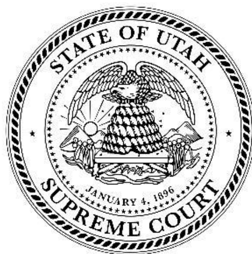

Utah Supreme Court
Rules of Evidence Committee

Meeting Agenda

Nicole Salazar-Hall, Chair

Location: WebEx Meeting

Date: May 12, 2026

Time: 5:15 p.m. - 7:15 p.m. MST

Action: Welcome and Approval of April Minutes	Tab 1	Nicole Salazar-Hall
Action: URE 804 – back from comment (no comments)	Tab 2	Nicole Salazar-Hall
Action: URE 702 – back from comment	Tab 3	Nicole Salazar-Hall
Update: URE 107 (coordination with other rules committees) and 1006		Jace Willard

Committee Web Page

Meeting Schedule:
June 9, 2026
October 13, 2026
November 10, 2026

Rule Status:
URE 107 – Back from Supreme Court – new Committee Note approved; coordinating with other implicated Rules Committees
URE 404 – Amended by Legislature; going to Supreme Court for guidance

URE 702 – Back from comment
URE 707 – Adopted by Legislature; going to Supreme Court for guidance
URE 801 – Awaiting further federal caselaw
URE 804 – Back from comment
URE 807 – Back from Supreme Court; Subcommittee drafting a note
URE 901 – In draft (on hold pending FRE AI-amendments)
URE 1006 – Approved by Supreme Court to go out for comment – awaiting Rule 107
URE Committee Notes Review – In draft with subcommittee
AI Rules – Under study by subcommittee

TAB 1

UTAH SUPREME COURT ADVISORY COMMITTEE
ON THE RULES OF EVIDENCE

MEETING MINUTES

April 14, 2026
5:15 p.m.-7:15 p.m.
Via Webex

MEMBERS PRESENT	MEMBERS EXCUSED	GUESTS	STAFF
David Billings Sarah Carlquist Clint Heiner Hon. Linda Jones Nathan Lyon Scott Lythgoe Hon. Tad May Ryan McBride Benjamin Miller Andres Morelli Nicole Salazar-Hall Hon. Coral Sanchez Rachel Sykes	Teneille Brown Wendy Brown Adam Merrill Hon. Rick Westmoreland Dallas Young	Jacqueline Carlton	Jace Willard

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1. Welcome and Approval of Minutes

Ms. Carlquist welcomed everyone to the meeting. The February meeting minutes were approved.

2. Introductions to New Member – Hon. Thaddeus J. May

Ms. Carlquist welcomed Judge Tad May as a new member of the Committee. Judge May introduced himself to the Committee and all other members present introduced themselves.

3. Discussion: Recent Legislative Action – SJR1 (URE 404)

Ms. Carlquist acknowledged the recent passage of SJR1, amending URE 404. She noted the work of the Rapid Response Subcommittee drafting a memo to address the proposed amendments during the legislative session. She indicated that the definition of "sexual assault" in subparagraph (d) is so broad that it potentially makes subdivision (c) superfluous.

Judge Jones said the legislative amendment may be an effort to bring Rule 404 more in line

with FRE 404. She recalled prior instances when similar proposals to amend Rule 404 were made by or to the Committee, but no amendments were ever made. She doubted the Court would want to change a legislative amendment. Ms. Salazar-Hall recalled an instance when the Court did so regarding a privilege issue.

Ms. Carlquist moved to seek guidance from the Court regarding how the issue should be addressed. The Court might send a note to the Legislature pointing out differences between the federal and state rules that may warrant a different approach. Subparagraph (c) could be deleted or the definition of "sexual assault" could be narrowed. Ms. Sykes seconded. The motion carried.

4. Discussion: Recent Legislative Action – HJR26 (URE 707)

Ms. Salazar-Hall noted the recent passage of HJR26, creating URE 707 to address the admissibility of machine-generated evidence. She reminded the Committee that, at the suggestion of most judges we surveyed, the Committee has delayed making new rules or amendments to address AI issues, pending completion of related FRE amendments. Additionally, she noted that the new URE 707 is inconsistent with the Court's drafting conventions as it largely spells out URE 702.

