



E53 Which Expert to Believe? Lessons Learned From a Leading English Tort Case

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After attending this presentation, attendees will better comprehend the evidential issues related to experts and scientific evidence in two common law jurisdictions that may differ in detail but still retain much in common after evolving separately for more than 250 years.

This presentation will impact the forensic science community by conveying knowledge, competence and performance about diverse perspectives on these issues that will enable legal practitioners, whether lawyers or judges, to be more competent, aware and knowledgeable about the complexities inherent in judging the merits of the differing strands of opinion evidence that may be offered to the Court by the parties in adversarial proceedings and will thus assist in the performance of their duties inside and outside of the courtroom. The presentation will help forensic practitioners to best assist the Court as experts by exploring the factors that judges have to take into account in choosing one particular expert's opinion over another's.

It is well recognized that the 1997 case of *Bolitho v. City and Hackney Health Authority*, 4 All ER 771, is an important English tort law case on the standard of care required of medical specialists. The case involved the care given to a child with croup and the Court heard differing opinions about whether and when the patient should have been treated by endotracheal intubation. The House of Lords held in *Bolitho* that there must be a "logical basis" for a medical expert's opinion. The Court arrives at such a conclusion by weighing risks against benefits, and judges have the authority and responsibility of choosing between two bodies of experts and of rejecting the one the Judge considers "logically indefensible." Leading authorities in this area of English tort law have interpreted *Bolitho* as establishing the precedent that the Courts set the law, not the experts. This presentation will discuss both the impact and aftermath of *Bolitho* from both English and United States perspectives. This presentation will also give consideration to *Bolitho* in terms of factors derived from two very important leading cases on evaluating scientific evidence in federal and state courts in the United States, *Daubert and Frye*. Federal Rule of Evidence 702 on expert testimony will also be discussed as to the reliability of the "scientific knowledge" grounded in scientific methodology and connoting a body of known facts accepted as true on good grounds and as to the relevancy of this evidence as having a valid scientific connection to the pertinent inquiry in court. The Federal Rules of Evidence on Expert Evidence will be compared and contrasted with the English Civil Procedure Rules (Part 35 – Experts and Assessors) and the Law Commission Report No. 325 "Expert Evidence in Criminal Proceedings in England and Wales." The Law Commission is a statutory independent body created by the Law Commissions Act 1965 to keep the law under review and to recommend reform where it is needed. The aim of the Commission is to ensure that the law is fair, modern, simple, and as as cost effective as possible.

Experts, English Tort Cases, *Daubert-Frye*