

classify the death as a homicide, and the district attorney decided to retain me as a prosecution expert. It was an interesting twist, and one that some people found confusing.

It amazes me that, most of the time, juries are able to understand expert testimony. This, in part, is thanks to the judge, who explains to them that the reason experts are there is to help them gain insight and understanding into specialized knowledge that the average person does not have—whether it be anatomy, toxicology, forensic entomology or blood-spatter analysis. Expert witnesses are there to help them understand and interpret the evidence.

The preliminary hearing into the death of Lonnie Ted Binion went on to become one of the longest in the history of Clark County, Nevada. Nearly thirty witnesses testified over two weeks.

The hearing began on August 17, 1999. The next day, the local press recounted the proceedings at the hearing and recapped the death, stating that the death had been ruled a homicide and that “lethal quantities” of heroin and the prescription sedative Xanax had been found in Binion’s system.

The burden of proof in a preliminary hearing is “slight or marginal evidence,” far below “beyond a reasonable doubt,” which is the degree of proof needed to secure a conviction at trial. Because of that, most defendants try not to bring out their best stuff at these hearings. They don’t want to scoop their own experts whom they may need to call on at trial.

Doing what I always do on a day when I will be appearing as an expert witness in court, I dressed on August 19, 1999, in a dark suit and white shirt. My intention in this way of dressing is to show my respect for the jury.

Dr. Simms preceded me to the stand. As expected, he testified that the amount of heroin found in Binion’s body was lower than what is normally considered to be lethal, but that the Xanax was

far in excess of the fatal range. The autopsy report was reviewed. When David Rogers, the prosecutor, introduced the autopsy photographs, he dropped them on the defense table. Sandy Murphy, one of the two defendants, began to cry. She was allowed to leave the courtroom for five minutes to compose herself. Then she returned and heard, with everyone else, the findings of Dr. Simms. Cause of death: overdose. Manner of death: homicide.

I didn't see any of this—not in person or on television, which covered the entire proceeding—because while Dr. Simms was on the stand, I was inspecting Ted Binion's home, taking photos, looking at the place where the body had been found and generally getting a sense of the scene of the crime I believed had been committed.

Tom Dillard brought me to Binion's home, which was still sealed by the police. I was most struck by the odd way in which Binion had been found—on an exercise mat on a hard floor, where he had never previously slept, but which provided a good surface if someone wished to burke him. The mat was still lying on the floor. And it was also apparent to me from the curtains, which were open onto the garden, that the gardener would have been able to peer into the residence and see what was happening if the curtains had remained opened. The gardener testified that he noticed at the time of the death that the curtains were all drawn shut, which they had never been before. I was told that Binion's house was a big mansion, but it looked more like a large suburban ranch house with similar neighboring houses.

After lunch I was called to the stand. As always, I had with me my blue cloth carry-on bag. Inside were academic papers on the effects of chasing the dragon on the human body and on Xanax and heroin use, as well as copies of documents I had reviewed in the case. I took a quick look at the two young people sitting behind the defense table with their lawyers.

Sandy Murphy and Rick Tabish looked like a young couple in love. She was twenty-seven and he was thirty-four. They looked



very relaxed, casually small-talking. Tabish was married to someone else, with whom he had small children, and Murphy had lived with Binion for three years. Although they might be facing the death penalty for killing Binion, they looked very relaxed, almost carefree. It was striking to me, accustomed as I am to seeing people sitting rigidly at the defense table.

At the time, Tabish was jailed but released for the preliminary hearing. Murphy was under house arrest and was wearing an ankle bracelet, which on one of the days of the hearing, she spray-painted beige to match the miniskirted, formfitting suit she wore to court.

When I testify at a trial, I always try to angle the witness chair away from the defendants and more toward the jury than it is when I get there. The expert witness is there to speak to the jury, after all—not to the cameras in the courtroom, the gallery, the defendants, the lawyers or even the judge. Doing this is usually easier during direct examination, when the lawyer I am working with will cross over to the jury's side of the courtroom and allow me a clear view of the members. During cross-examination, opposing counsel will frequently try to train the expert's eyes off the jury. This is an attempt to get the jury to believe you are ignoring them, that you answer only to counsel. Later, when this case came to trial, the attorney would stand off to the right, forcing me to look away from the jury—which I did, but only for the duration of the question, after which I would turn slightly and give my response to the jury.

There is great debate among attorneys over this practice. There are those who think that juries in the twenty-first century don't want eye contact with the witness, that they just want to view everything as they do television: as disinterested observers, even of their own lives. I don't buy this. My feeling is that it is better to look at the jury and make eye contact. After all, they are the only ones who matter once things get to court. I want to make contact with them, to speak to them, to help explain the science I bring with me to the courtroom.

