

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 FOOTWEAR AND TIRE IMPRESSION 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 footwear/tire impression evidence. 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 Laboratory Reports and Expert Witness Testimony Regarding Forensic Examination of Footwear and Tire Impression Evidence

The following is the range of opinions approved for use by the examiner in both laboratory reports and when providing expert witness testimony.

Identification

1. The examiner may state that it is his/her opinion that the shoe/tire is the source of the impression because there is sufficient quality and quantity of corresponding features such that the examiner would not expect to find that same combination of features repeated in another source. This is the highest degree of association between a questioned impression and a known source. This opinion requires that the questioned impression and the known source correspond in class characteristics and also share one or more randomly acquired characteristics. This opinion acknowledges that an identification to the exclusion of all others can never be empirically proven.

Probably Made

2. The examiner may state that it is his/her opinion that the shoe/tire probably made the impression and it is unlikely that another shoe/tire is the source of the impression; however, there are limitations which prevent effecting an identification. This opinion indicates a high degree of association between the questioned impression and the known source, which is based on the correspondence of class characteristics in combination with specific wear and/or randomly acquired characteristics.

Could Have Made

3. The examiner may state that it is his/her opinion that the shoe/tire is a possible source of the impression, but other shoes/tires with the same class characteristics are also included in the population of possible sources. This opinion indicates an association of class characteristics (i.e., outsole design and physical size for shoes, tread design and tread dimension for tires) between the questioned impression and the known source. Correspondence of general wear may also be present.

Could Not Be Determined

4. The examiner may state that it is his/her opinion that it could not be determined if the known shoe/tire is the source of the impression. This opinion indicates that similarities and/or differences in class characteristics were noted between the questioned impression and the known source, but there are significant limiting factors within the evidence that do not allow for a specific association or non-association.

Indications Did Not Make

5. The examiner may state that it is his/her opinion that the evidence indicates that the shoe/tire is not the source of the impression, but there are limitations which prevent eliminating the shoe/tire. This opinion indicates a degree of non-association between the questioned impression and the known source, which is based on observed dissimilarities.

Elimination

6. The examiner may state that the shoe/tire is not the source of the impression. This opinion is the highest degree of non-association between a questioned impression and a known source. This opinion requires an observable difference in class and/or randomly acquired characteristics between the questioned impression and the known source.

Unsuitable

7. The examiner may state that it is his/her opinion that the submitted evidence is unsuitable to conduct footwear/tire examinations. This opinion indicates one of the following: there are significant limitations which prevent the examiner from conducting a meaningful comparison between the questioned impression and the known source; or no discernible

footwear/tire impressions were observed on the questioned item which prevents the examiner from conducting any comparisons.

Statements Not Approved for Use in Laboratory Reports and Expert Witness Testimony Regarding Forensic Examination of Footwear and Tire Impression Evidence

The following are not approved for use by the examiner; however, it is acknowledged that there may be circumstances outside the control of the examiner, such as in courts of law, that require the examiner to deviate from the statements set forth below.

Exclusion of All of Others

1. The examiner may not state that a shoe/tire is the source of a questioned impression to the exclusion of all other shoes/tires because all other shoes/tires have not been examined. Examining all of the shoes/tires in the world is a practical impossibility.

Error Rate

2. The examiner may not state a numerical value or percentage regarding the error rate associated with either the methodology used to conduct the examinations or the examiner who conducted the analyses.

Statistical Weight

3. The examiner may not state a numerical value or probability associated with his/her opinion. Accurate and reliable data and/or statistical models do not currently exist for making quantitative determinations regarding the forensic examination of footwear/tire impression evidence.

**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:

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.