AMERICAN ASSOCIATION FOR JUSTICE®
The Association for Trial Lawyers

February 16, 2026

Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, DC 20544
RulesCommittee_Secretary@ao.uscourts.gov

Re: Proposed Rule 707 Machine Generated Evidence

Dear Members of the Committee on Rules of Practice and Procedure:

The American Association for Justice ("AAJ") submits this comment regarding proposed Federal Rule of Evidence 707 Machine-Generated Evidence ("FRE 707") proposed by the Advisory Committee on Evidence Rules ("Evidence Committee"). AAJ is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world's largest plaintiff trial bar. AAJ members primarily represent plaintiffs in personal injury and wrongful death actions, employment rights cases, consumer cases, class actions, and other civil actions in federal courts nationwide. While AAJ understands that there may be a need for a rule of evidence to address the reliability of AI-generated evidence or more specifically, machine learning, the proposed rule is over-inclusive and will result in satellite litigation over the use of routinely admitted evidence while leaving courts with even more questions regarding how to handle dubious evidence generated through machine learning. In light of the collective concerns raised by witness testimony and public comments, AAJ recommends that the committee pause for redrafting. Should the Evidence Committee decide to proceed with a rule, alternative rule text should be considered that focuses specifically on machine learning or more precisely carves out routinely admitted technology. Exempting simple scientific instruments from the scope of the rule will not effectively limit its overly broad scope.

I. The Proposed Amendment is Overly Broad

Originally, the Evidence Committee seemed focused on developing a rule to address evidentiary challenges related to machine learning.[1] However, the use of the term "machine-generated" in the proposed rule text implies a significantly broader application, sweeping in every

[1] According to the National Institute of Standards and Technology, "machine learning" is the "development and use of computer systems that adapt and learn from data with the goal of improving accuracy." *Machine Learning*, COMPUT. SEC. RES. CTR. GLOSSARY, U.S. DEP'T OF COM. (last visited Feb. 12, 2026) (citing NAT'L INST. OF STANDARDS & TECH., U.S. DEP'T OF COM., SPECIAL PUB. NO. 800-55V1, MEASUREMENT GUIDE FOR INFORMATION SECURITY 27 (Dec. 2024)).

type of machine imaginable—from appliances, common-place tools, and machinery, to software, mobile devices, and industry-specific equipment—most of which is readily accepted as reliable and frequently presented by lay witnesses or to lay a foundation in courts nationwide. Examples of routinely admissible evidence that will unintentionally be captured by the proposed rule include:

- Video recorded by surveillance cameras that can corroborate eyewitness accounts, establish timelines, and identify persons of interest.[2]
- Geolocation data used to show that a party is (or is not) located where they claim to be.[3]
- Specific machines, tools, technology or datasets that are a core component of a job or profession.[4]

Much of this data is routinely admitted into evidence without the use of an expert.[5]

The sweeping scope of the rule could have been avoided by either using more specific terminology in the text of the rule *or* providing a definition of the rule's application. Instead, the Committee Note directly and indirectly indicates that the rule applies to all types of machines. While the first paragraph of the draft Committee Note implies that the rule is about generative AI, the provided examples of exempted "simple scientific instruments" denote broad application.[6] Although it is unlikely that courts would require *Daubert* hearings for the "simple scientific instruments" listed by the Committee, some judges might require them for less rudimentary instruments that are similarly routinely used and understood to be reliable. The same Committee Note paragraph further provides that the rule "does not apply when the court can take judicial notice that the machine output is reliable." Providing this direction towards the end of the note, after the sentence regarding simple scientific instruments, makes this direction significantly less

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[2] Both public and private footage is routinely used to confirm crime scenes, collisions, and other negligent acts, as well as to identify persons of interest, victims, and witnesses.

[3] Geolocation data can be useful to prove facts (the defendant's mobile device indicates that they repeatedly showed up at the victim's home despite a restraining order) or disprove them (the defendant said that he was at home with his wife but geolocation data from his mobile phone and watch put him by the crime scene).

[4] For example, trucking litigation regularly relies on Electronic Logging Device (ELD) records, which automatically track key vehicle elements at certain intervals for safety and compliance. An ELD is required by the Federal Motor Carrier Safety Administration (FMCSA) and automatically records date, time, location, engine hours, vehicle miles, identification of the driver, and other information at 60-minute intervals when the synchronized vehicle is in motion. *ELD Functions FAQs*, FED. MOTOR CARRIER SAFETY ADMIN., U.S. DEP'T OF TRANSP. (Mar. 10, 2022).

