NAS Report Case List (Jennifer Friedman) October 2011

Case Number and Citation	Forensic Discipline	Court's Holding	**Court's Language re NAS Report**
People v. Melcher 2011 Cal.App.Unpub. LEXIS 7222	Firearms (*Frye)*	**Denied** The trial court did not err in failing to hold a *Kelly* "prong 1 hearing." "In this case it is clear that the techniques which Smith used were not new. Moreover, toolmark identification evidence has been admitted in California for over 60 years (see People v. Godlewski (1943) 22 Cal.2d 677, 685 [chisel marks]), and firearms identification is universally admissible in this country (Faigman, supra, § 35:3, p. [*36] 619). And, while the NCR report criticizes the subjectivity of toolmark and firearm identification, characterizes the standards as "unarticulated" and professes that there is no "statistical foundation for estimation of error rates" (fn. omitted), it does not call for outright abandonment of the field but rather recommends further study and, by inference, more specificity of protocols. While the expert came very close to the line with his expression of practical certainty, the trial court tempered the testimony with an	"At the hearing counsel argued that the NRC report marked a change in scientific opinion such that a 'prong one' Kelly hearing was warranted. The trial court declined, stating that there was not sufficient evidence that the scientific community had called into question the techniques currently used. Thereafter the court found that Smith qualified as an expert and he performed the examinations and tests in compliance with the San Francisco Police Department protocol, the Association [*30] of Firearm and Toolmark Examiners and the protocols of Illinois and Florida. On the issue of the scope of permissible testimony, the court ruled that Smith 'can't say that it's 100 percent; there is no other gun in this world. It's just his opinion.'"

		admonition and an instruction on how to evaluate the expert's testimony.	
Jones v. U.S. (2011)	Firearms (*Frye)*	**Denied** The trial court denied a *Frye* hearing holding that pattern matching evidence is not new, novel or unique. "Nothing presented to the trial court suggests that pattern matching methodology is no longer generally accepted."	The Court noted that the trial occurred prior to the issuance of the NAS report and thus not properly before the court. Even considering the report, the Appellate Court was nevertheless unpersuaded.
U.S. v. Gutierrez-Castro (D.Ct. N.M 2011) 2011 WL 3702374	Fingerprints (*Daubert*)	**Denied** The Court held the testimony admissible. The expert may "testify about the methods and practices of inked fingerprint analysis, and to compare several examples of fingerprints obtained from Defendant Salvador De Jesus Gutierrez-Castro, and to testify that all the fingerprints belong to the same person. The United States may not, however, offer McNutt as an expert witness in the jury's presence, the Court will not certify McNutt as an expert witness in the jury's presence, and the jury instructions will not refer to McNutt as an expert witness. Any issues that the parties bring out in direct or cross examination will go to the weight and credibility of McNutt's	"Gutierrez-Castro argues that McNutt is not sufficiently qualified to express expert opinions about the methods and practices of inked fingerprint analysis. Gutierrez-Castro argues that, while McNutt's resume indicates that he is a certified latent fingerprint examiner and that he has completed several classes on fingerprint analysis, a 2009 report from the National Academy of Sciences indicates that certification may not be a valid indication of knowledge or ability. Gutierrez-Castro states that training and certification procedures vary from agency to agency and that there is no standardized or approved method of certification. Gutierrez-Castro asserts that, because there are no standardized methods of accreditation or the necessary training to reduce errors, and because McNutt has not taken a class since 2004, he is not qualified to offer expert testimony about fingerprint analysis."

