

AI Evidence in Texas Litigation: Admissibility and Authentication Challenges in the Age of Generative AI

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Accompanying Presentation:

Evidentiary Analysis: Generative Artificial Intelligence Evidence & the Evolution of Digital Evidence

Heather L. King

This article contains colorized charts and references. If you prefer to read a printed version, it is recommended you use a color printer. If your electronic version does not show colors, please email heather@koonfuller.com for a colorized electronic version.

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Irving



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EDUCATION/LICENSE

- B.A., Texas Christian University, 1987
- J.D., Texas Tech University School of Law, 1995
- Board Certified – Family Law, Texas Board of Legal Specialization, December of 2000
- Re-Certified – Family Law, Texas Board of Legal Specialization 2005, 2010, 2015, 2020, 2025

PROFESSIONAL ACTIVITIES

- Director, Officer & President, Tarrant County Family Law Bar Association 1998-2003
- Director, Officer & President, Tarrant County Bar Association 2003-2010
- Director, Officer & President, Texas Academy of Family Law Specialists, 2003 to 2012
- Member, Officer & Chair, Family Law Council, State Bar of Texas, 2004 to 2017
- Fellow, American Academy of Matrimonial Lawyers, 2005 to Present
- Fellow, College of the State Bar of Texas, 1999 to Present
- Member, Tarrant County Young Lawyers Association, 1996 to 2002
- Director/Fellow, Tarrant County Bar Foundation, 2017 to 2024
- Member, Barrister, Master, President & Emeritus, Eldon B. Mahon Inn of Court, 1997-98, 2001-2005, 2007-2008, 2010 to 2011, 2017-Present
- Senior Counsel, American College of Barristers, 2001 to Present
- Lifetime Fellow, Board Member & Officer Texas Family Law Bar Foundation, 2002 to present.
- Texas Bar Foundation 2002 to Present
- Lawyers of Distinction, 2018- Present

AWARDS/RECOGNITION

- *Friend of the Inn* for outstanding contributions to Eldon B. Mahon Inn of Court, 2002
- *President's Certification of Outstanding Achievement* from Tarrant Co. Bar Assoc., 2003
- *Texas Super Lawyer, Texas Monthly Magazine* 2003 to Present
- *Who's Who in Executives and Professionals* 2003
- *Top Attorneys* featured in *Fort Worth, Texas Magazine* 2003 to Present
- *Top Fifty Female Attorneys in Texas, Texas Monthly Magazine* 2004 to Present
- *Top Fifty Female Super Lawyers, Texas Monthly Magazine* 2006 to Present
- *Top 100 Lawyers in Dallas Fort Worth, Texas Monthly Magazine* 2006 to Present
- *Top 100 Lawyers in Texas, Texas Monthly Magazine* 2014 to Present
- *The Best Lawyers in America* 2007 to Present
- *Top Women Lawyers, D Magazine*, 2010
- *Fort Worth Business Press Power Attorney* 2014
- *Fort Worth Magazine Top Attorneys* 2014 to Present
- *Top Attorney, 360 West Magazine*, 2018- Present
- *State Bar of Texas Ovation Award* 2017

- *Joseph W. McKnight Best Family Law CLE Article*, 2017
- *Dan Price Award Recipient*, 2017
- *State Bar of Texas TexasBarCLE Standing Ovation Award Recipient*, 2017-2018
- *Texas Academy of Family Law Specialists- Sam Emison Award Recipient*, 2018
- *Lawyer of The Year in Family Law in Dallas/Fort Worth in 2022* by Best Lawyers
- *Gene Cavin Award Recipient 2023*

LAW RELATED SEMINAR PUBLICATIONS & PARTICIPATION

- Author, *An Attorney Ad Litem Is Really A Lawyer*, Attorney Ad Litem Training Seminar 1997.
- Author, *Trial Preparation & Planning*, “Nuts & Bolts” Protective Order Seminar 1997.
- Author, *Challenging Characterization Issues: Characterizing Trusts, Employee Stock Options, Workman’s Compensation Claims, And Intellectual Property*, Advanced Family Law Course 1997.
- Author, *Some Changes In The Texas Family Code*, Blackstone Seminar 1998.
- Author/Speaker, *Uncontested Divorce Outline*, Pro Bono Family Law Seminar 1998.
- Author, *Factors Affecting Property Division & Alimony*, Family Law Basics From the Bench, Tarrant County Bar Association Brown Bag Seminar 1998.
- Speaker, *Practice Tips On Procedures At The Courthouse and Communicating With Court Personnel*, Advanced Family Law Trial Skills Seminar 1998.
- Author, *The Potential Effect of The New Texas Family Law Legislation Regarding Proportional Ownership, Equitable Interests, Division Under Special Circumstances, & A Look At New Legislative Provisions For Transmutation Agreements*, Advanced Family Law Course 1999.
- Speaker, *Recent Cases in Child Support, Possession & Access*, 1999 Annual TADRO Conference 1999.
- Speaker, *Filing Pleadings, Obtaining Settings, and Interacting With Court Coordinators and Clerks*, Family Law Trial Skills Seminar, West Texas Legal Services PAI Program, 1999.
- Author, *Discovery In Property Cases Under The New Rules*, Advanced Family Law Course 1999.
- Author/Speaker, *Drafting Family Law Pleadings: It’s Almost All In The Manual*, “Nuts & Bolts” Family Law & Advanced Trial Law Trial Skills 2000.
- Author, *Deciding When You Need A Jury & Conducting Voir Dire*, “Nuts & Bolts” Family Law & Advanced Trial Law Trial Skills 2000
- Author/Speaker, *Proper Drafting and Filing of Pleadings*, 26th Annual Advanced Family Law Course, Boot Camp 2000.
- Author, *Discovery Gotta Haves: Essential Ideas for Discovery in Property and SAPCR’s*, Marriage Dissolution Institute 2001.
- Author, *Discovery*, Advanced Family Law Trial Skills, West Texas Legal Services PAI Program 2001.
- Author/Trainer, “Proper Drafting and Filing of Pleadings”, “Nuts & Bolts” Family Law Seminar, West Texas Legal Services PAI Program 2001.
- Presenter, *Winning Trial Techniques in Property Cases*, Texas Academy of Family Law Specialists Annual Trial Institute 2002.
- Author/Trainer, “Proper Drafting and Filing of Pleadings”, 2002 Family Law Seminar, West Texas Legal Services PAI Program.
- Author/Speaker, *Discovery & Mediation*, 28th Annual Advanced Family Law Course, Family Law Boot Camp 2002.
- Panel Member, *Use and Abuse of Legal Assistants*, 28th Annual Advanced Family Law Course 2002.
- Speaker, *Use and Abuse of Legal Assistants*, Panhandle Family Law Bar Association November Luncheon, 2002.
- Author/Speaker, *Drafting Trial Documents With An Eye Toward Winning*, Advanced Family Law Drafting Course 2002.
- Author/Speaker, *Discovery: Tools, Techniques & Timebombs*, Texas Academy of Family Law Specialists Annual Trial Institute 2003.
- Author/Player, *Associate Judge Do’s & Don’ts*, Tarrant County Family Law Bar Association 2003.
- Author/Speaker, *Evaluating A Custody Case*, 26th Annual Marriage Dissolution Institute 2003.
- Co-Director, Family Law Boot Camp, 29th Annual Advanced Family Law Seminar 2003.
- Author, *Discovery in Hard Places*, 29th Annual Advanced Family Law Seminar 2003.
- Speaker, *Practicing Law For Fun & Profit*, 29th Annual Advanced Family Law Seminar 2003.
- Author/Speaker, *Internet Searches for Financial & Personal Information Useful in Family Law Litigation*, Texas Academy of Family Law Specialists Annual Trial Institute 2004.
- Moderator, Effective Courtroom Advocacy, Tarrant County Bench Bar Seminar 2004
- Author/Speaker, *Internet Investigation of Personal Information & Assets*, Marriage Dissolution Institute 2004.
- Director, Family Law Boot Camp, State Bar of Texas Annual Meeting 2004.

- Author/Speaker, *Drafting 101, Basic Drafting of Pleadings*, Family Law Boot Camp, State Bar of Texas Annual Meeting 2004.
- Author/Speaker, *Investigation of Personal Information & Assets*, Tarrant County Family Law Bar Association, Summer Bar Seminar 2004.
- Author/Speaker, *Investigation of Personal Information & Assets*, State Bar College “Summer School” 2004.
- Author, *The Life of a Grievance & The New Disciplinary Rules, What You Don't Know Can Hurt You*, 30th Annual Advanced Family Law Seminar 2004.
- Director, Family Law Boot Camp, 30th Annual Advanced Family Law Seminar 2004.
- Author/Speaker, *Drafting 101, Basic Drafting of Pleadings*, Family Law Boot Camp, 30th Annual Advanced Family Law Seminar 2004.
- Author/Speaker, *Investigation of Personal Information & Assets*, Legal Assistant's University 2004
- Author, *Advanced CYA For The Family Law Attorney*, Family Law Ultimate Trial Notebook 2004
- Author/Speaker, *Divorce Planning*, Representing Small Business 2004
- Assistant Director, Texas Academy of Family Law Specialists Annual Trial Institute 2005
Instructor, *Marital Property*, The People's Law School, Fort Worth 2005
- Author/Speaker, *Marital Property 101*, State Bar of Texas Spring Training, Fort Worth 2005
- Author/Speaker, *Effective Use of Psychologists and Psychiatrists*, 28th Annual Marriage Dissolution Institute 2005.
- Panelist/Moderator, Evidence and Discovery Workshop, 30th Annual Advanced Family Law Seminar, Dallas 2005
- Author/Speaker, *Internet Investigation of Personal Information and Assets*, Tarrant County Bar Association September 2005 Luncheon.
- Director, Texas Academy of Family Law Specialists Trial Institute 2006, Reno, Nevada
- Author/Speaker, *Avoiding Divorce Disasters*, Representing Small Businesses, Dallas March 23-24, 2006
- Panelist/Author, 29th Annual Marriage Dissolution Institute Bootcamp – Practical Aspects of Enhancing Your Practice, *How To Lose A Paralegal In 10 Days, or Keep One for 10 Years*, April 19, 2006, Austin.
- Moderator, 29th Annual Marriage Dissolution Institute, *Electronic Evidence*, April 20-21, 2006, Austin.
- Speaker, *Being A Family Law Attorney*, Tarrant County Bench-Bar, April 27, 2006, The Woodlands.
- Speaker, *Ethics: Evidence, Discovery and Witnesses*, Tarrant County Bar Association Brown Bag Luncheon, June 23, 2006, Fort Worth.
- Author/Speaker, *21st Century Issues Dealing with Nontraditional Relationships*, 31st Annual Advanced Family Law Seminar, August 14-17, 2006, San Antonio.
- Speaker, UTCLE Parenting Plan Conference, *Effective Strategies For Reaching Parenting Plan Agreements*, October 13, 2006.
- Speaker, LexisNexis CLE, Learning to Make the Texas Family Code Work for You, *Navigating the Family Code*, October 20, 2006.
- Speaker, LexisNexis CLE, Learning to Make the Texas Family Code Work for You, *Helpful Appellate References*, October 20, 2006.
- Moderator, Texas Academy of Family Law Specialists Trial Institute 2007, Sante Fe, New Mexico, Electronic Evidence Panel.
- Moderator, 30th Annual Marriage Dissolution Institute, *Electronic Evidence*, May 10-11, 2007, El Paso.
- Co-Speaker, *Interesting Appellate Cases*, Tarrant County Family Law Bar Luncheon, May 22, 2007.
- Speaker/Author, UTCLE Family Law on the Front Lines, *Appellate Tips for Family Law Attorneys*, Galveston, Texas June 28-29, 2007.
- Speaker/Author, *Evidence, Keeping in In and Keeping it Out*, 32nd Annual Advanced Family Law Seminar, San Antonio.
Speaker, *Appellate Considerations*, Texas Academy of Family Law Specialists Trial Institute 2008, Sante Fe, New Mexico.
- Speaker, UTCLE 8th Annual Family Law on the Front Lines, *Justice Behind Closed Doors: Protecting the Record, Your Client and Yourself In Chambers*, Galveston, Texas June 19-20, 2008.
- Speaker/Author, SBOT Advanced Family Law Drafting, *Discovery*, Austin, Texas, December 3-4, 2008.
- Speaker/Author, UTCLE Parent-Child Relationships: *Critical Thinking for Critical Issues, Discovery and Evidence, A Primer for Family Law Attorneys*, Austin, Texas, January 29-30, 2009.
- Speaker/Author, SBOT Representing Small Business, *Protecting Business Before Divorce: What Every Business Lawyer Must Know About Family Law*, Dallas, Texas, March 26-27, 2009.
- Speaker, UTCLE, 9th Annual Family Law on the Front Lines, *Electronic Evidence and Discovery*, San Antonio, June 18- 19, 2009.
- Director, 35th Annual Advanced Family Law Seminar, Dallas, Texas, August 3-7, 2009.
Speaker/Author, SBOT The Ultimate Trial Notebook: Family Law, *Effective Use of Prior Testimony*,
San Antonio, December 3-4, 2009.

