**3.14 Opinion Evidence, Expert Witness**

You [have heard] [are about to hear] testimony from [*name*] who [testified] [will testify] about [his] [her] opinions and the reasons for those opinions. This opinion testimony is allowed because of the specialized knowledge, skill, experience, training, or education of this witness.

Such opinion testimony should be judged like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness’s knowledge, skill, experience, training, or education, the reasons given for the opinion, and all the other evidence in the case.

**Comment**

*See* Fed. R. Evid. 701-05. *See also United States v. Ruvalcaba-Garcia*, 923 F.3d 1183, 1189 (9th Cir. 2019) (“a district court abuses its discretion when it either abdicates its role as gatekeeper by failing to assess the scientific validity or methodology of an expert’s proposed testimony, or delegates that role to the jury by admitting the expert testimony without first finding it to be relevant and reliable”) (internal quotations and brackets omitted); *United States v. Mendoza*, 244 F.3d 1037, 1048 (9th Cir. 2001) (holding that instruction should be given when requested by defendant).

This instruction avoids labeling the witness as an “expert.” If the court refrains from informing the jury that the witness is an “expert,” this will “ensure[] that trial courts do not inadvertently put their stamp of authority” on a witness’s opinion and will protect against the jury’s being “overwhelmed by the so-called ‘experts.’” Fed. R. Evid. 702 advisory committee’s note (2000) (quoting Hon. Charles Richey, Proposals to Eliminate the Prejudicial Effect of the Use of the Word “Expert” Under the Federal Rules of Evidence in Criminal and Civil Jury Trials, 154 F.R.D. 537, 559 (1994)).

In addition, Fed. R. Evid. 703 provides that facts or data that are the basis for an expert’s opinion but are otherwise inadmissible may nonetheless be disclosed to the jury if the court determines that their probative value in assisting the jury to evaluate the expert’s opinion substantially outweighs their prejudicial effect. Even in the absence of a request, it may be plain error for the trial court to fail to give an instruction sufficient to explain to the jury that the otherwise inadmissible evidence should not be considered for its truth but only to assess the strength of the expert’s opinions. *See United States v. Torralba-Mendia*, 784 F.3d 652, 659 (9th Cir. 2015); *United States v. Vera*, 770 F.3d 1232 (9th Cir. 2014).

Further, the “interpretation of clear statements is not permissible, and is barred by the helpfulness requirement of both Fed. R. Evid. 701 and Fed. R. Evid. 702.” *Vera*, 770 F.3d at 1246 (emphasis in original) (quotation marks and citation omitted).

This instruction also may be given as a limiting instruction at the time testimony is received.

This instruction is appropriate for a witness who provides only expert opinion testimony. If the same witness provides both expert opinion testimony and percipient witness testimony (including fact testimony, lay opinion testimony, or both), these different roles must be clarified for the jury. *See* Comment to Instruction 3.15 (Dual Role Testimony). In that event, use one of the three options shown in Instruction 3.15, instead of this instruction.

*Revised Mar. 2023*