		testimony." *Note however, it appears the defense conceded the print analyst could testify.*	
U.S. v. Love (So. D. Cal.2011)	Fingerprints (*Daubert*)	**Denied** The court held a *Daubert* hearing and held fingerprint comparison using the ACE-V method is reliable and there admissible. However, significantly the court holds that "general acceptance" factor only weakly support admission. The court relies on the criticisms of the NAS report in so holding.	"Instead of a full-fledged attack on friction ridge analysis, the report is essentially a call for better documentation, more standards, and more research." "The court recognizes that the NAS Report and other publications cited by Love critique some aspects of la-tent fingerprint analysis. However, the forensic science community generally and the FBI in particular have begun to take appropriate steps to respond to that criticism. On this record, in part because of recent developments regarding testing, publication, error rates, and the FBI's governing standards, none of the seven factors discussed by the parties weighs against the ad-mission of latent fingerprint evidence."
U.S. v. Council (E.D. Va.) 2011 WL 1305247	Fingerprint (palm) *Daubert)*	**Denied** The court held friction ridge comparison has standards, is widely accepted in the scientific community, and suggests critics are the error rate is 3% which in the court's view is low. The court equates verification (which in this case is blind) with peer review.	The reference to the NAS report is in a footnote only. The criticisms of friction ridge comparison came from the defense expert, Jennifer Mnookin.
State v. McGuire (2011 NJ S.Ct.) 2011 WL 890748	Toolmark (garbage bag) (*Frye)*	**Denied** The court acknowledged that the record regarding admissibility had	"Defendant's criticism of tool mark analysis is extrapolated from commentary in a report by the National Research Council of the National

		not been made in the trial court and yet nevertheless goes on to rule on the issue. "Proof of general acceptance does not mean that there must be complete agreement in the scientific community about the techniques, methodology, or procedures that underlie the scientific evidence.Tool mark identification has been generally accepted and admitted in many courts, both within and outside New Jersey."	Academy of Sciences titled Strengthening Forensic Science in the United States: A Path Forward (2009) ("NAS report"). The NAS report was issued in 2009, after defendant's trial. It contains some criticism of tool mark analysis, including lack of information about variances among individual tools, lack of a clearly defined process, and a limited scientific base of knowledge. Id. at 5-18 to 5-21. But the NAS report does not label the discipline "junk science." It acknowledges that tool mark analysis can be helpful in identifying a class of tools, or even a particular tool, that could have left distinctive marks on an object. Id. at 5-21. The report concludes that development of a precisely specified and scientifically justified testing protocol should be the goal of tool mark analysis. Ibid."
Comm.v. Heang 454 Mass. 1011, 908 N.E.2d 373, Mass. (2009)	Firearms (*Daubert)*	**Limited** The judge denied a *Daubert* hearing and ruled that the trooper could testify "to a degree of scientific certainty" that the recovered projectiles were fired by the nine millimeter firearm seized. He was required to admit on direct he could not, as a matter of science, exclude every other nine millimeter firearm with six lands and six grooves with a right-hand twist. Court offered recommendations for future cases:	Referring to the 2008 Ballistics Imaging Report by the NRC- contains one of the most comprehensive evaluations of the science underpinning the field of forensic ballistics, accepted as "a minimal baseline standard [that] firearms-related toolmarks are not completely random and volatile; one can find similar marks on bullets and cartridge cases from the same gun." First, there is little scientific proof supporting the theory that each firearm imparts "unique" individual characteristic toolmarks onto projectiles and cartridge cases. The second main problem with firearms identification is that the

		-Require adequate documentation -Basis of opinion -Avoid “practical impossibility/certainty”	matching of individual characteristics, regardless of the technique used, is highly subjective.
U.S v. Smallwood (W.D. Ky.2010) Slip Copy, 2010 WL 4168823	Toolmarks (*Daubert)*	**Excluded** The proposed testimony of the toolmark examiner that the knife recovered matched the toolmark found on the vandalized tires is inadmissible. The court distinguishes toolmarks from firearms holding there is less validation of toolmarks, there is great variability and toolmark comparisons are less frequent than firearms. Notes there is insufficient documentation and that knowledge and experience from firearms is not transferable. Compares toolmarks to polygraph in so far as one does not know when it is accurate and when it is not.	"AFTE standards acknowledge that these decisions involve subjective qualitative judgments . . . and that the accuracy of examiners' assessments is highly dependent on their skill and training." Id. (emphasis added). "The examiner is expected to draw on his or her own experience." Id. at 155. Even with new technology, "the decision of the [tool mark] examiner remains a subjective decision based on unarticulated standards[.]" Id. at 153-54.”
Commonwealth v. Fitzpatrick (**Need cite Mass)**	Toolmarks (*Daubert)*	**Excluded** The examiner does not sufficient training, experience etc. with knife/tire toolmarks. Other toolmarks do not transfer. There are a lack of consistent protocols and standards. The apparent lack of standards for comparison between casts made from knife cuts, both generally and in this case, means	The Court notes in particular the following from the NAS "Strengthening Forensic Science" report, at 153: "AFTE standards acknowledge that these decisions regarding subjective qualitative judgments by examiners and that the accuracy of examiners’ assessments is highly dependent on their skill and training agreement.”