How I speak is also an issue. I need to make things uncomplicated, and that's a fine line, because while I never want to talk down to a jury, I must bring the level of communication down to about a high school range, especially in science. And I must keep it interesting. Think for a moment about the weeks of DNA testimony in the O.J. Simpson case: After the trial many people said two things about it—that it was boring and that it was so complicated they didn't understand what was being said. This is less of a challenge in a preliminary hearing, since judges generally have more experience hearing scientific testimony, but even so, my testimony must be crystal clear.

The prosecution in the Binion case was bringing in not just one expert to testify to the cause and manner of death but two. And those two differed in their opinion. And with barely any time to prepare beforehand, I could not know just how the DA was going to handle this or whether the court would agree to amend the original criminal complaint charging Murphy and Tabish with murder to reflect my findings.

I also had no idea what reaction my findings would bring from the defense. They were well prepared, since the witness list and the expected testimony had been made public long before the hearing, with the exception of me and what I was going to say. I was almost a total surprise.

As the questioning began, I couldn't help but notice the amount of whispering Sandy Murphy did in her attorney's ear, her constant smiles and long glances over her shoulder at the gallery audience. Then came the review of the autopsy and the findings. I was asked what materials I had reviewed for the case: twenty-one tissue slides and more than two dozen Polaroid photographs. I stated for the record that I didn't accept drug overdose as the cause of death or agree that there was enough heroin or Xanax present to cause it. We examined and reviewed already introduced autopsy photos. I pointed out the bruises on Binion's lips, face and wrists, as well as those small, circular marks on the chest.



"What do those bruises suggest, Doctor?" asked Wall.

"The circular bruises are from shirt buttons."

It was then that I felt a change had taken place at the defense table. Murphy and Tabish had become rigid and were staring at me, their previous whisperings and light smiles gone. And in that instant, I had a feeling that I get only in courtrooms—the oddest sensation of a connection linking the defendant to the expert witness, when it seems that the defendant knows that someone else knows what happened. Murphy's and Tabish's dispositions appeared to me utterly changed. It would be fair to say that in the time it took for me to proceed through my testimony—stating for the record my expert opinion that Ted Binion had been handcuffed, laid on the mat on his back, and then smothered with a pillow or with someone's hands, that the cause of death was asphyxiation and that the manner of death was homicide—the blood seemed to drain from Sandy Murphy's face.

The preliminary hearing resulted in seventeen charges being brought against the lovers. They would be tried together for murder at a trial that began on March 27, 2000, and ended on May 19, 2000, when after eight days of deliberations, the jury came back with a verdict. It was never publicly revealed if there were odds on the trial, but this was Las Vegas, and you can pretty much bet that they favored acquittal.

But other numbers dominated the proceedings. We learned that Ted Binion had spent \$1 million in his life on heroin. His drug dealer testified that Binion called him every three or four days to request three to four balloons of tar heroin, which the dealer would then deliver. On the day before Binion died, however, the drug dealer delivered twelve balloons, each containing a small amount of the tar heroin. We learned that in the weeks leading up to Binion's death, Murphy called Tabish sometimes thirty-one times in a single day on one of her three cell phones—but not once on the day the body was found. Murphy had originally arrived in Las Vegas only a few years before with her \$20,000 life

savings, which she promptly blew at the blackjack tables at Caesar's Palace, testimony revealed. That led her to work at Cheetahs, a topless club, where she modeled lingerie and where she met Binion, whose wife had just left him. On the first night he met Murphy, he offered her a wad of cash totaling \$1,300, which she promptly threw back in his face, saying, "I don't want your money." She did not yet know that his net worth was somewhere between \$35 million and \$44 million.

Evidence included 386 marked exhibits for the prosecution, 167 for the defense, 2 prosecutors who questioned witnesses and 5 defense attorneys who did the same. The prosecution called 93 witnesses, the defense called 23.

I testified for the prosecution; Cyril Wecht, one of my closest friends and most admired colleagues, testified for the defense. This happens from time to time: Frequently, someone I know and respect will be on the opposing side. And that's just the way it should be.

As an expert, I would much rather have a proper forensic expert in my field, like Dr. Wecht, examining the evidence for the other side than a hospital pathologist not trained in unnatural death, as often happens.

Physicians may be the worst witnesses. They are often swayed by whoever asked them to be an expert. If that lawyer is smart enough to ask their advice, they conclude, he must know what he is doing. That being the case, physicians therefore adopt whatever the lawyer tells them as the facts of the case and become, if only subconsciously, an advocate for the lawyer rather than an independent adviser.

As a result of the preliminary hearing in the Binion case, the defense was compelled at trial to argue that Binion died of an overdose—either accidental or suicidal. Wecht had provided them with a seventeen-page report concluding that Binion died of "a combined heroin and Xanax overdose" as part of a planned suicide. He went on to write that he did "not find any evidence to



support that contention that he was suffocated," and that he believed "Mr. Binion initially inhaled heroin smoke, as he had in the past, and this led to thoughts of suicide."

