

**UNITED STATES DEPARTMENT OF JUSTICE  
UNIFORM LANGUAGE FOR TESTIMONY AND REPORTS  
FOR THE FORENSIC HAIR 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 hair 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 comparison of a questioned hair to a known hair sample. Section IV is applicable to all forensic hair 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 Hair Comparison**

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 source of the known hair sample can be included as a possible source of the questioned hair. The questioned hair could also have originated from additional sources whose known hair sample encompasses the range of macroscopic and microscopic characteristics observed in the questioned hair.

The basis for an ‘inclusion’ conclusion is an examiner’s opinion that all assessed macroscopic and microscopic characteristics in a questioned hair are exhibited in the known hair sample with no exclusionary differences.

#### **Exclusion**

‘Exclusion’ is an examiner’s conclusion that the source of the known hair sample cannot be included as a possible source of the questioned hair based on the known hair sample provided.

The basis for an ‘exclusion’ conclusion is an examiner’s opinion that all assessed macroscopic and microscopic characteristics in a questioned hair are not exhibited in the known hair sample.

#### **Inconclusive**

‘Inconclusive’ is an examiner’s conclusion that no determination can be reached as to whether the source of the known hair sample can be included as a possible source of the questioned hair based on the known hair sample provided.

The basis for an ‘inconclusive’ conclusion is an examiner’s opinion that the questioned hair contains both similarities to and differences with the known hair sample, or the questioned hair is of limited value for meaningful microscopical comparison such that the examiner is unable to determine whether or not a questioned hair could have originated from the source of the known hair sample.

### **IV. Qualifications and Limitations of Forensic Hair Examinations**

- 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 hairs. Therefore, 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 a questioned hair originated from a particular source to the exclusion of all other sources.
- An examiner shall not offer an ‘inclusion’ conclusion unless he or she explains that the questioned hair could also have originated from additional sources whose known hair sample encompasses the range of macroscopic and microscopic characteristics observed in the questioned hair. Forensic hair examination is not a basis for source identification.
  - When comparison of a questioned animal hair to a known animal hair sample results in an ‘inclusion,’ an examiner shall explain that animal hairs do not typically possess sufficient differences in macroscopic and microscopic characteristics to distinguish between animals of similar breed and color.
  - An examiner shall not assert that forensic hair examination is infallible or has 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.
  - An examiner shall not cite the number of forensic hair 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 hair 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 either reports or testimony unless required to do so by a judge or applicable law.<sup>3</sup>

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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).

<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>.