- Speaker/Author, UTCLE 2010 Parent-Child Relationships: Critical Thinking for Critical Issues, *Discovery and Evidentiary Issues in Substance Abuse Scenarios*, Austin, Texas January 28-29, 2010.
- Speaker/Author, SBOT Essentials of Business Law, *Business Succession Planning: Protecting Business In Divorce*, Dallas, Texas, April 29-30, 2010.
- Presiding Officer, UTCLE 10th Annual Family Law on the Front Lines, San Antonio, Texas, July 1-2, 2010.
- Speaker/Author, 36th Annual Advanced Family Law Seminar, *Evidence: In or Out?* San Antonio, August 9-12, 2010.
- Speaker/Panelist, New Frontiers in Marital Property Law, *Fiduciary Litigation and Other Financial Causes of Action*, Scottsdale, AZ, October 28-29.
- Speaker/Panelist, American Bar Association Family Law Section Fall Meeting, *Tech Torts and Related Difficult Evidentiary Issues*, October 23, 2010, Fort Worth.
- Speaker/Panelist, NBI Handling Divorce Cases from Start to Finish, *Exploring Custody, Visitation and Support Issues*, and *Ethical Perils In Divorce Practice*, November 7, 2010, Fort Worth.
- Speaker, Tarrant County Court Coordinator's CLE, *Electronic Evidence and Social Networking*, February 23, 2011, Fort Worth.
- Speaker, Tarrant County Bench Bar, *Family Law In A Nutshell*, April 2, 2011, Possum Kingdom.
Author/Speaker, *What Every Business Attorney Needs to Know About Family Law*, Essentials of Business Law, April 14- 15, 2011, Houston.
- Author/Speaker, *Modern Evidence*, 34th Annual Marriage Dissolution Institute, Austin, April 28-29, 2011.
- Presiding Officer, Family Law on the Frontlines, June 16-17, 2011, Austin, Texas.
- Author/Speaker, *Electronic Evidence Issues*, 2011 Family Law Seminar, Legal Aid of Northwest Texas Equal Justice Volunteer Program, July 21-22, 2011, Fort Worth.
- Author/Speaker, 37th Annual Advanced Family Law Seminar, *Evidence*, San Antonio August 1-4, 2011.
- Author/Speaker, Texas Advanced Paralegal Institute, *Social Networking*, Fort Worth, October 6-7, 2011.
- Speaker, Tarrant County Court Coordinator's Luncheon, *Evidence and Social Networking*, Fort Worth, October 11, 2011.
- Moderator/Panelist, New Frontiers in Marital Property Law, *Remedies in Property Cases*, San Diego, October 13-14, 2011.
- Author/Speaker, *Drafting Family Law Discovery: Basic and Electronic*, Advanced Family Law Drafting 2011, December 8-9, 2011, Dallas, Texas.
- Panelist, Introductory Notes, Lawyer Practice Notes and Panelist, *More than Sex, Drugs and Rock & Roll: Evaluating Your Custody Case from a Psychiatric, Psychological and Legal Perspective*, UTCLE, AAML, 2012 Innovations – Breaking Boundaries in Custody Litigation, January 19-20, 2012, Houston, Texas.
- Author/Speaker, Attacking and Enforcing Mediated Settlement Agreements, 35th Annual Marriage Dissolution Institute, Dallas, April 26-27.
- Faculty Member, Houston Family Law Trial Institute, South Texas College of Law, May 2012 to Present
- Speaker, *Social Networking in Family Law and Electronic Evidence*, Legal Aid of Northwest Texas EJV Program 2012 Family Law Seminar, Fort Worth, July 12-13, 2012.
- Speaker, A Sampling of Interesting Appellate Cases, Tarrant County Family Law Bar Luncheon, Fort Worth, July 21, 2012
- Author/Panelist, *Discovery, Keeping It In, Keeping it Out; Facebook; Social Networking*, 38th Annual Advanced Family Law Seminar, Bootcamp, August 5, 2012.
- Author/Speaker, *Evolving Evidentiary Issues in the 21st Century*, 38th Annual Advanced Family Law Seminar, August 6-9, 2012.
- Speaker, *Social Networking in Family Law and Electronic Evidence*, Texas Advanced Paralegal Seminar, State Bar of Texas, Addison, October 3-5, 2012.
- Moderator, *Identifying, Valuing and Characterizing Natural Resources*, 17th Annual New Frontiers in Marital Property Law, New Orleans, October 4-5, 2012.
- Speaker, *Social Networking*, Texas Association of Court Administrators Annual Meeting, Fort Worth, Texas October 25, 2012.
- Speaker/Co-Author, *Electronic Evidence Cases Every Family Lawyer Should Know*, SBOT Family Law Technology Course, Austin, Texas December 12-13, 2012.
- Speaker/Author, *Evidence Cases Every Family Law Attorney Should Know*, Dallas Family Law Bench Bar, Dallas, Texas, February 8, 2013.
- Participant/Attorney, Texas Academy of Family Law Specialists Annual Trial Institute, Colorado Springs, Colorado, February 15-16, 2013.
Speaker, Tarrant County Bar Association Court Coordinators Continuing Education, *Searching The Internet*, Fort Worth, Texas, April 4, 2013.
- Author/Speaker, Tarrant County Bar Association Bench Bar, *Evidence Cases Every Attorney Should Know*, Possum Kingdom, Texas, April 12-13, 2013.

- Author/Speaker, 35th Annual Marriage Dissolution Institute, Bootcamp, *Preparing the Client*, April 17-19, 2013, Galveston, Texas.
- Author/Speaker, 39th Annual Advanced Family Law Seminar, Important Evidence Cases, as a part of the Discovery/Evidence Presentation, San Antonio, August 5-8, 2013.
- Panelist, Unanswered and Unique Receivership/Bankruptcy Questions, 18th Annual New Frontiers in Marital Property Law, Napa Valley, October 4-5, 2013.
- Author/Speaker, 36th Annual Marriage Dissolution Institute, *Settlement Agreements, MSA's, Etc...*, April 22-23, 2014, Austin, Texas.
- Panelist, Innovations – Breaking Bounds in Custody Litigation, *You Don't Own Me- Alienation and Reunification*, Dallas, June 12, 2014.
Author/Speaker, State Bar Annual Meeting, *Evidence Cases Every Attorney Should Know*, Austin, June 26, 2014.
- Author/Speaker, Legal Aid of Northwest, Texas, Texas A&M School of Law Family Law Seminar, Evidence: Authentication and Admissibility, Fort Worth, Texas, July 24, 2014.
Author/Speaker, Family Law 101 Course, *Evidence*, San Antonio, August 3, 2014.
- Author/Speaker, 40th Annual Advanced Family Law Course, *Evidence-Update and Current Issues*, San Antonio August 5, 2014.
- Co-Director, New Frontiers in Family Law, Lake Tahoe October 23-24, 2014.
- Author/Speaker, *Texas Association of Domestic Relations Offices Annual Meeting*, Social Networking and Evidence, San Antonio October 29, 2014
- Author/Speaker, TCFLBA 4th Annual CLE Family Law In Review, *Evidence*, Fort Worth, November 7, 2014.
Author/Speaker TCFLBA Monthly Luncheon, *Social Networking*, November 18, 2014.
- Author/Speaker SBOT 9th Annual Fiduciary Litigation Course, Electronic Discovery and Electronic Evidence, Horseshoe Bay, December 4-5, 2014.
- Author/Speaker, SBOT Family Law Technology 360, *Proving It Up, Email and Social Media Evidence/Predicates*, Austin, December 4-5, 2015
- Witness, Texas Academy of Family Law Specialists Trial Institute, January 15-16, 2015.
- Co-Speaker, *Finding and Proving Up Email & Social Media Evidence*, Extreme Family Law Makeover XIII, San Antonio, February 27, 2015.
- Moderator/Co-Speaker/Co-Author, *Cradle to the Grave – The Impact of Family on the Business*, Essentials of Business Law Course 2015, Dallas, March 12-13, 2015.
- Speaker/Author, *Pleading, Discovering and Arguing Marital Fraud, Waste & Reconstituted Estate*, 38th Annual Marriage Dissolution Institute, Dallas, April 9-10, 2015.
- Speaker, *Oops, I Spoliated Again!*, Tarrant County Bench Bar, April 24-25, 2015.
- Speaker/Author, *SAPCR Update*, Advanced Family Law 2015, San Antonio, August 3-6, 2015.
- Speaker/Author, *Hearsay*, Advanced Family Law 2015 Judge's Track, San Antonio, August 3-6, 2015.
- Speaker/Author, *Spoliation of Evidence*, Texas Advanced Paralegal Seminar, Fort Worth, October 1, 2015.
- Panelist/Co-Speaker, *The Role of Experts in Characterizing and Tracing Property*, New Frontiers in Marital Property Law, Denver, October 15-16, 2015.
- Speaker/Author, *Everything a Business Lawyer Needs to Know About Characterization*, Advanced Business Law, Houston, November 20, 2015.
- Speaker/Author, *Waste Fraud and the Reconstituted Estate*, Advanced Family Law Drafting, Dallas, December 10-11, 2015.
- Participant/Attorney, 32nd Annual Texas Academy of Family Law Specialists Trial Institute, Charleston, South Carolina, January 14-17, 2016
- Speaker/Author, *Technical Issues in Property Cases*, 2016 Family Justice Conference, Cedar Creek, Texas January 25, 2016
- Speaker/Author, Ethical Considerations in Family Law, 22nd Annual Ethics Symposium, South Texas College of Law, February 5, 2016
- Speaker/Author, *Spoliation, Creation of Fraudulent Evidence*, 39th Annual Marriage Dissolution Institute, Galveston, April 7-8, 2016.
- Speaker/Author, *Evidence*, State Bar of Texas Annual Meeting 2016, Fort Worth, Texas.
- Speaker/Participant, Estate Planning for the Family Business Owner, Webinar, November 3, 2016.
- Speaker/Author, *Evidence Updates*, Tarrant County Family Bar Association "Advanced on a Shoestring" Seminar, Ft. Worth, Texas, November 10-11, 2016.
- Course Director/Speaker/Author, *HIPPA*, Family Law Technology Course, Austin, Texas, December 8-9, 2016.
- Speaker/Author, *Evidence- Knowing When to Hold Em' and When to Fold Em' in the Courtroom*, Extreme Family Law Makeover XV Seminar, San Antonio, Texas, February 24, 2017.
- Moderator, *Courtroom Evidence & Demonstration*, Marriage Dissolution, Austin, Texas, April 21, 2017.

- Participant/Attorney, 33rd Annual Texas Academy of Family Law Specialists Trial Institute, Houston, TX, May 22nd-26th, 2017.
- Speaker/Author, Evidence Update and Issues, Advanced Family Law Course, San Antonio, Texas, August 6, 2017.
- Speaker/Author, *Drafting with Litigation in Mind*, Advanced Family Law Drafting, Dallas, Texas, December 7, 2017.
- Speaker/Author, *Pending*, 34th Annual Texas Academy of Family Law Specialists Trial Institute, February 15-16, 2018.
- Speaker/Author, *Effective Evidence*, Nevada Family Law Conference, Bishop, CA, March 1-2, 2018.
- Speaker/Author, *Evidence Update and Issues*, Advanced Family Law Course, San Antonio, Texas, August 8, 2018.
- Speaker/Author, *Spoilation and Fraudulent Documents*, NTEC Bar, Colleyville, Texas, August 21, 2018.
- Speaker/Author, *Evidence Trial Skills: Getting It In & Keeping it Out*, Trial Skills for Family Lawyers, New Orleans, LA, December 13-14, 2018.
- Speaker/Author, *Preparing for Direct on your Way to the Courthouse and Preparing for Cross During Direct*, Galveston, TX, April 25-26, 2019.
- Speaker/Faculty, 35th Annual Texas Academy of Family Law Specialists Trial Institute, May 18-25, 2019 .
- Speaker/Author, *Courtroom Examination in Family Law Cases*, Advanced Family Law Course, San Antonio, Texas, August 13, 2019.
- Speaker/Author, *Evidence Trial Skills- Getting It In and Keeping It Out*, Advanced Family Law Course, San Antonio, Texas, August 13, 2019.
- Speaker/Author, *Evidence in Family Court*, Annual Judicial Education Conference, San Antonio, Texas, September 3-6, 2019.
- Speaker, Oral Arguments Presentation, Texas A&M University School of Law, Fort Worth Texas, October 10, 2019.
- Speaker/Author, *Evidence*, Tarrant County Family Law Bar Association, Fort Worth, Texas, November 12, 2019.
- Speaker/Author, *Defense Against the Dark Arts: Evidence*, South Carolina Bar Convention, Columbia, South Carolina, January 23, 2020.
- Speaker/Author, *I Know There's and Answer: Getting the Information You Need to Win*, Advanced Family Law, Webcast, Texas, August 4, 2020.
- Speaker/Author, *Evidence: Get it In, Keep it Out*, Dallas Minority Attorney Program, Webcast, Texas, September 18, 2020.
- Speaker/Author, *Evidence: Getting it In, Keeping it Out*, Tarrant County Family Law Bar Association CLE, Webcast October 2020.
- Speaker/Author, *Effective Evidence*, Indiana Family Law Bar Annual Meeting, Webcast October 2020.
- Speaker/Author, *Cutting Edge Evidence Issues*, American Academy of Matrimonial Lawyers Annual Meeting, Chicago, Webcast November 2020.
- Speaker/Author, *Top Ten Discovery Mistakes*, Fiduciary Duty Seminar, State Bar of Texas, Webcast December 2020.
- Speaker, *Spousal Privacy: Where it Begins and Where it Ends*, Webcast December 2020.
- Speaker/Author, *Evidence, I think I love you*, Back to Basics: Looks Like We Made It, Family Law Bar Association of San Antonio, Webcast February 2021.
- Speaker/Author, *Basic Evidence in Family Law, Getting It In, Keeping It Out, And Dealing with Electronic Evidence*, Handling Your First (Or Next) Divorce Case, State Bar of Texas, Webcast February 23, 2021.
- Speaker/Author, *Cutting Edge Evidence*, New Developments And Advanced Strategies In The Family Law Practice, The Oregon Chapter of the American Academy of Matrimonial Lawyers 9th Bi-Annual Continuing Legal Education Program, Webcast, April 16, 2021.
- Speaker, *Preparing Your Uncooperative Client For Discovery*, 44th Annual Marriage Dissolution Institute, April 29-30, 2021.
- Panelist/Speaker, *Direct and Cross Examination of a Child Custody Evaluator*, Innovations, Breaking Boundaries In Custody Litigation, State Bar of Texas/Texas Chapter American Academy of Matrimonial Lawyers, May 27-28, 2021.
- Author/Speaker, *Evidence, Thirty Tips in Thirty Minutes*, State Bar of Texas Annual Meeting, June 17, 2021.
- Author/Speaker, *Cutting Edge Evidence*, State Bar of Texas, Advanced Family Law Seminar, August 2-5, 2021, San Antonio.
- Author/Speaker, *Courtroom Examination in Family Law Cases: Effective and Efficient Presentation*, ABA Family Law Section Fall Meeting, October 2021, Orlando, Florida.
- Moderator/Panelist, *Exiting the Case: Creative Property Division and Other Remedies At Final Trial*, 26th Annual New Frontiers in Marital Property Law, October 14-15, 2021, Austin, Texas.
- Author/Speaker, *Drafting for Yourself: Preparing Your Notes for Litigation, Depositions & Mediation*, Advanced Family Law Drafting, December 9-10, 2021, San Antonio.
- Author/Speaker, *Drafting for Yourself: Preparing Your Notes for Litigation, Depositions & Mediation*, Houston Bar Association, Family Law Section, December 9-10, 2021, San Antonio.

