants, grand jury, sentencing, bail, and similar proceedings are generally outside the Evidence Rules.

Page refs: Federal Rules PDF p. 44; May 2026 report PDF pp. 7-8 and 30-31.

8. May 2026 Celebrite Discussion | May 2025 Examples and Minutes.

Claim map: Supports the distinction between simple copy/extraction uses and analytic AI features that infer patterns or relationships, plus the examples involving facial recognition, machine comparison, prediction, and video augmentation.

Page refs: May 2026 report PDF pp. 30-31; May 2025 report PDF pp. 4, 39, and 40.

9. May 2026 Report and Meeting Record | Official Oct. 15 Meeting Notice | Agenda Books.

Claim map: Supports the planned October 15 Boston hybrid meeting, public-observation terms, agenda-material timing, contact information, and the plan to consider Rule 707 Version 2 and Rule 901(c) together with possible joint publication.

Page refs: May 2026 report PDF pp. 27-28, 31, and 45; Federal Register notice 91 FR 36001, p. 1.

10. Professor Rebecca Delfino's 2025 Rule 901(c) Suggestion.

Claim map: Background source for the generative-AI authenticity lane, court gatekeeping proposal, and burden-shifting concept that informs the later committee discussion without being the current committee draft.

Page refs: PDF pp. 1, 3, and 4-8.