[5] The data medical professionals enter into a patient's electronic health record, as well as related audit trails, are routinely used in medical malpractice claims without an expert, as are electronic timecards and digital time tracking software introduced to prove hours worked in overtime cases.

[6] Although Professor Capra has stated that "[t]here is a good argument that the above passages, together with the good sense of courts, will mean that the rule will be applied only where it was intended: to machine data that approximates or replicates human thinking," AAJ is less confident that the proposed rule in its current form would be applied consistently in the way the Committee intends. Memorandum from Professor Dan Capra, Reporter, to Advisory Committee on Evidence Rules (Oct. 1, 2025), *in* Advisory Committee to Evidence Rules Agenda Book 140 (Nov. 2025) [hereinafter Capra Memo]. There is a vast difference between a Google Maps search result and a mercury-based thermometer reading, which is not even a machine-generated device even though it is listed as an example of a "simple scientific instrument" in the proposed Committee Note to Rule 707.

effective. Should the Evidence Committee decide to proceed with a rule, it would be more useful to provide direction on judicial notice earlier, perhaps even in the rule text.

Adding to this confusion is the reality that courts may have differing opinions regarding the reliability of the technologies cited in the examples above. For instance, while geolocation data is routinely used and generally reliable, it can be imprecise.[7] A *Daubert* hearing seems misplaced for geolocation data, but such technology also clearly is outside the scope of a "simple scientific instrument." At the state court level, the Florida legislature attempted to address these reliability concerns by permitting parties to object to a court's taking judicial notice of information taken from web mapping services, global satellite imaging sites, or internet mapping tools and seek to overcome the rebuttable presumption that such evidence should be judicially noticed in civil cases.[8] Under the proposed rule, courts may determine that a 702 inquiry must be performed every time geolocation data is introduced, even where more reasonable safeguards could be applied on a case-by-case basis (or where exact precision is not required). The Committee needs to consider not only the placement of these issues in the Note, but also how they interact with or impede existing regional practices.

More generally, the Committee Note itself begins in a perplexing manner. The first sentence says that "Expert testimony in modern trials increasingly relies on software- or other machine-based conveyances of information." Not only is this a complicated start to explaining a rule that is *not* an amendment to FRE 702 and does not apply to experts, but "machine-based conveyances of information" include basic technology that businesses and individuals use daily and routinely introduce in litigation. Moreover, many of these devices have both machine- and human-generated components. In the case of a mobile phone, text and email messages as well as photos and videos would be content created by the user, but the device's metadata showing when the content was created, modified, sent, received, stored, or deleted is all machine-generated. Machines or tools used by professionals are similar. Data—such as a driver's identification number or the amount of medication dispensed to a patient—may be inputted by a human, but the information on the device or computer program is all electronically maintained, sorted, stored, and produced.

The Evidence Committee should revisit its initial motivation for a rule in the first place. The current rule's scope with its application to all machines is a vast overreach and completely unnecessary and will inevitably lead to confusion among judges and parties over its application to routinely accepted data and technology. It would be best to pause this proposed draft and assess whether a narrower, more targeted rule would better serve the interests of parties and courts.

II. Reliability Factors Evaluated by Non-Experts

Under proposed FRE 707, the machine or instrument—rather than the person who provides the testimony—is considered the expert for purposes of the 702 inquiry, yet the data or computer program itself isn't always going to be able to explain how or why it is reliable. For a court reviewing the rule text, it may be very challenging to determine if "the testimony is the product of

[7] Geolocation accuracy can be affected by several factors, including IP addresses, weak satellite signals, VPNs, and device settings.

[8] FLA. STAT. ANN. § 90.2035 (2022).

reliable principles and methods" (FRE 702(c)) and whether "the expert's opinion reflects a reliable application of the principles and methods to the facts of the case" (FRE 702(d)).

A. Generally accepted data and information

AAJ is concerned that the proposed rule would bog down the courts with gatekeeping over the reliability of generally accepted technology or the machines used to capture that information. Absent specific evidence regarding a data breach or that the machine was subjected to manipulation by a third party, there should be no reason for a party—particularly, a lay witness—to explain why the time and date stamps of their text messages, digital calendar appointments, or digital banking transactions are reliable. Lay witnesses may be testifying on information they recorded, collected, or obtained using an electronic device or digital app—but none of it falls under the purview of "expert" testimony.

