



# NATIONAL COMMISSION ON FORENSIC SCIENCE



## Testimony using the term “Reasonable Scientific Certainty”

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### **Type of Work Product: Views Document by the Subcommittee on Reporting And Testimony**

### **Adjudication of Public Comments on the Draft Document Relating to the Use of the Phrase “Reasonable Scientific Certainty”**

#### **Public Comment Summary:**

There were seventeen public comments received. Eight comments were received before the Commission meeting and nine following the meeting. Five of the individuals providing comment identified themselves as working in criminal defense. Two individuals indicated they were law professors. Six identified themselves as forensic scientists, including one who is a lab director. Four individuals participated anonymously. One individual indicated they were a statistician.

#### **Adjudication Process Used by the Subcommittee:**

On July 7, 2015, a conference call of the subcommittee was held. Eighteen members of the subcommittee participated in the call. During the course of the call the agenda turned to adjudication of the comments received. Jules Epstein summarized the views of the individuals who commented. In light of those views, an opportunity for discussion was offered. There was no discussion. The question was then posed whether any subcommittee member wished to make changes to the document in light of the comments received. No one voiced a desire to do so.

#### **Itemized Issues and Adjudication Summary**

The responses largely fell into 2 groups. One group, consisting of 8 people agreed with the recommendation. Another group comprised of 7 persons posed the question what would the Commission propose as a replacement to “reasonable scientific certainty.” During the course of the conference call the Subcommittee heard a report from the subcommittee working group on probabilistic statements. It is hoped that its work will assist in providing an appropriate answer to the question posed. There were two individual responses that should be noted. One person suggested that foundation for admissibility should be left to individual courts. Another responder recommended that the Attorney General prohibit Justice Department prosecutors and scientists from using the phrase.