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13 Stetson J. Advoc. & L. 146 (2026)

## Judging What Jurors Know: Expert Testimony After Voir Dire

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## I. Introduction

146. In the fictional Alabama courtroom of *My Cousin Vinny*, Brooklyn lawyer Vincent Gambini stood before a jury, exploiting on cross-examination what every Southerner (i.e., “grit-eating world”) in that room knew instinctively: proper grits require 20 minutes to cook, not five. What had previously seemed like arcane culinary knowledge to the New York attorney became as fundamental to the Alabama jury as “getting stuck in the mud.”<sup>2</sup> Had Vinny called a chef as an expert witness to testify about grits preparation time, the judge might well have sustained relevance objections — not because the testimony was unimportant, but because it fell within the Alabama jury’s common knowledge and required no specialized interpretation. Yet this same cooking wisdom would likely have necessitated expert testimony in a Brooklyn courtroom. This geographic divide in “common knowledge” mirrors the temporal shift that transformed Galileo’s revolutionary astronomy into elementary school curriculum, demonstrating how the boundaries of what requires expert interpretation under Federal Rule of Evidence 702,<sup>3</sup> shift not only across centuries, but across county and state lines.

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2 The defense witness, Mona Lisa Vito, testified as an expert that tiring getting “stuck in the mud” is a way of thinking about the concept of positraction.

3 [Fed. R. Evid. 702](#).

147. In 1633, Galileo Galilei stood before the Roman Inquisition, forced to recant what every schoolchild today knows as fact: that the Earth revolves around the sun. Decades earlier, Copernicus had delayed publishing his heliocentric theory until the year of his death, fearing similar persecution.<sup>4</sup> These titans of astronomy were not merely advancing novel theories — they were attempting to explain observable phenomena that contradicted the common understanding of their time. Had they been expert witnesses in a 17th-century trial, voir dire of potential jurors would have revealed not just ignorance of heliocentrism, but a deeply held conviction in its opposite. But consider a modern trial where astronomical positioning evidence proves relevant. Today's judge would likely take judicial notice of basic celestial mechanics, and voir dire would reveal jurors who learned these principles in elementary school. The same evidence that once required Galileo's expert knowledge — and led to his persecution — would today be considered within the realm of common knowledge, requiring no additional interpretation under Federal Rule of Evidence 702.<sup>5</sup>

148. This evolution of astronomical knowledge from expert testimony to common understanding illustrates a fundamental challenge in our legal system's approach to expert witnesses and jury competence. This challenge becomes even more pronounced when we consider a fundamental tension in the jury trial system: while courts strive to ensure cases are decided based on evidence presented during trial proceedings, they must simultaneously acknowledge that jurors inevitably bring their pre-existing knowledge and experiences into deliberations. This tension manifests in the context of expert testimony, where courts must decide whether to admit specialized explanations for matters that some — but perhaps not all — jurors might already understand through their education or professional experience. The central thesis of this article is that courts should assess the actual knowledge of the impaneled jury prior to admitting expert testimony under Federal Rule of Evidence 702(a). Furthermore, courts should be more lenient in permitting educated jurors (i.e., those with some knowledge about concepts related to the case) to remain on the case, as opposed to excusing them and replacing them with expert testimony.

149. Critics of this approach might argue that allowing jurors to rely on specialized knowledge acquired outside the courtroom undermines the principle that trials should be decided solely on evidence presented within it. They might further contend that pre-existing juror knowledge could be outdated, inaccurate, or inconsistently distributed among panel members. However, this critique rests on artificial distinctions between specialized and common knowledge that fail to recognize how all jurors — regardless of background — necessarily apply their prior experiences and understanding when evaluating evidence. The dynamic nature of what constitutes specialized versus common

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4 History.com Editors, *Galileo Goes on Trial for Heresy*, [HISTORY](#) (Nov. 13, 2009).

5 [Fed. R. Evid. 702](#).

knowledge, whether the necessary time to cook grits or basic celestial knowledge, challenges us to reconsider how courts approach both expert testimony determinations and jury selection. As scientific knowledge and technological literacy advance, courts must constantly reassess what constitutes specialized knowledge requiring expert interpretation versus common knowledge within the grasp of lay jurors. Yet this assessment has historically occurred without systematic evaluation of actual juror knowledge,<sup>6</sup> leading to persistent debates about jury competence that span centuries of American jurisprudence. Even as some fields of knowledge transition from expert domain to common knowledge, new complexities emerge, renewing age-old questions about jurors' ability to evaluate specialized evidence.

## II. The Jury System

150. The jury system stands as one of the most enduring symbols of democratic justice in America, deeply rooted in the nation's historical commitment to participatory governance. The jury has long been heralded as the cornerstone of American justice, a democratic institution imbued with the power to decide the fate of individuals based on principles of fairness, impartiality, and reason. Emerging from English common law traditions, the jury was transplanted to American soil by early colonists, who saw it as a bulwark against governmental overreach and a vital mechanism for ensuring community involvement in justice.<sup>7</sup>

151. The modern jury system emerged from the collapse of medieval proof methods in thirteenth-century England. When ecclesiastical authorities withdrew their support for trial by ordeal in 1215, English courts faced a crisis in their system of determining guilt and innocence. Juries, which had already begun functioning in limited capacities, expanded their role to become the primary mechanism for criminal determinations. Practical considerations, rather than philosophical commitments to democratic ideals, drove this institutional shift. The presenting jury, an early form of criminal jury that existed before the Magna Carta, evolved to become the standard method for resolving criminal cases in the absence of other viable alternatives.<sup>8</sup>

152. The medieval jury bore little resemblance to its modern descendant. Jurors in early English practice possessed personal knowledge of the cases they decided and functioned more as informed witnesses than impartial fact-finders. Medieval defendants

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6 Danielle E Chojnacki, Michael D Cicchini & Lawrence T White, *An Empirical Basis for the Admission of Expert Testimony on False Confessions*, *ARIZ. ST. L.J.* 21–22 (2008).

7 Toni M Massaro, *Peremptories Or Peers — Rethinking Sixth Amendment Doctrine, Images, and Procedures*, 64 *N.C. L. REV.* 507–08 (1986).

