



F10 **Leading a Horse to Water and Trying to Make Him Think: The Impact of the 2009 National Academy of Sciences Report (NAS) Report, *Strengthening Forensic Sciences in the United States: A Path Forward on America's Courts***

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After attending this presentation, attendees will understand how the 2009 National Academy of Sciences (NAS) Report, *Strengthening Forensic Science in the United States: A Path Forward* has been received by the judiciary and has impacted the court system.

This presentation will impact the forensic science community by focusing on how cases around the country have addressed the NAS Report. It will describe how, in large part, the judiciary has found evidence to be admissible despite the concerns raised. This presentation will explore why the judiciary has been resistant to considering issues highlighted by the Report and why a more deliberate approach would be beneficial.

In February 2009, when the Committee on Identifying the Needs of the Forensic Science Community issued their report, *Strengthening Forensic Science in the United States: A Path Forward*, it raised serious concerns regarding the scientific underpinning of certain forensic disciplines, resulting in speculation about what impact this would have on forensic and legal communities.

The intent was “to chart an agenda for progress in the forensic science community and its scientific disciplines.”¹ Recommendations focused on reform to the forensic community, not the impact to the court system. How would the criminal justice system be impacted? One professor suggested, “The findings in the National Academy of Sciences report should spur judges to require higher standards.”²

Although not focused on legal reform, in March of 2009, the Committee Co-Chair said he expected, “courts [would] take the findings of the committee regarding the scientific foundation of particular types of forensic evidence into account when considering the admissibility of such evidence in a particular case.”³

In June, the United States Supreme Court cited this Report stating, “The forensic science system, encompassing both research and practice, has serious problems that can only be addressed by a national commitment to overhaul the current structure that supports the forensic science community in this country,” thus further suggesting that judicial review of the committee’s concerns might be warranted.⁴

As the Committee Co-Chair predicted, courts have been asked to address how the concerns raised by the NAS Report impact the admissibility of forensic evidence including fingerprints, ballistics, and hair comparison. Other cases addressed claims of ineffective assistance of counsel and newly discovered evidence.

Despite multiple challenges, case law suggests there has been little effect on how courts assess forensic evidence and written opinions tend to be cursory. Forensic evidence has rarely been deemed inadmissible. Courts have been reticent to engage in careful discussion of whether the concerns of the NAS Report are legitimate and, if so, what modifications to the admissibility of evidence are required to insure the integrity of the system. The changes the courts have made are usually in the form of limitations on the scope of expert testimony.

The court system has an important role, assuring the reliability and integrity of forensic science used in criminal cases that leads to the conviction of the guilty and the exoneration of the innocent. That is why the issues raised by the NAS affect the entire forensic family: defense attorneys, prosecutors, judges, and practicing scientists.

In 2010, the Committee Co-Chair said, “[T]here is still much more that can be done by members of the legal profession, bench and bar, within the existing legal framework, to insure that forensic evidence is properly assessed and admitted only when it will serve the ends of justice. If we insist on valid and reliable forensic methodologies and practices, and qualified practitioners, change will happen. And our systems of law enforcement and criminal justice will be better for it.”⁵



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References:

1. National Research Council, *Strengthening Forensic Science in the United States: A Path Forward*, at P-1 (National Academies Press 2009) (hereinafter, NAS Report).
 2. Jennifer L. Mnookin, Op-Ed., Clueless “science,” *L.A. Times*, February 19, 2009.
 3. The Need to Strengthen Forensic Sciences in the United States: The National Academy of Science’s Report on a Path Forward, Hearing Before the S. Judiciary Comm., 111th Cong. (2009)(statement of Hon. Harry T. Edwards, C.J. Emeritus, D.C. Circuit).
 4. *Melendez-Dias v. Massachusetts*, 557 U.S. 305, 318, 319 (2009)(citation omitted).
 5. H.T. Edwards, *The NAS Report on Forensic Sciences - What it Means for the Bench and Bar*, Conference on The Role of Court in An Age of Developing Science & Technology, Superior Court of the District of Columbia, May 6, 2010, p. 12 – 13.
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NAS, Court, Evidence