



**AMERICAN SOCIETY OF  
CRIME LABORATORY DIRECTORS, INC.**

**139 A Technology Drive Garner, NC 27529**

December 22, 2015

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Attn: Reporting and Testimony Subcommittee

The American Society of Crime Laboratory Directors represents more than 600 members of crime laboratory directors and forensic science managers dedicated to providing excellence in forensic science through leadership and innovation. The membership represents both private and public institutions from all 50 states in the U.S. and eighteen countries from across the globe. Our mission is to promote the effectiveness of crime laboratory leaders throughout the world by facilitating communication among members, sharing critical information, providing relevant training, promoting crime laboratory accreditation, and encouraging scientific and managerial excellence in the global forensic science community.

ASCLD is dedicated to advancing forensic science through a multitude of initiatives including the National Commission on Forensic Science. ASCLD currently has twenty-five members serving on the Commission and its subcommittees. The efforts of the Commission are important and have significant implications for the entire criminal justice community. As a result, the ASCLD Board of Directors offers the following comments, recommendations, and impact statements for consideration by the subcommittee for the "*Testimony Using the Term Reasonable Degree of Scientific Certainty*".

ASCLD remains ready to be a continuing resource to assist the Commission and the Department of Justice in the development of these important work products for the forensic science community so that a broader based acceptance and implementation of these products may be realized.

Regards,

ASCLD Board of Directors



# The American Society of Crime Laboratory Directors

**"Excellence Through Leadership in Forensic Science Management"**

## ASCLD Board Comments

### **Views Document on "Testimony Using the Term Reasonable Degree of Scientific Certainty"**

The ASCLD Board of Directors supports the discussion found in the Views Document prepared by the Reporting and Testimony Subcommittee on **"Testimony using the Term Reasonable Degree of Scientific Certainty"** as well as the essence of the recommendations made to the DOJ. Further, ASCLD requests the Views Document be made a Directive Recommendation after the incorporation of the Recommendations included in ASCLD's comments.

Of particular concern for the crime laboratory community is the impact the elimination of the use of this statement may have on local jurisdictions without a suitable replacement and/or training directed to the FSSPs/FSMPs to aid the criminal justice community during this transition. With that said, many jurisdictions do not use this phraseology as a routine matter of practice, but for those that do it has the potential to create a vacuum and adversely disrupt the criminal justice system.

At the heart of this discussion is how a practitioner communicates their confidence in their result to a trier of fact. The Organization of Scientific Area Committees has been established to develop technical and quality standards for the forensic science community. A collaborative effort between the NCFS and the OSAC could develop alternative wording to communicate the strength of an expert's opinion.

ASCLD requests the inclusion of the following recommendations in a Directive Recommendation to the Department of Justice:

1. **"The NCFS recommends that the Attorney General implement department policy that federal prosecutors do not use this term or allow it to be used in the courtroom."**
2. **"The NCFS should recommend that the Attorney General consult with legal and forensic experts including the Forensic Science Standards Board regarding potential OSAC involvement to develop alternative wording."**
3. **"The NCFS should recommend that the Attorney General develop training programs, webinars, or informational articles educating/training FSSPs, FSMPs, and officers of**



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**the court regarding the problems of using terms such as "Reasonable Scientific Certainty" and alternatives developed in recommendation 2."**

Notes: As a note regarding the content contained within the Views Document, it is ASCLD's understanding that the NCFS agreed not to quote themselves in documents; therefore, the quote of NCFS Commissioner Paul Giannelli should be removed.

Further, ASCLD believes the statement made in the NCFS document *"Use of the term "scientific" implies that the discipline is indeed a science, which is not true of all disciplines."* should be removed from the document. It serves no purpose other than being argumentative and there are several efforts currently ongoing to evaluate the scientific foundations of many of the forensic science disciplines. Until the efforts of these entities are made publicly available and articles discussing the value/foundation of these forensic science disciplines are published, this is an opinion not supported by fact.

ASCLD Board of Directors