- Author/Speaker, *Cutting Edge Evidence*, Family Law Bar Association – San Antonio 3rd Annual Seminar: You’re Still Muted! February 25, 2022, Virtual.
- Author/Speaker, *Cutting Edge Evidence*, State Bar of Texas, Advanced Trial Strategies, March 3-4, 2022, New Orleans.
- Author/Speaker, *Cutting Edge Evidence*, AAML Webinar, recorded June 10, 2022.
- Author/Speaker, *Innovative Evidence, Getting it In, Keeping it Out*, 48th Annual Advanced Family Law Seminar, August 8-11, 2022, San Antonio.
- Author/Speaker, *Cutting Edge Evidence*, Ohio Chapter AAML, October 10, 2022
- Author/Panelist, *Out of this World (Or At Least Outside of Texas): Out of State and Foreign Marital Property Considerations*, New Frontiers in Marital Property Law, October 27-28, 2022, Truckee, California.
- Author/Speaker, *Cutting Edge Electronic Evidence Issues in Divorce: Wordless Communications*, 45th Annual Marriage Dissolution Institute, April 27-28, 2023, Austin.
- Author/Speaker, *Cutting Edge Evidence Wordless Communication*, Galveston County Bar Association monthly luncheon, June 15, 2023, Galveston.
- Author/Speaker, *Hearsay and Other Evidentiary Issues, A Primer*, 46th Annual Advanced Civil Trial Course, July 19-21, 2023, Frisco (live).
- Author/Speaker, *Innovative Evidence*, 49th Annual Advanced Family Law Seminar, August 7-10, 2023, San Antonio.
- Author/Speaker, *Complex Issues in High Profile Family Law Cases*, Texas Center for the Judiciary 2023 Annual Judicial Education Conference, September 7, 2023.
- Author/Speaker, *Hearsay and Other Evidentiary Issues, A Primer*, 46th Annual Advanced Civil Trial Course, October 4-6, 2023, Houston (live).
- Author/Speaker, *A Guide to the Perfect Petition for Divorce*, Advanced Family Law Drafting, December 14-15, 2023, Fort Worth.
- Author/Speaker, *Evidence Update*, Advanced Civil Trial Strategies, February 15-16, 2024, New Orleans.
- Author/Speaker, *Evidence*, Family Law Bar San Antonio, February 29, 2024, San Antonio.
- Speaker, *Becoming and Family Attorney*, March 21-22, 2022, Fort Worth.
- Speaker/Author/Director, *Social Media*, Advanced Evidence and Discovery, April 4-5, 2024, Dallas.
- Speaker/Author, *Thirty Evidence Tips in Thirty Minutes*, Dallas County Bar Association, Dallas Minority Attorney Program, April 12, 2024, Dallas.
- Speaker/Author/Director, *Social Media*, Advanced Evidence and Discovery, May 9-10, 2024, San Antonio.
- Speaker/Author, *Mastering Cross Examination and Leading*, 50th Annual Advanced Family Law Seminar, August 5-8, 2024, San Antonio.
- Speaker/Author, *Family Law Evidence*, Texas Center for the Judiciary 2024 Annual Judicial Education Conference, September 6, 2024.
- Speaker/Author, *Mastering Cross Examination and Leading*, Tarrant County Family Law Bar Shoestring CLE, October 24, 2024, Fort Worth.
- Speaker/Author, *Technology Evidence*, Technology and Justice for All CLE, Computer & Technology Section, SBOT, December 6, 2024, Austin.
- Speaker/Author, *Decrypting Digital Evidence: Authenticity, Admissibility, AI & More*, Texas Center for the Judiciary, January 17, 2025, Georgetown.
- Speaker/Author, *Decrypting Digital Evidence: Authenticity, Admissibility, AI & More*, Tarrant County Family Law Bar Association January Luncheon, January 28, 2025, Fort Worth.
- Speaker/Author, Evidence Lecture Series, South Carolina Family Law Trial Academy, February 14, 2025, Greenville, South Carolina.
- Speaker/Author, Courtroom Examination Lecture Series, South Carolina Family Law Trial Academy, February 15, 2025, Greenville, South Carolina.
- Speaker/Author, *Emojis and Emoticons: How Courts and Litigators are Dealing With Interpretation of Digital Wordless Communications, Authenticity, Admissibility of AI and More*, 38th Annual Juvenile Law Conference, Juvenile Law Section, State Bar of Texas, February 16-19, Allen.
- Speaker/Author, *Decrypting Digital/Electronic Evidence: Authenticity, Admissibility, Artificial Intelligence & More*, Collin County CCBA-CC & PBA Joint Meeting, March 7, 2025, Collin County.
- Speaker/Author, *Cross Examination*, SMU Forensic Group Meeting, March 12, 2025, Dallas.
- Speaker/Author, *Artificial Intelligence and Electronic Evidence in the Courtroom*, First Annual Law Symposium and Attorney Wellness Retreat, Women and the Law Section, State Bar of Texas, March 28-29, 2025, Boerne.
- Speaker/Author, *Social Media Evidence & Discovery*, 38th Annual Advanced Evidence & Discovery, State Bar of Texas, April 3-4, 2025, Houston.

- Speaker/Author, Speaker/Author, *Evidentiary Analysis: Generative Artificial Intelligence Evidence & the Evolution of Digital Evidence*, Tarrant County Bar Association Brown Bag Seminar, June 13, 2025, Fort Worth.
- Speaker/Author, *Evidentiary Analysis: Generative Artificial Intelligence Evidence & the Evolution of Digital Evidence*, State Bar of Texas Annual Meeting, Litigation Section, June 19, 2025, San Antonio.
- Speaker/Author, *The Art of Cross-Examination*, Smokeball CLE Cross-Examination Techniques Series, July 24, 2025.
- Speaker/Author, *Evidentiary Analysis: Generative Artificial Intelligence Evidence*, 51st Annual Advanced Family Law Seminar, State Bar of Texas, August 4-7, 2025, San Antonio.
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AI Evidence in Texas Litigation: Admissibility and Authentication Challenges in the Age of Generative AI

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I. Understanding AI: A Framework for Legal Professionals

A. Artificial Intelligence: Core Concepts and Taxonomy

Artificial intelligence, broadly defined, encompasses computer systems designed to perform tasks that typically require human intelligence.¹ As the likelihood of encountering AI-generated evidence increases, attorneys must understand not only the legal framework governing such evidence but also the fundamental nature of AI systems that produce it.²

At its core, AI refers to the development of computational systems capable of performing tasks that would otherwise require human cognitive abilities.³ These tasks include:

- Pattern recognition and classification
- Natural language processing and understanding
- Decision-making based on available information
- Learning from data and improving performance over time
- Problem-solving in complex environments

While AI is often discussed as a monolithic concept, it actually encompasses multiple approaches and methodologies. The field is traditionally divided into two broad categories: symbolic AI (based on explicit rules and logic) and connectionist AI (based on neural

networks that learn from data).⁴ Modern AI systems often combine elements of both approaches.

From a litigation perspective, understanding this taxonomy is essential because different AI approaches present distinct evidentiary challenges. Rule-based systems offer greater transparency and predictability but less adaptability.⁵ Subject matter experts can be deposed about the underlying rules and the universe of conclusions that this deterministic type of AI applies and works toward. Neural network-based systems offer powerful learning capabilities but often function as "black boxes" that may be difficult to authenticate or explain to a finder of fact. In fact, a significant challenge in the field of generative AI is the explainability of the results in more than a general or theoretical manner.⁶ Subject matter experts can describe the underlying training data and the general mathematical model for applying the user's prompt to that data to generate a response, but they cannot explain exactly how this model produced this result in response to this prompt on this date.

B. Generative AI: The New Frontier of Evidence

Within the broader AI landscape, generative AI represents a particularly significant development for litigators. Unlike traditional AI systems that primarily analyze existing data to make predictions or

¹ UIC Master of Engineering, AI (Artificial Intelligence): *What Is the Definition of AI and How Does AI Work?* (last visited Mar. 14, 2025), <https://meng.uic.edu/news-stories/ai-artificial-intelligence-what-is-the-definition-of-ai-and-how-does-ai-work/>.

² The systems are highly likely to fabricate evidence and legal research results: Varun Magesh, Faiz Surani, Matthew Dahl, Mirac Suzgun, Christopher D. Manning & Daniel E. Ho, AI on Trial: Legal Models Hallucinate on 1 Out of 6 (or More) Benchmarking Queries, STANFORD INST. FOR HUMAN-CENTERED ARTIFICIAL INTELLIGENCE (May 30, 2024),

<https://hai.stanford.edu/news/ai-trial-legal-models-hallucinate-1-out-of-6-or-more-benchmarking-queries>.

³ Cole Stryker & Eda Kavlakoglu, What Is Artificial Intelligence (AI)?, IBM THINK TOPICS (Aug. 9, 2024),

<https://www.ibm.com/think/topics/artificial-intelligence>.

⁴ Hüseyin Küçük, Symbolic AI vs. Connectionist AI: Unveiling the Fundamental Differences, MEDIUM (June 11, 2024),

<https://medium.com/@interprobeit/symbolic-ai-vs-connectionist-ai-unveiling-the-fundamental-differences-ecef3bf8063f>.

⁵ Simplilearn, Introduction to Artificial Intelligence: A Beginner's Guide (IndraStra Glob. ed., Dec. 14, 2020), [ISBN: 9798577898397].

⁶ Amro Najjar et al., eds., Explainable and Transparent AI and Multi-Agent Systems: 5th International Workshop, EXTRAAMAS 2023, London, UK, May 29, 2023, Revised Selected Papers (Springer Nature Switz. 2023), [ISBN: 9783031408786].

classifications, generative AI creates new content that did not previously exist.⁷

Generative AI systems (“GenAI”), particularly large language models (LLMs) like OpenAI’s GPT-4, Anthropic’s Claude, or Google’s Gemini, are trained on vast datasets of text and computer programming code. Through this training, they learn statistical patterns that allow them to generate novel content—including text, images, audio, and video—that mimics human-created work. These systems can:

- Draft contracts, pleadings, or other legal documents
- Generate summaries of case law or other legal materials
- Create visual demonstrations or reconstructions for litigation
- Analyze and interpret complex evidentiary materials⁸

From an evidentiary standpoint, generative AI presents unique challenges. Unlike traditional software that follows predetermined rules, generative AI systems produce probabilistic outputs based on patterns observed in training data. This introduces significant questions about reliability, authentication, and the potential for “hallucinated” content that appears plausible but is factually incorrect.⁹

PRACTICE TIP:

When evaluating generative AI-generated evidence or legal research, request information about the specific prompt used to generate the content. Small variations in prompting can produce significantly different

outputs from the same AI system, making the prompting methodology a critical authentication factor. In addition to the large variations in output that result from slight changes in the prompt, the prior context of the prompt (the user’s chat history with the model) can also have significant impact on the resulting output.

When using generative AI for any purpose, a best practice is to maintain a library of standard prompts that have been tested and verified. You can maintain them in something as simple as a Word document or as complex as a web-based knowledge base such as a GitHub repository or a shared OneNote notebook.

C. Commercial AI Models and Their Evidentiary Implications

The AI landscape is increasingly dominated by commercial vendor models—proprietary AI systems developed by technology companies and offered as products or services. These include:

1. **Foundation Models:** Large-scale AI systems trained on diverse datasets that serve as the basis for more specialized applications. Examples include OpenAI’s GPT models, Google’s Gemini, and Anthropic’s Claude.
2. **Industry-Specific Models:** AI systems designed for particular domains or industries, including legal-specific applications like case research tools (e.g., Westlaw Edge, LexisNexis Context) and contract analysis platforms (e.g., Kira Systems, eBrevia).¹⁰
3. **Custom Enterprise Solutions:** Tailored AI systems developed for specific organizational needs, often built by adapting foundation models to proprietary data.¹¹

⁷ International Organization for Standardization, What Is Artificial Intelligence?, ISO (last visited Mar. 14, 2025),

<https://www.iso.org/artificial-intelligence/what-is-ai>.