		that there is no accounting for points of dissimilarity, unlike fingerprint and DNA analysis, and that the number of points of comparison deemed necessary to identify a particular knife as having made the cut varies with the subjective judgment of the particular examiner.	
U.S. v. Aman (E.D. Va. 2010) Slip Copy, 2010 WL 4103157	Arson Fingerprints (*Daubert)*	**Admitted- Subject of Cross** The testimony is admissible and the issues raised are not grounds for exclusion but issues to be raised during cross-examination of the witnesses. "The absence of a known error rate, the lack of population studies, and the involvement of examiner judgment all raise important questions about the rigorousness of friction ridge analysis. To be sure, further testing and study would likely enhance the precision and reviewability of fingerprint examiners' work, the issues defendant raises concerning the ACE-V method are appropriate topics for cross-examination, not grounds for exclusion."	"As an initial matter, the NRC Report does not recommend barring fire investigators from offering opinions in court based on the use of the NFPA 921 methodology. Moreover, while an important contribution to the evaluation of numerous forensic fields, the report does not bind federal courts. In any event, although the NRC sensibly suggests that further development of the principles and methods of fire investigation would improve the precision of such experts' findings, the NRC's critique does not change the result that, for all of the reasons already stated, the NFPA 921 methodology is sufficiently reliable to withstand Daubert scrutiny." "The NRC Report devotes significant attention to friction ridge analysis, noting the "subjective" and "interpret[ive]" nature of such examination. NRC Report, at 139. Additionally, the examiner does not know, a priori, which areas of the print will be most relevant to the given analysis, and small twists or smudges in prints can significantly alter the points of comparison. This unpredictability

			can make it difficult to establish a clear framework with objective criteria for fingerprint examiners. And unlike DNA analysis, which has been subjected to population studies to demonstrate its precision, studies on friction ridge analysis to date have not yielded accurate population statistics. In other words, while some may assert that no two fingerprints are alike, the proposition is not easily susceptible to scientific validation. Id. at 139-40"
State v. Hull (Minn. 2010) 788 N.W.2d 91	Fingerprints Handwriting (*Frye)*	**No error in failing to hold admissibility hearing.** The issue raised is whether the court erred in failing to hold an admissibility hearing. This court holds the error is harmless.	"Since the time of the admissibility hearings in this case, a committee of the National Academy of Sciences has issued a relevant report. The committee was formed by Congress in 2005 to conduct a study on forensic science. After several years of research, the committee published its nearly 350-page report concluding that: "In a number of forensic science disciplines, forensic science professionals have yet to establish either the validity of their approach or the accuracy of their conclusions, and the courts have been utterly ineffective in addressing this problem."
Com. v. Gambora (Mass. 2010) 457 Mass. 715, 933 N.E.2d 50	Fingerprints Shoeprints (quasi-*Daubert)*	**Harmless error to admit/ Should be limited** The court holds that even if it were to assume the trial court erred in admitting the evidence, it was harmless. The court however, does appear to be concerned about the statements of certainty that were	"The NAS Report raises a number of questions about the reliability of certain aspects of the ACE-V methodology and expert testimony based on it. The report does not appear to question the underlying theory which grounds fingerprint identification evidence; as the report states, there is scientific evidence supporting the theory that