8 Toni M. Massaro, *Peremptories Or Peers — Rethinking Sixth Amendment Doctrine, Images, and Procedures*, 64 *N.C. L. REV.* 501, 505, 506 (1986).

faced a stark choice: accept jury trial or endure imprisonment with physical hardships until they consented to the proceedings. This coercive practice, known as *peine forte et dure*, involved subjecting the accused to weighted chains and restricted sustenance. Contemporary criminal procedure, which permits defendants to choose between jury and bench trials with court approval, reflects a fundamental transformation in the relationship between the accused and the jury system.<sup>9</sup>

153. The English jury system, with its roots in medieval common law, provided the foundation for American legal institutions and their commitment to citizen participation in justice. This historical legacy was formalized through the inclusion of jury protections in the U.S. Constitution and the Bill of Rights, most notably in the Sixth and Seventh Amendments, which enshrined the jury as a cornerstone of both criminal and civil proceedings.<sup>10</sup> As both a symbol of civic engagement and a procedural safeguard, the jury ensures that justice is not the sole purview of the state but rests, instead, in the hands of ordinary citizens.<sup>11</sup> The American jury system evolved from earlier English practices that utilized expert knowledge in fundamentally different ways. Historically, courts employed three distinct methods for incorporating specialized knowledge: impaneling special juries composed of persons with particular expertise relevant to the case, summoning skilled advisors to assist the court directly in understanding technical matters, and the more recent practice of calling experts as witnesses before ordinary juries.<sup>12</sup> Each method reflected different assumptions about how lay citizens could best evaluate complex or technical evidence in reaching their verdicts.

154. The practice of special juries had ancient roots, dating back to medieval England where juries of matrons would determine pregnancy in cases involving inheritance or stays of execution. In fourteenth-century London, trade disputes were regularly decided by juries composed of members from the relevant guild, who possessed the specialized knowledge necessary to evaluate whether trade regulations had been violated. These special juries represented a recognition that certain factual questions required expertise beyond the common knowledge of ordinary citizens. The practice continued into the seventeenth century and beyond, with merchant juries deciding commercial disputes “because it was conceived they might have better Knowledge of the Matters in Difference which were to be tried, than others could, who were not of that Profession.”<sup>13</sup> This

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9 Toni M. Massaro, *Peremptories Or Peers — Rethinking Sixth Amendment Doctrine, Images, and Procedures*, 64 N.C. L. REV. 505, 506 (1986).

10 U.S. CONST. amends. VI, VII.

11 Toni M Massaro, *Peremptories Or Peers--Rethinking Sixth Amendment Doctrine, Images, and Procedures*, 64 N.C. L. REV. 507–08 (1986).

12 Learned Hand, *Historical and Practical Considerations Regarding Expert Testimony*, 15 HARV. L. REV. 40, 40–43 (1901).

13 Learned Hand, *Historical and Practical Considerations Regarding Expert Testimony*, 15 HARV. L. REV. 40–42 (1901).

system acknowledged that the jury's traditional fact-finding role sometimes required supplementation with specialized experience.

155. The American jury was never merely a static import but evolved in response to the unique political, social, and cultural contexts of the United States.<sup>14</sup> Early American juries not only decided guilt or innocence but also asserted their authority to judge the morality and fairness of laws themselves, a practice that underscored their foundational role as a check on tyranny.<sup>15</sup> The evolution from special expert juries to the modern practice of expert witnesses represented a significant shift in how the legal system balanced democratic participation with the need for specialized knowledge. By the nineteenth century, the practice of calling experts as witnesses had become standard, though this development created new tensions between the jury's role as fact-finder and their ability to evaluate competing expert opinions.<sup>16</sup> This transformation reflected broader changes in American society as scientific and technical knowledge became increasingly specialized and essential to legal proceedings.

156. By the 20th century, juries had become a crucial arena for battles over civil rights and equality. Their composition and impartiality were contested issues in landmark cases, such as those addressing racial discrimination in jury selection and the inclusion of women on juries.<sup>17</sup> These struggles underscored the jury's dual identity as both a mechanism of justice and a microcosm of the society it serves.<sup>18</sup> Within this framework, voir dire — the process by which attorneys and judges select an impartial jury — serves as a critical mechanism to uphold the jury's integrity. Simultaneously, the increasing complexity of legal disputes has elevated the role of expert testimony in informing juries about technical, scientific, or specialized knowledge. This intersection of juror impartiality and expert influence poses a significant challenge to the justice system: how to preserve the jury's democratic ideals while enabling it to grapple effectively with sophisticated evidence.

157. Voir dire emerges as a battleground for these competing priorities, where attorneys not only assess biases but also evaluate a juror's capacity to comprehend and weigh

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14 Toni M. Massaro, *Peremptories Or Peers — Rethinking Sixth Amendment Doctrine, Images, and Procedures*, 64 N.C. L. REV. 507, 508–10 (1986).

15 Nancy J. King, *The American Criminal Jury*, 62 L. & CONTEMP PROBS. 41, 50 (1999); Lawson Wright, *Originalism and Jury Nullification in America: A Legal Basis for the Restoration of a Lost Right*, 3 PRINCETON LEGAL J. (2024).

16 Learned Hand, *Historical and Practical Considerations Regarding Expert Testimony*, 15 HARV. L. REV. 40 (1901).

17 *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994); *Batson v. Kentucky*, 476 U.S. 79 (1986); Toni M Massaro, *Peremptories Or Peers--Rethinking Sixth Amendment Doctrine, Images, and Procedures*, 64 N.C. L. REV. 530 (1986).

18 Toni M Massaro, *Peremptories Or Peers — Rethinking Sixth Amendment Doctrine, Images, and Procedures*, 64 N.C. L. REV. 508 (1986).

complex matters, as well as expert testimony. This article explores voir dire and expert testimony as interdependent facets of trial practice, with a focus on their implications for the jury's role as the bedrock of American justice. By examining the legal and procedural dimensions of voir dire and expert testimony, this discussion sheds light on the evolving dynamics of jury trials in the 21st century and their enduring commitment to justice. It interrogates how voir dire fosters juror neutrality while navigating the potential sway of expert witnesses, questioning whether these tools strengthen or compromise the jury's decision-making function.

158. The criticism of jury competence to evaluate complex evidence has remained remarkably constant throughout American legal history. Critics in both the nineteenth and twentieth centuries consistently questioned whether lay jurors could understand increasingly complex matters coming before courts. This skepticism has been characterized in the following way: judges are more capable, due to their training and experience, than lay jurors who are “selected from a wide range of intelligence levels, who have no particular experience with matters of this sort, and who have no durable official responsibilities.”<sup>19</sup> The question has also arisen: “Why should anyone think that 12 persons brought in from the street, selected in various ways, for their lack of general ability, should have any special capacity for deciding controversies between persons?”<sup>20</sup> These fundamental doubts about jury competence have persisted across different eras, suggesting an inherent tension between peer judgment and technical complexity.