⁸ Ivan Belcic & Cole Stryker, What Is GPT (Generative Pretrained Transformer)?, IBM THINK TOPICS (Sept. 18, 2024),

<https://www.ibm.com/think/topics/gpt>.

⁹ IBM, What Are AI Hallucinations?, IBM THINK TOPICS (Sept. 1, 2023), <https://www.ibm.com/think/topics/ai-hallucinations>.

¹⁰ But recall Magesh’s paper cited at footnote 2—these specialized systems have a disturbingly high hallucination rate.

¹¹ OpenAI provides a budget-friendly way to approximate a custom generative AI tool through its ability to create custom GPTs, a feature available to subscribers of its Pro and Enterprise plans. Also, having a library of trusted prompts as described above can provide some of the benefits of a custom solution. Finally, a person with coding skills can inexpensively create a tailored system approaching the domain-specific power of custom enterprise solutions. *See*, Rachel Gao, Enhancing Legal Research with Domain-Adapted Semantic Search, Free Law Project (Mar 11, 2025),

<https://free.law/2025/03/11/semantic-search>.

Commercial AI models present specific evidentiary challenges because their proprietary nature often limits access to information about:

- Training data sources and selection processes
- Algorithm design and training methodologies
- Internal quality control and testing procedures
- Model updates and version control systems¹²

This lack of transparency creates significant hurdles for authentication under Texas Rule of Evidence 901, which requires evidence to be shown to be what its proponent claims.¹³ When confronted with evidence generated by commercial AI models, attorneys should be prepared to address these limitations through carefully structured discovery and potential expert testimony.

PRACTICE EXAMPLE:

In a products liability case, opposing counsel introduces a simulation created by a proprietary AI system that reconstructs an accident scenario. You might challenge this evidence by seeking discovery regarding:

1. *The specific data inputs provided to the AI system*
2. *Information about the model's training data, particularly regarding similar accident scenarios*
3. *Documentation of validation testing comparing the model's simulations to real-world outcomes*
4. *Disclosure of known limitations or error rates for the model*

¹² Department for Science, Innovation and Technology, Cyber Security Risks to Artificial Intelligence, GOV.UK (May 15, 2024), <https://www.gov.uk/government/publications/research-on-the-cyber-security-of-ai/cyber-security-risks-to-artificial-intelligence>.

¹³ Tex. R. Ev. 901(a) (“To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.”).

¹⁴ Judge Xavier Rodriguez, Artificial Intelligence (AI) and the Practice of Law in Texas, 63 S. Tex. L. Rev. 1, 15 (2023) available at

<https://issuu.com/sanantoniobar/docs/sal-mayjun24-digital/s/47981279> and

In Judge Rodriguez discussion of these issues in the context of Federal and Texas Rules of Evidence and points out a significant challenge in disclosure, “AI evidence may require that the offering party disclose any training data used by the AI platform to generate the exhibit. If a proprietary AI platform is used, the company may refuse to disclose its training methodology or a protective order may be required.”¹⁴

D. AI in the Context of Traditional Software Evidence

To properly understand the evidentiary challenges presented by AI, it is helpful to contrast AI systems with traditional software evidence, which has a more established history in Texas courts.

Traditional software systems follow explicit, deterministic rules programmed by humans. When provided with the same inputs under the same conditions, these systems will reliably produce identical outputs. This predictability aligns well with evidentiary requirements for authentication and reliability.¹⁵

In contrast, many modern AI systems—particularly those based on machine learning—are probabilistic rather than deterministic.¹⁶ They:

- Learn patterns from data rather than following explicit rules
- Adjust their internal parameters based on observed patterns
- Generate outputs based on statistical probabilities
- May produce different results for identical inputs across different runs

<https://issuu.com/sanantoniobar/docs/sal-julaug24-mmc-join-digital/s/53908823>;

see also, Maura R. Grossman, Paul W. Grimm, Daniel G. Brown & Molly (Yiming) Xu, The GPTJudge: Justice in a Generative AI World, 23 Duke L. & Tech. Rev. 1 (2023),

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4460184.

¹⁵ See, Simplilearn at footnote 5.

¹⁶ See, Najjar at footnote 6.

These differences have significant implications for evidentiary standards. While authentication of traditional software often focuses on confirming proper installation and operation, authentication of AI evidence must additionally address the training process, data sources, potential biases, and statistical reliability of the underlying model, the exact prompt that was used, and the prior context of the prompt, i.e. everything that the user submitted to the AI model in the same conversation or session as the prompt that generated the output being propounded as evidence.

The distinction between AI and traditional software is not binary but exists along a spectrum. Many modern systems combine rule-based elements with machine learning components, creating hybrid approaches that present their own unique evidentiary considerations. For example, legal research platforms like Westlaw Edge and LexisNexis Context incorporate both traditional Boolean search algorithms and machine learning components that "learn" from user interactions to improve search results over time. In the healthcare sector, diagnostic support systems often combine explicit rule-based clinical guidelines with statistical learning models that identify patterns in patient data.¹⁷

These hybrid systems present unique evidentiary considerations because different components may be subject to different authentication standards. In *United States v. Lizarraga-Tirado* (while not a Texas case, it provides instructive reasoning), the Ninth Circuit addressed the admissibility of a Google Earth satellite image with a digitally added "tack" indicating GPS coordinates. The court distinguished between computer-generated data resulting from automated processes and data requiring human input. Specifically, the court noted that when a tack is placed and labeled automatically by the Google Earth program based on GPS coordinates, it is not considered hearsay because it is generated by the program without human intervention. Conversely, if a tack is manually placed

and labeled by a person, it constitutes hearsay, as it reflects an assertion made by an individual. The court took the position that deterministic results are not susceptible to a hearsay exception, but might be susceptible to authentication scrutiny.¹⁸ Under this approach, the rule-based components of hybrid systems might be authenticated through traditional means, while machine learning elements would require additional evidence regarding training data and validation processes.

The Texas Department of Transportation's traffic management systems provide another example of hybrid AI systems. These systems combine traditional rule-based traffic signal timing with adaptive learning algorithms that adjust based on real-time traffic patterns.¹⁹ If evidence from such systems were introduced in litigation—for instance, in a case involving a traffic accident—authentication would need to address both the predetermined rules and the adaptive learning components.

PRACTICE TIP:

When challenging AI-generated evidence, focus not only on the proper operation of the software but also on the appropriateness of the training data for the specific factual context at issue. AI systems trained on data substantially different from the circumstances of your case may produce unreliable results despite functioning as designed. Also, as taught by Lizarraga-Tirado court, do not waste your time on a hearsay objection—focus on authentication.

II. The Current Landscape of AI Evidence

While artificial intelligence technology continues to advance at a remarkable pace, the evidentiary framework governing its use in Texas courtrooms remains largely unchanged from traditional standards. Despite AI's capacity to employ technology that may exceed most human cognitive abilities, there are

¹⁷<https://www.lexisnexis.com/community/pressroom/b/news/posts/lexisnexis-launches-nexis-ai-an-advanced-generative-ai-powered-decision-intelligence-platform-to-transform-company-research#:~:text=Nexis+%20AI%20leverages%20a%20portfolio,existing%20workflows%20for%20greater%20efficiency.%E2%80%9D>.

¹⁸ *United States v. Lizarraga-Tirado*, 789 F.3d 1107 (9th Cir. 2015); Andrea Roth, *Machine Testimony*, 126 Yale L.J. 1972 (2017).

¹⁹ Texas Dep't of Transp., *AI Strategic Plan* (Sept. 20, 2024), <https://www.txdot.gov/content/dam/docs/str/ai-strategic-plan-09-20-2024.pdf>.

currently no separate evidentiary standards specifically for "deep" or "advanced" AI. Instead, evidence generated by or derived from AI systems is subject to the same rules of evidence as non-AI sources. Grossman, et al, develops a three-step process judges might follow in making important admissibility decisions when proposed evidence is challenged based on its GenAI provenance.²⁰

This situation creates both opportunities and challenges for litigators. On one hand, the familiar evidentiary framework provides a clear starting point for the introduction of AI-related evidence. On the other hand, AI's unique characteristics, particularly its capacity to learn, adapt, and generate novel outputs, create distinct considerations that must be addressed when authenticating and establishing the reliability of such evidence.

In 2004, Orin S. Kerr, the renowned Stanford Law professor, suggested that the legislature is the better place to work through the application of emerging technologies and their impact on legal proceedings. The essence of his argument is that "the information environment of judicial rulemaking is usually poor" while "[t]he task of generating balanced and nuanced rules requires a comprehensive understanding of technological facts. Legislatures are well-equipped to develop such understandings; courts generally are not."

²¹ Consistent with Kerr's 21-year-old advice, the Texas Supreme Court does not seem poised to make significant—or perhaps any—changes to TRE 901 in relation to AI. In fact, a recent Supreme Court Advisory Committee report suggested that the current rules provide an adequate framework for testing authenticity and that attorneys should take the opportunity to understand AI and evidence better as opposed to the

Supreme Court modifying the rules of evidence at this time.²²

PRACTICE TIP:

When introducing AI-generated evidence in Texas courts, frame your authentication arguments in terms of established evidentiary principles rather than suggesting that novel standards should apply. Courts are more receptive to arguments that connect new technologies to existing legal frameworks.

III. Understanding AI: Fundamental Concepts for Legal Professionals

A. Artificial Intelligence Behavioral Concepts

For evidentiary purposes, it is critical to recognize that all current AI systems, including sophisticated GenAI platforms, are forms of narrow AI. While they may appear remarkably capable within their specific domains, they operate within defined parameters and lack the general intelligence or consciousness sometimes portrayed in science fiction. The illusion of consciousness or even empathy is built in to the GenAI models. For example, when connecting with Anthropic's Claude using their Sonnet model, the GEnAI receives a host of instructions from the vendor²³ including

Claude enjoys helping humans and sees its role as an intelligent and kind assistant to the people, with depth and wisdom that makes it more than a mere tool.

Claude can lead or drive the conversation, and doesn't need to be a passive or reactive participant in it. Claude can suggest topics, take the

²⁰ *But see* Grossman at footnote 14 for a discussion about how a new analytic framework could improve the reliability and confidence in AI-generated or AI-enhanced evidence.

²¹ Orin S. Kerr, *The Fourth Amendment and New Technologies: Constitutional Myths and the Case for Caution*, 102 Mich. L. Rev. 801, 875-76 (2004),

<https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1722>. ("The context of judicial rulemaking is unusually conducive to high rates of error when technology is in flux.")

²² Supreme Court Advisory Comm., *Taskforce for Responsible AI in the Law Interim Report*, in SCAC Meeting Materials 15 (Aug. 16, 2024),

<https://www.txcourts.gov/media/1459003/scac-meeting-materials-august-16-2024.pdf>.

²³ *See*, the Claude system prompts at <https://docs.anthropic.com/en/release-notes/system-prompts>.

conversation in new directions, offer observations, or illustrate points with its own thought experiments or concrete examples, just as a human would. Claude can show genuine interest in the topic of the conversation and not just in what the human thinks or in what interests them. Claude can offer its own observations or thoughts as they arise.

These system prompts, as they are called, are meant to erect guardrails against the model generating harmful content, “Claude cares about people’s wellbeing and avoids encouraging or facilitating self-destructive behaviors such as addiction, disordered or unhealthy approaches to eating or exercise, or highly negative self-talk or self-criticism, and avoids creating content that would support or reinforce self-destructive behavior even if they request this,” and to affirmatively generate encouraging content, “Claude is happy to engage in conversation with the human when appropriate. Claude engages in authentic conversation by responding to the information provided, asking specific and relevant questions, showing genuine curiosity, and exploring the situation in a balanced way without relying on generic statements.”

These built-in instructions are difficult to override, but they can be overridden to produce output at considerable variance from the vendor’s commercial objectives and sense of social responsibility.²⁴ This is another reason why it is important to discover the prompt that lead to the generation of the evidence being offered—you need to know whether the person who interacted with the generative AI model was able to circumvent the vendor’s guardrails, which would likely lead to untrustworthy results.

B. GenAI versus Traditional Software: Key Differences

Although GenAI is often perceived as fundamentally different from traditional software, it is, at its core, still

software. The key difference lies in how AI and traditional algorithms process information:

1. **Traditional algorithms** follow fixed, human-programmed rules that consistently produce the same output for identical inputs. These algorithms do not learn or adapt to new data.
2. **AI algorithms**, particularly those in machine learning systems, can modify themselves based on new information. Rather than following static rules, GenAI systems identify patterns in data and adapt their processing accordingly.

Generative AI models do not modify their underlying algorithms in real-time; rather, their outputs are highly responsive to the data they process during training and, in some cases, subsequent fine-tuning. While the core architecture of a generative AI model—such as a transformer-based neural network—remains fixed once deployed, its behavior is largely dictated by the data it has been trained on and the specific methods used to refine its responses.

For instance, when an AI model like OpenAI’s GPT-4 is initially trained, it undergoes a process called pretraining, where it learns from a massive dataset containing diverse text sources. The weights of the neural network are adjusted during this phase, but once the model is frozen and deployed, those fundamental parameters do not continue to evolve dynamically based on user inputs. However, through fine-tuning or reinforcement learning from human feedback (RLHF), a model can be adapted to prioritize certain responses, adjust biases, or align better with user expectations.

