

# **DEPARTMENT OF JUSTICE TESTIMONY MONITORING FRAMEWORK**

## **I. Purpose and Scope<sup>1</sup>**

Testimony monitoring is a quality assurance measure that Department forensic laboratories and digital analysis entities use to ensure that results offered by their examiners and analysts are properly qualified and appropriately communicated. The purpose of testimony monitoring is to provide examiners and analysts with ongoing evaluations of their testimonial presentations and to highlight opportunities for continual improvement.

This document updates the Testimony Monitoring Framework (Framework) for the creation or revision of component testimony monitoring procedures. It applies to all Department forensic laboratories and digital analysis entities.<sup>2</sup> Relevant components must develop and maintain testimony monitoring procedures consistent with this Framework.

## **II. Applicability**

This Framework applies, to the maximum extent possible, to qualifying testimony<sup>3</sup> in civil and criminal matters provided by examiners testifying on behalf of a Department forensic laboratory and digital analysts testifying on behalf of a Department digital analysis entity. Testimony monitoring is subject to the legal requirements and restrictions of the courts and jurisdictions in which testimony is provided. If testimony monitoring is prohibited, this Framework does not apply, and testimony monitoring is not required. Components should notify sponsoring attorneys about their testimony monitoring procedures well in advance of testimonial presentations by their examiners and analysts.

## **III. Requirements**

An evaluating official<sup>4</sup> shall determine whether an examiner or analyst's testimony complied with each of the following requirements:

1. The testimony was consistent with mandatory component procedures regarding the forensic analysis and interpretation of evidence;

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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.

<sup>2</sup> As of the effective date, forensic laboratories subject to the Framework are maintained by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Drug Enforcement Administration (DEA), and Federal Bureau of Investigation (FBI). Digital analysis entities subject to the Framework are maintained by ATF, DEA, FBI, and the Department's Criminal Division.

<sup>3</sup> In general, qualifying testimony is in-court statements premised on the analysis or interpretation of evidence that include an opinion based on scientific, technical, or other specialized knowledge.

<sup>4</sup> For digital analysis entities, the evaluating official should be a subject-matter expert. For forensic laboratories, the evaluating official should meet all applicable accreditation requirements for technical review of testimony.

2. The testimonial opinions, conclusions, and statements regarding case-specific facts or data were properly qualified, did not exceed the limitations of any relevant method or discipline, and adhered to the individual's component-authorized qualifications; and
3. The testimonial conclusions conformed to the requirements of any applicable Uniform Language for Testimony and Reports (ULTR) document in effect on the date of testimony.

#### **IV. Evaluation Process**

Testimony monitoring may be conducted by real-time observation (in-person or virtual streaming) of the evaluating official, review of an audio or video recording, or transcript review. A transcript should be requested promptly after any testimonial presentation not personally observed by the evaluating official or for which an audio or video recording is not available.

In general, the evaluating official should complete testimony monitoring evaluations within thirty calendar days of either the personal observation of the testimonial presentation or the receipt of the transcript or recording. The evaluation and the date that it was completed shall be documented in writing.

Testimony monitoring results shall be provided to the examiner or analyst and the component shall review the results with the examiner or analyst. The identity of the evaluating official and the date that the results were provided to the examiner or analyst shall be documented.

Components shall determine whether the examiner or analyst's testimony complied with the requirements set forth in section III using any documented criteria or metric they deem appropriate. Components shall have a documented procedure to address substantive failure by an examiner or analyst to comply with these requirements.

#### **V. Consultations**

The evaluating official shall consult with the sponsoring attorney and a component attorney before the component makes a determination whether there was a substantive failure by the examiner or analyst to comply with any requirement set forth in section III. The purpose of this consultation is to determine whether court rulings or other factors beyond the examiner or analyst's control may have affected the examiner or analyst's compliance with the requirements of section III.

Following these consultations, if the component determines that there was a substantive failure by the examiner or analyst to comply with any requirement provided in section III, the component shall notify the sponsoring attorney and a component attorney of that decision.