159. The historical evolution of jury criticism reveals particular concern about juror sophistication in evaluating complex evidence. Charles A. Boston in the early twentieth century derided the lack of required qualifications for jurors, observing that while society requires training and licensure for various professions, “so long as a man speaks any sort of English, can hear, is on the jury list, and has not formed an opinion, he is deemed a competent man to decide disputes in a Court of Justice.” Boston further lamented that juries consisted of “raw recruits who could not as a class do well in any one of the many activities which, in civilization, we require from any class in the community.”<sup>21</sup> This criticism maintains its currency today, with modern scholars observing that “the public who serve as jurors are less educated than the norm, and our skewing of the jury toward the less-informed segment of the population is most evident in the high-profile trials that most shape public impressions of the jury.”<sup>22</sup>

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19 Harry Kalven, Jr. & Hans Zeisel, *THE AM. JURY* 8 (Little, Brown & Co. 1966).

20 Harry Kalven, Jr., *The Dignity of the Civil Jury*, 50 *VA. L. REV.* 1055, 1066, 1068 (1964).

21 Charles A. Boston, *Some Practical Remedies for Existing Defects in the Administration of Justice*, 61 *U. PA. L. REV.* 1, 11–12 (1912); Randolph N. Jonakait, *THE AM. JURY SYSTEM* 13 (2003).

22 Albert W. Alschuler, *Explaining the Public Wariness of Juries*, *DEPAUL L. REV.* 407, 408 (1998); See also Randolph N. Jonakait, *THE AM. JURY SYSTEM* 13 (2003); See also Elizabeth C. Britt, *Dangerous Deliberation: Subjective Probability and Rhetorical Democracy in the Jury Room*, 39 *RHETOR. SOC. Q.* 103 (2009).

160. The influence of jury selection on trial outcomes has been a persistent concern throughout American legal history. Critics have long argued that verdicts are determined not by evidence but by attorney tactics, strong-willed jurors, or strategic deployment of expert witnesses. This skepticism about jury selection dates back to at least the early twentieth century, as exemplified by Earl Rogers' observation that "often a criminal case was already won or lost when the twelve jurors sat in the box." Professor Alschuler echoes this modern sentiment, noting that "in England the trial begins when the jury is selected; in America, that is when the trial is over."<sup>23</sup> This historical pattern of criticism suggests that concerns about jury selection and expert testimony are deeply intertwined and have been since the earliest days of American jurisprudence.

### III. The Development of Expert Testimony in American Courts

161. The first systematic attempt to create a uniform standard for the admission of expert testimony came in 1923 with the D.C. Circuit Court's decision in *Frye v. United States*. The Frye court established what became known as the "general acceptance" test, requiring that scientific evidence be generally accepted within the relevant scientific community before it could be admitted at trial.<sup>24</sup> The Frye approach provided consistency but also faced criticism for being overly conservative and potentially excluding novel but valid scientific evidence. Despite these limitations, the Frye test dominated federal and many state courts for over half a century, shaping the development of scientific evidence law well into the modern era.<sup>25</sup> Cutting-edge scientific theories could be excluded if they had not gained widespread acceptance within the relevant professional community. This meant attorneys had to carefully cultivate expert witnesses who could demonstrate not just individual expertise, but community-wide validation of their methodological approach.<sup>26</sup>

162. The adoption of the Federal Rules of Evidence in 1975 and the holding in *Daubert* marked a transformative moment in the evolution of expert testimony standards, with Rule 702 representing a conscious effort by Congress to create a more flexible and comprehensive framework.<sup>27</sup> The Advisory Committee Notes reveal that the rule was

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<sup>23</sup> Randolph N. Jonakait, *The Am. Jury System* 14 (2003).

<sup>24</sup> *Frye v. U.S.*, 293 F. 1013, 1014 (D.C. Cir. 1923).

<sup>25</sup> *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 585, 588 (1993); Edward J. Imwinkelried, *The Standard for Admitting Scientific Evidence: A Critique from the Perspective of Juror Psychology*, 28 *VILL. L. REV.* 554, 556-58 (1983).

<sup>26</sup> *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 585 (1993).

<sup>27</sup> *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993); *Fed. R. Evid. 702(a)* advisory committee's note to 2000 amendment.

designed to address several key concerns, including the need for a more systematic approach to evaluating expert testimony and the recognition that expert knowledge extends beyond purely scientific matters. The original Rule 702 took a markedly different approach from Frye, focusing on whether the expert's testimony would assist the trier of fact rather than on general acceptance alone. This shift reflected a growing recognition that the increasingly complex nature of litigation required a more nuanced approach to expert testimony, one that could accommodate both traditional scientific evidence and other forms of specialized knowledge.<sup>28</sup> The rule's emphasis on "scientific, technical, or other specialized knowledge" acknowledged that expertise valuable to the fact-finding process could come from various fields and backgrounds, not just traditional scientific disciplines.<sup>29</sup> The shift to Rule 702 created new strategic opportunities for trial attorneys. No longer strictly constrained by 'general acceptance,' lawyers could now introduce specialized knowledge that genuinely assists the jury. This expanded the aperture for expert testimony, allowing more nuanced and targeted expert contributions across a broader range of cases.

## IV. The Current Legal Framework

163. Expert testimony plays a crucial role in modern litigation, but courts must carefully evaluate when such testimony will truly assist the jury versus when the issues are within jurors' common knowledge and experience.<sup>30</sup> Federal Rule of Evidence 702 permits expert testimony only if "specialized knowledge will help the trier of fact to understand the evidence or determine a fact in issue."<sup>31</sup> This foundational requirement forces courts to engage in an analysis concerning whether expert guidance is truly necessary for jury comprehension.<sup>32</sup> The determination often involves subtle distinctions between matters that appear technical but can be understood through common experience versus those truly requiring specialized knowledge.<sup>33</sup> Courts must also consider whether proposed expert testimony might actually hinder rather than help jury understanding by unnecessarily complicating straightforward issues.

164. History has shown difficulties in application of Rule 702 when courts confronting identical scientific evidence have reached opposite conclusions about whether such matters fall within "common knowledge," revealing the arbitrary nature of current Rule 702(a) determinations. The treatment of expert testimony regarding false confessions

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<sup>28</sup> Fed. R. Evid. 702(a) advisory committee's note to 2000 amendment.

<sup>29</sup> Fed. R. Evid. 702; *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999).

<sup>30</sup> *Howard v. Cal Dive Int'l, Inc.*, No. 10-4737, 2011 U.S. Dist. LEXIS 3496, 10-12 (E.D. La. Jan. 5, 2011).

<sup>31</sup> Fed. R. Evid. 702(a); see also *Nna v. Am. Std., Inc.*, 630 F. Supp. 2d 115, 133 (D. Mass. 2009).

