



# NATIONAL COMMISSION ON FORENSIC SCIENCE

**NIST**  
National Institute of  
Standards and Technology  
U.S. Department of Commerce

## Ensuring That Forensic Analysis Is Based Upon Task-Relevant Information

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

#### Public Comment Summary

The document was drafted by the Human Factors subcommittee. Seven (7) public comments were submitted; some comments included several concerns. One comment was from a Commissioner, one from a Department of Justice representative, one from a person who did give his name, three anonymous submissions, and one from the American Society of Crime Lab Directors (ASCLD) board of directors.

#### Adjudication Process Used by Subcommittee

The Human Factors subcommittee employed both formal and informal components, as follows:

- One of the subcommittee chairs prepared a line-by-line listing and analysis of the public comments and shared it with the principal drafter of the document and others.
- The document was modified to accommodate the comments that were deemed valid.
- On October 19, 2015, the full subcommittee held a telephone conference to discuss the concerns expressed by the commenters and had the opportunity to review the changes made to the document and the proposed adjudication thereof.

The comments and the subcommittee's responses are listed below.

#### Itemized Comments and Adjudications

As each comment addressed a different aspect of the document, the comments are presented by individual submitter, with the subcommittee's response and adjudications in italics.

1. #19 anonymous. The comment supported adopting the proposal, but urged that the document make clear that it does not apply to mental health professionals.

*The subcommittee declined the suggestion because (A) it is unfeasible to create a list of exclusions that will be complete, (B) the document makes clear that each discipline will define what is task relevant, and (C) this may also be addressed by emphasizing that this applies to "forensic science service providers."*

2. #16 anonymous. The comment requested wording changes: "FSSP" and "challenge" in lieu of "problem."

*The subcommittee accepted the changes.*

3. #27 – Jonathan McGrath. Mr. McGrath had several comments.

- a. Recommended adding the following language at the end of Statement of Issue #3: "Such procedures should be established using written policies and protocols, and accreditation

bodies should consider including context management procedures as supplemental requirements.”

*The subcommittee accepted some of the proposed language, but not as to accreditation, because that is beyond this subcommittee’s scope.*

- b. Recommended adding this sentence to the beginning of the document’s final paragraph: “Forensic laboratories should develop written policies and protocols to facilitate the implementation of context management procedures.”

*The subcommittee rejected this suggestion, as its recommendation is to begin using such systems, not to begin policy development. The need for written procedures is already clear from the change in response to Mr. McGrath’s comment above, in a).*

- c. Recommended citation to the NIST publication, *Latent Print Examination and Human Factors*.

*The subcommittee adopted this recommendation.*

- d. Recommend using the full term for ACE-V.

*The subcommittee added a parenthetical definition of ACE-V where it is used in the document but retained the acronym because “linear ACE-V” is a term of art—a label for a particular procedure. The term appears in the document in quotation marks.*

- 4. #26 – Kathy Moore. Ms. Moore urged that the document be limited to individualization disciplines and not others such as “classification” ones.

*The subcommittee rejected this change, as contextual information can have a biasing effect even in classification. This is exemplified in the article by Dror, et. al, 2014, “Cognitive bias in forensic anthropology: Visual assessment of skeletal remains is susceptible to confirmation bias” <http://www.sciencedirect.com/science/article/pii/S1355030613001202>.*

- 5. #12 – anonymous. This commenter had two concerns.

- a. The document does not do enough to acknowledge that all humans—and all participants in the criminal justice system—are subject to biasing information.

*The subcommittee rejected this, concluding that the document properly reflected this.*

- b. The case manager approach may not work in labs where there are electronic file systems and/or where the case is reported in the news.

*The subcommittee rejected this, as the document suggests case managers as one possible method of addressing/minimizing the risk of bias. A paragraph was added concerning Laboratory Information Management Systems (LIMS). If LIMS interfere with the adoption of a context management system, then the LIMS can and should be changed. Laboratory procedures should be based on an intelligent analysis of what analysts need to know to do their job, not on the happenstance of how some programmer happens to set up a LIMS.*

- 6. #7 – Cecilia Crouse. Ms. Crouse had seven comments.

- a. As commenter #16 did, suggested changing “problem” to “challenge.”

*The subcommittee accepted the change.*

- b. Recommended substituting “should” for “can” in section 1, “Pertinent Principles.”  
*The subcommittee made the change.*
- c. Raised concern over use of “proposition,” because scientists receive requests to test, not “propositions” of what the evidence might or might not be.  
*The subcommittee did not make the change, because the document defines “propositions”; this should not be an issue.*
- d. Raised concern over whether it is permissible (i.e., task relevant) to speak with a detective over prioritization of samples/items to be tested.  
*The subcommittee did not make the change because this level of detail was not needed in this document. Prioritization of items should be handled with a case manager or in a manner in which the analyst would be shielded from task-irrelevant information.*
- e. Suggested using “competent” instead of “qualified” in this sentence on pg. 2: “They should draw conclusions only from methods or techniques that they are trained and **qualified** to use.”  
*The subcommittee made the change.*
- f. Raised this concern: “The document identifies information as ‘task relevant’ if necessary to answer the ‘proposition.’ The challenge, as in comment c, [above] is that scientists often are not addressing a proposition but a more specific task. By way of example, the task might be to extract a DNA profile, which is not a proposition. A later task may address the proposition of whether there is an identification with/to another profile.  
*The subcommittee referred to its answer to comment c), above, and reiterated that this issue was clarified in the last paragraphs on p. 1 and the first two paragraphs on p. 2.*
- g. Suggested making a change on pg. 3, for consistency: “therefore is not task-relevant” should be changed to “therefore is task-irrelevant.”  
*The subcommittee made the change.*
7. #25 – ASCLD Board of Directors. The board of directors made three comments.
- a. Referred to an earlier version of the document with a footnote about crime scene analysis.  
*The subcommittee considered the issue resolved as the language is not in the current version.*
- b. Again addressed an earlier version about whether “a name from a CODIS hit could not be used to do a direct comparison.” The closest language in the current document seems to be (at pg. 2): “It would be inappropriate, for example, if analytic conclusions were influenced by whether the suspect made incriminating statements or had a criminal record, or whether other forensic evidence implicated the suspect.”  
*The subcommittee considered the issue resolved as nothing in the document suggests this. The sole risk of biasing is whether the analyst is told that there was a CODIS hit. Also, the rewrite makes it clear that information needed to decide what examinations and comparisons are appropriate is task-relevant (at least at the initial stage).*

- c. Had two concerns: Would having a case manager be viable in small labs, and should a technical reviewer also be blinded from task-irrelevant information?

*The subcommittee did not make the changes. For the first concern, the document does not mandate case managers but simply lists them as one option for reducing the risk. For the second concern, there is no mention of technical reviewers and there is no reason to either single them out or treat them differently. There is no reason for a technical reviewer to have task-irrelevant information.*