		made. "We recognize, however, that the issues highlighted in the NAS report are important, and deserve consideration.FN17 Nevertheless, we do not undertake such consideration in this case." "One of the issues about which the NAS Report is most critical is the a claim that a fingerprint examiner can state with absolute certainty that a particular latent print matches a known print, and that fingerprint comparisons conducted according to the ACE-V methodology are essentially error free." That claim was not made in this case.	fingerprints are unique to each person and do not change over a person's life. NAS Report at 143-144 & n. 34…However, the NAS report adds, "[u]niqueness and persistence are necessary conditions for friction ridge identification [i.e., fingerprint identification] to be feasible, but those conditions do not ... guarantee that prints from two different people are always sufficiently different that they cannot be confused, or that two impressions made by the same finger will also be sufficiently similar to be discerned as coming from the same source." NAS Report at 144." "The NAS Report does not conclude that fingerprint evidence is so unreliable that courts should no longer admit it."
People v. Givens (2010 N.Y S.Ct) 2010 WL 5022731	Toolmarks (*Frye)*	**Admitted** *Frye* motion denied. Request for hearing denied. Court does not address issue of whether testimony should be limited in some way.	"Similarly, the report issued by the National Academy of Sciences appears to question the way in which results of the testing are reported and the lack of review of the initial findings of the examiner." Does mention that the federal courts have limited the testimony that may be offered.
U. S. v. Cerna (N.D. Cal. 2010) Slip Copy, 2010 WL 3448528	Firearms Fingerprints (*Daubert)*	**Denied hearing/Limited testimony** Relying heavily on its holding in *Diaz*, the court denied a *Daubert* hearing but states, "(T) The firearms experts must explain at trial why and how the AFTE theory comports with the Daubert reliability requirement. It will not be enough for the firearms experts to simply opine that the	These weaknesses, however, do not require the automatic exclusion of any expert testimony based on the AFTE theory. The weaknesses highlighted by the NAS report-subjectivity in a firearm examiner's identification of a "match" and the absence of a precise protocol-are concerns that speak more to an individual expert's specific procedures or application of the AFTE theory,

		AFTE theory is widely accepted. If the government fails to make the required threshold showing, the jury will be instructed to disregard the expert testimony. The NAS report does not necessitate exclusion of expert testimony simply because an expert employed the AFTE theory. Instead, the NAS report may be used for cross-examination or may offer guidance for fact-specific challenges. The AFTE theory need not be perfect science to satisfy Daubert so long as it is sufficiently reliable." The court limited the firearms examiner to testifying to a "reasonable degree of certainty in the ballistic field. The court similarly denied a *Daubert* hearing on the admissibility of the fingerprints. "A pretrial evidentiary hearing to re-plough ground already canvassed time and again is unnecessary, although the government will be required to introduce reliability evidence at trial, as it has committed to do." The court limited the fingerprint examiner to testifying to a reasonable degree of certainty in the fingerprint field."	rather than the universal reliability of the theory itself. Indeed, the NAS report notes that although the "process for toolmark and firearms comparisons lacks the specificity of the protocols for, say, 13 STR DNA analysis ... [t]his is not to say that toolmark analysis needs to be as objective as DNA analysis in order to provide value"
U.S. v Willock	Firearms	**Limited testimony**	"Because not enough is known about the

(D.Md. 2010) 696 F.Supp.2d 536 (Note- this is the District Court opinion based on the Magistrate's findings in *U.S. v. Mouzone* below)	(*Daubert)*	The court held (1) that the government must provide bases and reasons that support the opinion which includes the sketches, diagrams, notes, and photographs that the accepted methodology for application of the AFTE theory requires that the firearms examiner make; (2) firearms toolmark identification evidence is only relevant, reliable, and helpful to a jury if it is offered with the proper qualifications regarding its accuracy. (Note- the court adopted the recommendations made by the Magistrate in *Mouzone*)	variabilities among individual tools and guns, we are not able to specify how many points of similarity are necessary for a given level of confidence in the result. Sufficient studies have not been done to understand the reliability and repeatability of the methods. The committee agrees that class characteristics are helpful in narrowing the pool of tools that may have left a distinctive mark. Individual patterns from manufacture or from wear might, in some cases, be distinctive enough to suggest one particular source, but additional studies should be performed to make the process of individualization more precise and repeatable.Id. at 154. Moreover, it characterized the lack of a specific protocol for toolmark analysis as a "fundamental problem," reasoning that toolmark analysis guidance provided by the AFTE lacks specificity because it allows an examiner to identify a match based on "sufficient agreement," which the AFTE defines using the undefined terms "exceeds the best agreement" and "consistent with." FN14 Id. at 155."
U.S. v. Rose (D.Md. 2009) 672 F.Supp.2d 723	Fingerprints (*Daubert)*	**Denied hearing/Admitted evidence** The court denied a hearing holding fingerprint identification evidence based on the ACE-V methodology is generally accepted in the relevant scientific community, has a very low incidence of erroneous	"The Report identified a need for additional published peer-reviewed studies and the setting of national standards in various forensic evidence disciplines, including fingerprint identification. See NAS Report 19-24. While the Report quoted a paper by Haber and Haber, the defendant's proposed experts