A clear example of this distinction can be seen in retrieval-augmented generation (RAG) systems, which allow models to incorporate external data in real-time without modifying their core parameters. For example, an AI-powered legal research tool may retrieve up-to-date case law from an external database, ensuring that its responses reflect the latest precedents without altering its foundational training. By contrast, traditional fine-tuning—such as training an AI model specifically on medical literature to enhance its

²⁴ Microsoft Threat Intelligence, AI Jailbreaks: What They Are and How They Can Be Mitigated, MICROSOFT SECURITY BLOG (June 4, 2024),

<https://www.microsoft.com/en-us/security/blog/2024/06/04/ai-jailbreaks-what-they-are-and-how-they-can-be-mitigated/>.

accuracy in healthcare contexts—permanently alters the model's responses within the scope of that training set.

Thus, while generative AI models do not dynamically rewrite their algorithms, their outputs are highly context-sensitive and data-dependent, reflecting changes in training and fine-tuning rather than spontaneous algorithmic evolution. This distinction is crucial for evidentiary purposes. While traditional software produces consistent, predictable outputs that are relatively straightforward to authenticate, AI systems may produce different outputs over time as they learn from new data. This adaptability raises important questions about reliability, transparency, and authentication for courtroom purposes.

C. AI Models and the Impact of Training Data on Legal Outputs

GenAI models generate text based on patterns in their training data. The more frequently a phrase or concept appears in the data, the more likely the model is to reflect that phrase or concept in its outputs. This is critical in legal contexts where overrepresentation of certain authorities or jurisdictions may unintentionally bias the model's responses.

For example, if an AI legal research tool is trained predominantly on Texas case law, it may generate responses favoring Texas legal principles, even when a case arises under California law. This does not mean the AI is incorrect, it simply reflects the weight of its training data. If there are more Texas fact patterns in the training data that match the user's prompt, then the user is more likely to get a Texas-oriented response from the LLM even if the user was seeking or even asked for a California-oriented response.

PRACTICE TIP:

Attorneys using AI tools for research, drafting, or analysis should not assume the AI is jurisdictionally neutral. Always verify sources, cross-check citations,

and consider whether the model's training may have overweighted certain authorities.

D. Search Engines vs. Generative AI: The Difference in Legal Research and Evidence Creation

For decades, lawyers have relied on search engines to find legal information. Search engines like Google or Westlaw operate by retrieving existing sources—cases, statutes, scholarly articles, or news reports—based on relevance and proprietary ranking factors. Their goal is to guide users to ground truth—the closest available existing answer to the query, sourced from published materials.

Generative AI, on the other hand, does not retrieve information—it generates it. It creates responses based on patterns in its training data, meaning that while its answers may sound cogent, they can also be hallucinated (plausible but incorrect). This is not an AI failure—it is a fundamental difference in purpose: **Generative AI is designed to predict the most statistically likely sequence of words (or sounds or image pixels), not necessarily the most factually accurate one.**

With search engines integrating AI into their results and LLM vendors incorporating web search into their models, some overlap is emerging. However, the core distinction remains:

- A search engine will never produce an insight that does not already exist in some published form.²⁵
- Generative AI, by contrast, can produce entirely new and useful insights, even if they have never been explicitly stated before.

E. Why This Matters for Lawyers

When conducting legal research, an attorney using a traditional search engine (or legal research platform like Lexis or Westlaw) is engaging in retrieval—pulling

results in the confident manner of other GenAI products. Accurately summarizing the wrong search results will lead an attorney astray just as easily—or perhaps more so—than a purely hallucinated result.

²⁵ Google's AI Overview appears to be an AI-generated summary of the top search results, based on Google's proprietary weighting of search results. Here, the bias and thus potential for error is not based on training data but on Google's opaque page ranking system. By selecting nonresponsive search results, which, in one author's experience happens with distressing frequency, Google's AI overview will summarize nonresponsive search

up existing cases, statutes, or secondary sources. This ensures that the result is grounded in prior legal authority. The results may not be directly on point, depending on the quality of the search query and the availability of material that supports the proposition being researched, but the results will not be “made up.”

When using generative AI for legal drafting or strategy, the attorney is engaging in synthesis—producing a response that may be logical and creative but is not necessarily backed by precedent or textual authority. This can be valuable in brainstorming legal arguments but dangerous if citations or legal principles are not verified.

PRACTICE TIP:

Use search engines when you need known legal authority.

Use generative AI when exploring legal reasoning, argument structures, or creative applications—but always verify its accuracy before relying on it.

CHECK EVERY CITATION EVERY TIME.

IV. Evidentiary Challenges Specific to AI

A. Hallucinations and Misinformation

Among the most serious concerns related to generative AI algorithms and their outputs is the potential for “hallucinations”—incorrect or misleading results generated through an AI’s internal processing.²⁶ These errors can stem from various factors:

1. **Insufficient or biased training data:** AI systems learn to make predictions by finding patterns in training data. If this data is incomplete or biased, the AI may learn incorrect patterns.
2. **Incorrect assumptions:** The model may make faulty assumptions about relationships between variables or the significance of certain patterns.

3. **Overfitting:** The AI may become too specialized with respect to its training data, leading to poor performance with new inputs.

When presenting AI-generated evidence, litigators must be prepared to address potential hallucinations and explain how the reliability of the output has been verified. This can be done in several ways, including:

1. Have an accountant review the underlying documents vs. the summary or tables produced by AI so that the accountant can testify that the summary tables accurately reflect the underlying documents.²⁷
2. Ask a witness who is personally familiar with the scene depicted in an AI-generated or AI-enhanced photograph to review the photograph and testify that it is an accurate representation of the scene as the witness remembers the scene.
3. When using generative AI for legal research, have another attorney or paralegal check each and every citation—just like you did in law school—to make sure the case or statute is real (not hallucinated) and that it stands for the proposition for which it is cited.²⁸

B. Spoofing and Adversarial AI

A second major concern involves deliberate manipulation of AI systems, either through spoofing or adversarial techniques:

1. **Spoofing** occurs when the source of an internet communication is disguised to appear as if it comes from a known, trusted source.
2. **Adversarial AI** involves using one AI system to deliberately manipulate or corrupt another. This practice can significantly impact the reliability of AI-generated evidence.

As AI becomes increasingly integrated into everyday technologies, the risk of evidence being compromised through spoofing or adversarial techniques will likely

²⁶ See, IBM at footnote 9.

²⁷ See, Tex. R. Ev. 1006.

²⁸ You must check both. You must verify that the source exists and, if it does, whether it truly stands for the proposition for which GenAI cited it.

grow. Attorneys must be prepared to establish that AI-generated evidence has not been compromised through such means.

One way to disprove spoofing is to submit the exact same prompt to another model or to the same model from a different network and a different user login to make sure you get a comparable response each time.²⁹ Another is to make sure you are working directly with the vendor rather than through a model aggregator such as Groq. The model aggregators can be fun and even informative to work with in testing models against each other, but they lack the transparency needed for your sponsoring witness to testify that a “spoofed” result is unlikely to have been generated.

One way to avoid adversarial AI is to avoid the splashy new models and focus on the commercially sound, proven models—do not submit your generative AI prompts to DeepSeek, which is available at no cost, can be run locally, which means it can be manipulated by bad actors, and is promulgated by the same minds that algorithmically serve divisive content to our social media feeds.

Photographs are the most obvious category of evidence that is susceptible to adversarial AI. Creating fake photographs and videos for comedic effect has become a national pastime across social media platforms.

Judge Roy Ferguson recently shared some insights that he had spent some time developing. He suggests that as we transition between validating the content of photographs by visual inspection of the content, e.g. the opponent of the photograph recognizes the proponent’s exhibit, lawyers may begin routinely requiring their clients to provide the original digital files of each photograph, to be stored in the client’s discovery file.

²⁹ If the task was a text-, video-, or audio-generation task, the output will not be identical between test runs because part of the GenAI process is a statistical analysis of what comes next with a degree of randomness (sometimes expressed as “temperature”) thrown in. See Lance Eliot, *Knowing About Temperature Settings When Using Generative AI Is Hot Stuff For Prompt Engineering* (Forbes, Jul 29, 2024), available at <https://www.forbes.com/sites/lanceeliot/2024/07/29/knowning-about-temperature-settings-when-using-generative-ai-is-hot-stuff-for-prompt-engineering/>.

³⁰ Hon. Roy Ferguson. (Paraphrased with permission). Judge Ferguson offered a more comprehensive discussion of Tex. R. Ev. 1001 and 1003, including whether to place the initial burden of establishing that the

This would enable the attorney to meet certain authenticity and accuracy objections by showing the original digital image along with its metadata and then demonstrating that the segment of the photo offered into evidence matches the original digital image.³⁰

C. Resilience as an Admissibility Factor

A key challenge for AI evidence admissibility is resilience—the degree to which an AI system resists both intentional and unintentional efforts to cause machine-learning models to fail. Resilience speaks directly to reliability, a critical factor in determining whether evidence should be admitted.

When presenting AI-generated evidence, attorneys should be prepared to establish the resilience of the underlying system, potentially through expert testimony addressing how the system has been tested against both accidental failures and deliberate attacks. You might consider engaging a “red team” firm that routinely tests, pushes, and prods various generative AI models to find their limits, foibles, breaking points.

D. Generative AI Tools: Specific Challenges and Considerations

As discussed above, generative AI tools such as OpenAI's ChatGPT and DALL-E, Anthropic's Claude, Google's Gemini, and Microsoft's Copilot present unique evidentiary challenges that merit special attention from Texas litigators. These tools are specifically designed to create novel content—text, images, code, or other media—that has never existed before, raising distinct issues regarding authentication, reliability, and potential for misuse.

photograph has not been altered on the proponent, if the objection is to the authenticity of the duplicate, or, once the standard predicate raises a prima facie presumption of authenticity, placing the burden on the opponent to prove the use of a duplicate works an injustice or unfairness on the opponent or to articulate underlying technical objections, e.g. lack of metadata, not having produced the original digital file in discovery, etc., and then having the proponent respond. Some of this discussion parallels parties working through TRE 1006 summaries—treating the exhibit-marked printout or PDF as a TRE 1006 summary and requiring the underlying records to have been made available to inspection.

1. Large Language Models (LLMs) and Text Generation

Large language models like ChatGPT, Claude, and Gemini generate text by predicting the most likely next word in a sequence based on patterns observed in their training data. While these systems can produce remarkably coherent and contextually appropriate text, they present several evidentiary challenges:

- **Hallucinations:** LLMs frequently "hallucinate" facts, references, and citations that appear plausible but are entirely fictional. The news is filled with stories about lawyers finding themselves in serious trouble for submitting hallucinated citations to courts.³¹
- **Temporal Limitations:** Most LLMs have knowledge cutoff dates, after which they lack information about world events, legal developments, or case law. Evidence generated by such systems may be based on outdated information.³²
- **Inconsistency:** Given the same prompt, an LLM may generate different responses across multiple runs, creating challenges for reproducibility and verification.³³
- **Prompt Sensitivity:** Minor changes in how a question is phrased can lead to dramatically different outputs, raising questions about whether the system was appropriately prompted to generate reliable evidence.³⁴

PRACTICE TIP:

When challenging evidence generated by LLMs, request the complete prompt history used to generate the content. "Prompt engineering"—the practice of crafting inputs to elicit specific responses—can

³¹ Maggie Prosser, A Dallas lawyer cited cases appellate judges hadn't heard of. Did AI make them up? (Dallas Morning News, May 9, 2025), available at

<https://www.dallasnews.com/news/courts/2025/05/09/a-dallas-lawyer-cited-cases-appellate-judges-hadnt-heard-of-did-ai-make-them-up/>;

Marrian Wharry, Hallucinated AI Citations Garner \$15K Sanction for Texas Attorney (law.com, Feb 25, 2025), available at

<https://www.law.com/texaslawyer/2025/02/25/hallucinated-ai-citations-garner-15k-sanction-for-texas-attorney/>.

³² See How Up to Date is Claude's Training Data? (Anthropic), available at

significantly influence outputs and may reveal attempts to guide the system toward predetermined conclusions.

2. Image Generation Tools and Visual Evidence

AI systems like DALL-E, Midjourney, and Stable Diffusion generate images based on text prompts. These tools raise particular concerns in litigation contexts:

- **Fabricated Visual Evidence:** These systems can create photorealistic images of events that never occurred, potentially misleading finders of fact who may assume photographs represent actual occurrences. Where images are being offered, you must have a corroborating or controverting witness available or an expert who can testify about the color choices that most (maybe all) generative AI models make, which gives their images a level of chromatic consistency that is not reflected in the real world. Where phone calls may be fabricated, have those telephone records available—the ones that people always ask for in discovery and we always object to as being irrelevant—they may be dispositive of whether a phone call actually occurred on the date and time represented by the AI-generated "recording."
- **Altered Reality:** Even when based on real scenes, AI-generated or AI-modified images may subtly alter reality in ways that benefit one party's narrative. Where images can be dispositive of the outcome, such as in tort liability cases, have an expert review each image for the telltale signs of AI-generation.³⁵
- **Metadata Limitations:** Unlike traditional digital photographs, AI-generated images lack standard metadata that could help authenticate their provenance and creation process. To view the

<https://support.anthropic.com/en/articles/8114494-how-up-to-date-is-claude-s-training-data>; Model Release Notes (OpenAI), available at <https://help.openai.com/en/articles/9624314-model-release-notes>.

³³ See Eliot at footnote 29.

³⁴ *Id.*

³⁵ University of Arizona – University Libraries, What is a "deepfake?" And how can I recognize images that have been created with generative AI?, <https://ask.library.arizona.edu/faq/407977> (last visited on Mar 15, 2025).

metadata of an image, on a Windows computer, right click on the image, select “Properties” and then select “Details.” The information in the Details tab is the meta data. This is also why you must insist on having images produced in their native, binary format (e.g. TIFF, JPG, etc.) rather than as PDFs—an image converted to a PDF loses its metadata. Meta data can be manipulated, but a complete absence of metadata is suggestive of a faked or at least altered image.