The defense attorneys did not share with Wecht all the information about the circumstances surrounding the death. Wecht and I did not look at the same set of facts, because we can look at only what is presented to us or what we request.

Part of the expert's obligation is to assume that he is not getting the whole story from the prosecutor or defense attorney. Everyone, after all, is biased and develops his or her own spin. The expert is not supposed to have innate prejudice, of course, but he is going to be influenced by what he looks at and must actively resist being biased toward either party.

In every trial it is the privilege of any attorney to search for what is known as "collateral material" on the experts, information that is not related to the issue of the trial but that will be used solely to attack the credibility of the expert. Prior testimony, for instance, is a fertile place for opposing counsel to go. What they choose to do with that information varies in each case. But we should always assume that they have it, ready to go if need be.

Dirt was flung in the Binion case. And the advance word on Court TV was that a defense expert and attorney named Jim Shellow had been flown in from Wisconsin just to cross-examine me. While I had never heard of him, much was made in the media about his skill and reputation in attacking medical experts.

He hammered away at me for four hours, emphasizing my differences with Simms and attacking my conclusions that the wrist bruises resulted from handcuffs. He suggested that the bruises might, instead, be from Binion's watchband. But I'm from New York City and have practiced forensic medicine for more than forty years, and I have seen a lot of handcuff abrasions—these were handcuff marks. After the trial someone who was not called as a witness told Tom Dillard that they were diamond-studded handcuffs purchased by Murphy in an expensive sex shop.

Shellow was a fine lawyer who trotted out most of the old standbys: He read to me from my own writings, lifting things out of context; he tried to anger me by suggesting I was biased; he implied that I was operating without the full range of facts (casting me as an out-of-towner, which I was); he differed with me when I referred to something as "the" official publication of the United States Department of Justice, and insisted instead that it was "an" official publication of the department.

If the expert lets stuff like that goad him, it's unfortunate, because the jury does not want to see a riled expert. They want to see a professorial, cool-headed, confident person who knows the science cold and has nothing in the past to be ashamed of.

Over and over it was suggested that I was under the thumb of what had become known at the trial as "The Binion Money Machine," that I was testifying to what the family wanted me to say. A lot was made of a statement I once made that I "enjoy" morgues. I do.

And for his part, when he gets on the stand, Wecht occasionally takes heat for appearing on a controversial 1995 television show, *Alien Autopsy: Fact or Fiction*. After forty years on the job, there's a lot of life to throw back at someone, which is why many attorneys opt for more inexperienced experts: no background, nothing to check.

Sometimes opposing counsel will revisit the high-profile cases I've worked on: everything from my work re-investigating the assassinations of John F. Kennedy and Martin Luther King, Jr., for Congress to my testimony in the O.J. Simpson case and my work in the Claus von Bulow murder trial, as well as my consultations in the deaths of the Romanov family and John Belushi.

Television is a great aid to those who want to embarrass the expert witness, as is the Internet. Sitting in the DA's office one afternoon on break, I was amazed to see the number of e-mails coming in to Wall from people watching the trial on Court TV, many of them suggesting that he undermine Wecht's testimony by asking him about the alien show.



## Dead Reckoning

These are called collateral attacks. And the information that is whizzing around on the Internet is feeding them faster than ever. Sometimes, of course, the exposure provides evidence, as it did in the Simpson case when someone outside the court sent in photographs of Simpson in Bruno Magli shoes, the likes of which produced footwear impression evidence in blood at the scene of the murder of Nicole Brown Simpson and Ron Goldman.

There is no way to know what really engages a jury—whom they believe and whom they dismiss. Experts are wrong to try to outguess juries. Experts are also wrong to think that their one day in court is so dramatic that it will determine the outcome of a trial.

The jury in the Binion case sat for all of April 2000 and into May. Then it deliberated for eight days. Finally, on Friday, May 19, just after 4 P.M., the jury reentered the courtroom of District Judge Joseph Bonaventure. Much was made by the media of the fact that four of the jurors were wearing sunglasses and that several appeared to be crying. It's questionable how true this is and what we should make of it, but no one could remember having ever seen such a sight in a jury.

Viewers at home watched on live TV as Sandy Murphy and Rick Tabish stood to learn their fate. The defendants remained standing as the foreman read seventeen separate guilty verdicts including that of murder. Appeals are pending.

I was not in court to see it. I didn't hear the news until two days later, when someone left me a message of congratulations. Those messages are hard to understand. To me there is no winning or losing at trial. An expert witness is too emotionally involved if he considers his testimony a win or a loss. It's my rule never to go to parties to celebrate what some think of as victories. I get invited, but I never go and didn't go to any for the Binion murder case. Even if I had wanted to, it would have been impossible for me to attend.

I was working.