Ms. Carlquist moved to flag this issue for the Court and seek direction regarding how best to proceed. Mr. Lythgoe seconded. The motion carried.

5. Discussion: URE 807 (back from Court)

Ms. Salazar-Hall noted that the Court did not approve the Committee's proposal to amend Rule 807 in line with FRE 807. The Court viewed the proposed change as inconsistent with *State v. Buttars*, 2020 UT App 87, ¶¶ 32-36 (disallowing admission of evidence under the residual hearsay exception when another exception covers the evidence type, but recognizing the possibility of exceptions under compelling circumstances). Ms. Salazar-Hall believes the Court's concerns can be addressed by leaving the "specifically covered by" language in subparagraph (a). She moved to submit this change for the Court's consideration. Mr. Billings seconded. The motion carried. Ms. Salazar-Hall invited the Rule 807 subcommittee to draft a committee note explaining the change.

6. Update: URE 702 (out for comment)

Ms. Salazar-Hall noted that proposed amendments to Rule 702 have been published for public comment.

7. URE 107 and 1006 (coordination plan approved)

Mr. Willard reported that the Committee's plan to coordinate with the other rules committees has been approved. He will send out the draft Rule 107 to staff for the other committees.

8. Update: Website Feature re Historical Rules

Mr. Willard reported that the Court has approved the IT Department moving forward with the proposal to add a feature to the Court Rules website that includes historical versions of the rules.

ADJOURN:

With no further items to discuss, Ms. Salazar-Hall adjourned the meeting. The next meeting will be held on May 12, 2026, beginning at 5:15 pm, via Webex Webinar video conferencing.

TAB 2

Rule 804. Exceptions to the ~~R~~rule ~~A~~against ~~H~~hearsay - ~~W~~when the ~~D~~declarant is u~~U~~navailable as a ~~W~~witness.

(a) Criteria for ~~B~~being ~~U~~unavailable. A declarant is considered to be unavailable as a witness if the declarant:

~~(a)~~**(1)** is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;

~~(a)~~**(2)** refuses to testify about the subject matter despite a court order to do so;

~~(a)~~**(3)** testifies to not remembering the subject matter;

~~(a)~~**(4)** cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or

~~(a)~~**(5)** is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure the declarant's attendance.

But this subdivision (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

(b) The ~~E~~exceptions. The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

~~(b)~~**(1) Former t~~T~~estimony.** Testimony that:

~~(b)(1)~~**(A)** was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

~~(b)(1)~~**(B)** is now offered against a party who had — or, in a civil case, whose predecessor in interest had — an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

~~(b)~~**(2) Statement ~~U~~under the ~~B~~belief of ~~I~~imminent ~~D~~death.** In a civil or criminal case, a statement made by the declarant while believing the declarant's death to be imminent, if the judge finds it was made in good faith.

~~(b)~~**(3) Statement a~~A~~gainst ~~I~~interest.** A statement that:

~~(b)(3)~~**(A)** a reasonable person in the declarant’s position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant’s proprietary or pecuniary interest or had so great a tendency to invalidate the declarant’s claim against someone else or to expose the declarant to civil or criminal liability; and

~~(b)(3)~~**(B)** if offered in a criminal case as one that tends to expose the declarant to criminal liability, is supported by corroborating circumstances that clearly indicate its trustworthiness after considering the totality of circumstances under which it was made and any evidence that supports or undermines it~~, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability~~.

~~(b)~~**(4) Statement of ~~P~~personal or ~~F~~family h~~H~~istory.** A statement about:

~~(b)(4)~~**(A)** the declarant’s own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

~~(b)(4)~~**(B)** another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person’s family that the declarant’s information is likely to be accurate.

Effective: --/--/----

2026 Advisory Committee Note. The language of subparagraph (b)(3)(B) has been amended based on recent amendments to the federal rule.