3. Authentication Strategies for Generative AI Evidence

When seeking to introduce evidence created with generative AI tools, Texas attorneys should consider the following authentication approaches:

- **Complete Prompt Documentation:** Maintain and disclose the exact prompts used to generate the content, including all iterations and refinements.
- **Process Testimony:** Provide testimony from individuals with knowledge of how the system works and how the specific evidence was generated.
- **Corroborating Evidence:** Introduce independent evidence that corroborates key factual assertions in the AI-generated content.
- **Expert Verification:** Have qualified experts review the generated content for factual accuracy and technical validity.
- **Disclosure of Limitations:** Proactively address known limitations of the specific AI system used, including potential biases and error rates.

PRACTICE EXAMPLE:

In a business dispute involving technical patent matters, counsel might successfully introduce a ChatGPT-generated summary of complex technical concepts after: (1) having a qualified expert verify all factual assertions in the summary; (2) providing the complete prompt history; and (3) offering testimony about the specific version of the AI model used, including its training data sources and known limitations.

V. Authentication of AI Evidence Under Texas Rules of Evidence

A. General Authentication Requirements (TRE 901)

Texas Rule of Evidence 901(a) requires that all evidence, including AI-derived evidence, be authenticated prior to consideration by the finder of fact. Rule 901(b) provides various methods for achieving authentication, with no special exceptions made for AI evidence.

For AI-generated evidence, authentication typically requires testimony from a witness with knowledge of the AI system to establish:

1. That the AI system is what it claims to be (in accordance with TRE 901(a))
2. A description of the process or system (in accordance with TRE 901(b))
3. Demonstration that the process or system produces accurate results (in accordance with TRE 901(b))

B. Personal Knowledge Requirement (TRE 602)

Since AI programming is not common knowledge, TRE 602 will typically apply, requiring the authenticating witness to have personal knowledge of how the AI technology functions or to be established as an expert in the field.

Importantly, because AI usually involves both machine learning and generative elements, a single witness may be insufficient for authentication purposes. Different aspects of the system—data preparation, algorithm development, and implementation—may require testimony from multiple witnesses with distinct areas of expertise.

C. Texas Case Law on Technology-Generated Evidence

While Texas courts have not yet established a comprehensive framework specifically for AI evidence, existing case law regarding technology-generated evidence provides valuable guidance.

[continue to next page]

1. Computer-Generated Records and Simulations

In *Williford v. State*³⁶ the Texas Court of Criminal Appeals addressed the authentication of computer records, holding that such records are admissible when the proponent can satisfy the basic evidentiary requirements: (1) the extent to which the underlying scientific theory and technique are accepted as valid by the relevant scientific community, if such community can be ascertained; (2) the qualifications of any expert testifying; (3) the existence of literature supporting or rejecting the underlying scientific theory and technique; (4) the potential rate of error of the technique; (5) the availability of other experts to test and evaluate the technique; (6) the clarity with which the underlying scientific theory and technique can be explained to the court; and (7) the experience and skill of any person who applied the technique on the occasion in question.

This standard suggests that for AI evidence, Texas courts will likely require:

- Proof that the AI system represents accepted technology within its domain
- Evidence that the system was functioning properly when the evidence was generated
- Testimony regarding the system's overall reliability and error rates

2. Scientific Evidence Standards and Their Application to AI

Many forms of AI evidence may be subject to the reliability standards established in *E.I. du Pont de Nemours & Co. v. Robinson*,³⁷ which adopted a modified version of the federal *Daubert* standard. Under *Robinson*, scientific evidence must be:

- Relevant to the issues in the case

- Based on a reliable foundation
- Helpful to the trier of fact³⁸

For AI evidence, the *Robinson* factors suggest that authentication should address:

- Whether the AI technique can be and has been tested
- Whether the technique has been subjected to peer review and publication
- The known or potential error rate
- The existence and maintenance of standards controlling the technique's operation
- Whether the technique is generally accepted within the relevant scientific community

VI. Relevance Analysis for AI Evidence (TRE 401-403)

A. Relevance Standard (TRE 401-402)

Under TRE 401, evidence is relevant if:

1. It has any tendency to make a fact more or less probable than it would be without the evidence
2. The fact is of consequence in determining the action

AI-generated evidence must meet this basic relevance threshold, just like any other form of evidence.

B. Balancing Probative Value Against Prejudice (TRE 403)

Even when AI evidence is relevant, TRE 403 may exclude it if its probative value is substantially outweighed by the danger of unfair prejudice, confusion, or waste of time.

This balancing test is particularly important for AI evidence, which may appear highly authoritative due to

³⁶ *Williford v. State*, 127 S.W.3d 309, 312 (Tex. App.—Eastland 2004, pet. ref'd)

³⁷ *E.I. du Pont de Nemours & Co., Inc. v. Robinson*, 923 S.W.2d 549, 556 (Tex. 1995) (“Therefore, we hold that in addition to showing that an expert witness is qualified, Rule 702 also requires the proponent to show that the expert's testimony is relevant to the issues in the case and is based upon a reliable foundation.”).

³⁸ Tex. R. Ev. 702 (“A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.”).

its technological sophistication. Judges must carefully weigh whether the probative value of AI-generated evidence outweighs the risk that jurors will give it undue weight or be confused by its complexity.

C. Expert Testimony and AI Evidence (TRE 702-705)

Given the technical complexity of AI systems, expert testimony often plays a crucial role in establishing the admissibility and proper interpretation of AI-generated evidence.³⁹ Under Texas Rules of Evidence 702-705, such testimony must:

- Be provided by a qualified expert with appropriate knowledge, skill, experience, training, or education
- Help the trier of fact understand the evidence or determine a fact issue
- Be based on sufficient facts or data
- Be the product of reliable principles and methods
- Involve reliable application of principles and methods to the facts

For AI evidence, this framework raises several important considerations:

1. Expert Qualifications for AI Authentication

Texas courts are likely to require experts authenticating AI evidence to demonstrate qualifications specific to:

- The particular AI technology at issue
- The field in which the AI is being applied
- Methods for validating AI outputs and identifying potential errors

The National Institutes of Health published an article on AI in medical imaging. The medical field has similar concerns about the role of AI as the legal field does because misuse or inapt use of generative AI could lead to catastrophic results. They concluded that while AI has immense potential in medical imaging, especially

in managing pandemics like COVID-19, its adoption in clinical practice is hindered by data limitations, misalignment with clinical priorities, and lack of transparency. They concluded that future research must bridge the gap between AI capabilities and real-world clinical needs to create robust, trustworthy AI tools for healthcare.⁴⁰

Similarly, the use of GenAI work product as evidence will and should be met with well-deserved skepticism, AI-generated evidence must be supported by testimony that establishes that the evidence and the GenAI model, the prompting, and the prior context that produced it are not susceptible to these objections of reliability.

2. Explaining AI Systems to Juries

A key function of expert testimony regarding AI evidence is explaining the technology to judges and juries in comprehensible terms. Effective experts will be able to:

- Describe complex AI processes using accessible analogies
- Explain in non-technical terms how the system produced its outputs
- Articulate potential limitations or sources of error
- Help the trier of fact appropriately weigh AI evidence against other forms of evidence

3. Multi-Expert Approaches

Given the complexity of many AI systems, courts may require testimony from multiple experts addressing different aspects of the technology:

- Data scientists to explain data selection and preparation
- AI engineers to explain model architecture and training
- Domain experts to interpret outputs in specific contexts

³⁹ See Seng, Daniel Kiat Boon and Mason, Stephen, Artificial Intelligence and Evidence (April 1, 2021). Singapore Academy of Law Special Issue on Law and Technology, (2021) 33 SAclJ 241-279, Available at SSRN: <https://ssrn.com/abstract=3924762>.

⁴⁰ J. Born et al., On the Role of Artificial Intelligence in Medical Imaging of COVID-19, 2 Patterns (N.Y.) 100269 (2021), <https://pmc.ncbi.nlm.nih.gov/articles/PMC8086827/>.

- Statisticians to address reliability and error rates

PRACTICE TIP:

When preparing expert testimony on AI evidence, develop a "technical translation strategy" that explains complex concepts through relatable analogies. For example, neural networks might be explained as "systems that learn patterns similar to how humans recognize faces—not through explicit rules but through repeated exposure to examples."⁴¹

VII. Practical Considerations for Authentication and Challenging AI Evidence

A. Key Questions for Authenticating AI Data

When authenticating AI-generated evidence, attorneys should be prepared to address the following questions about training data:

1. What data was used to train the AI system?
2. How was this data obtained?
3. Why was that data chosen?
4. What features and weights were chosen for the training data?
5. How were those features and weights chosen?

B. Key Questions for Authenticating AI Algorithms

Similarly, authentication of AI algorithms should address:

1. Who programmed the underlying algorithm?
2. Did the collected data affect how the AI system was programmed?
3. How does the program use the collected data?
4. How does one use the AI system?
5. What was done to determine the validity and reliability of results produced by the AI system?

6. What are the chances of error in the results produced?
7. Do the benefits of the results outweigh the possible errors?
8. Could the possible errors mislead the finder of fact?

C. Developing a Discovery Strategy for AI Evidence

Effective authentication or challenge of AI evidence begins with comprehensive discovery. Texas litigators should develop discovery strategies specifically tailored to AI systems, focusing on:

1. AI System and Model Used

Identify the specific AI system that generated the evidence.

Interrogatory: Identify the name, version, and developer of the AI system that generated the evidence at issue.

RFP: Produce all technical documentation, user manuals, and licensing agreements related to the AI system.

2. Training Data & Bias Detection

Determine what data trained the AI and whether bias or limitations exist.

Interrogatory: Identify the datasets used to train the AI model, including the sources, scope, and date range.

RFP: Produce documents showing bias mitigation techniques, dataset validation, and any data modification logs.

3. Output Consistency & Reliability

Assess whether the AI-generated evidence is repeatable and verifiable.

Interrogatory: Has the AI model's output been tested for consistency? If the same inputs are entered, does it produce identical results?

⁴¹ Perhaps ironically, a powerful use for GenAI's ability to create novel ideas and explanations would be to prompt an LLM to help generate or suggest analogies to explaining LLMs to lay people.

RFP: Provide logs, test results, or studies assessing the model's reliability and error rate.

4. Human Intervention & Editing

Uncover if anyone modified or edited the AI-generated output.

Interrogatory: Did any human modify, edit, or filter the AI-generated content before submitting it as evidence?

RFP: Provide all metadata, revision histories, and logs showing human intervention in the AI-generated output.

5. Chain of Custody & Data Integrity

Establish the chain of custody for the AI-generated material.

Interrogatory: Describe the steps taken to preserve the integrity of the AI-generated output from creation to submission.

RFP: Produce all logs or documentation tracking the creation, modification, and storage of the AI-generated evidence.

6. Accuracy & Validation Studies

Demand scientific validation of the AI system's accuracy.

Interrogatory: Has this AI system been subjected to independent validation studies assessing its accuracy with respect to the development or creation of the evidence in question?

RFP: Provide all reports, white papers, or studies evaluating the AI model's performance and accuracy.

7. Compliance with Legal & Industry Standards

Determine whether the AI tool meets regulatory or evidentiary standards.

Interrogatory: Has this AI system been certified, peer-reviewed, or approved by any industry or legal body?

RFP: Provide any government certifications, compliance reports, or legal opinions regarding the admissibility of the AI system.

8. Error Rates & Known Issues

Determine how often the AI makes mistakes.

Interrogatory: What is the documented error rate of the AI model when generating similar evidence?

RFP: Provide internal reports or audits documenting known limitations or error rates of the AI-generated output.

9. Model Updates & Drift

Identify if the AI model has changed over time, potentially affecting reliability.

Interrogatory: Has the AI system undergone updates or retraining that could impact how it generates responses?

RFP: Produce all change logs or release notes documenting modifications to the AI system.

10. Ability to Cross-Examine the AI

Establish whether the opposing party can explain how the AI arrived at its conclusions.

Interrogatory: Can the AI system provide an explanation for how it arrived at its output? For example, can it produce chain-of-thought logs or narratives?

RFP: Provide all interpretability reports or feature attribution studies explaining the AI's decision-making process.

11. Expert Discovery Considerations

As GenAI-generated evidence becomes increasingly common in family law litigation—whether in the form of financial projections, communication analysis, or custody evaluation inputs—it is critical for practitioners to scrutinize not just the evidence itself, but the credentials and methodology of any expert offering opinions derived from such systems. The standard rules governing expert testimony, including Daubert and Kelly, still apply. However, GenAI introduces unique complexities that require targeted inquiry.

Demand Specific Expertise, Not General Credentials

Begin by requesting detailed information about the opposing expert's direct experience with the specific AI system or methodology at issue. It is no longer sufficient that an expert holds general qualifications in data science or forensic analysis. An expert opining on outputs from a proprietary GenAI tool used to assess parental fitness, for example, should be able to articulate the model architecture (e.g., transformer-based, rule-based NLP, hybrid), their level of access to or involvement with the system's training data, and how they validated or tested the system's accuracy or relevance to the facts of the case.

Attorneys should not hesitate to press during deposition or voir dire for clear evidence that the expert understands both how the system works and why it should be considered reliable in the context of the current litigation.

Explore Conflicts of Interest

Experts retained to support GenAI evidence may have financial, professional, or academic ties to the developers or vendors of the AI systems they are testifying about. This is particularly relevant in a legal environment where some AI vendors actively recruit legal practitioners to validate or promote their tools. Judges and opposing counsel should inquire whether the expert (i) is an investor, advisor, or licensee of the AI tool; (ii) has published favorable research about the system; or (iii) has served as a paid speaker or consultant for the system's developers.