These examples are relatively low-tech and generally accepted by courts, but they all share some common elements that could lead to them being swept up by the scope of the proposed rule. First, they would not be excluded by the exemption of "output of simple scientific instruments," as video recordings and digital banking information would *not* be considered simple, nor would they fall into the category of examples[9] provided in the Committee Note. Second, if this rule were adopted as drafted, courts may treat these common technologies differently, increasing uncertainty and discordance across districts. While some judges may decide that these technologies are inherently reliable, absent evidence to indicate otherwise, other judges may read the rule text as written to require application of the 702 factors. Additionally, the testifying witness may have knowledge of data they recorded or photographed, but another company or technology is responsible for storing or retaining the information. Are all aspects of data capture subject to the rule? This process could easily become unnecessarily burdensome for both courts and parties.

The rule's application is further complicated if more technically advanced instruments are in question. For example, an electronic health record (EHR) is a digital record of the heath care a patient receives at a medical practice or hospital, can be accessed by anyone providing care at that facility, and usually includes the patient's medical history, diagnosis, allergies, medication, test results, and treatment plan. In a medical malpractice case, the EHR would be considered routine evidence. If a nurse is testifying as a fact witness that they checked a patient's chart for allergies before administering medication, the nurse may be questioned about specific entries in a patient's record or more generally how and when EHRs are updated. While the EHR is generally considered a reliable source of information regarding a specific patient,[10] the nurse would not be able to address the overall reliability of the medical records software used by the facility.

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[9] The Committee Note states that examples "might include the results of a mercury-based thermometer, an electronic scale, or a battery-operated digital thermometer." These examples are overly simplistic and, thus, not very meaningful. Indeed, a mercury thermometer is an example of heat expansion and contraction rather than a machine-generated instrument.

[10] The federal government recognizes that the use of EMR's can reduce human errors and improve the delivery of healthcare, providing significant improvement over paper documentation. They also pose security and privacy risks, which is why audits and system logs are used to document who accessed and edited the record. CTRS. FOR MEDICARE & MEDICAID SERVS., DEP'T OF HEALTH & HUMAN SERVS., ELECTRONIC HEALTH RECORDS PROVIDER (Dec. 2015).

Finally, the rule does not distinguish between machines and tools that generate information or data automatically, with minimal inputs from humans, and machines that use human data inputs to produce an outcome or conclusion. While CCTV footage is an obvious example in the public domain, the increasing use of private security recording cameras and sensors (such as Ring or SimpliSafe) could be used by a homeowner witness to describe how a camera system installed at their home captured a burglary across the street.[11]

B. Machine-learning data may not be explainable

With machine learning, the machine learns on its own, and this learning may be impossible to explain.[12] The machines learn patterns, correlations, and rules; sometimes these tasks were previously performed by humans, but other times they are ones that humans cannot perceive or accomplish without the use of computer programming. In many cases, even the experts developing the technology cannot explain exactly how it works.[13] Machine learning could assist with facial or body recognition if an image is incomplete or corrupted, or it could document a medical image with text without the assistance of a health professional. But if the machine itself can't explain how it learns, should it be admitted into evidence?

For lay witnesses, the use of facial recognition and other image enhancements may be helpful to a factfinder but it also may lead to reliability concerns relating to accuracy and bias. For example, a bike messenger takes a mobile video of a woman grabbed off the street by a man driving a van; the video captures the van and the woman screaming for help, but the mobile phone recording is too far away to capture the man's face. Should video enhancement technology be used to help jurors identify whether the man in the video is the same man as the defendant?[14] Moreover, even if there is reason to believe that the enhancement technology is accurate, the technology must be evaluated over concerns of bias. Research shows that if facial recognition algorithms are trained

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[11] Americans are at a crossroads regarding when and how to employ this technology. At the time of this submission, neighbors of missing Nancy Guthrie in Tucson, Arizona seem eager to share video footage from their doorbell cameras to assist the FBI and local law enforcement to find tips leading to Guthrie's safe return or to the capture of the person(s) who abducted her from her home in the middle of the night. Simultaneously, a Super Bowl ad for Ring security cameras boasting how the company can scan neighborhoods for missing dogs prompted customers to remove or uninstall cameras as Americans debate the value of continued surveillance and how AI analysis is using it to track them. Detailed concerns regarding the use of surveillance by law enforcement were described by the American Civil Liberties Union at the second public hearing. *See* Transcript of Proceedings, *Hearing on Proposed Amendments to Federal Rules of Evidence*, Advisory Committee on Evidence Rules (Jan. 29, 2026) (statement of Lauren Yu, ACLU) (forthcoming).