<sup>32</sup> *United States v. Elfenbein*, 24-4048 (4th Cir. July 17, 2025); *Nationwide Agribusiness v. Structural Restoration, Inc.*, 705 F. Supp. 2d 1070, 1082 (S.D. Iowa 2010).

<sup>33</sup> *Kologik Capital, LLC v. In Force Tech., LLC*, 693 F. Supp. 3d 115, 144-47 (D. Mass. 2023).

saliently presents the jurisdictional divisions and highlights the point. Courts previously confronted the same social science research documenting the prevalence and psychology of false confessions yet reached opposite conclusions about jury competence to evaluate such evidence.<sup>34</sup> While some courts allowed false confession expert testimony, some courts excluded it, reasoning that the possibility of false confessions fall within the common knowledge of the average juror.<sup>35</sup> Yet research comparing expert and lay opinions reveals that laypeople gave lower ratings to the coerciveness of all sets of items representing interrogation techniques compared to social scientists specializing in interrogations and confessions.<sup>36</sup> This empirical evidence suggests that courts excluding such expert testimony based on assumptions about “common knowledge” may be systematically wrong about actual jury understanding.<sup>37</sup> These jurisdictional divisions constitute more than mere doctrinal disagreement; they provide compelling empirical evidence that current Rule 702 determinations lack any objective foundation for assessing actual jury capabilities. The empirical import of these inconsistencies cannot be overstated. If the boundary between common and specialized knowledge were objectively determinable, we would expect substantial uniformity across jurisdictions applying the same “common knowledge” standard to identical scientific evidence. Instead, the divergence in outcomes provides quantifiable proof that the current system operates without reliable metrics for assessing what juries actually understand.

165. Moreover, the notion that jurors’ specialized knowledge is more problematic than their general worldly understanding creates a false dichotomy. This artificial line-drawing is difficult to justify when courts simultaneously exclude jurors with relevant knowledge and then rely on expert witnesses to impart that knowledge to unknowledgeable jurors. If we accept that jurors will inevitably draw upon their understanding of the world during deliberations, there is little logical basis for treating their specialized knowledge, whether pre-existing or acquired through expert testimony, as categorically different than “common knowledge.”<sup>38</sup> There is no real contention that a juror, using past experience cooking grits, could misremember or otherwise be wrong about the time it takes to cook it. Whether the timing to cook grits is specialized does not change the possibility that a jury without knowledge regarding grits would rely on a misconception possessed by another juror. Jurors, as people, bring with them many untested misconceptions

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34 Danielle E Chojnacki, Michael D Cicchini & Lawrence T White, *An Empirical Basis for the Admission of Expert Testimony on False Confessions*, *ARIZ. ST. L.J.* 21 (2008); David A Perez, *The (In)Admissibility of False Confession Expert Testimony*, 26 *TOURO L. REV.* 23 (2011).

35 *State v. Davis*, 32 S.W.3D 603, 609 (Mo. Ct. App. 2000); *Vent v. State*, 67 P3d 661, 665 (Alaska Ct. App. 2003).

36 Jeffrey Kaplan et al., *Perceptions of Coercion in Interrogation: Comparing Expert and Lay Opinion*, 26 *PSYCHOL. CRIME & L.* 384 (2020).

37 Danielle E Chojnacki, Michael D Cicchini & Lawrence T White, *An Empirical Basis for the Admission of Expert Testimony on False Confessions*, *ARIZ. ST. L.J.* 21 (2008); David A Perez, *The (In)Admissibility of False Confession Expert Testimony*, 26 *TOURO L. REV.* 23 (2011).

38 Paul F Kirgis, *The Problem of the Expert Juror*, 75 *TEMP L. REV.* 1, 14 (2002).

about the world which may in one jurisdiction be considered specialized knowledge while in another be common knowledge. If the expert gives the jury the information, it is still possible that they misapprehend what the new knowledge means. Therefore, rather than excluding knowledgeable jurors only to have experts later provide similar information, courts should focus on identifying actual bias rather than assuming that specialized knowledge itself compromises the deliberative process. This tension suggests a need to reevaluate our approach to jury selection in cases involving technical or specialized evidence, perhaps considering whether limited expertise among jurors might actually serve the truth-seeking function of trials better than complete reliance on expert witnesses to educate an entirely lay jury panel.

166. This paradox extends beyond simple pro-prosecution or pro-defense considerations. When, for instance, competing experts present conflicting interpretations of trauma response, their testimony may actually impede rather than aid jury comprehension. The introduction of dueling expert opinions can create confusion about fundamentally human experiences, potentially leading to acquittals where jurors might otherwise have relied on their collective understanding and experience. Conversely, expert testimony can prove exceptionally powerful, potentially tipping the scales toward conviction when presented compellingly. This dual-edged nature of expert testimony in trauma cases, as one example, underscores the need for courts to carefully evaluate whether such evidence truly assists the jury or merely complicates their assessment of credibility and human behavior.

167. Some legal scholars and practitioners might object to this article's proposal for post-voir dire reassessment of expert testimony needs, arguing that it undermines a fundamental principle of the jury trial system: that cases should be decided based on evidence formally presented during trial proceedings. According to this view, expert testimony serves as a controlled mechanism for introducing specialized knowledge into the courtroom, ensuring that all jurors gain access to the same information through testimony that can be challenged through cross-examination and competing expert opinions. By contrast, specialized knowledge that individual jurors bring to deliberations cannot be similarly vetted, potentially introducing unexamined biases or outdated information into the decision-making process. This critique reflects legitimate concerns about maintaining procedural fairness and ensuring consistent evidentiary standards across trials.

168. However, this objection relies on several questionable assumptions about the nature of juror knowledge and the function of expert testimony. First, it presupposes a clear distinction between "specialized" knowledge (which must be formally introduced through expert testimony) and "common" knowledge (which jurors are freely permitted to apply). Yet as this article has demonstrated, the boundary between specialized and common knowledge is neither fixed nor universal. Knowledge that was once considered highly specialized, like basic principles of digital technology operation, may

now fall within the common knowledge of many jurors. Conversely, what courts might assume to be common knowledge, such as the reliability of eyewitness testimony or patterns of trauma response, may actually be widely misunderstood by the general public, requiring expert clarification despite its seemingly non-technical nature.

169. Second, the objection assumes that knowledge acquired through expert testimony during trial is inherently more reliable or current than pre-existing juror knowledge. This assumption overlooks the reality that expert witnesses themselves may present outdated theories, rely on contested methodologies, or express minority viewpoints within their fields. The adversarial system attempts to mitigate these risks through the gate-keeping function performed by the judge, as well as competing expert testimony and vigorous cross-examination, but these safeguards are imperfect at best. By contrast, jurors with relevant professional training or education may possess current, practical understanding of field standards and practices that could enhance deliberations.