		misidentifications, and is sufficiently reliable to be admissible under Fed. R. Ev. 702 generally and specifically in this case. (Note this holding is inconsistent with the holding in *State v. Rose* in which the trial judge after a hearing held that fingerprint comparison evidence was not generally accepted in the scientific community. At a judicial conference in D.C. Judge Blake explained her ruling stating her case was not a death penalty case where standards for reliability are stricter. She also noted that the state court judge may have been influenced by the witnesses she heard at the hearing as opposed to the substance of the testimony.	in this case, in which the Habers found no "available scientific evidence of the validity of the ACE-V method," NAS Report 143, the Report itself did not conclude that fingerprint evidence was unreliable such as to render it inadmissible under Fed. R. Ev. 702. Indeed Judge Harry Edwards, who co-chaired the project, made it clear that nothing in the Report was intended to answer the "question whether forensic evidence in a particular case is admissible under applicable law." Hon. Harry T. Edwards, Statement before U.S. Senate Judiciary Committee (Mar. 18, 2009)." (*Note: Judge Edwards clarified his remarks at a D.C judicial conference and suggested to otherwise.)*
State v. Ward (N.C. 2010) 364 N.C. 133, 694 SE2d 738	Controlled Substances (*Daubert)*	**Excluded** After the trial court excluded the expert opinion regarding the controlled substance because of discovery violations, the court permitted an agent to testify that he was able identify the substance as a controlled substance by visual inspection. "The State has not carried its burden of demonstrating the sufficient reliability of his visual inspection methodology. Therefore, the trial court abused its discretion	"Recently, the field of forensic science has come under acute scrutiny on a nationwide basis. When articulating the right of a criminal defendant under the Sixth Amendment of the United States Constitution to confront forensic analysts as witnesses at trial, the Supreme Court of the United States in Melendez-Diaz v. Massachusetts was quick to recognize the significance of a landmark report issued in 2009 by the National Academy of Sciences."

		by permitting Special Agent Allcox to identify certain evidence as controlled substances based merely on visual inspection as a method of proof."	
U.S v. Zajac (D. Utah 2010) Slip Copy, 2010 WL 3489597	Trace (*Daubert)*	**Limited testimony** The expert may testify regarding the consistency between the adhesives found at the crime scene and those in the defendant's residence but may not testify that they could have come from the same source. May not testify re individualization i.e. no two people have the same prints. He may not state there is an objective basis for his opinion or that it is supported by scientific principles or methods.	"The NAS Study found problems with current forensic science standards in many areas.FN64 When discussing examination of paint and coatings evidence, however, it noted that it "requires microscopic and instrumental techniques and methods," and "follows an analytical process." FN65 It further noted that "[e]xaminers involved with the analysis of paint evidence in the laboratory typically possess an extensive scientific background, because many of the methods and analyses rely heavily on chemistry." FN66 In summing up its assessment, the study stated "analysis of paints and coatings is based on a solid foundation of chemistry to enable class identification."
U.S v. Zajac (D. Utah 2010) Slip Copy, 2010 WL 3489597	Bitemark (*Frye)*	**Admitted** The majority does not cite the NAS report and holds that precedent requires admissibility.	The concurrence cites the NAS report and other article, "Moreover, a recent study by the National Research Council of the National Academy of Sciences found that the uniqueness of human teeth had not been scientifically established. See National Academy of Sciences, Strengthening Forensic Science in the United States: A Path Forward 175 (2009). Still, that group concluded that "[d]espite the inherent weaknesses involved in bite mark comparison, it is reasonable to assume that the process can sometimes