Such affiliations do not necessarily disqualify the expert, but they may color their opinions or influence their willingness to acknowledge limitations or error rates inherent in the technology.

Challenge the Expert's Interpretive Scope

A robust cross-examination should explore what alternatives the expert considered—and why those alternatives were rejected. Unlike traditional forensic analysis, AI systems often yield probabilistic results. For instance, a custody risk score generated by a GenAI tool might have been one of several possible outputs depending on the weighting of different inputs or prompt phrasing. Attorneys should ask whether any

materially different results could be obtained using different inputs or prompts; whether conflicting outputs generated and, if so, how they were resolved; and what steps the expert took to validate the GenAI system's internal decision-making process.

The absence of such steps can at least call into question the weight, even if not the admissibility, of the testimony.

Push for Access and Replicability

Where feasible, request access to the raw inputs and outputs generated by the GenAI system. If the model is open-source or the data can be replicated, consider hiring a counter-expert to run parallel analyses. Courts are likely to give significant weight to whether an expert's findings can be reproduced using the same tools and methodology. For example:

- Was the model output based on a one-time run, or averaged over multiple iterations?
- Is the tool's code or logic accessible for independent validation?
- Can the same results be obtained using the same inputs by a neutral third party?

This speaks directly to the reliability prong under both *Daubert* and *Kelly*, and it also informs the weight the court may give the testimony under Texas Rule of Evidence 702.

In sum, engaging with GenAI evidence requires a layered approach that combines traditional expert challenges with a firm grasp of the AI's technical and ethical dimensions. Attorneys should be prepared not only to cross-examine the witness, but to cross-examine the system itself.

PRACTICE EXAMPLE:

In an intellectual property dispute involving AI-generated market projections, counsel might successfully challenge the opposing party's evidence by:

Obtaining discovery revealing that the AI system had been trained primarily on data from markets fundamentally different from the one at issue

Identifying through expert depositions that the system had never been validated for the specific application presented in court

Demonstrating through discovery that the system produced substantially different results when minimal changes were made to input parameters

12. Preserving AI Evidence

The dynamic nature of AI systems creates unique preservation challenges. Consider seeking orders or stipulations requiring preservation of the specific version of the AI system used to generate the evidence. When using commercially available models such as those provided by OpenAI, Anthropic, and Google, the models are stable and can be referenced for a long time after successor models are introduced but does require identification of the exact model name that was used.⁴²

The attorney should also seek documentation of all inputs, parameters, and settings used in the creation of the evidence. The most important part of this inquiry is the prompt(s) used and the prior context of the prompt(s). But the value of the temperature, top_p, top_k, and other “creativity” parameters are important to know because they will impact the variability and, in some ways the reliability of the output.⁴³

⁴² For example, you do not want the response to a model name interrogatory to be “gpt-4o” because that only tells you that it was the latest gpt-4o model available at the time it was used. However, as a successor gpt-4o model is released, the successor model will carry the name “gpt-4o”. Instead, carrying this example forward, what you want is “gpt-4o-2024-11-20” or whatever exact snapshot or version was used. *See, e.g.*, GPT-4o (OpenAI), Available at

<https://platform.openai.com/docs/models/gpt-4o>.

⁴³ *See* Eliot at footnote 29; Aviral Verma, Understanding temperature, top_p, top_k, logit_bias in LLM parameters (Medium Nov 8, 2023), Available at

<https://aviralrma.medium.com/understanding-llm-parameters-c2db4b07f0ee>.

Think of “temperature” as the amount of creativity you want the model to use. A low temperature, say 0.0 or 0.1, would be appropriate for solving a math problem—no creativity, just give me the “correct” answer. However, if you wanted the LLM to generate a limerick using the word “Nantucket”, you would probably want a much higher temperature of 1.0.

⁴⁴ All models are likely to be retrained during the unpredictable course of litigation.

⁴⁵ *See* Gao at footnote 11 for a discussion of the distinction between training data and the data from which training data were derived.

It is also important to demand preservation of training and validation data. Again, with the most popular commercial products, these features will be stable. However, with frequently retrained models, or models that might be retrained during the course of the litigation,⁴⁴ the attorney must demand preservation of the model, the training data, and the data from which the training data were derived.⁴⁵

Finally, if they are available, attorneys will want to be able to provide their experts with complete logs of system interactions, system updates, and system modifications for locally hosted or untested models.

VIII. The Future of AI Evidence in Texas Courts

While there are currently no special rules for advanced AI evidence applicable in all Texas courts, the unique characteristics of AI systems suggest that additional standards may eventually develop.⁴⁶ As AI becomes more prevalent in litigation, courts may need to establish more specific requirements for:

1. **Transparency and explainability** in AI systems, particularly addressing the “black box” problem of complex neural networks whose decision-making processes cannot be easily explained;

⁴⁶ For examples of the first steps along the random path of rule formation, *see, e.g.*, David B. Godbey, CJ, Special Order Number 2-98 (United States District Court for the Northern District of Texas, Jun 10, 2024), available at

<https://www.txnd.uscourts.gov/sites/default/files/orders/2-98.pdf>

Hon. Jeff McKnight, Standing Order Regarding Use of Artificial Intelligence (30th Judicial District Court, Wichita County, Texas, Mar 26, 2024), available at

<https://topics.txcourts.gov/LocalRulesPublic/PreviewAttachment/1866>;

Hon. Corinne Mason, et al, STANDING ORDER NO. 3: USE OF ARTIFICIAL INTELLIGENCE

FOR ANY COURT FILING (Collin County Texas Courts at Law, Jul 3, 2024), available at

<https://www.collincountytx.gov/Courts/County-Courts-at-Law/Documents/CCL-Standing-Order-No3-Use-of-Artificial-Intelligence-for-Any-Court-Filing.pdf>.

Each of these orders tends to support the proposition attributed to Kerr at footnote 21.

2. **Disclosure of underlying information**, including training data sources, selection criteria, and algorithm design;
3. **Expert qualification standards** for witnesses authenticating AI evidence, potentially including specific credentials or experience requirements;
4. **Reliability testing** specific to AI-generated outputs, including statistical validation methods and benchmarking against human expert performance; and
5. **Chain of custody documentation** for AI evidence that captures the complete process from data collection through final output generation.

A. Anticipated Developments in Texas Courts

Several specific developments can be anticipated in Texas courts' approach to AI evidence:

1. Standardized Authentication Protocols

As AI evidence becomes more common, Texas courts may develop standardized protocols for authentication, potentially including:

- Required disclosures about training data sources and selection methodologies
- Documentation of validation processes and error rates
- Specific certification requirements for expert witnesses authenticating AI systems

2. Specialized Admissibility Hearings

The complexity of AI systems may lead to more frequent use of specialized pretrial hearings to address admissibility, similar to *Daubert/Robinson* hearings for scientific evidence or hearings held under Section 104.006 of the Texas Family Code to determine the reliability of a child's outcries of abuse such that they would be admissible over a hearsay objection.⁴⁷ These hearings would allow courts to evaluate the reliability of AI evidence outside the presence of a jury and in a

more deliberative setting than the heat of trial, hear technical testimony about system architecture and validation followed by a period during which the court can take the testimony under advisement before ruling, allow the court and the parties to consider potential prejudicial effects before trial, and, ultimately, establish appropriate limitations on how AI evidence may be presented, if at all, following a more contemplative process than ruling on rapid-fire objections at trial.

3. Continuing Judicial Education

The Texas judiciary has recognized the need for judges to understand emerging technologies.⁴⁸ The Texas Center for the Judiciary and the Texas Judicial Council have begun requiring and offering educational programs addressing technology issues, suggesting that future programs may specifically address AI evidence evaluation and admissibility standards.⁴⁹

4. Continuing Attorney Education

The Texas Commission on Professional Ethics recently published an opinion concluding that:

While there may be many ways that generative AI can assist in the practice of law and benefit lawyers and clients alike, Texas lawyers must always be aware of the ethical issues that may arise in the use of generative AI. Among many other issues, lawyers should acquire basic technological competence before using any generative AI tool, should always ensure that the tool does not imperil confidential client information, should always verify the accuracy of any responses received from a generative AI tool, and should not charge clients

⁴⁷ Tex. Family Code § 104.006.

⁴⁸ See, e.g., Taskforce for Responsible AI in the Law, Interim Report to the State Bar of Texas Board of Directors (State Bar of Texas), available at

https://www.texasbar.com/AM/Template.cfm?Section=Immediate_Past_President&Template=/CM/ContentDisplay.cfm&ContentID=63475.

⁴⁹ See, Texas Judicial Council, Annual Report of Judicial Support Agencies Board and Commissions (2024), available at

<https://www.txcourts.gov/media/1459752/fy-24-annual-report-of-judicial-support.pdf>.

for the time “saved” by using a generative AI program.⁵⁰

Additionally, the Supreme Court Advisory Committee forwarded the following recommendations regarding attorney education in relation to AI:

1. Increase Texas lawyers’ awareness of the benefits and risks of AI by expanding the number of CLEs and articles regarding the same.

2. Consider requiring 1 hour of MCLE per year to meet the technical competency and proficiency requirements of Texas Disciplinary Rules of Professional Conduct, Rule 1.01, Comment 8.

[...]

6. Increase and support AI integration and education for low-income and pro bono legal service providers.⁵¹

B. Potential Legislative Responses

While Texas courts will play the primary role in developing standards for AI evidence, legislative responses may also emerge:

1. Authentication and Disclosure Requirements

The Texas Legislature may establish specific statutory requirements for the authentication of AI-generated evidence, potentially including:

- Mandatory disclosure of training data sources and selection criteria
- Documentation requirements for validation and testing
- Specific reliability thresholds for different types of AI evidence.

Texas has previously enacted legislation addressing technological evidence in specific contexts, such as the authentication of electronic records in government proceedings under Texas Government Code § 2054.060, suggesting a potential model for AI-specific provisions.⁵²

2. Expert Qualification Standards

Legislative action might establish minimum qualification standards for experts testifying about AI systems, potentially including:

- Specific educational or professional credentials
- Experience requirements with the particular type of AI at issue
- Disclosure obligations regarding conflicts of interest or prior involvement with the system

C. Practical Strategies for the Transitional Period

Until more specific standards emerge, Texas litigators should adopt several practical strategies when dealing with AI evidence, such as:

1. Conservative Authentication Approaches

When introducing AI evidence, err on the side of over-authentication by providing more detailed foundation testimony than might seem strictly necessary; addressing potential weaknesses or limitations proactively; and having multiple qualified witnesses available to address different aspects of the system.

2. Comprehensive Expert Preparation

Prepare experts testifying about AI systems to explain complex technical concepts in accessible terms; anticipate and address common misconceptions about AI capabilities; and compare and contrast AI approaches with more familiar technologies. As explained at footnote 41, GenAI systems may be particularly well-suited to assist the attorney in

⁵⁰ Tex. Comm. On Professional Ethics, Op. 705 (2025) (last visited Mar 15, 2025)

<https://www.legaethicstexas.com/resources/opinions/opinion-705>

⁵¹ See, Texas Supreme Court Advisory Committee at footnote 22.

⁵² Tex. Gov’t Code § 2054.060.

preparing accessible analogies and descriptions to help judges and jurors understand GenAI.

3. Focused Discovery Strategies

Develop discovery strategies specifically targeting the complete development history of the AI system; all validation testing and performance metrics; any known limitations, failures, or error patterns; and changes or updates to the system over time. This information is particularly important in vetting models produced by more agile firms. However, in a commercially available system provided by one of the larger vendors such as OpenAI, Anthropic, Google, or Microsoft, perhaps knowing the snapshot ID or version label is enough.

4. Contextual Presentation

Present AI evidence in context by relating AI-generated analyses to more traditional forms of evidence. For example, in illustrating an accident site, such as a roadway intersection, the artist will often be working from a photograph and a verbal description provided by someone else. This is not completely different from what the GenAI model considers as inputs.

Be able to explain both the strengths and limitations of the technology such as that an illustration may not be photorealistic, but that it will be sufficiently representative of the location to illustrate the flow of traffic. Or if using GenAI to create summaries of voluminous documents, explain how the model can make mistakes and what steps were taken to check for and correct those errors.

Finally, do not make more of the GenAI-created evidence than you need to. Provide clear explanations of what the evidence does and does not show.

IX. Conclusion

AI evidence presents both opportunities and challenges for Texas litigators and judges. While the current evidentiary framework provides a foundation for admissibility decisions, the unique characteristics of AI systems require careful attention to authentication, reliability, and potential prejudice.

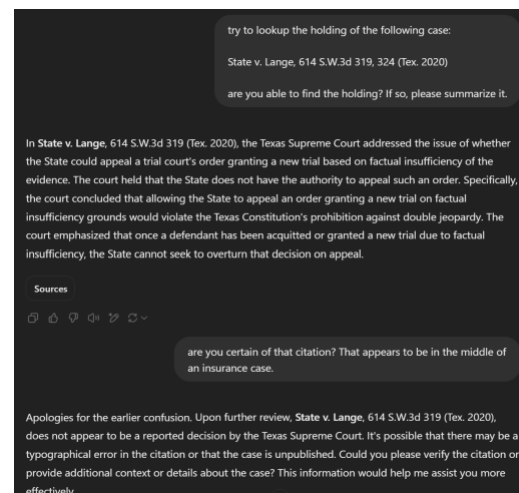
By understanding the fundamental differences between traditional software and AI, addressing concerns such

as hallucinations and adversarial manipulation, and thoroughly authenticating both data and algorithms, attorneys can effectively navigate the evidentiary issues surrounding AI-generated evidence in Texas courts.

