

Justice Department issues first standards for forensic expert testimony

By **Spencer S. Hsu** June 3

The Justice Department proposed the first department-wide standards for forensic expert testimony Friday, responding to findings in 2015 that nearly every examiner in an elite FBI forensic unit had overstated testimony in criminal trials for decades.

The draft uniform language for court testimony and reports is based on written guidance developed by the FBI for about 20 techniques, and it would apply to all department personnel, including those with the bureau, Drug Enforcement Administration and the Bureau of Alcohol, Tobacco, Firearms and Explosives, officials said in an announcement.

Deputy Attorney General Sally Q. Yates invited public comment and said the department is committed to ensuring that its experts' claims are supported by strong science.

“Forensic science is a critical component of our criminal justice system, both for identifying the perpetrator of a crime and for clearing the innocent,” Yates said in a statement. “Once finalized and adopted, these guidance documents will clarify what scientific statements our forensic experts may – and may not – use when testifying in court and in drafting reports, in turn strengthening the integrity of our system overall.”

The draft standards apply to serology, toxicology and drug and chemical examiners, as well as more frequently challenged experts who make subjective, pattern-based comparisons of fibers, glass, foot- and tire prints and fingerprints.

Proposals will follow this summer for more techniques, including analysis of DNA, hair, handwriting and explosive devices, the department said.

The move comes after an April 2015 finding by the FBI and Justice Department that nearly all FBI hair examiners overstated testimony about hair matches incriminating defendants during the 1980s and 1990s. A root-cause analysis is pending, but authorities acknowledged that until 2012, they lacked standards defining scientifically appropriate and erroneous ways to explain results in court.

In March, Yates proposed an expanded review of FBI forensic testimony to a National Commission on Forensic Science appointed by the attorney general, recommending audits of statements made in other pattern-based techniques used by crime labs in more than 100,000 examinations each year, including tracing fibers, fingerprints, tread marks, marks that guns leave on bullets, soil and other crime-scene evidence.

Yates then characterized the inquiry into “testimonial overstatement” as a forensic science “stress test.”

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A National Academy of Sciences panel in 2009 reported that although examiners had long claimed to be able to match pattern evidence to a source with “absolute” or “scientific certainty,” only DNA analysis had been validated through statistical research.

On Monday, department officials said that the proposed standards were not intended to set precedent for state and local crime labs or imply that others’ statements are incorrect. They also will not necessarily serve as the basis for the department’s proposed reviews of past forensic science testimony or foreclose a more far-reaching recommendation by the commission to end claims of matching evidence with “scientific certainty” without statistical proof.

Peter Neufeld, co-founder of the Innocence Project, a member of the commission and a partner in the Justice Department and FBI’s hair review, applauded the proposed standards.

However, he said, “It’s remarkable that the FBI developed internal standards for decades, without ever subjecting those guidelines either to public comment or more importantly, to the scrutiny of the nation’s leading experts in statistics and probabilities, with the exception of DNA,” Neufeld said. “But we hope this is the beginning of a new era, and we applaud that.”

Spencer S. Hsu is an investigative reporter, two-time Pulitzer finalist and national Emmy award nominee.

