



E21 Ensuring Justice: What Lawyers and Judges Can Do to Carry Out the Goals of the NAS Report

Dave J. Waxse, JD, US Courthouse, 500 State Ave, Rm 219, Kansas City, KS 66101; and Rebecca A. Waxse, JD*, 5669 147th St N., PO Box 548, Hugo, MN 55038*

After attending this presentation, attendees will understand what tools are available to lawyers and judges to fulfill their role in carrying out the goals of the National Academy of Sciences (NAS) Report and ensure that only reliable forensic evidence is used in the court system.

This presentation will impact the forensic science community by exploring and examining what tools exist within the court system and how these tools should be utilized in the effort to carry out the goals of the NAS report. This is beneficial because it will help gain a better understanding of the interplay between forensic science and the courtroom.

The NAS Report entitled, “*Strengthening Forensic Science in the United States: A Path Forward*” was a call to action. Specifically, it was a call to action by the forensic science community. While it did not directly address the trial court’s role in making the changes called for by the Report, this does not mean that the entire justice system, including both the trial court and counsel, is off the hook. In fact, because forensic science plays such an important role in so many cases before the court, it is imperative that the justice system take on its own role in implementing the goals of the NAS Report and ensure that justice is being served in our courts.

To ensure that justice is being served in our courts, judges and lawyers must start looking more critically at forensic evidence. As lawyers and judges we need to make sure that the forensic evidence being presented to juries is reliable. In order to determine whether the evidence is reliable, first and foremost, courts must ensure that the evidence being presented is generally accepted by the scientific community. In addition, lawyers and judges need to look at what processes were in place when testing is done. The presentation explores the lawyer role in the need to ensure the proper protocols are followed when testing is done. The judicial systems needs to ensure the proper safeguards are in place when testing is done and that the individuals conducting the testing are qualified. In order to make these determinations, those in the judicial system need to be able to examine the processes, protocols and safeguards.

In this presentation, the tools lawyers and judges have to ensure that only reliable forensic evidence is presented in court to either juries or judges will be presented. Generally, the judiciary looks to *Frye* in some state courts or to *Daubert*, as codified in Rule 702 of the Federal Rules of Evidence, in other state courts and federal court to determine whether the evidence being presented is reliable. This presentation will examine whether these are the appropriate standards and whether these standards are being applied appropriately? Under *Frye*, the Court is to determine if the evidence being proffered is generally accepted in the general scientific community. If *Frye* is the standard, what additional tools exist to ensure that the procedures and protocols being used are sufficient? Are there other tools within the rules of evidence that should be used to carry out the goals of the NAS Report and ensure that only reliable evidence is being presented? Additionally, this presentation will explore whether lawyers should be challenging the reliability of forensic evidence on a global level or on a case by case basis? Finally, who bears the responsibility of ensuring that only reliable forensic evidence is introduced in court to judges and juries?

This presentation will benefit the forensic science community by exploring and examining what tools exist within the court system and how these tools should be utilized in the effort to carry out the goals of the NAS Report. This is beneficial because it will help us gain a better understanding of the interplay between forensic science and the courtroom.

Reliable Evidence, Frye, Daubert