170. This is not to suggest that all specialized juror knowledge should be treated as equivalent to expert testimony. Concerns about outdated or incorrect pre-existing knowledge are legitimate, particularly in rapidly evolving fields. However, similar concerns apply to common knowledge as well. Jurors may hold outdated or incorrect beliefs about memory formation, statistical probability, or run-of-the-mill behavioral psychology that could equally impact their evaluation of evidence. Yet our current approach treats specialized knowledge with particular suspicion while accepting that jurors will inevitably rely on their general understanding of the world, however imperfect. This inconsistency suggests our concern is less about the accuracy of juror knowledge and more about maintaining artificial distinctions between expert and lay domains.

171. Third, the objection fails to acknowledge that all jurors inevitably bring pre-existing knowledge and beliefs into deliberations, regardless of whether such knowledge is categorized as “specialized” or “common.” Courts have long recognized that jurors cannot — and should not — leave their life experiences and understanding at the courthouse door. As the Supreme Court noted, “It is a basic premise of our jury system that the court states the law to the jury and the jury applies that law to the facts as the jury finds them.”<sup>39</sup> This application necessarily involves jurors drawing on their pre-existing frameworks for understanding the world to assess evidence presented in trial. The concern about unvetted specialized knowledge thus represents a difference of degree rather than kind from the baseline reality of jury deliberation, and is one in which voir dire can readily expose.

172. The use of expert testimony to describe human behavior presents particularly complex challenges, as courts must balance the need for specialized knowledge against the risk of expert testimony improperly invading the province of the jury.<sup>40</sup> While expert tes-

<sup>39</sup> *Delli Paoli v. United States*, 352 U.S. 232, 242 (1957).

<sup>40</sup> *United States v. Downing*, 753 F.2d 1224, 1242–43 fn 27 (3d Cir. 1985).

timony may be necessary to explain technical matters, courts must carefully scrutinize attempts to introduce expert testimony which serves merely to make conclusions reserved solely for the jury.<sup>41</sup> This scrutiny reflects concerns that expert testimony might, for instance, usurp the jury's role in making fundamental determinations about credibility and mental state.<sup>42</sup> This evaluation is particularly important where expert testimony might suggest scientific certainty about essentially behavioral conclusions.<sup>43</sup>

173. In *People v. Weinstein*, the court provided significant guidance on the role of expert testimony in sexual assault cases involving trauma response.<sup>44</sup> The prosecution presented expert testimony from a forensic psychiatrist who specialized in trauma response to educate the jury about victim responses. This expert testimony served two distinct purposes in the trial court proceedings. First, the expert explained how sexual assault victims may behave in ways that persons unfamiliar with trauma response might consider counterintuitive to their expectations of victim behavior. Second, the expert worked to dispel certain rape myths, including the misconceptions that most rapes are committed by strangers rather than acquaintances. The expert also addressed the common misbelief that credible victims promptly report attacks and discontinue relationships with their attackers. Additionally, the expert testified about how traumatic events narrow the brain's ability to focus on specific details, yielding clearer memories of such events. This scientific explanation helped contextualize the victims' testimony and memory patterns. The court noted this type of expert testimony was especially important given the complex nature of trauma response and memory formation.

174. The *Weinstein* case exemplifies a paradox in the courts' approach to the common knowledge of the average jury as it relates to expert testimony on trauma response, as only one example. During voir dire, the court specifically screened potential jurors for experience with sexual assault, presumably to identify and potentially exclude those with direct knowledge of trauma response.<sup>45</sup> Yet the court then admitted expert testimony to explain precisely the kind of experiential knowledge that may have led to challenges for cause during jury selection. This contradiction highlights a fundamental tension: the justice system simultaneously treats trauma response knowledge as grounds for potential juror exclusion and as specialized information requiring expert explanation to the selected jury. While a seemingly plausible rationale may be that specialized understanding of trauma response necessarily leads to bias when derived from personal experience rather than expert testimony, this assumption rests on untested premises about both the relationship between personal experience and prejudice and the supposedly neutral impact of gaining such knowledge during trial, premises that deserve

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41 *United States v. Brown*, 871 F.3d 532, 538–39 (7th Cir. 2017).

42 *United States v. DiDomenico*, 985 F.2d 1159, 1164 (2d Cir. 1993).

43 *United States v. Brown*, 871 F.3d 532, 538 (7th Cir. 2017).

44 *People v. Weinstein*, 207 A.D.3d 33, 59–63 (App. Div. 2022).

45 *People v. Weinstein*, 207 A.D.3d 33, 59–63 (App. Div. 2022).

greater empirical and theoretical scrutiny than courts are typically provided during voir dire and when ruling on Federal Rule of Evidence 702 matters. Courts should allow parties to explore in voir dire those issues, such as past trauma experiences, not solely to elicit bias, but to better inform the court when making a Federal Rule of Evidence 702(a) analysis.

175. The concept of false confessions provides another example for when courts have taken an inconsistent approach to assessing what is within the common knowledge of jurors. While it is true that the common knowledge of a typical juror likely increases commensurate with the reliability of scientific advances, that phenomenon would not explain why courts, during the same time period, would come to diametrically opposed conclusions about whether the typical juror would understand a particular type of science. In other words, it makes sense that as science advances so too would the courts acceptance of the science under Federal Rule of Evidence 702(c)-(d), but that would not explain the differing approach under Federal Rule of Evidence 702(a) during a time when the science remained static.<sup>46</sup> For instance, some judges have found that jurors can comprehend the various reasons why a person would lie to law enforcement to the person's detriment.<sup>47</sup> During the same period, others courts have found that the circumstances that result in a false confession are within the common knowledge of the average juror.<sup>48</sup> Stated simply, judges have transformed the Federal Rule of Evidence 702(a) analysis into a guessing game about whether or not jurors, who have yet to be impaneled, know about a particular field of science, despite judges being largely insulated from the communities from which jurors are drawn.

176. Rather than categorically excluding knowledgeable jurors or automatically admitting expert testimony without considering the actual composition of the jury panel, courts should adopt a more nuanced approach that recognizes the complex interplay between different forms of knowledge in jury deliberations. This approach would involve evaluating whether particular expert testimony actually bridges gaps in the impaneled jury's understanding or merely duplicates knowledge already present in the jury box. It would also involve recognizing that the distinction between what constitutes evidence produced at trial versus information jurors bring with them becomes increasingly artificial in an era of widespread information access and growing scientific literacy. This nuanced understanding does not undermine the principle that cases should be decided based on evidence presented at trial. Rather, it acknowledges that jurors inevitably filter and interpret such evidence through their existing frameworks of understanding, whether those frameworks derive from formal education, professional experience, or

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<sup>46</sup> Fed. R. Evid. 702.

