

## Artificial Justice – Navigating an AI Evidence Crisis

Generative AI, with its ability to produce hyper-realistic deepfakes, is not just a technological marvel—it's a profound challenge for the justice system. In this conversation, Judge Paul Grimm, former U.S. District Judge for the District of Maryland and now a professor at Duke Law School, explores the intricate legal and evidentiary issues posed by AI in courtrooms.

Central to the discussion is the concept of the **"liar's dividend"**, where generative AI creates a dual evidentiary crisis. On one hand, legitimate evidence can be dismissed as fake, undermining its credibility. On the other hand, fabricated evidence—entirely plausible and generated by AI—can be accepted as real, influencing outcomes in critical cases. Judge Grimm highlights how AI tools democratize the creation of fraudulent evidence, making sophisticated forgeries accessible to anyone with a smartphone.

Judge Grimm also delves into how AI impacts the judicial system's ability to evaluate evidence. He describes the unprecedented challenges posed by deepfakes, which exploit our natural trust in what we see and hear. Unlike forged documents or manipulated images of the past, AI-generated content can convincingly mimic voices, faces, and even actions. These creations, Judge Grimm explains, often exploit the "seeing is believing" instinct of jurors and judges, creating what he calls a **"perfect evidentiary storm."**

AI isn't simply a threat to the justice system, the technology also offers the prospect of powerful tools to authenticate evidence and streamline complex legal processes. However, Judge Grimm warns of overreliance on such technologies, especially as "black-box" AI models often operate with mechanisms that even their creators cannot fully explain. As Judge Grimm puts it, the justice system must adapt to ensure that technology enhances truth rather than distorting it.

Judge Paul Grimm is a professor of law at Duke Law School and an expert on evidence and artificial intelligence. He brings decades of experience as a judge and legal scholar to this timely and critical topic.

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## **Rules of Evidence and Insights from Judge Paul Grimm**

Introduction The integration of artificial intelligence (AI) into legal proceedings presents new challenges for the rules of evidence. In a recent conversation, Judge Paul Grimm, former U.S. District Judge and current professor at Duke Law School, explored the evidentiary implications of AI technologies, including generative AI and deepfakes, and their impact on justice. This document summarizes key rules of evidence, their application, and insights from the interview.

### **Core Rules of Evidence**

**Rule 401: Relevance** Definition: Evidence must have any tendency to make a fact more or less probable than it would be without the evidence. Application: AI-generated evidence must directly relate to an issue in dispute. For example, an AI-produced analysis of a crime scene must clarify a material fact.

**Rule 403: Balancing Test** Definition: Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion, or misleading the jury. Application: AI evidence, such as deepfake videos, may be excluded if it risks unduly influencing the jury's decision by appearing overly convincing despite questionable authenticity.

**Rule 901: Authenticity** Definition: To admit evidence, a party must produce sufficient evidence to support that it is what the proponent claims it to be. Application: AI-generated evidence must be authenticated, often through expert testimony or certifications demonstrating the reliability of the AI system used to generate the evidence.

**Rule 902: Self-Authentication** Definition: Certain types of evidence are considered self-authenticating and do not require external proof of authenticity. Application: Some AI outputs, when accompanied by proper certification (e.g., under Rule 902(13)), may qualify as self-authenticating, provided the opposing party does not challenge them.

Rules 701-703: Expert Testimony Definition: Rules governing lay and expert opinion testimony. Application: Expert witnesses are often necessary to explain the methodologies and reliability of AI tools, such as predictive algorithms or generative systems used in evidence creation or analysis.

### **Key Legal Insights from Judge Grimm**

The "Liar's Dividend" Judge Grimm highlighted a critical challenge with AI evidence: authentic evidence may be dismissed as fake due to mistrust in AI, while fake evidence may be accepted as real due to its apparent authenticity.

Deepfake Evidence Challenge: Deepfakes exploit the jury's natural trust in audio-visual evidence. Example: Judge Grimm cited studies showing that even when viewers are informed a piece of evidence is fake, it can still influence their perceptions and decision-making.

Black-Box AI and Transparency Insight: AI systems often operate as "black boxes," where even developers cannot fully explain how decisions are made. This complicates admissibility under rules requiring demonstrable reliability and accuracy.

Generative AI's Impact on Civil and Criminal Cases Civil Cases: Judge Grimm noted that AI tools are increasingly used in damage calculations and predictive models, but inconsistencies in AI outputs can undermine their credibility. Criminal Cases: In some instances, such as voice or facial recognition evidence, false positives or negatives can lead to wrongful convictions or acquittals.

Judicial Reliance on AI Tools Judge Grimm emphasized that while AI tools offer efficiencies, judges must independently verify AI-generated insights to prevent overreliance, which could undermine judicial integrity.

### **Proposed Updates to the Rules of Evidence**

AI-Specific Authentication Standards Implement clear guidelines for authenticating AI-generated evidence, including requirements for explainability and testing of AI tools.

Disclosure Requirements Mandate pre-trial disclosure of intent to use AI evidence, providing the opposing party an opportunity to examine and challenge its reliability.

Enhanced Balancing Tests Introduce a modified Rule 403 test for AI evidence to weigh probative value against the unique risks of AI-generated content, such as deepfake-induced prejudice.

Educational Resources for Judges and Attorneys Develop training programs on the evidentiary implications of AI technologies, including strategies for assessing authenticity and reliability.

Conclusion As Judge Grimm noted, the rise of AI in evidence creates significant challenges that demand careful consideration and adaptation of existing legal frameworks. By addressing the risks posed by generative AI and deepfakes through updated rules and safeguards, the legal system can better ensure that technology serves the cause of justice rather than undermining it.