DEPARTMENT OF JUSTICE
TESTIMONY MONITORING FRAMEWORK

I. Purpose and Scope[1]

Testimony monitoring is a quality assurance measure by which Department forensic laboratories and digital analysis entities can ensure that the results of forensic examinations are properly qualified and appropriately communicated by their examiners. Its purpose is to provide examiners with ongoing evaluations of their testimonial presentations and to highlight opportunities for continual improvement.

This document establishes a Framework for the creation or revision of component testimony monitoring policies and applies to all Department forensic laboratories and digital analysis entities. These components must develop and maintain testimony monitoring policies consistent with the requirements of this Framework.

II. Applicability

This Framework applies to testimony provided in criminal proceedings by Department forensic examiners and digital analysts. Testimony monitoring is subject to the legal requirements of the courts and jurisdictions in which testimony is provided. Components should notify sponsoring attorneys about their testimony monitoring policy in advance of any testimonial presentation.

III. Requirements

An evaluating official shall determine whether an examiner's testimony complied with each of the following requirements:

1. The examiner's testimony was consistent with mandatory component policies and procedures regarding the forensic analysis and interpretation of evidence;

2. The examiner's testimonial opinions, conclusions, and statements regarding case-specific facts or data were properly qualified and did not exceed the limitations of any relevant method or discipline; and

3. The examiner's testimonial conclusions conformed to the requirements of any applicable Uniform Language for Testimony and Reports (ULTR) document.

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[1] 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 or legal prerogatives of the Department.

IV. Evaluation Process

Testimony monitoring may be conducted either by transcript review or the personal observation of an evaluating official. For purposes of this Framework, an audio or video recording is considered equivalent to a transcript. A transcript should be requested promptly after any testimonial presentation that is not personally observed by an evaluating official.

In general, testimony monitoring evaluations should be completed within thirty calendar days of either the receipt of the transcript or the personal observation of a testimonial presentation. The evaluation should be in writing and the date it was completed shall be documented.

The evaluating official shall provide the results to, and review them with, the evaluated examiner. The identity of the evaluating official and the date on which the evaluation was completed shall be documented.

Components shall evaluate whether an examiner's testimony complied with the requirements provided in section III by any criteria or metric they deem appropriate. Components shall have a documented policy to address an examiner's substantive failure to comply with these requirements.

The evaluating official shall consult with the sponsoring attorney and a component attorney before making a determination that an examiner's testimonial presentation was non-compliant. If the evaluating official determines that there was a substantive failure by the examiner to comply with any requirement provided in section III, the evaluating official shall notify both the attorney who sponsored the examiner and a component attorney so that a legal determination can be made whether additional notifications are required. The evaluating official shall document the date(s) that the sponsoring and component attorneys received notice of an examiner's substantive failure to comply with any requirement provided in section III.