<sup>47</sup> Danielle E Chojnacki, Michael D Cicchini & Lawrence T White, *An Empirical Basis for the Admission of Expert Testimony on False Confessions*, ARIZ. ST. L.J. 21 (2008).

<sup>48</sup> *Vent v. State*, 67 P3d 661, 670 (Alaska App. 2003); *People v. Wood*, 341 Ill. App. 3d 599, 608 (Ill. App. Ct. 2003).

simply living in the world. By recognizing this reality, courts can make more informed decisions about when expert testimony truly serves its intended purpose of assisting the trier of fact.

## V. The Procedural Component Related to Expert Testimony

177. Often called a Daubert hearing, courts generally prefer to conduct hearings on the admissibility of expert testimony before trial begins, primarily to avoid wasting jurors' time while the court considers challenges to expert testimony. As one court explained, holding pre-trial Daubert hearings "eliminates jury 'down' time waiting on rulings in the middle of trial."<sup>49</sup> Pre-trial Daubert hearings also allow both parties adequate time to prepare their arguments regarding the admissibility of expert testimony and give courts sufficient opportunity to thoroughly evaluate complex scientific or technical evidence. While courts have broad discretion in deciding whether and when to hold Daubert hearings, the preference for pre-trial determinations helps ensure the efficient administration of justice.<sup>50</sup> This timing preference stems from courts' gatekeeping obligation to ensure that any expert testimony presented to the jury is both relevant and reliable. However, holding a pre-trial Daubert hearing is not mandatory, and trial courts retain discretion over the timing and necessity of such hearings. Indeed, courts have recognized that separate pre-trial Daubert hearings may not always be feasible or necessary, particularly in bench trials where there is no risk of jury delay. The preference for pre-trial Daubert determinations must therefore be balanced against other case management considerations, scheduling constraints, and substantive issues.<sup>51</sup>

178. In some circumstances, courts may find it necessary or appropriate to conduct Daubert hearings after the jury has been impaneled, even though this is not the preferred approach.<sup>52</sup> This typically occurs in cases involving urgent timing constraints or where pre-trial Daubert hearings are otherwise impracticable. Courts have also held mid-trial Daubert hearings where expert challenges arise unexpectedly. While not ideal, such mid-trial determinations of expert admissibility may be warranted when the interests of justice and judicial economy so require. The key consideration appears to be whether delaying the Daubert determination would cause greater disruption than addressing it pre-trial. Courts thus retain flexibility to adjust the timing of Daubert hearings based on the particular circumstances and exigencies of each case, even though

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49 *In re Ohio Execution Protocol Litig.*, 2018 U.S. Dist. LEXIS 206156, 18 (S.D. Ohio Dec. 6, 2018).

50 *United States v. DiDomenico*, 985 F.2d 1159, 1161–62 (2d Cir. 1993).

51 See *In re Ohio Execution Protocol Litig.*, No. 2:11-cv-1016, 2018 U.S. Dist. LEXIS 206156, 17–18 (S.D. Ohio June 14, 2018).

52 See *Sims v. City of Jasper*, 2023 U.S. Dist. LEXIS 217401, 10 (E.D. Tex., January 24, 2023).

pre-trial hearings remain strongly preferred when feasible.

179. This flexibility in timing Daubert hearings reflects courts' recognition that expert testimony determinations may require adjustment as cases develop. However, courts have not systematically extended this flexibility to account for the specific knowledge composition of impaneled juries, despite Rule 702's explicit focus on whether expert testimony will "help the trier of fact." This creates a procedural gap where courts make abstract determinations about what might assist a hypothetical jury without considering the actual knowledge and experience of the specific jurors selected to hear the case. When a court rules pre-trial that expert testimony is admissible because it addresses matters beyond common knowledge, that determination occurs without knowing whether the jury that is ultimately selected might include individuals with relevant specialized knowledge. Conversely, when courts exclude expert testimony because the matters fall within common knowledge, they do so without confirming whether the actual jurors possess such understanding. This procedural approach treats all juries as interchangeable, ignoring the potential for significant variation in juror knowledge and experience from one venire to another.

## VI. Moving Beyond the Status Quo

180. Courts should conduct truncated Daubert hearings post-voir dire to analyze the impaneled jury's common knowledge. While comprehensive pre-trial Daubert hearings remain essential for evaluating the reliability and methodology of expert testimony, brief supplemental hearings focused solely on the "common knowledge" requirement can serve a vital function without significantly disrupting trial proceedings.<sup>53</sup> The distinction is important; comprehensive pre-trial hearings examine all aspects of expert qualification and reliability under Rule 702, while targeted post-voir dire proceedings would focus solely on whether specific testimony exceeds the common knowledge of the actual jury panel, under Rule 702(a). This narrower inquiry requires minimal court time, presumably a 20–30-minute hearing, yet could prevent unnecessary expert testimony that risks confusing or misleading jurors who already possess relevant knowledge and understanding. The fundamental gatekeeping function described in Daubert emphasizes preventing unnecessary or potentially confusing expert testimony. This proposed hearing is consistent with the flexibility in managing expert testimony challenges in which courts have already engaged, including reconsidering prior rulings when new information becomes available that bears on the Rule 702 analysis.<sup>54</sup> Indeed, some courts explicitly acknowledge that Daubert determinations can be revisited during trial.<sup>55</sup> This

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53 Manual for Complex Litigation (Fourth) § 23.352 (2004).

54 *Boutin v. Newfield Exploration Co.*, No. 11-30062 (5th Cir. 2011).

55 *Nicholson v. Medina*, No. 2:2010cv01425 - Document 58, 11 (E.D. Cal. Nov. 26, 2013).

approach recognizes that the appropriateness of expert testimony may need reassessment as a case develops. Extending this principle to incorporate insights gained during jury selection represents a modest and pragmatic evolution of existing practice.

181. This targeted reassessment would also address concerns about the tension between evidence formally presented at trial and jurors' pre-existing knowledge. In the case of false confessions, it is entirely possible that the jury in one jurisdiction fully understands that false confessions are an actual phenomenon, whereas a jury from another jurisdiction believes the concept was made up by slick defense lawyers trying to get their guilty clients acquitted. Only after voir dire could a court possibly know what the jury thinks. Courts do and should continue to test whether the jury has any preconceived notions about particular issues in the case, such as false confessions. No judge should be willfully blind to the receptiveness of a juror to matters the court has already deemed are admissible in the case. Thus, the proposal in this paper would add little, if anything, to the voir dire process. Additionally, the post-voir dire hearing would not encourage jurors to substitute their knowledge for evidence; rather, it would help courts determine when expert testimony is truly necessary to bridge knowledge gaps versus when it might confuse matters by presenting overly technical explanations of concepts the jury already understands. Far from undermining the importance of trial evidence, this approach would enhance the clarity and efficiency with which such evidence is presented to jurors.

