

**UNITED STATES DEPARTMENT OF JUSTICE  
UNIFORM LANGUAGE FOR TESTIMONY AND REPORTS  
FOR THE FORENSIC ANTHROPOLOGY DISCIPLINE**

**I. Application**

This document applies to Department of Justice examiners who are authorized to prepare reports and provide expert witness testimony regarding the forensic examination of anthropological evidence. This document applies to reports and to testimony based on reports that are finalized after its effective date. Section III is limited to conclusions that result from the anthropological comparison of known and questioned skeletal information. Section IV is applicable to all forensic anthropological examinations unless otherwise limited by the express terms of an individual qualification or limitation.

**II. Purpose and Scope<sup>1</sup>**

The Uniform Language for Testimony and Reports is a quality assurance measure designed to standardize the expression of appropriate consensus language for use by Department examiners in their reports and testimony. This document is intended to describe and explain terminology that may be provided by Department examiners. It shall be attached to, or incorporated by reference in, laboratory reports or included in the case file.

Department examiners are expected to prepare reports and provide testimony consistent with the directives of this document. However, examiners are not required to provide a complete or verbatim recitation of the definitions or bases set forth in this document. This is supplemental information that is intended to clarify the meaning of, and foundation for, the approved conclusions.

This document should not be construed to imply that terminology, definitions, or testimony provided by Department examiners prior to its effective date that may differ from that set forth below was erroneous, incorrect, or indefensible. It should also not be construed to imply that the use of different terminology or definitions by non-Departmental forensic laboratories or individuals is erroneous, incorrect, or indefensible.

This document does not, and cannot, address every contingency that may occur. For example, an examiner may not have an opportunity to fully comply with this document's directives during a testimonial presentation due to circumstances beyond his or her control. In addition, this document does not prohibit the provision of conclusions in reports and testimony that fall outside of its stated scope. Finally, the substantive content of expert testimony may be subject to legal rules imposed by the court or jurisdiction in which it is offered.

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<sup>1</sup> This document is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable by law by any party in any matter, civil or criminal; nor does it place any limitation on otherwise lawful investigative or legal prerogatives of the Department of Justice.

### **III. Conclusions Regarding Forensic Comparison of Skeletal Information from Known and Questioned Sources**

An examiner may offer any of the following conclusions:

1. Inclusion (i.e., included)
2. Exclusion (i.e., excluded)
3. Inconclusive

#### **Inclusion**

‘Inclusion’ is an examiner’s conclusion that the questioned skeletal information could have originated from the same individual as the known skeletal information, or from another source with the same skeletal features.

The basis for an ‘inclusion’ conclusion is an examiner’s opinion that there is sufficient agreement between the features of the questioned and known skeletal information, with no unexplainable differences, to conclude that the skeletal information could have originated from the same source or from another source with the same skeletal features.

The strength of the agreement, based on relevant databases or published frequencies of shared skeletal feature(s), shall be reported, if known. If the frequency of the shared feature(s) is not known, the examiner shall disclose that the number of sources that may also share the feature(s) is unknown.

#### **Exclusion**

‘Exclusion’ is an examiner’s conclusion that the questioned and known skeletal information could not have originated from the same source.

The basis for an ‘exclusion’ conclusion is an examiner’s opinion that the questioned and known skeletal information exhibit sufficient differences in skeletal features such that the questioned skeletal information could not have originated from the same source as the known skeletal information.

#### **Inconclusive**

‘Inconclusive’ is an examiner’s conclusion that no determination can be reached as to whether the questioned and known skeletal information could have originated from the same source.

The basis for an ‘inconclusive’ conclusion is an examiner’s opinion that there is insufficient quantity and/or quality of skeletal features in the known and/or questioned skeletal information to determine whether the skeletal information could have originated from the same source or from another source with the same skeletal features.

#### IV. Qualifications and Limitations of Forensic Anthropological Examinations

- When a conclusion provided during testimony or in a report is ultimately an examiner's decision and is not based on a statistically-derived or verified measurement or comparison to all other skeletal information, an examiner shall not:
  - assert that an 'inclusion' or an 'exclusion' conclusion is based on the 'uniqueness'<sup>2</sup> of an item of evidence.
  - use the term 'individualize' or 'individualization' when describing a conclusion.
  - assert that questioned skeletal information originated from a particular source to the exclusion of all other sources.
- When a conclusion provided during testimony or in a report is based on statistically-derived data, the strength of the agreement based on relevant databases or published frequencies of shared skeletal feature(s) shall be reported. If the frequency of the shared feature(s) is not known, the examiner shall disclose that the number of individuals who may also share the feature(s) is unknown.
- When material is non-skeletal in origin, an examiner shall not assert the origin of the material other than descriptive observations or, in certain cases, the elemental constituents of the material.
- When skeletal material is non-human in origin, an examiner shall not assert the non-human animal origin or species beyond general categories (e.g., mammal, bird).
- An examiner shall not assert that skeletal material could not have originated from a source with biological characteristics outside of the estimated parameters.
- An examiner shall not assert that a particular implement was the source of a skeletal alteration.
- An examiner shall not assert the cause or manner of death based on skeletal alterations and/or trauma.
- An examiner shall not offer an 'inclusion' conclusion unless he or she explains that the skeletal information could also have originated from another source that exhibits the same skeletal features.
- An examiner shall not assert that forensic anthropological examinations are infallible or have a zero error rate.
- An examiner shall not provide a conclusion that includes a statistic or numerical degree of probability except when based on relevant and appropriate data.

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<sup>2</sup> As used in this document, the term 'uniqueness' means having the quality of being the only one of its kind. OXFORD ENGLISH DICTIONARY 804 (Oxford Univ. Press 2012).

- An examiner shall not cite the number of forensic anthropological examinations performed in his or her career as a direct measure for the accuracy of a proffered conclusion. An examiner may cite the number of forensic anthropological examinations performed in his or her career for the purpose of establishing, defending, or describing his or her qualifications or experience.
- An examiner shall not use the expressions ‘absolute certainty,’ ‘100% certainty,’ ‘reasonable degree of scientific certainty,’ ‘reasonable scientific certainty,’ or similar assertions of reasonable certainty in reports or testimony unless required to do so by a judge or applicable law.<sup>3</sup>

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<sup>3</sup> See Memorandum from the Attorney General to Heads of Department Components (Sept. 9, 2016), <https://www.justice.gov/opa/file/891366/download>.