2011 Advisory Committee Note. The language of this rule has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make

53 class and terminology consistent throughout the rules. These changes are intended to be
54 stylistic only. There is no intent to change any result in any ruling on evidence
55 admissibility.

56 **Original Advisory Committee Note.** Subdivision (a) is comparable to Rule 63(7), Utah
57 Rules of Evidence (1971). Rule 62(7)[(e)], Utah Rules of Evidence (1971), seems to be
58 encompassed in Rule 804(a)(5). Subdivision (a)(5) is a modification of the federal rule
59 which permits judicial discretion to be applied in determining unavailability of a witness.

60 Subdivision (b)(1) is comparable to Rule 63(3), Utah Rules of Evidence (1971), but the
61 former rule is broader to the extent that it did not limit the admission of the testimony to
62 a situation where the party to the action had the interest and opportunity to develop the
63 testimony. Condas v. Condas, 618 P.2d 491 (Utah 1980); State v. Brooks, 638 P.2d 537
64 (Utah 1981).

65 Subdivision (b)(2) is comparable to Rule 63(5), Utah Rules of Evidence (1971), but the
66 former rule was not limited to declarations concerning the cause or circumstances of the
67 impending death nor did it limit dying declarations in criminal prosecutions to homicide
68 cases. The rule has been modified by making it applicable to any civil or criminal
69 proceeding, subject to the qualification that the judge finds the statement to have been
70 made in good faith.

71 Subdivision (b)(3) is comparable to Rule 63(10), Utah Rules of Evidence (1971), though it
72 does not extend merely to social interests.

73 Subdivision (b)(4) is similar to Rule 63(24), Utah Rules of Evidence (1971).

74 Subdivision (b)(5) had no counterpart in Utah Rules of Evidence (1971).

75

76

TAB 3

Rule 702. Testimony by ~~E~~experts.

(a) Subject to the limitations in paragraph (b), 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.

(b) Scientific, technical, or other specialized knowledge may serve as the basis for expert testimony only if there is a threshold showing that the principles or methods that are underlying in the testimony

~~(b)~~**(1)** are reliable,

~~(b)~~**(2)** are based upon sufficient facts or data, and

~~(b)~~**(3)** ~~have been~~ are reliably applied to the facts, or, if not applied to the facts, are offered to assist the factfinder in understanding principles relevant to the case.

(c) The threshold showing required by paragraph (b) is satisfied if the underlying principles or methods, including the sufficiency of facts or data and the manner of their application to the facts of the case, are generally accepted by the relevant expert community.

2026 Advisory Committee Note. The language of Rule 702(b)(3) has been amended to recognize existing caselaw allowing the use of so-called "blind experts." Further, the Original Advisory Committee Note states, "Section (b) adopts the three general categories of inquiry for expert testimony contained in the federal rule." This portion of the original note may no longer be accurate.

2011 Advisory Committee Note. The language of this rule has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make class and terminology consistent throughout the rules. These changes are intended to be

26 stylistic only. There is no intent to change any result in any ruling on evidence
27 admissibility.

28 **Original Advisory Committee Note.** Apart from its introductory clause, part (a) of the
29 amended Rule recites verbatim Federal Rule 702 as it appeared before it was amended in
30 2000 to respond to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). The
31 2007 amendment to the Rule added that introductory clause, along with parts (b) and (c).
32 Unlike its predecessor, the amended rule does not incorporate the text of the Federal Rule.
33 Although Utah law foreshadowed in many respects the developments in federal law that
34 commenced with *Daubert*, the 2007 amendment preserves and clarifies differences
35 between the Utah and federal approaches to expert testimony.