			reliably exclude suspects." Strengthening Forensic Science at 176."
U.S. v. Mouzone (2009)	Firearms (*Daubert)*	**Limited testimony** 1) That Sgt. Ensor not be allowed to opine that it is a "practical impossibility" for any other firearm to have fired the cartridges other than the common "unknown firearm" to which Sgt. Ensor attributes the cartridges; (2) Additionally, that Sgt. Ensor only be permitted to state his opinions and bases without any characterization as to degree of certainty (whether "more likely than not" or "to a reasonable degree of ballistic certainty"); (3) Alternatively, if you disagree with Recommendation No. 2, that Sgt. Ensor only be allowed to express his opinions "more likely than not"; (4) Alternatively, if you disagree with Recommendation Nos. 2 and 3, that Sgt. Ensor only be allowed to express his opinions "to a reasonable degree of ballistic or technical certainty" (or any other version of that standard);	

		Case 1:08-cr-00086-WDQ Document 721 Filed 10/29/2009 Page 57 of 58 58 (5) That Defendant Mouzone be granted a continuance to attempt to locate a rebuttal expert to challenge Sgt. Ensor's identifications, if he so requests; (6) That additional funds be approved under the Criminal Justice Act to pay for any additional expert time on the part of Professor Schwartz or any other expert sought by Defendant Mouzone to testify at trial, if permitted by the Court; (7) That the United States Attorney's Office be required to provide a written report which identifies its policies and training regarding compliance with Rule 16 discovery obligations, to include how the policy is implemented and monitored to ensure compliance; and (8) That the Government not be permitted to argue or imply that the Defendant had, but did not take, the opportunity to hire a firearms toolmark identification expert to visit	

		the BCPD Forensic Services Division laboratory and review the evidence, and that no Government witness is permitted to testify that such an opportunity existed. Dated: October 29, 2009 _____/S/_____ Paul W. Grimm United States	
U.S. v. St. Gerard (2010) United States Army Trial Judiciary Fifth Judicial Circuit, Germany	Firearms (*Daubert)*	**Limited testimony** Accordingly, the defense motion to exclude the testimony of Mrs. Sevigny that it would be a practical impossibility for the cartridge case to have been fired by any weapon other than the seized AK-47 is GRANTED. This ruling is limited solely to testimony concerning the level of certainty of the origin of the marks.	
U.S. v. Taylor (D. N.M. 2009) 663 F.Supp.2d 1170	Firearms (*Daubert)*	**Limited** The expert could testify, in his opinion, using pattern-based methodology, that bullet came from suspect rifle to within reasonable degree of certainty in firearms examination field.	"AFTE standards acknowledge that these decisions involve subjective qualitative judgments by examiners and that the accuracy of examiners' assessments is highly dependent on their skill and training." Strengthening Forensic Sciences in the United States: A Path Forward, Committee on Identifying the Needs of the Forensic Sciences Community; Committee on Applied and Theoretical Statistics, National Research Council, 5-20 (2009). The Committee went on to say that, "a fundamental problem with toolmark and

			firearms analysis is the lack of a precisely defined process.... AFTE has adopted a theory of identification, but it does not provide a specific protocol." Id. at 5-21. At one point the Committee concluded that, "[e]ven with more training and experience using new techniques, the decision of the toolmark examiner remains a subjective decision based on unarticulated standards and no statistical foundation for estimation of error rates."
People v. Greenwood (2010) Los Angeles Superior Court	Fingerprints (*Frye)*	**Limited** The latent print examiner "will not be able to testify that her opinion is a result of an infallible scientific process" and that the defense "is free to vigorously cross-examine the LPE on the shortcomings of the ACE-V method in the 2009 National Academy of Science Report."	
U.S. v. Faison (2010) Superior Court District of Columbia	Fingerprints (*Frye)*	**Limited** "Based on the evidence and the arguments of the parties that the conclusions that can be drawn at trial by fingerprint experts have to account for human error as well as for the fact that there are no conclusive studies on the uniqueness of fingerprints. Conclusions drawn from fingerprint examiners should no longer be stated in absolute terms i.e. testimony from an examiner that a print is unique to one person to the exclusion of all others." The judge	

