

This document provides examples of the scientifically-supported conclusions and opinions that may be contained in Department of Justice reports and testimony. These examples are not intended to be all inclusive and may be dependent upon the precedent set by the judge or locality in which a testimony is provided. Further, these examples are not intended to serve as precedent for other forensic laboratories and do not imply that statements by other forensic laboratories are incorrect, indefensible, or erroneous. 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 and litigative prerogatives of the Department.

**DEPARTMENT OF JUSTICE
PROPOSED UNIFORM LANGUAGE FOR TESTIMONY AND REPORTS
FOR THE Y CHROMOSOME AND MITOCHONDRIAL DNA TYPING DISCIPLINES**

Purpose and Scope

If adopted, this document will apply to Department of Justice personnel who perform forensic examinations and/or provide expert witness testimony regarding the forensic examination of Y chromosome and mitochondrial DNA evidence. This document does not imply that statements made or language used by Department personnel that differed from these proposed statements were incorrect, indefensible, or erroneous.

This document provides the acceptable range of opinions expressed in both laboratory reports and during expert witness testimony while acknowledging that this document cannot address every variable in every examination.

Statements Approved for Use in Y Chromosome and Mitochondrial DNA Typing Testimony and/or Laboratory Reports

Inclusion/Cannot Exclude/Match

1. The examiner may state or imply that an inclusion is the determination that two haplotypes, generally one from an evidence sample and one from a reference sample, may have originated from the same source or lineage because the haplotypes were concordant. An examiner should further state or imply that an inclusion is not an identification because the lineage will share the haplotype and unrelated individuals may also share the haplotype. An inclusion will be supported by a statistical estimate (e.g., upper bound frequency estimate or likelihood ratio) when a match is deemed a positive association by the examiner.

Level of Certainty

2. An examiner may state or imply a level of certainty in his/her calculation of the supporting statistic. The level of certainty is based on a 95% confidence interval.

Inconclusive

3. An examiner may state or imply that no conclusion can be provided for a sample or for a comparison between the haplotypes obtained from an evidentiary sample and a known reference sample. Such a conclusion is termed an inconclusive result and may be the consequence of the recovery of an insufficient quantity of DNA for detection, the recovery of DNA of insufficient quality for successful typing, and/or specific sequence-based observations for mitochondrial DNA sequence comparisons.

Exclusion

4. An examiner may state or imply that an exclusion is the determination that two haplotypes did not originate from the same source or lineage because there are sufficient differences detected in the haplotypes.

Other Haplotype Conclusions

5. An examiner may state or imply that no DNA typing results were obtained from the evidence or that no DNA typing results foreign to a conditional known specimen were obtained from the evidence. An examiner may also state or imply that the DNA typing results obtained from the evidence are suitable for comparison purposes if no reference samples are available for comparison.

Statements Not Approved For Use in Y Chromosome and Mitochondrial DNA Typing Testimony and/or Laboratory Reports

Absolute Identification

1. An examiner may not state or imply that two matching haplotypes provide an absolute identification of the individual from whom the biological material originated.

Racial/Ethnicity Prediction

2. An examiner may not state or imply that haplotype results can be used to predict the specific population, racial, or ethnic group to which an individual belongs.

Zero Error Rate

3. An examiner may not state or imply that the procedures used to perform the interpretation and comparisons for haplotype-based DNA testing have a zero error rate or are infallible. While the Laboratory has a quality system in place to minimize and/or identify potential procedural errors, the analytical processes and procedures used to support DNA typing technology do not have a calculable error rate due to the unpredictability of human error.

**DEPARTMENT OF JUSTICE PROPOSED UNIFORM LANGUAGE
FOR TESTIMONY AND REPORTS REVIEW SHEET**

Directions: This review sheet is designed to assist you in evaluating the attached Proposed Uniform Language for Testimony and Reports document against certain criteria while maintaining internal consistency in review and assessing comments.

Your use of this rating sheet is completely **optional**. While it is anticipated this review sheet will encourage comments on issues of particular importance, you are welcome to submit comments in any format that you believe appropriate. This review sheet is not intended to limit comments in any way.

If you elect to use the review sheet, you may find it helpful to frame your comments as suggested below.

Proposed Uniform Language Discipline Reviewed:

Reviewer Name:

Reviewer Organization:

Reviewer Email:

Statements Approved for Use in Laboratory Reports and Expert Witness Testimony

Provide a summary of your assessment of the statements approved for use, including the most important highlights from the individual criteria comments.

- The statements approved for use are supported by scientific research.
- The statements approved for use accurately reflect consensus language.
- The statements approved for use are stated clearly.

Statements Not Approved for Use in Laboratory Reports and Expert Witness Testimony

Provide a summary of your assessment of the statements not approved for use, including the most important highlights from the individual criteria comments.

- The statements not approved for use are supported by scientific research.
- The statements not approved for use accurately reflect consensus language.
- The statements not approved for use are stated clearly.