

I N S I D E   T H E   M I N D S

# Utilizing Forensic Science in Criminal Cases

*Leading Lawyers on Analyzing the Latest  
Trends in Forensics and Incorporating  
Them into Defense Strategies*



ASPATORE

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# Juristic Heuristics

John Stevens Berry

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*I dedicate this chapter to all of the lawyers in the Stevens and Berry families who practiced law every day in Iowa or Nebraska or both during the twentieth century, and those who have continued the tradition into the twenty-first century.*

## **Introduction: The Interdependency of Law and Society**

In much simpler times, a wise jurist referred to the law as “a seamless web.” The law and the practice of law remain mysterious, confusing, and often inscrutable. Once, at a meeting of the American Academy of Forensic Sciences, one of the speakers referred to the law as the linchpin of forensic sciences. The pathologists had their groups, and, as I recall, the dentists had a “bite-mark breakfast,” but in the final analysis, all their efforts come down to the courtroom where the lawyers practice.

Law has been described as the most intellectual of all activities. I am convinced that if it is practiced properly, this is true. It is difficult to speak of courtroom forensics without discussing economics, discovery, and a number of other aspects. Few of us represent clients of unlimited resources, and we must develop strategy and tactics in an economical manner. The law lags behind learning. The law arises from society and contributes back to society, and each influences the evolution of the other.

In the late fifteenth century the Renaissance was spreading in Western Europe. And in 1474, in Basel a rooster came under the charge of having laid an egg. The human mind and spirit soared with magnificent cathedrals and paintings and the beginnings of great literature. The local prosecutor took the position that any rooster that laid an egg must be affiliated with the devil. The rooster was put to trial...

JOHN STEVENS BERRY, *THOSE GALLANT MEN: ON TRIAL IN VIETNAM*  
(Presidio Press, 1984)

As science evolves, the law evolves with it. Prosecutors have virtually unlimited resources, and they like to spend defense counsel into submission whenever they can. Therefore, it is vital for you to have your own contacts in the forensic community and to know the sympathetic and affordable

experts—especially the ones who will be honest with you about your case and tell you when they are not suitable.

I tried the first DNA case in the history of Lincoln, Nebraska. My client was out of funds; the prosecution insisted on DNA evidence; so I was able to persuade the court to appoint me so that public funds could be used and so that my client could benefit from my traveling with the prosecution to the Cell-Mark lab. We traveled to Boston to take the deposition of a Harvard professor who was a biogeneticist. Whenever a question will allow prosecutors to run up the bill on experts, you can be certain they will take advantage of it.

### **The Prosecution’s Bag of Tricks: Experts and Evidence**

When I became an attorney in 1965, all a trial lawyer needed to know was evidence, procedure, and a bibliography. Those days are gone forever. It is impossible to practice effectively in the criminal forum today without your own list of ballistics experts, pathologists, et al.

In a case involving an adulterous love nest and socially prominent people, a woman died from a closed-skull injury. At the time, both parties were severely intoxicated. The man was charged with manslaughter, and because of his prominent position in the business and social community, there was some press coverage. The local pathologist, the coroner’s physician, did not see it as a homicide. He believed it was an accident. Because the county attorney was already exploiting publicity, they brought in a flying knife from St. Louis to testify about the *coup-contra-coup*, the simple notion that a blow forces the brain in one direction, after which it rebounds in the opposite direction and causes damage different from that caused by a fall.

We all have nicknames for the mercenaries the prosecution brings in, and it is occasionally permissible to remind the jurors that their money has been spent to drag in these experts from every point on the globe. Sometimes, it is okay to use the good, old, reliable local pathologist or the coroner’s physician, who has been good enough for hundreds of homicide cases in the past. In any community in which at least half the judges have been promoted from the prosecutor’s office, it is always a pleasure and a delight to “hometown the county attorney.”

But all the pathology expertise in the world will not save you as the defense counsel unless you remember to exercise Fed.R.Evid. 403. Prosecutors will inevitably, as part of their “forensic proof,” offer as many gory photos as they can. Of course, they are doing so to inflame the jury, and the prejudicial effect outweighs any probative value. Your job as an attorney is to keep as much of the gore away from the jury as possible. It is possible, and sometimes wise, to offer to stipulate to certain aspects of forensic tests that are not controverted and that do not go against your own pathologist. And the appellate courts across the country seem to have noticed the fact that to show the identity of a murdered woman, you do not have to produce the photo of her cuddling her darling baby.

