

"ANYTHING TWO PEOPLE KNOW IS NOT A SECRET."

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Dr. Michael Baden joins Sells lawsuit

Other expert witnesses will include liquor liability expert Fred Del Marva

by **Dave Featherly**

Dr. Michael M. Baden has been retained by the Sells' family attorneys as an expert witness in their lawsuit against owners of the Outlaw Saloon (Susan Hein and Mitch Jedlicki), the bar (HEJE, Inc.) and bouncer/agent for the Outlaw, Don Nath.

Referred to as the "Detective of Death," Dr. Baden is a Board-certified, forensic pathologist and from Chief Medical Examiner of New York City. He has held a medical degree since 1959, has written books on the subject of forensic pathology and crime solving, and has lectured at countless universities. More recently, he has been affiliated with the New York State Police and in private practice.

Dr. Baden is one of a handful (perhaps only two) of the best-known, most respected forensic pathologists in the world. Dr. Henry C. Lee, a forensics scientist, heads the Henry C. Lee Institute of Forensic Science in West Haven, Connecticut, of which only he and Dr. Baden are "Diplomates of the Institute."

Dr. Baden is a very familiar figure to most Americans who watch television or read magazines or newspapers. He has appeared in numerous trials as an expert for both the prosecution and defense.

From the 1960's when he was Chairman of the Forensic Pathology Panel of the U.S. Congress Select Committee on Assassinations that investigated the death of President John F. Kennedy and Dr. Martin Luther King, Jr., to today's controversial death of 14 year-old Martin Lee Anderson in Florida, Dr. Baden has been at the forefront of forensic pathology.

He has hosted the popular HBO series, *Autopsy*, for several years. He is a guest on Court TV, Larry King Live, Catherine Crier, Greta Van Susteren and other television shows reporting on crime and deaths. He has been involved in high-profile cases such as the deaths of John Belushi, Billy Martin, TWA Flight 800 victims, and defendants Claus Von Bulow, Christian Brando and O.J. Simpson.

He has consulted on the re-examination of the remains of Tzar Nicholas of Russia and the Lindbergh kidnapping and murder case. He has done over 20,000 autopsies, including a re-autopsy of Medgar Evers and he has observed the re-autopsy of Martin Lee Anderson, the boy who was first said to have died of sickle cell but is now believed to have died as the result of a beating at a "boot camp."

He has served as an expert witness in too many trials to count. Recently, he testified at the trial involving the murder of Las Vegas casino mogul, "Ted" Binnion.

His specific role in the case of the wrongful death action brought by the family of Dwayne Sells is unknown to me. The attorneys handling the case for the Sells family, John Vincent of Riverton and Tom Kelly of Cheyenne, have shared no information, strategy or insight about their use of Dr. Baden in this case.

It is of considerable concern to me that the pathologists out of Colorado who do the autopsies up here or testify on behalf of the autopsies done by another pathologist, have a working relationship and collect fees from Wyoming municipalities and counties to the point of not always being totally objective. In Casper, law enforcement officials referred to local coroner/pathologist James Thorpen as a "partner." For hired pathologists to disagree with coroner or police findings or statements would be biting the hand that feeds them and they are unlikely to do that.

Dr. Michael Cina performed the autopsy on Dwayne Sells and listed no cause of death on the autopsy report. Then, in a last-minute declaration, he supported the police and coroner's conclusion that the death resulted from an accidental fall. He further said (in contradiction to what the treating neurosurgeon, Dr. Judson Cook had said), that the multiple injuries on different areas of Dwayne's head, were the result of a "single incident."

Dr. Cook, in his sworn statement, said that he had seen similar injuries to what Dwayne Sells suffered but not from a fall

from the distance it was testified the bouncer dropped an unprotected Dwayne Sells on the back of his head. In fact, Dr. Cook stated that the injuries were consistent with a person who had been hit with the back side of a truck's rear view mirror as that truck passed at 40 mph.

The case file(s) is beginning to build at the District Court office and I reviewed them all on March 24, 2006. For the first time, I was able to read the sworn statements of police officers who were involved in the response to the incident or subsequent investigation.

One of the claims in this wrongful death lawsuit is that the relationship between the Outlaw Saloon and the local police department contributed to the outrageous behavior by patron Jay Payne that night. In questioning several police officers who had worked at the Outlaw before the incident and during the investigation of it, plaintiffs' attorneys ran into great resistance to answering their questions with any degree of specificity. "I don't remember," was a more common response than a direct answer to a simple question.

Deborah Mincer is attorney of record for the three defendants other than Don Nath. Rocky Edmonds is local counsel for Nath. Currently, the matter is set for trial in February of 2007. Ms. Mincer's proclivity to filing motion upon motion could easily delay that date. That is her history.

Meanwhile, financial and other issues pile up for the owners (and defendants in this case) of the Outlaw Saloon and Cowboy South (now called "Rockin' Rodeo or similar name).

This year's renewal application for the liquor license held by the Outlaw Saloon initially had the same ownership split as in the past - Hein with 60%, Jedlicki with 40%. Perhaps deciding that discretion would be the better part of valor, an addendum was filed a couple weeks later, taking Jedlicki out of the ownership of the Outlaw completely. It is presumed the same thing will have to happen at the Cowboy for that license to be renewed.



Dr. Michael Baden

In response to a motion filed by Ms. Mincer, attorneys for the Sells family have filed an Affidavit from Fred Del Marva, an Arizona-based private investigator, whose review "involved in general terms the foreseeability of malfeasance and adequacy of security." His credentials state: "I have consulted with hundreds of bars with regard to security procedures, investigated hundreds of bars with regard to security procedures, and have been retained in over 500 cases to render opinions in cases involving premises liability, premises security and liquor liability issues in hospitality industry related businesses."

His 11-page Affidavit concludes that the Outlaw could have reasonably foreseen, prior to the attack on Dwayne Sells, that "such an attack on one of its patrons would occur." Also, that the defendants could have "prevented further injuries to Mr. Sells after the initial assault by Payne and [Josh] Cooper." He also asked, rhetorically, "Whether the employment of armed, uniformed law enforcement officers contributed to the negligent operational practices and outrageous conduct of the Defendants?"

He dealt with issues such as allowing a patron who had been determined to "be argumentative, assaultive, and abusive," back into the bar; failure to comply with State liquor statutes by serving an underaged patron and alleged assailant that night (Josh Cooper); having a "willful, wanton and reckless [written] policy in which any fight involving more than two people would be allowed to run its course with no intervention," and having insufficient bouncers for the crowd size.

Mr. Del Marva concluded: "None of the above was considered or implemented by the owners, operators, and management of the Outlaw Saloon and, but for this irresponsible and reckless conduct, Dwayne Sells would not have died that evening (sic)."

The Complaint in this matter is accessible on the Cheyenne Herald website (see below) and the Del Marva Affidavit should also be available there in its entirety.

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