		concluded that the fingerprint examiner could testify "in her opinion, based on her training and experience, the inked print and the latent match to a reasonable degree of fingerprint certainty."	
U.S. v, Anderson et. al. (2010) D.C. Superior Court and *U.S. v. McCorkle*	Firearms (*Frye)*	**Limited testimony** The firearms examiner may testify to a reasonable degree of certainty in the field of firearms and toolmark identification or to a practical certainty not to a reasonable degree of scientific certainty or practical impossibility.	
Ex Parte Neal Hampton Robbins (2011) 2011 Tex.Crim. App.LEXIS 901	Pathology (post-conviction habeas)	**Newly Discovered but Failed to Show No reasonable Juror. Not False b/c New Opinions is Undetermined** Here the pathologist who testified at trial that the child died as a result of asphyxia. In post-conviction numerous experts called into question her opinion, all of whom with the exception of one said the cause of death was "undetermined." The expert who had testified at trial then changed her opinion to undetermined. The trial court granted a new trial on the grounds that the testimony presented was	Quoting the NAS report- "Part of the problem is that there is a fundamental disconnect between the worlds of science and of law. Science is constantly evolving by testing and modifying its prior theories, knowledge, and "truths."4 It is a hall-mark of the scientific method to challenge the status quo and to operate in an unbiased environment that encourages healthy skepticism, guards against unconscious bias, and acknowledges uncertainty and error. The legal system, on the other hand, "embraces the adversary process to achieve 'truth,' for the ultimate pur-pose of attaining an authoritative, final, just, and socially acceptable resolution of disputes."

		"false." The Court of Crim. Appeals reversed. Good language in concurrence regarding definition of "false" testimony under *Giglio*.	
People v. Smith (2011) 2011 WL 1350762 unpublished	Firearms (post-conviction) (*Frye)*	**Not IAC** Note the court get the date of the NAS report wrong although it might have meant to refer to the ballistics imaging report. Nevertheless the court seems to state because the report had only been out for 5-6 months defense counsel was not IAC for failing to be aware of the report.	"The validity of the fundamental assumptions of uniqueness and reproducibility of firearms-related toolmarks has not yet been fully demonstrated. [¶] Notwithstanding this finding, we accept a minimal base-line standard regarding ballistics evidence." "Thus, the report came to no conclusion regarding the uniqueness of toolmarks, saying that further research needed to be done. Moreover, although trial counsel here did not have the report and therefore did not ask Anderson about it, counsel did cross-examine Anderson about the validity of his conclusion that no other gun in the world could have fired the casings recovered from the scene of the shooting and from the Impala in an attempt to raise questions about the uniqueness of toolmarks."
Johnston v. State (Fla. 2010) 27 So.3d 11	Blood Spatter (Post-Conviction)	**Not Newly Discovered Evidence** The report cites existing publications that were available at the time of trial. Nothing in the report renders the techniques used in the case unreliable.	
Webster v. State (2011 Ok.Crim.App.) 2011 OK CR 14	Fingerprint (palm print) (*Daubert)*	**Denied** The court held appellant waived the objection and regardless because there was DNA evidence any error was harmless.	The court characterizes appellant's arguments regarding the NAS report as supporting wholesale exclusion of the evidence. "Webster fails to cite any jurisdiction that has actually held, as he suggests this Court should

			hold, that latent print individualization testimony, i.e., claims of a unique "match" to a particular individual, is so scientifically unreliable as to be inadmissible." Additionally, the court states the information could have bee used to cross-examine the examiner.
Commonwealth v. John Kunco (2010) Ct. of Common Pleas- Westmoreland	Bitemark (Post-Conviction)	**Not Newly Discovered Evidence** The information in the NAS report could have been discovered prior to the issuance of the report.	While the NAS report is critical of bitemark evidence it does not suggest that bitemark evidence has lost general acceptance in the field of odontology.
Hooper v. Warden (D.N.H. 2010) Slip Copy, 2010 WL 1233968	Fingerprint and Bootprint (Post-Conviction)	**Newly Discovered Evidence claim not exhausted.**	
Commonwealth v. Edmiston (2009)No. 1025-88 Ct. of Common Please-Cambria	(Hair) Post-Conviction	Newly Discovered Evidence The NAS Committee's more intensive investigations of the twelve specific areas contained in Part 5 of the NAS Report constitute new information for the purposes of the newly discovered exception. The information relating to hair analysis contained in the report constitutes new facts which only became available upon publication in February 2009.	