182. Moreover, concerns about potentially outdated or incorrect specialized knowledge among jurors can be addressed through the normal processes of jury deliberation, where jurors discuss and evaluate competing understandings. Courts already trust jurors to assess the credibility and weight of competing expert testimony — a task that inevitably involves jurors applying their collective knowledge and reasoning abilities. If we trust jurors to evaluate competing expert opinions, there seems little justification for categorically distrusting the specialized knowledge that individual jurors might contribute to deliberations. In both scenarios, the adversarial system relies on collective judgment to reach sound conclusions from diverse information sources.

183. Consider a typical pre-trial Daubert hearing where the court engages in a comprehensive analysis of proposed expert testimony. The court examines the expert's qualifications, methodology, and the potential value their testimony might add to jury understanding. In such a hearing, the court necessarily considers the abstract notion of what an average juror might understand, without the benefit of knowing the actual jury's composition. When courts issue pre-trial rulings finding expert testimony admissible, they typically focus on reliability of methods and general helpfulness to a theoretical jury. This analytical framework could operate differently in various factual scenarios after voir dire exposes the specialized knowledge and experience of the jury on the panel. For instance, in a product liability case involving industrial machinery, voir dire might reveal multiple jurors with engineering degrees who work in manufacturing design.

While expert testimony about engineering standards and design processes might seem necessary in the abstract, these particular jurors may already understand the core mechanical principles and industry practices at issue. A brief supplemental hearing could allow counsel to argue whether portions of the proposed expert testimony would be unnecessarily duplicative for this specific jury.

184. Next consider a products liability case involving an industrial printing press that allegedly malfunctioned due to a defective hydraulic safety system, causing severe injuries to an operator. During pre-trial proceedings, the court conducts a comprehensive Daubert hearing and rules that plaintiff's expert testimony regarding hydraulic system design, industry safety standards, and failure analysis methodology is admissible under Rule 702. The court reasons that the technical complexities of industrial hydraulic systems, pressure calculations, and engineering safety protocols exceed the common knowledge of typical jurors and require expert explanation to assist the jury in understanding both the alleged defect and causation.

185. However, voir dire reveals a jury composition that significantly diverges from the court's initial assumptions. Three impaneled jurors work as mechanical engineers in manufacturing facilities, with two specializing in hydraulic system design and maintenance. A fourth juror spent fifteen years as a safety inspector for industrial equipment, specifically evaluating hydraulic press operations for OSHA compliance. A fifth juror operates similar printing presses in his daily work and has extensive hands-on experience with hydraulic safety systems, including troubleshooting pressure failures and implementing lockout-tagout procedures.

186. Under current practice, the court's pre-trial ruling stands regardless of this revealed expertise. Plaintiff's expert will spend time explaining basic hydraulic principles that multiple jurors already understand through their professional experience, including pressure calculations that the engineering jurors perform routinely, safety standards that the former OSHA inspector helped enforce, and operational procedures that the press operator follows daily. The expert will describe industry standards for hydraulic safety systems using technical language and concepts that are fundamental knowledge for several impaneled jurors.

187. A brief post-voir dire hearing could address these concerns efficiently. Counsel could argue that portions of the expert testimony — particularly basic hydraulic principles, industry safety standards, and operational procedures — no longer require expert explanation for this jury. The court might maintain expert testimony on more complex issues like metallurgical failure analysis or specific pressure calculations while eliminating redundant foundational material. Such a hearing would require perhaps twenty minutes (about the time it takes to cook grits): about ten minutes for plaintiff to argue that expert testimony remains necessary despite jury expertise, about ten minutes for defendant to argue that certain portions have become superfluous, and brief judicial

consideration of which aspects of the testimony continue to serve Rule 702's "help the trier of fact" standard.<sup>56</sup>

188. Conversely, jury voir dire may expose a particular venire lacks understanding of something the court might otherwise think is "within the ken" of the typical juror.<sup>57</sup> A party may renew a Daubert challenge after voir dire if jury selection reveals that the jurors lack the specialized knowledge or experience initially presumed by the court in its pretrial ruling. Conversely, a party who previously prevailed on a Daubert challenge may use voir dire to reinforce the record by demonstrating the jurors' lack of relevant technical expertise, thereby strengthening their position that expert testimony is necessary and appropriate should the ruling face appellate review. While some courts restrict voir dire questions about jurors' technical knowledge or expertise (i.e., they do not let parties 'try their case in voir dire'), parties should argue, in cases where the court has ruled that expert testimony is admissible as outside the ken of the jury or inadmissible as within the ken of the jury, that such questioning aligns with Federal Rule of Evidence 702's requirement that expert testimony "help the trier of fact" understand evidence or determine facts, a determination that necessarily depends on the specific knowledge and capabilities of the impaneled jury.<sup>58</sup>

189. Lastly, this approach of retaining rather than excluding knowledgeable jurors is not without potential complications. One concern arises through the hypothetical of a specialized juror being excused mid-trial due to illness, family emergency, or other circumstances. If the court has relied on that juror's specialized knowledge as grounds for excluding certain expert testimony, their departure could leave the remaining jurors without access to the specialized knowledge needed to properly evaluate the evidence. However, this challenge has a straightforward solution: the court can simply admit the previously excluded expert testimony at that point. This flexibility aligns with courts' general authority to reconsider evidentiary rulings as circumstances change during trial. Indeed, this approach better serves the underlying principle that trials should be decided based on evidence presented in court, as it ensures that necessary expert testimony is available when the jury lacks relevant specialized knowledge while avoiding unnecessary technical presentations when such knowledge is already present in the jury box. The possibility of losing a knowledgeable juror thus presents a manageable procedural issue rather than a fundamental obstacle to the proposed approach. Moreover, counsel have already prepared, through pretrial Daubert hearings, to present the expert testimony. The mid-trial addition of calling the expert should come as no surprise to either side. Going into trial, counsel should understand that their expert may or may not be permitted to testify. Trial lawyers are adept at adapting to a changing landscape during trial.

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56 *Nicholson v. Medina*, No. 2:2010cv01425 - Document 58, 11 (E.D. Cal. Nov. 26, 2013).

57 *Bunting v. D.C. CVS Pharm., LLC*, No. 1:2022cv00766 - Document 55 (D.D.C. 2024).

58 *Fed. R. Evid. 702*.