[12] Patrick Nutter, *Machine Learning Evidence: Admissibility and Weight*, 21 U. PA. J. CONST. L. 919, 927 (2019) ("The machine has the 'ability to keep improving its performance without humans having to explain exactly how to accomplish' a task.").

[13] *See* Changwu Huang et al., *An Overview of Artificial Intelligence Ethics*, 4(4) IEEE TRANSACTIONS ON A.I. 799, 803 (Aug. 2023) ("Even for the designers and developers of deep learning, the model is incomprehensible since it usually involves thousands or millions of connections between different neurons. Therefore, it is difficult to explain how these connections interact and why the model makes certain predictions.").

[14] This example reflects an actual criminal trial for kidnapping in which a person associated with AAJ served on the jury. The jury was unable to determine whether the person shown in the unenhanced video was the alleged defendant, and video enhancement (beyond enlargement of the mobile screen) was not permitted.

on datasets that contain very few examples of a particular demographic group, the resulting model will be worse at accurately recognizing members of that group.[15]

While image enhancement technology continues to become more accurate, how exactly will a machine algorithm show that it is the "product of reliable principles and methods" when the machine itself can't explain its methods? Furthermore, the individualized accuracy of the same algorithm may vary depending on other factors, such as the quality of the images used to form the inquiry and the data used to train the algorithm.[16] The uncertainty regarding the use of machine-learning programs or tools, and how to apply them, may result in uneven application of a rule of evidence, especially if judges try to apply each prong of 702(a)–(d). Moreover, even within the same judicial district, variations in each jurist's technological comfort level may result in vast discrepancies in rule application, and uncertainty for parties. This inconsistency could be further exacerbated by the public's negative perception of certain technologies and their welcoming of others.[17]

III. There is No Need to Rush a Rule

Concerns regarding the unfettered use of AI have dominated headlines, and the judiciary's focus on this issue is appropriate. But in the rush to publish a rule, it seems some practical considerations regarding implementation may have been overlooked. Most of the input regarding the draft of the rule came from academics and not litigators, which may be why both the plaintiff and defense bar have concerns about the proposed rule.

While AAJ shares the Evidence Committee's concern about revising FRE 702 too soon following the 2023 amendments, it seems shortsighted to assume that experts will understand machine-learning and algorithms more than lay witnesses.[18] There are plenty of high-tech lay

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[15] James A. Lewis & William Cumpler, *Questions about Facial Recognition*, CTR. FOR STRATEGIC & SCI. INITIATIVES 2 (Feb. 2021).

[16] *Face Recognition Technology Accuracy and Performance*, BIPARTISAN POL'Y CTR. (May 24, 2023) (citing *Face Recognition Technology Evaluation: Demographic Effects in Face Recognition*, NAT'L INST. OF STANDARDS & TECH., U.S. DEP'T OF COM. (last visited Feb. 12, 2026)) ("NIST's ongoing face verification accuracy testing across demographic groups also shows that many algorithms achieve higher accuracy on individuals with lighter, rather than darker, skin tones and on men than women. The relative performance differences are often substantial (i.e., false positive error rates that are often >100 times worse for the lowest-accuracy demographic group than for the highest-accuracy demographic group).").

[17] A Pew Research survey found that half of all respondents are more concerned than excited about the use of AI in their daily lives, up from 38% just three years ago. The concerns fall into several categories, including anger over the lack of choice to use AI. *See* Brian Kennedy et al., *How American View AI and Its Impact on Society*, PEW RSCH. CTR. (Sept. 17, 2025); Shira Ovide, *Americans Have Become More Pessimistic About AI: Why?*, WASH. POST (Oct. 7, 2025).