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36 The amended rule embodies several general considerations. First, the rule is intended to
37 be applied to all expert testimony. In this respect, the rule follows federal law as
38 announced in *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999). Next, like its federal
39 counterpart, Utah's rule assigns to trial judges a "gatekeeper" responsibility to screen out
40 unreliable expert testimony. In performing their gatekeeper function, trial judges should
41 confront proposed expert testimony with rational skepticism. This degree of scrutiny is
42 not so rigorous as to be satisfied only by scientific or other specialized principles or
43 methods that are free of controversy or that meet any fixed set of criteria fashioned to test
44 reliability. The rational skeptic is receptive to any plausible evidence that may bear on
45 reliability. She is mindful that several principles, methods or techniques may be suitably
46 reliable to merit admission into evidence for consideration by the trier of fact. The fields
47 of knowledge which may be drawn upon are not limited merely to the “"scientific”" and
48 “"technical”", but extend to all “"specialized”" knowledge. Similarly, the expert is viewed,
49 not in a narrow sense, but as a person qualified by “"knowledge, skill, experience,
50 training or education".” Finally, the gatekeeping trial judge must take care to direct her
51 skepticism to the particular proposition that the expert testimony is offered to support.
52 The Daubert court characterized this task as focusing on the "work at hand.”. The
53 practitioner should equally take care that the proffered expert testimony reliably

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addresses the “work at hand,” and that the foundation of reliability presented for it reflects that consideration.

Section (c) retains limited features of the traditional *Frye* test for expert testimony. Generally accepted principles and methods may be admitted based on judicial notice. The nature of the “work at hand” is especially important here. It might be important in some cases for an expert to educate the factfinder about general principles, without attempting to apply these principles to the specific facts of the case. The rule recognizes that an expert on the stand may give a dissertation or exposition of principles relevant to the case, leaving the trier of fact to apply them to the facts. Proposed expert testimony that seeks to set out relevant principles, methods or techniques without offering an opinion about how they should be applied to a particular array of facts will be, in most instances, more eligible for admission under section (c) than case specific opinion testimony. There are, however, scientific or specialized methods or techniques applied at a level of considerable operational detail that have acquired sufficient general acceptance to merit admission under section (c).

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The concept of general acceptance as used in section (c) is intended to replace the novel vs. non-novel dichotomy that has served as a central analytical tool in Utah’s Rule 702 jurisprudence. The failure to show general acceptance meriting admission under section (c) does not mean the evidence is inadmissible, only that the threshold showing for reliability under section (b) must be shown by other means.

Section (b) adopts the three general categories of inquiry for expert testimony contained in the federal rule. Unlike the federal rule, however, the Utah rule notes that the proponent of the testimony is required to make only a “threshold” showing. That “threshold” requires only a basic foundational showing of indicia of reliability for the testimony to be admissible, not that the opinion is indisputably correct. When a trial court, applying this amendment, rules that an expert's testimony is reliable, this does not necessarily mean that contradictory expert testimony is unreliable. The amendment is broad enough to permit testimony that is the product of competing principles or methods

82 in the same field of expertise. Contrary and inconsistent opinions may simultaneously
83 meet the threshold; it is for the factfinder to reconcile–~~—~~or choose between–~~—~~the
84 different opinions. As such, this amendment is not intended to provide an excuse for an
85 automatic challenge to the testimony of every expert, and it is not contemplated that
86 evidentiary hearings will be routinely required in order for the trial judge to fulfill his
87 role as a rationally skeptical gatekeeper. In the typical case, admissibility under the rule
88 may be determined based on affidavits, expert reports prepared pursuant to Rule 26 of
89 the Utah Rules of Civil Procedure~~Utah R. Civ. P. 26~~, deposition testimony and
90 memoranda of counsel.

91

Public Comments re Proposed Amendments to URE 702

1. **Thomas Rollins**
   March 20, 2026 at 8:04 am

This change and comment really do not elucidate when such testimony would be appropriate. If the expert is not explaining how the principals apply to the facts of the case, why are they even relevant?

2. Stephen Howard
   March 20, 2026 at 8:54 am

If the expert is not applying their knowledge to actual facts in a case, we need to look very closely at what purpose is really served by the expert testimony.

If a principle is so complex that it takes an expert to explain it, can we really expect a lay jury on its own to correctly apply that complex principle to the specific facts of the case?

Alternatively, If a principle is sufficiently simple that a jury does not need expert assistance in applying that principle to the facts, did we really need an expert to explain that principle in the first place?

