

This document provides examples of the scientifically-supported conclusions and opinions that may be contained in Department of Justice reports and testimony. These examples are not intended to be all inclusive and may be dependent upon the precedent set by the judge or locality in which a testimony is provided. Further, these examples are not intended to serve as precedent for other forensic laboratories and do not imply that statements by other forensic laboratories are incorrect, indefensible, or erroneous. 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 and litigative prerogatives of the Department.

**DEPARTMENT OF JUSTICE
PROPOSED UNIFORM LANGUAGE FOR TESTIMONY AND REPORTS
FOR THE FORENSIC PAINTS AND POLYMERS DISCIPLINE**

Purpose and Scope

If adopted, this document will apply to Department of Justice personnel who perform forensic examinations and/or provide expert witness testimony regarding the forensic examination of paints and polymers (e.g., pressure sensitive adhesive tapes, adhesives, glues, plastics). This document does not imply that statements made or language used by Department personnel that differed from these proposed statements were incorrect, indefensible, or erroneous.

This document provides the acceptable range of opinions expressed in both laboratory reports and during expert witness testimony while acknowledging that this document cannot address every variable in every examination.

Statements Approved for Use in Forensic Paints and Polymers Testimony and/or Laboratory Reports

1. An examiner may report and/or state an association between two or more items based on their physical and/or chemical properties.
2. An examiner may state that compared items exhibit physical features that demonstrate they were once part of the same object. This conclusion can only be reached when the examined items fit together in one or more of the following ways: along an irregular edge-to-edge border like a jigsaw puzzle matched over a reasonable length; verified by continuous surface markings (or internal features); verified by three-dimensional fit.
3. For the large majority of comparisons, associations are limited to class characteristics and, as such, are not individualizing. The examiner may report and/or state the relative strength of an association. There are many potential gradations stating the strength of the association, depending upon the number of characteristics available for assessment, the number of orthogonal examinations able to be conducted, and the results obtained from the analyses conducted.

4. The examiner may report and/or state that additional significance may be given to examples of cross-transfer and/or if multiple types of evidence appear to have transferred from one source to another.
5. An examiner may report and/or state that an *Elimination* is the determination that two paint/tape/polymer items did not originate from the same source due to sufficient differences in their physical or chemical properties.
6. An examiner may report and/or state that an *Inconclusive* is the inability to associate or exclude two paint/tape/polymer items as having a common origin based on the lack of quality and/or quantity of corresponding information.
7. The examiner may report and/or state the limitations of his/her examinations and opinion.
8. An examiner may report and/or state the polymeric composition of an item (assuming a comprehensive analysis was conducted) as well as the possible common uses of the material. For example, an examiner may report that a piece of polymer is polystyrene, which has a wide variety of uses, such as disposable food containers and CD jewel cases.
9. An examiner may report and/or state the likely manufacturer of an automotive paint or duct tape based on resources available to the laboratory (e.g., databases, industry contacts). For example, an examiner may report make-model-year possibilities of an original equipment manufacturer paint system.
10. An examiner may report and/or state the manufacturing process used to produce a paint/tape/polymer item and may explain the variability possible between products.
11. An examiner may report and/or state the batch size involved in production, such as how many single rolls can be produced from a jumbo duct tape roll or how many vehicles from an assembly line might contain the same paint layer system.
12. An examiner may report and/or state the application process used to paint an item when the physical characteristics permit such an inference. For example, an examiner may indicate that a paint was spray applied to a surface.

Statements Not Approved For Use in Forensic Paints and Polymers Testimony and/or Laboratory Reports

1. An examiner may not state or imply that the method used in performing paint/tape/polymer comparisons has a zero error rate or is infallible.
2. An examiner may not state or imply a statistical weight or degree of certainty in the conclusions that is absolute or numerically calculated.

**DEPARTMENT OF JUSTICE PROPOSED UNIFORM LANGUAGE
FOR TESTIMONY AND REPORTS REVIEW SHEET**

Directions: This review sheet is designed to assist you in evaluating the attached Proposed Uniform Language for Testimony and Reports document against certain criteria while maintaining internal consistency in review and assessing comments.

Your use of this rating sheet is completely **optional**. While it is anticipated this review sheet will encourage comments on issues of particular importance, you are welcome to submit comments in any format that you believe appropriate. This review sheet is not intended to limit comments in any way.

If you elect to use the review sheet, you may find it helpful to frame your comments as suggested below.

Proposed Uniform Language Discipline Reviewed:

Reviewer Name:

Reviewer Organization:

Reviewer Email:

Statements Approved for Use in Laboratory Reports and Expert Witness Testimony

Provide a summary of your assessment of the statements approved for use, including the most important highlights from the individual criteria comments.

- The statements approved for use are supported by scientific research.
- The statements approved for use accurately reflect consensus language.
- The statements approved for use are stated clearly.

Statements Not Approved for Use in Laboratory Reports and Expert Witness Testimony

Provide a summary of your assessment of the statements not approved for use, including the most important highlights from the individual criteria comments.

- The statements not approved for use are supported by scientific research.
- The statements not approved for use accurately reflect consensus language.
- The statements not approved for use are stated clearly.