[18] AI experts have a more favorable opinion of AI than the general public, but they still don't exactly understand how it works. Pew Research Center found that "[f]ully 56% of AI experts surveyed say AI will have a very or somewhat positive impact on the United States over the next 20 years. This compares with 17% among the general public." Colleen McClain et al., *How the U.S. Public and AI Experts View Artificial Intelligence*, PEW RSCH. CTR. (Apr. 3, 2025); Mark Bailey, *How Can We Trust AI, If We Don't Know How It Works*, SCI. AM. (Oct. 3, 2023) ("AI systems have a significant limitation: Many of their inner workings are impenetrable, making them fundamentally unexplainable and unpredictable.").

witnesses and many top-notch experts who are beginners when it comes to machine learning and AI.[19]

Does this mean that a rule isn't necessary? Perhaps not. It may be that a *specific rule* is needed to address machine learning. It seems short-sighted to propose a rule that excludes technically savvy experts, sweeps in lay witnesses who may not have the knowledge to discuss certain reliability issues related to machine learning and algorithms, while also requiring courts to engage in gatekeeping. The risk of related satellite litigation over very basic tools and instruments that have been reliably admitted as evidence outside of the scope of a Rule 702 analysis seems high and could needlessly bog down trial courts.

Finally, the prongs of 702(a)-(d) are not easily applied to AI or machine learning tools. It would be better to draft a rule that doesn't require the application of another rule. On this point, LCJ and AAJ are in rare agreement.[20] Not only are the prongs of 702(a)-(d) hard to apply to machine outputs, but there is also a risk of creating diametric court decisions and circuit splits.

IV. How to Improve the Proposed Rule

AAJ recommends that the Evidence Committee go back to the drawing board and answer the basic questions of what needs to be covered by a machine-learning rule first. Almost all information is machine-generated, including vast amounts of financial data for both business and personal use. To require all machine-generated evidence, which is routinely brought into court by both expert and lay witnesses, to undergo a thorough 702 reliability analysis could significantly delay trials and lead to unnecessary appeals. Alternatively, the Committee could decide that a rule on machine learning is needed now, but that capturing almost all machine-generated evidence is unnecessary. While some on the Committee may be concerned with an underinclusive rule, an overinclusive rule would have a greater impact on the courts. To the extent that the Committee concludes it will move forward with a rule at the conclusion of the comment period, it would be easier to strengthen or clarify a less-inclusive rule through amendment than it would be to repeal a rule that has overreached.[21]

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[19] Psychologists are increasingly turning to tools powered by artificial intelligence (AI) to streamline their practice—about 1 in 10 use it at least monthly for note-taking and other administrative work. *Barriers to Care in a Changing Practice Environment: 2024 Practitioner Pulse Survey*, AM. PSYCH. ASS'N 1 (Dec. 2024). However, "many remain skeptical, with 71% reporting they've never used AI in their practice. Zara Abrams, *Artificial Intelligence Is Reshaping How Psychologists Work*, AM. PSYCH. ASS'N SERVS., INC. (last updated June 26, 2025).

[20] Lawyers for Civ. Just., Comment Letter on Proposed Rule 707 on Machine-Generated Evidence, at 2 (Jan. 5, 2026) ("The new rule should be custom-made for its purpose, not a cross-reference to an existing rule. Rule 707 should not require each reader to interpolate the language of Rule 702(a)-(d), the vocabulary of human expert witnesses, into to the world of machines, models, and algorithms. Courts and lawyers will struggle with the linguistic mismatch.").

[21] Mandatory Rule 11 sanctions resulted in a satellite litigation without accomplishing its goal of deterring abuse. ." Fed. R. Civ. P. 11 advisory committee's note to 1983 amendment ("Experience shows that in practice Rule 11 has not been effective in deterring abuses.").

A. Narrow the rule to focus on machine learning

At its November 2025 meeting, the Evidence Committee discussed an alternative to the proposed amendment on the "Output of a Process of Machine-Learning."[22] This draft limited the rule by focusing on the specific concerns that have been brought to the attention of the Evidence Committee and are the impetus for moving a draft rule to public comment. Unlike the version of the rule published for public comment, this option provided a detailed definition of machine learning in the first sentence of the Committee Note, complete with descriptions of how these systems work and relate to artificial intelligence:

> Machine learning is 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. Machine learning involves artificial intelligence systems that are used to perform complex tasks in a way that is similar to how humans solve problems. Machine-learning systems can make predictions or draw inferences from existing data supplied by humans. When a machine draws inferences and makes predictions, there are concerns about the reliability of that process, akin to the reliability concerns about expert witnesses.