In other words,

A physicist could expound endlessly on Newton's laws of motion and a jury could learn much about those principles. But we would not expect a jury, on its own, to then apply those principles to determine whether a bullet with a certain mass, fired from one location could ricochet off a surface and be deflected in another direction, and then still have sufficient speed to apply the force necessary to cause a specific type of injury.

On the other hand, if the injury involved is a black eye from getting punched in the face, we probably don't need the physicist to testify as a "blind expert" in the first place.

3. **Benjamin Hurst**
   March 20, 2026 at 1:57 pm

I strongly oppose the proposed amendments to Utah Rule of Evidence 702, particularly the changes to subsection (b)(3) and the 2026 Advisory Committee Note that claim to merely "recognize existing caselaw allowing the use of so-called 'blind experts.'"

This justification is circular bootstrapping. In State v. Clopten, 2009 UT 84, 223 P.3d 1103, this Court first approved expert testimony on factors affecting eyewitness identification, expressly noting that such experts "may or may not be familiar with the facts of the case" and "will not offer an opinion on whether the specific eyewitness identification is accurate or not," instead discussing research "in more general terms" (¶19). Courts have since extended this far beyond eyewitness cases.

The very need for this rule change proves Utah courts have not been following the plain text of the existing rule. Current URE 702(b)(3) requires that the expert's principles or methods "have been reliably applied to the facts." Blind experts, by definition, do not apply their methods to the facts. As recently as 2025, in State v. Mendoza, 2025 UT App 140, the Court of Appeals upheld testimony from a Children's Justice Center forensic services manager who testified as a "blind expert" about children's disclosure patterns and behaviors in sexual-abuse cases. Defense counsel stated on the record that objections were futile, and the Court of Appeals agreed.

This is classic bootstrapping: the courts first permitted a practice that the written rule did not allow. Now the rule is being amended to ratify what the courts have been doing anyway. The circular logic codifies a fallacy before any real challenge to the underlying precedents can be mounted. Therefore, this rule, as proposed, is rotten and will lead to incarcerations based on bad testimony. It shows the originating rulings are rotten at their core.

The standard introduction compounds the problem. Prosecutors establish that the expert has not reviewed the case file, then ask, "So you're a blind expert?" The witness answers "Yup." This ritual falsely implies scientific objectivity and neutrality, like "blind justice." In reality, many of these experts (including the CJC manager in Mendoza) are affiliated with prosecution-oriented institutions, train detectives, and are called by the State. The "blind" label misleadingly enhances their perceived reliability.

This practice disregards core principles of relevance and unfair prejudice (URE 403) and violates defendants' rights to due process and a fair trial. Jurors inevitably connect the general testimony to the specific facts. There is no legitimate need to further weaken the trial judge's gatekeeper role or create a special carve-out for abstract, untethered testimony.

I urge the Utah Supreme Court to reject this amendment in its entirety.

4. **John Macfarlane**
   [April 15, 2026 at 12:42 pm]

I oppose the proposed amendment to Rule 702 as currently drafted.
The amendment references "existing caselaw" permitting so-called "blind experts," yet fails to cite any supporting authority. The absence of citations makes the amendment misleading to both practitioners and courts, obscuring the narrow and context-specific circumstances in which departures from traditional case-specific expert testimony have been permitted.

In particular, reliance on State v. Clopten (or similar authority) is problematic. Clopten is a criminal-specific case addressing the role of "educational" or "framework" experts in a limited constitutional context. It cannot properly be read to authorize a broad expansion of expert testimony across all civil and criminal cases. As written, the amendment invites precisely that misuse by divorcing generalized expert testimony from case-specific application without clearly delineating limits.

The proposed language is therefore likely to be taken out of context and abused. Without careful cabining, it risks undermining the gatekeeping function of Rule 702 by allowing experts to present speculative or abstract testimony untethered to the facts of the case under the guise of merely "educating" the factfinder.

As a member of the Utah Model Jury Instructions Committee, I respectfully suggest a more restrained and transparent approach. If the Committee believes certain cases legitimately recognize narrow exceptions, the better course would be to cite those cases explicitly in the Advisory Committee Note, explaining their procedural posture and limitations. Doing so would provide critical guidance to judges and attorneys and avoid unintended expansion of the rule itself.

