



NATIONAL COMMISSION ON FORENSIC SCIENCE



Inconsistent Terminology

Type of Work Product: Adjudication of Public Comments on Draft Document

Public Comment Summary:

There were three public comments submitted. Two were by Commissioners and one by a professional society. Additionally, a commissioner approached the chair of the group after the meeting and expressed concern with language in the document. Although these concerns were not reduced to a written public comment, it was the decision of the subcommittee to also address those concerns raised in the adjudication process.

Adjudication Process Used by Subcommittee:

On March 3, 2015 the Report Writing and Testimony Subcommittee held a telephone conference lead by co-chairs Matt Riedel and Judge Jed Rakoff. The substances of the public comments were summarized by co-chair Riedel. Each issue was discussed and the proposed adjudication was voted on by the participating subcommittee members. All votes taken were unanimous. A substance of those discussions and the response of the subcommittee members are outlined below.

Itemized Issues and Adjudication Summary:

1. Suggested Changes to the Title of the Document.

Two comments involved the title of the document and thought it did not properly reflect the sentiment as outlined in the document itself. One suggested the title should be changed to “uniform terminology.” Group members shared the work they had done in considering a number of different titles. Words such as “problematic” as well as many others had previously been considered and rejected. However, the document is not designed to cast blame or ban words which the term “problematic” might suggest. “Uniform” or “standardized” had also been considered. However, uniform and standardized terminology may be the solution for some of the challenges practitioners face when reporting their conclusions and also testifying about their results but it is the intent of the document not to suggest a particular outcome but only to highlight one particular kind of challenge. Even if uniform language is used within a discipline it can still be inconsistent for the reasons outlined in the document. The challenge our group was focused on is that of inconsistent terminology.

The Subcommittee agreed to leave the title as originally drafted.

2. Suggestions for the creation of uniform and/or standardized terminology and highlighting of the challenges in the use of uniform terminology.

All three commenters suggested that in one form or another that there are numerous challenges in defining terms and that this task might be carried out by the OSACs. Suggestions were made for solutions to the challenges created by inconsistent terminology which included a glossary of terms, supplemental definitions and the like.

One commenter pointed out that the second paragraph in the “recommendation” section says this document will “suggest a framework for creating standardized terminology.” Yet the document does not offer such a framework.

The Subcommittee agrees that no framework is provided in this document and the specific quotation outlined above should be removed from the document. The Subcommittee intended this document to be narrow in its scope and provide information about a particular issue involving the use of terminology. The suggested framework for how this, as well as any other issues which the subcommittee may identify, could be resolved will be forthcoming in a separate document.

3. Comment regarding the sentence – “Ultimately, this work should provide clarity and guidance for all users within the forensic science and the legal system, who in the end, share the responsibility of learning, understanding and properly using these terms in the art of persuasion.” It was the commenter’s opinion that it is not the function of those in the forensic laboratory to persuade.

It was the intention of the group with this statement to acknowledge that lawyers who use terminology found in reports ultimately share in the responsibility of using such terminology properly. It was not the intention of the group to suggest that forensic scientists engage in persuasion.

To clarify the meaning and intention of the statement, the Subcommittee changed the language to:

Ultimately, this work should provide clarity and guidance for all users within the legal system, who in the end, share the responsibility of learning, understanding and properly using these terms.

4. Concern was raised about the characterization of the work being done by the FBI, the Innocence Project and NACDL to review hair comparison cases. Namely, the commenter was concerned about the characterization of this work as “rectifying damage” found footnote 16.

The intent of this footnote was to highlight the progress that has been made to acknowledge and address errors in microscopic hair analysis cases. To that end, the Subcommittee agreed to change the word “damage” to “errors.”

5. Similarly, a concern was raised with the choice of language in the following sentence – “This phrasing suggests that very few people in the world would have “consistent” hair – a gross overstatement.”

It was the opinion of the Subcommittee that the word “gross overstatement” would be changed to “erroneous.”

** Other minor typos and corrections in citation were also made. None of these impact the document in any substantive way.