A definition would help ensure that parties and courts understand the scope and application of the rule, including that it addresses new technology and is not intended to slow down trials over machine outputs widely accepted by the public today and generally understood to be reliable. Further, this refinement would assist the court in assessing data where a human provides certain, often minimal, inputs, while the machine calculates other numbers or information. For example, truckers are responsible for starting their vehicle's Electronic Logging Device (ELDs) at the start of their shift by logging in, but it is the device itself that automatically records driving time, miles driven, and other key data.[23] ELDs are widely accepted as reliable, but it would be unfair to burden a truck driver testifying about their injuries with a 702 inquiry into whether the device accurately recorded their inputs on the day of the crash. This draft proposal also has the added benefit of dropping the second sentence on simple scientific instruments, as it would not be necessary.

The machine-learning alternative is also preferable to the alternative on "Computer-Generated Evidence," which the Evidence Committee also discussed.[24] The agenda book analysis is that "computer-generated is narrower than the "machine-generated" text provided by the proposed rule, it does not specifically address the concerns associated with the use of machine learning and artificial intelligence. Word processors, calculators, and digital cameras are all examples of simple computers that would all be considered reliable.

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[22] Capra Memo, *supra* note 6, at 141.

[23] Truck drivers must input key data into the ELD, such as loading, fueling, off-duty, inspection, etc. to record what they are doing, but the ELD automatically tracks the day's activities. *About ELDs: Improving Safety Through Technology*, FED. MOTOR CARRIER SAFETY ADMIN., DEP'T OF TRANSP. (last visited Feb. 12, 2026).

[24] *See* Capra Memo, *supra* note 6, at 143.

B. Provide a definition to the rule's application

If the Committee decides to proceed with the current version of the amendment, it should provide a definition of "machine-generated" preferably in the text of the rule, but at a minimum, in the Committee Note. As drafted, there is no definition of "machine-generated" provided in either and the discussion of the proposed rule seems to indicate that it should be given a broad interpretation,[25] thus resulting in much of AAJ's objection to the rule.

Failing to provide a definition will result in courts applying the rule differently to the same instruments and technology. Circuit splits and intra-district splits could immediately develop. It would be better to limit the scope of the rule and be clear what the rule intends to cover. This will avoid second-guessing by parties and courts, uneven application of the rules, and satellite litigation.

C. Exempt routinely used instruments

The sentence to exclude simple scientific instruments would barely limit the number of items that judges would have to evaluate. By using both the word "simple" and scientific" in the caveat, the exception could even result in some parties questioning the reliability of date and timestamp data from mobile phones and other electronic devices. At a minimum, both the rule text and the Committee Note's examples need to be crafted in a more sophisticated manner, as all these examples are items that a court could take judicial notice of as reliable under Rule 201. Should the Evidence Committee decide to move forward with a final rule, it would be beneficial to remove the second sentence.

Alternatively, it may be clearer for both parties and courts to rewrite the second sentence with the aim of exempting routinely relied upon instruments:

> This rule does not apply to instruments routinely used to produce [generate] the output.

The goal of the sentence is to create an exception for the output of instruments that are routinely used (and expected to be used) for the function being measured, captured, or produced. At its fall meeting, the Evidence Committee thought it should not cede coverage of the rule to the general public, which this sentence would not do, as the court would still be required to evaluate whether an instrument is routinely used. Machines that are routinely used but are *not* generally used for the function employed would not be exempted. The word "generate" would be preferable to the word "produce" only if the Evidence Committee adopts rule text other than "machine-generated" evidence.

The corresponding paragraph in Committee Note could be rewritten to address both the issues of routine use and some examples could look like this:

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[25] *Id.* at 143 ("'Machine' is defined as 'an apparatus using or applying mechanical power and having several parts, each with a definite function and together performing a particular task.' So that term covers everything from fax machines to bulldozers.").

> The final sentence of the rule is intended to give trial courts sufficient latitude to avoid unnecessary litigation over the output from ~~simple scientific~~ instruments that are routinely relied upon in everyday life. Examples might include the results of a phone log, geolocation data, or other metadata. Moreover, the rule does not apply when the court can take judicial notice that the machine output is reliable. *See* Rule 201.

This exception also has the added benefit of functioning in tandem with instructions on judicial notice.

V. Conclusion

AAJ urges the Evidence Committee to reconsider what sort of rule is needed to address concerns regarding machine learning and AI and focus on a rule to specifically address those issues. The proposed rule applies to all sorts of machines that pose no reliability concerns and the exemption for simple scientific instruments is far too limited. The committee should pause and reevaluate how to draft a rule in light of the comments and testimony received. Thank you for considering these comments. Please direct any questions to Susan Steinman, Senior Director of Policy & Senior Counsel, at susan.steinman@justice.org.

Respectfully submitted,

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