The practical consequences of this amendment are also concerning. The change invites expert stacking and unnecessary expense. In the medical malpractice context, for example, parties could retain multiple costly experts to discuss general medical principles, theoretical possibilities, or alternative mechanisms—without ever opining as to what likely occurred in the case at hand. Such testimony would significantly increase litigation costs while providing minimal probative value.

Moreover, juries are likely to be confused rather than assisted by abstract discussions of medical principles or hypothetical possibilities for which there is no evidentiary support in the record. This result runs counter to the core purpose of Rule 702, which is to aid the trier of fact in resolving disputed facts—not to present academic lectures untethered to the case.

For these reasons, I urge the Committee to reject the proposed amendment as written, or, at minimum, confine any discussion of limited exceptions to the Advisory Committee Notes with clear citations and explicit boundaries.

Public Comments re Proposed Amendments to URE 702 (left on URAppP 26 thread)

1. **Alyson McAllister**
   April 15, 2026 at 9:51 am

I write to oppose the proposed amendment to Utah Rule of Evidence 702(b)(3). This is a substantive expansion of expert testimony. The current rule requires that expert principles and methods be reliably applied to the facts of the case. This proposal would permit expert testimony even when the expert has not applied those principles or methods to the facts, so long as the testimony is said to "assist the factfinder in understanding principles relevant to the case." This seems to open the door to a whole host of problems.

The amendment is especially troubling in medical malpractice cases, where liability turns on highly specific facts: timing, symptoms, test results, clinical presentation, available information, differential diagnosis, treatment choices, and causation. In that setting, context is everything. A "blind" expert who has not actually analyzed the case can be used to present abstract medical principles through a hypothetical that conveniently mirrors one side's theory while avoiding the full record.

Other serious problems created by this language:
-It invites an end-run around Rule 702's core safeguard that expert testimony must be tied to sufficient facts or data and reliably applied to the facts.
-It allows a party to convert contested facts into assumed facts, then build an apparently authoritative opinion on that selective premise.
-It risks turning experts into narrators for one side's hypothetical rather than witnesses who have done the disciplined work of applying expertise to the actual case.
-It is likely to mislead juries, who may not reliably distinguish between true educational testimony and a disguised opinion on liability.
-It is most dangerous where standard of care and causation depend on granular factual context, as they often do in professional negligence cases.
-It will create more line-drawing disputes, not fewer, over when "educational" testimony crosses into a covert opinion on the facts.

If the Court does not reject the amendment outright, it should at least narrow it substantially. Any amendment should make clear that an expert who has not applied principles or methods to the facts of the case may not directly or indirectly endorse a

party's version of disputed facts, and may not offer hypothetical testimony that functions as a substitute for a case-specific expert opinion.The better course is to reject the amendment and preserve the current rule's focus on reliable application to the facts. That is the safeguard that keeps expert testimony useful rather than misleading. For these reasons, I respectfully urge the Court not to adopt the proposed amendment to Rule 702(b)(3).

2. **Natalie Roos**
   [April 17, 2026 at 1:15 pm]()

I oppose this amendment. As drafted, it permits expert testimony offering general scientific or technical principles without any case-specific application and no threshold judicial finding that the testimony is actually appropriate. The phrase "offered to assist the factfinder in understanding principles relevant to the case" does no meaningful gatekeeping work beyond URE 401 and the helpfulness requirement of URE 702(a). The rule as written leaves the door open for testimony that sounds authoritative but may create improper inferences. For example, in a trial for arson, an expert could testify generally about how fires spread, how electrical systems can malfunction, and how investigators misread burn patterns, without ever determining whether any of those things happened in that case. The result is that a party can place credentialed scientific testimony before the jury implying a conclusion about the merits without ever having to defend how that science applies to the specific facts of the case. Although designed to assist the factfinder, in practice it would likely trigger the very concerns URE 403 is meant to prevent, e.g., misleading the jury and confusing the issues.