190. Critics might raise concerns about potential “jury shopping”: the worry that parties would manipulate jury selection to achieve favorable expert testimony rulings. This concern, while understandable, reflects a misunderstanding of both the proposal’s scope and existing jury selection constraints. Parties cannot control venire composition; they must work with the individuals summoned for jury duty, regardless of their professional backgrounds or expertise levels.<sup>59</sup> The proposal does not expand parties’ voir dire rights or create new opportunities for strategic jury selection. Courts retain full control over the scope and manner of voir dire questioning, and parties cannot manufacture jury expertise that does not exist or eliminate expertise that does exist.

191. Moreover, the concern assumes that parties would necessarily prefer either expert or lay juries in predictable ways. In practice, the calculus proves more complex. A plaintiff with strong expert testimony might prefer a lay jury that receives the full educational benefit of expert explanation. Conversely, a defendant confident in their expert’s ability to expose flaws in plaintiff’s case might welcome knowledgeable jurors capable of recognizing methodological weaknesses.<sup>60</sup> The proposal simply ensures that expert testimony serves its intended function of assisting the actual jury, rather than forcing parties to present unnecessary technical evidence to jurors who already possess relevant understanding.

192. The proposed approach requires clear parameters to distinguish cases warranting post-voir dire reconsideration from those where pre-trial determinations remain sufficient. Post-voir dire review should be limited to cases where voir dire reveals jury composition that materially diverges from reasonable pre-trial assumptions about typical jury capabilities. This standard encompasses two distinct scenarios: first, cases where voir dire uncovers significant relevant expertise among impaneled jurors that calls into question the necessity of previously admitted expert testimony; and second, cases where voir dire reveals that impaneled jurors lack knowledge the court assumed would be within common knowledge, potentially warranting reconsideration of excluded expert testimony.<sup>61</sup>

193. The first scenario applies when voir dire reveals that multiple jurors possess professional experience, advanced education, or specialized training directly relevant to the subject matter of proposed expert testimony. The industrial printing press example illustrates this situation: when several jurors demonstrate hands-on expertise with hydraulic systems, safety protocols, and equipment operation, basic expert testimony about these subjects may no longer serve Rule 702’s “help[ful to] the trier of fact” standard.<sup>62</sup> However, the threshold should require substantial relevant expertise among

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59 *Taylor v. Louisiana*, 419 U.S. 522, 530 (1975).

60 Cf. *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 139 n.11 (1994).

61 Fed. R. Evid. 702(a).

62 Fed. R. Evid. 702.

multiple jurors, not merely tangential knowledge by a single juror. A nurse on a medical malpractice jury might not trigger reconsideration, but three nurses specializing in the relevant clinical area would warrant review.

194. The second scenario addresses cases where courts exclude expert testimony based on assumptions about common knowledge that prove incorrect for the particular jury. For instance, a court might exclude expert testimony about basic financial concepts like compound interest, reasoning that such matters fall within ordinary understanding. However, if voir dire reveals a jury lacking any members with financial education or experience managing investments, the court might reconsider whether expert explanation would assist this particular jury's comprehension.

195. The standard for triggering review should focus on whether the revealed jury composition creates a substantial question about the continued appropriateness of the pre-trial expert testimony determination. Courts need not conduct post-voir dire review merely because one or two jurors possess some relevant experience. Instead, review becomes warranted when voir dire reveals jury expertise or lack thereof that would reasonably lead to a different conclusion about whether particular expert testimony would assist the fact-finder. This threshold ensures that the procedure serves its intended purpose of tailoring expert testimony to actual jury needs without becoming a routine requirement that burdens every trial involving expert witnesses.

## VII. Conclusion

196. The question of when expert testimony truly assists a jury lies at the heart of Federal Rule of Evidence 702. While courts have developed robust frameworks for evaluating expert qualifications and methodologies, less attention has been paid to a crucial aspect of the analysis: whether particular expert testimony will actually help the specific jury impaneled to hear the case. The current practice of making all expert witness determinations without considering voir dire, while administratively efficient and helpful to parties preparing for trial, may sometimes result in the presentation of unnecessary technical evidence to jurors who already possess relevant specialized knowledge or preclude necessary testimony to jurors without the knowledge.

197. This observation does not suggest a wholesale revision of expert testimony practice. In most cases, pre-trial expert determinations will remain both appropriate and sufficient. Technical evidence about complex scientific processes, specialized medical procedures, or advanced engineering principles will typically exceed the knowledge of any lay jury panel. However, in cases where voir dire reveals jurors with significant relevant expertise — whether through professional experience, advanced education, or specialized training — courts should remain open to brief, targeted reassessment of

whether specific portions of previously approved expert testimony remain necessary or whether excluded testimony would be helpful.

198. The proposed approach requires minimal modification to existing procedures. A focused 20–30-minute hearing following voir dire, limited strictly to the “help the trier of fact” element of Rule 702(a), would allow parties to address whether particular expert testimony might be unnecessary or potentially confusing for the specific jury panel. This targeted review would not revisit questions of expert qualifications or methodology, which would remain properly determined before trial. Rather, it would serve as a final check to ensure that expert testimony fulfills its intended purpose: bridging gaps in jury knowledge rather than unnecessarily complicating matters already within jurors’ understanding.

199. This approach also addresses concerns about jurors relying on pre-existing knowledge rather than evidence presented at trial. By acknowledging the reality that jurors inevitably bring varying levels of knowledge and experience to their role, courts can make more informed decisions about what evidence requires expert explanation versus what falls within the jury’s collective understanding. This recognition does not undermine the principle that cases should be decided based on evidence presented in court; instead, it ensures that such evidence is presented in ways that genuinely assist the specific jurors tasked with evaluating it.

200. Critics who worry about jurors applying potentially outdated or incorrect specialized knowledge should recognize that this concern applies equally to common knowledge. All jurors — regardless of background — filter evidence through their existing understanding of the world. Our legal system already trusts jurors to collectively evaluate competing factual claims and expert opinions during deliberations. The approach proposed here simply acknowledges this reality while providing courts additional tools to tailor expert testimony more precisely to actual jury needs.

201. Courts and counsel should view this proposal not as an additional procedural burden, but as an opportunity to enhance the precision and effectiveness of expert testimony. By remaining attentive to the actual composition and capabilities of impaneled juries, parties and the court can better serve the ultimate goal of our evidentiary rules: facilitating clear, efficient presentation of relevant evidence that genuinely assists jurors in their fact-finding role. While this approach may not affect every case involving expert testimony, its adoption would represent an important step toward a more thoughtful and nuanced application of Rule 702’s fundamental requirement that expert testimony help the trier of fact.