

**UNITED STATES DEPARTMENT OF JUSTICE
UNIFORM LANGUAGE FOR TESTIMONY AND REPORTS
FOR THE FORENSIC FIREARMS/TOOLMARKS DISCIPLINE
PATTERN EXAMINATION**

I. Application

This document applies to Department of Justice examiners who are authorized to prepare reports and provide expert witness testimony regarding the forensic pattern examination of firearms/toolmarks 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 two firearms/toolmarks patterns. Section IV is applicable to all forensic firearms/toolmarks discipline examinations unless otherwise limited by the express terms of an individual qualification or limitation.

II. Purpose and Scope¹

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 provided.

¹ 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 Pattern Examination of Firearms/Toolmarks Evidence

An examiner may provide any of the following conclusions:

1. Source identification (i.e., identified)
2. Source exclusion (i.e., excluded)
3. Inconclusive

Source identification

‘Source identification’ is an examiner’s conclusion that two toolmarks originated from the same source. This conclusion is an examiner’s opinion that all observed class characteristics are in agreement and the quality and quantity of corresponding individual characteristics is such that the examiner would not expect to find that same combination of individual characteristics repeated in another source and has found insufficient disagreement of individual characteristics to conclude they originated from different sources.

The basis for a ‘source identification’ conclusion is an examiner’s opinion that the observed class characteristics and corresponding individual characteristics provide extremely strong support for the proposition that the two toolmarks originated from the same source and extremely weak support for the proposition that the two toolmarks originated from different sources.

A ‘source identification’ is the statement of an examiner’s opinion (an inductive inference²) that the probability that the two toolmarks were made by different sources is so small that it is negligible.

Source exclusion

‘Source exclusion’ is an examiner’s conclusion that two toolmarks did not originate from the same source.

The basis for a ‘source exclusion’ conclusion is an examiner’s opinion that the observed class and/or individual characteristics provide extremely strong support for the proposition that the two toolmarks came from different sources and extremely weak or no support for the proposition that the two toolmarks came from the same source.

Inconclusive

‘Inconclusive’ is an examiner’s conclusion that all observed class characteristics are in agreement but there is insufficient quality and/or quantity of corresponding individual

² Inductive reasoning (inferential reasoning):

A mode or process of thinking that is part of the scientific method and complements deductive reasoning and logic. Inductive reasoning starts with a large body of evidence or data obtained by experiment or observation and extrapolates it to new situations. By the process of induction or inference, predictions about new situations are inferred or induced from the existing body of knowledge. In other words, an inference is a generalization, but one that is made in a logical and scientifically defensible manner.

OXFORD DICTIONARY OF FORENSIC SCIENCE 130 (Oxford Univ. Press 2012).

characteristics such that the examiner is unable to identify or exclude the two toolmarks as having originated from the same source.

The basis for an ‘inconclusive’ conclusion is an examiner’s opinion that there is an insufficient quality and/or quantity of individual characteristics to identify or exclude. Reasons for an ‘inconclusive’ conclusion include the presence of microscopic similarity that is insufficient to form the conclusion of ‘source identification;’ a lack of any observed microscopic similarity; or microscopic dissimilarity that is insufficient to form the conclusion of ‘source exclusion.’

IV. Qualifications and Limitations of Forensic Firearms/Toolmarks Discipline 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 firearms or toolmarks. Therefore, an examiner shall not:
 - assert that a ‘source identification’ or a ‘source exclusion’ conclusion is based on the ‘uniqueness’³ of an item of evidence.
 - use the terms ‘individualize’ or ‘individualization’ when describing a source conclusion.
 - assert that two toolmarks originated from the same source to the exclusion of all other sources.
- An examiner shall not assert that examinations conducted in the forensic firearms/toolmarks discipline 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.
- An examiner shall not cite the number of examinations conducted in the forensic firearms/toolmarks discipline performed in his or her career as a direct measure for the accuracy of a conclusion provided. An examiner may cite the number of examinations conducted in the forensic firearms/toolmarks discipline performed in his or her career for the purpose of establishing, defending, or describing his or her qualifications or experience.
- An examiner shall not assert that two toolmarks originated from the same source with absolute or 100% certainty, or use the expressions ‘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.⁴

³ 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).

⁴ See Memorandum from the Attorney General to Heads of Department Components (Sept. 9. 2016), <https://www.justice.gov/opa/file/891366/download>.