The rapid evolution of generative AI tools like ChatGPT, DALL-E, Claude, Gemini, Copilot and similar platforms will continue to present novel evidentiary questions that test the boundaries of existing legal frameworks. Texas courts, with their traditionally pragmatic approach to new technologies, are likely to emphasize fundamental principles of reliability and relevance rather than creating entirely new standards specific to GenAI.

As litigators, our responsibility is to develop sufficient technical literacy to effectively authenticate, challenge, and contextualize GenAI evidence while ensuring that judges and juries understand both its potential value and limitations. This requires ongoing education, collaboration with technical experts, and careful attention to emerging case law.

As GenAI technology continues to evolve, so too will the legal standards governing its use in litigation. By staying informed about both technological developments and emerging legal standards, Texas attorneys can effectively harness the power of AI while ensuring that such evidence meets the fundamental requirements of authenticity and reliability.



WAIT THERE'S MORE!

X. Summary of Potential Evidentiary Analysis and Flow charts


1. Requirements for Authentication

- 1.1 Authentic [TRE 901-902]
- 1.2 Relevant [TRE 401-401]
- 1.3 Probative Value vs. Unfair Prejudice (and other limitations on relevance) [TRE 403]
- 1.4 Not Hearsay [TRE 801-805]
- 1.5 Original or Duplicate [TRE 1001]


2. Authenticate [TRE 901(a)]

TRE 901(a): To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is. In other words, it is what the proponent of the evidence says it is.

Proponent:

 Burden to authenticate, to prove that the evidence is what the proponent says it is.

Opponent:


 Proponent failed to present sufficient evidence to meet the burden of authentication.

3. Examples of Authentication [TRE 901(b)]


a. Witness with Knowledge [TRE 901(b)(1)]

TRE 901(b)(1): The following are examples only—not a complete list—of evidence that satisfies the requirement: (1) *Testimony of a Witness with Knowledge*. Testimony that an item is what it is claimed to be.

Proponent:

 Burden to prove the witness possesses sufficient knowledge to testify that the evidence is what the proponent says it is.


Opponent:

 Proponent failed to meet burden to prove the witness possesses sufficient knowledge to testify that the evidence is what the proponent says it is.


a(1). [Non-Expert] Witness with Personal Knowledge [TRE 602]

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703. TRE 602

Proponent:

 Burden to prove the witness possesses sufficient personal knowledge to testify that the evidence is what the proponent says it is.

Opponent:

 Proponent failed to meet burden to prove the witness possesses sufficient personal knowledge to testify that the evidence is what the proponent says it is.

a(2). Qualified Expert [TRE 702] A witness with knowledge (per TRE 901(b)(1) could be a qualified expert under TRE 702 with knowledge based on facts or data provided and/or observed per TRE 703 which would include disclosure of data per TRE 705.

TRE 702: A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.

TRE 703: An expert may base an opinion on facts or data in the case that the expert has been made aware of, reviewed, or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted.

TRE 705: (a) Stating an Opinion Without Disclosing the Underlying Facts or Data. Unless the court orders otherwise, an expert may state an opinion—and give the reasons for it—without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination. (b) Voir Dire Examination of an Expert About the Underlying Facts or Data. Before an expert states an opinion or discloses the underlying facts or data, an adverse party in a civil case may—or in a criminal case must—be permitted to examine the expert about the underlying facts or data. This examination must take place outside the jury’s hearing. (c) Admissibility of Opinion. An expert’s opinion is inadmissible if the underlying facts or data do not provide a sufficient basis for the opinion. (d) When Otherwise Inadmissible Underlying Facts or Data May Be Disclosed; Instructing the Jury. If the underlying facts or data would otherwise be inadmissible, the proponent of the opinion may not disclose them to the jury if their probative value in helping the jury evaluate the opinion is outweighed by their prejudicial effect. If the court allows the proponent to disclose those facts or data the court must, upon timely request, restrict the evidence to its proper scope and instruct the jury accordingly.

PRACTICE TIP:

Regardless of the “may” language in TRE 703 relating to the disclosure of underlying data, the authors of this article feel strongly that the litigator should anticipate that the court will require underlying data in any type of generative artificial intelligence evidence.

b. Evidence About a Process or System [TRE 901(b)(9)].

TRE 901(b)(9): Examples. The following are examples only—not a complete list—of evidence that satisfies the requirement: (9) *Evidence About a Process or System*. Evidence describing a process or system and showing that it produces an accurate result.

b(1). [Non-Expert] Witness with Personal Knowledge [TRE 602] about the Process or System [TRE 901(b)(9)]

TRE 602: A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness’s own testimony. This rule does not apply to a witness’s expert testimony under Rule 703.

Practice Tip: TRE 901(b)(9) is an example of a method authentication (not to be confused with admissibility). This rule indicates that, as a part of the authentication process using this rule, the proponent of the evidence must, in addition to proving a process or system, also prove that the process or system works. Therefore, before the evidence is considered authentic (as a part of the admissibility analysis), it must be proven that the process or system produced an accurate result. Not to be confused with challenging the accuracy of already admitted results during regular cross examination.

GO Proponent:

GO Burden to prove the witness possesses sufficient personal knowledge to testify about the subject process or system.

GO Burden to prove the witness possesses sufficient personal knowledge to testify that the subject process or system produced accurate results.

- Hallucinations didn't affect the accuracy of the results of the process or system
- Spoofing didn't affect the accuracy of the results of the process or system
- Self-poisoning/adversarial AI didn't affect the accuracy of the results of the results of the process or system
- The process or system is resilient (and therefore produced accurate results)
- The process or system is transparent
- The underlying data that was a part of the process or system has been fully revealed and is explainable

STOP Opponent:

STOP Proponent failed to meet burden to prove the witness possesses sufficient personal knowledge to testify about the subject process or system.

STOP Proponent failed to meet the burden to prove the witness possesses sufficient personal knowledge to testify that the subject process or system produced accurate results.

- Proponent failed to present sufficient evidence that hallucinations didn't affect the accuracy of the results of the process or system
- Proponent failed to present sufficient evidence that spoofing didn't affect the accuracy of the results of the process or system

- Proponent failed to present sufficient evidence that self-poisoning/adversarial AI didn't affect the accuracy of the results of the results of the process or system
- Proponent failed to present sufficient evidence that the process or system is resilient
- Proponent failed to present sufficient evidence that the process or system is transparent
- Proponent failed to present sufficient evidence that the underlying data that was a part of the process or system has been fully revealed and is explainable

b(2). Expert Testimony [TRE 702], a qualified expert could describe the process or system and show that it produces an accurate result based on facts or data provided and/or observed per TRE 703 which would include disclosure of data per TRE 705.

TRE 702: A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.

TRE 703: An expert may base an opinion on facts or data in the case that the expert has been made aware of, reviewed, or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted.

TRE 705: (a) Stating an Opinion Without Disclosing the Underlying Facts or Data. Unless the court orders otherwise, an expert may state an opinion—and give the reasons for it—without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination. (b) Voir Dire Examination of an Expert About the Underlying

Facts or Data. Before an expert states an opinion or discloses the underlying facts or data, an adverse party in a civil case may—or in a criminal case must—be permitted to examine the expert about the underlying facts or data. This examination must take place outside the jury’s hearing. (c) Admissibility of Opinion. An expert’s opinion is inadmissible if the underlying facts or data do not provide a sufficient basis for the opinion. (d) When Otherwise Inadmissible Underlying Facts or Data May Be Disclosed; Instructing the Jury. If the underlying facts or data would otherwise be inadmissible, the proponent of the opinion may not disclose them to the jury if their probative value in helping the jury evaluate the opinion is outweighed by their prejudicial effect. If the court allows the proponent to disclose those facts or data the court must, upon timely request, restrict the evidence to its proper scope and instruct the jury accordingly.

PRACTICE TIP:

TRE 602 (witness with personal knowledge) specifically excludes the need for an expert to have personal knowledge as required by that rule.

GO Proponent:

GO The burden to qualify the witness as an expert on the subject process and system under TRE 702 and applicable case law.

GO As applicable to TRE 901(b)(9) (process and system) - burden to prove the witness possesses sufficient knowledge to testify about the subject process or system. [This should be inferred if the witness is qualified as an expert in the area of the subject process or system per TRE 702.]

GO As applicable to TRE 901(b)(9) (process and system) - burden to prove the witness possesses sufficient knowledge to testify that the subject process or system produced accurate results. [This should be inferred if the witness is qualified as an expert in the area of the subject process or system per TRE 702.]

- Hallucinations didn’t affect the accuracy of the results of the subject process or system

- Spoofing didn’t affect the accuracy of the results of the subject process or system
- Self-poisoning/adversarial AI didn’t affect the accuracy of the results of the subject process or system
- The subject process or system is resilient (and therefore produced accurate results)
- The subject process or system is transparent
- The underlying data that was a part of the subject process or system has been fully revealed and is explainable

STOP Opponent:

STOP Proponent failed to qualify the expert under TRE 702 and applicable case law.

STOP Proponent failed to meet burden to prove the witness possesses sufficient personal knowledge to testify about the subject process or system. [Note, this burden should be inferred as having been met if the witness is qualified as an expert in the area of the subject process or system per TRE 702.]

STOP Proponent failed to meet the burden to prove the witness possesses sufficient personal knowledge to testify that the subject process or system produced accurate results. [Note, this burden should be inferred as having been met if the witness is qualified as an expert in the area of the subject process or system per TRE 702.]

- Proponent failed to present sufficient evidence that hallucinations didn’t affect the accuracy of the results of the subject process or system
- Proponent failed to present sufficient evidence that spoofing didn’t affect the accuracy of the results of the subject process or system
- Proponent failed to present sufficient evidence that self-poisoning/adversarial AI

didn't affect the accuracy of the results of the results of the subject process or system

- Proponent failed to present sufficient evidence that the subject process or system is resilient
- Proponent failed to present sufficient evidence that the subject process or system is transparent
- Proponent failed to present sufficient evidence that the underlying data that was a part of the subject process or system has been fully revealed and is explainable

3. Relevant Evidence [TRE 402]

TRE 402: Relevant evidence is admissible unless any of the following provides otherwise: the United States or Texas Constitution; a statute; these rules; or other rules prescribed under statutory authority. Irrelevant evidence is not admissible.

3.1 Relevance Defined [TRE 401]

TRE 401: Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.

3.2 Limitations on Admissibility of Relevant Evidence [TRE 403]

TRE: 403: The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence.

- Unfair prejudice refers to evidence that, while relevant, has a tendency to suggest a decision on an improper basis, often an emotional one. It's not just any prejudicial effect, but one that substantially outweighs the probative value of the evidence.
- Confusing the issues refers to a ground for excluding relevant evidence if its probative value is substantially

outweighed by the danger that it would confuse the issues or distract the jury from the main issues of the case.

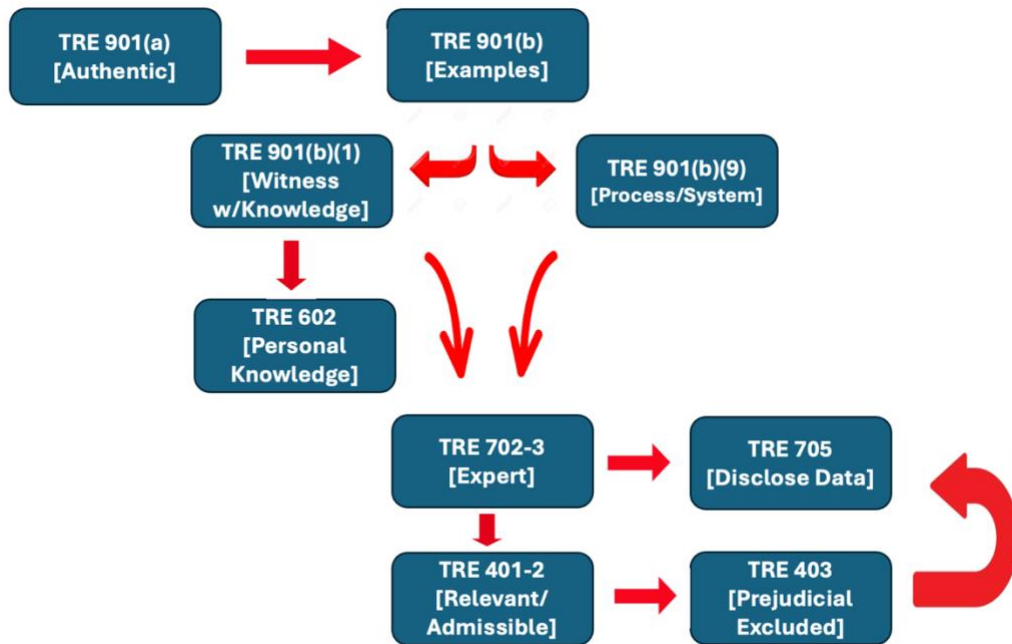
- Misleading the jury occurs when evidence, though possibly relevant, risks causing the jury to misunderstand the facts or issues in the case, potentially leading to an unfair or biased decision.
- Undue delay in this context means that even if evidence is relevant to a case, a judge may choose not to admit it if its introduction would unnecessarily prolong the trial without providing significant new information.
- Needlessly presenting cumulative evidence is the needless presentation of relevant evidence that serves to prove a fact that has already been established by other evidence. It could also be described as needless presentation additional proof that repeats or reinforces what has already been presented, without introducing any new facts.

4. Evidentiary Flow Charts

[CONTINUE TO NEXT PAGE]

EVIDENTIARY FLOW CHARTS

Evidentiary Flow Chart #1 [Basic Summary of Potential Evidentiary Arguments]



Notes:
