



### E5 The Effect of the NAS Report Upon Courts in Admitting Forensic Expert Testimony

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After attending this presentation, attendees will gain an understanding of the extent of the impact the NAS Report recommendations have had on judges deciding whether to preclude or limit expert witness testimony.

This presentation will impact the forensic community by providing the results of federal and state court decisions that have referenced the NAS Report, and to what extent certain types of forensic specialists have been precluded or limited in testifying in court.

In February of 2009, the National Research Council of the National Academy of Sciences (NAS) published their long-awaited Report entitled, "*Strengthening Forensic Science in the United States: A Path Forward*," which is commonly referred to as NAS Report.<sup>1</sup> The NAS Report reviewed: the fundamentals of the scientific method as applied to forensic practice, such as hypothesis generation, testing, falsifiability, replication and peer review of scientific publications. The Report also assessed the methods and technologies of forensic science such as: the collection and analysis of forensic data; the accuracy and error rates of forensic analysis; the sources of potential bias and human error in the interpretation by forensic experts; and the proficiency testing of forensic experts.

The NAS Report, made 13 recommendations. The first and primary recommendation was to "promote the development of forensic science into a mature field of multidisciplinary research and practice," founded on the systematic collection and analysis of relevant data. In order to effectuate that over-riding recommendation, the report recommended that Congress should create a National Institute of Forensic Science (NIFS) to focus on establishing "best practices" for forensic science professionals and forensic laboratories. Once established and funded, the NIFS should establish standards for mandatory accreditation of forensic science laboratories, scientists, and medical examiners. The report recommended that NIFS should promote scholarly, competitive peer-reviewed research, and technical development in the forensic sciences. It should also develop strategies to improve forensic science research and educational programs and new technologies. Lastly, it should develop programs to improve understanding of forensic science disciplines and their limitations within the legal system.

While the Congress has not appropriated monies to fund the National Institute of Forensic Science, the NAS Report with its critique of certain forensic specialties has been presented to judges by attorneys in court proceedings as part of their applications to preclude certain expert witnesses, or at least to limit the extent of their testimony and opinions before the judge or jury. This study will review the 25 federal and 26 state court published decisions that have cited the NAS Report from February 2009, when the NAS Report was first published until August 1, 2012, to ascertain what impact, if any, the report has had on the court decisions to preclude or limit expert testimony.<sup>2</sup> The study will evaluate whether courts are merely citing to the NAS Report to acknowledge its existence, or is the NAS Report cited as a rationale for a court's decision to preclude or limit expert witness testimony.

In conclusion, this study will provide some insight into the impact the NAS Report has had on some court decisions on the admissibility of some forensic specialties and how the forensic community can address those issues the courts found significant in the future.

#### References:

<sup>1</sup> National Research Council of the National Academies, *Strengthening Forensic Science in the United States: A Path Forward*. Washington, DC: National Academies Press, 2009.

<sup>2</sup> Westlaw query: "Strengthening Forensic Sciences in the United States," All case Data Base (accessed August 1, 2012).

#### NAS Report, Experts, Admissibility