Prosecutors will use their limitless treasury to introduce “expert” witnesses in any case they can. It has long been part of the lore of trial lawyers that in a case in Texas, a beleaguered defense counsel called in a local rancher and attempted to qualify him as “an expert on identifying lyin’ sons-a-bitches.” If his testimony had been allowed, you can bet the prosecution would have come in with a much more expensive expert from a distance away.

### *Police Dogs as Experts: Barking Up the Wrong Tree?*

There are all kinds of expert witnesses, but I would like to address the notion of expert dogs, specifically, expert drug dogs, and what the tests should be to justify a search under the Fourth and Fourteenth Amendments to the US Constitution.

Drug dogs do not get on the witness stand and qualify themselves as experts, of course, but witnesses do. Typically, a car or van will be stopped on Interstate 80. The Nebraska State Patrol trooper will ask for consent to search the vehicle. The defendant denies consent, and the trooper detains the vehicle to conduct a “free-air search” of the air around the vehicle by the drug dog. Most circuits now recognize a defendant’s right to challenge the training and reliability of the canine teams. A dog alert may not give probable cause if the particular dog has a poor accuracy record. So the courts consider the dog’s training and certification, its successes and failures in the field, and the experience and training of the officer handling the dog.

If you are fortunate enough to have a video of the free-air search, you may see a dog indicate the presence of an odor of narcotics. Issues in court can

arise as to whether the act performed by the dog constitutes an “indication” or signal giving rise to probable cause. Some dogs are trained to sit upon the smell of narcotics, while other dogs are trained to bark and scratch at the location of the odor. Experts are frequently used to offer opinions as to whether the dog did, in fact, signal or whether the dog’s act was caused by something else—for example, the presence of another dog, an inadvertent signal by the handler (“cueing”), traffic driving by on the Interstate at eighty miles per hour, or other factors.

The prosecution will call an expert to say that this dog truly was well trained, and the fact that the dog may have reacted in strange ways to various signals and suggestions by the trooper does not detract from whether the eventual search of the vehicle pursuant to the dog’s activities was constitutional. I am happy to say that many states and many federal circuits are working toward a “totality of the circumstances” test, but in Nebraska, all you need is for a drug dog to make a “hit,” and the driver is arrested, and several months pass before experts testify as to whether the dog was reliable. To properly prepare your case, you can and should get records as to the dog’s prior performance.

### *High-Stakes Use of an Expert*

In one of the most enjoyable cases I tried with an expert witness, I called Oswald Jacoby to testify that poker is not a game of chance, but rather a game of skill. Jacoby had been an actuary since age seventeen; his remarkable mind had been used to break codes during the Korean conflict; and he wrote books and columns on both poker and bridge. The judge questioned him quite thoroughly as to the odds of a certain card coming up under certain circumstances. During closing, I looked around the courtroom, at the jury, at the judge, at the prosecutor, at the various deputies and other personnel, and said, “If any of you really believe that poker is a game of chance and not skill, I will gladly stake you to a sit-down with Jacoby; you name the game; you deal.” The prosecutor objected, and the judge admonished me, but I did not get any takers for that challenge.

There are expert witnesses who will make you feel as if you have crammed for a very boring corporate exam. Forensic accountants and economists can be of great value, but they give you a headache, and at least some of my friends are eager to have an adult beverage after they get through with those

cases. A number of years ago, I heard F. Lee Bailey state that nobody could be a good trial lawyer in today's society unless he or she could also pilot a jet plane. That is nonsense, of course, but his point was that we do live in a technological age, and unless you are willing to adjust to it, you will find that the prosecution will, again and again, "expert witness" you to death.

## **The Effective Use of Psychiatric Evidence and Testimony**

The Diagnostic and Statistical Manual (DSM) evolves, and the language of the courtroom changes with issues of mental responsibility and the ability to cooperate with counsel in preparation for a trial. Issues frequently arise during trial as to the admissibility of the criteria and subsequent diagnoses outlined with the DSM. Currently, the DSM-IV is the primary diagnostic classification system used to diagnose mental health disorders. An international survey of psychiatrists in sixty-six countries found that doctors valued the DSM-IV more than any other diagnostic tool available. Juan E. Mezzich, *International Surveys on the Use of ICD-10 and Related Diagnostic Systems*, *Psychopathology* 72, 75 (2002). The most common criticism of the DSM is skepticism over whether the process by which a diagnosis is generated is reliable or valid.

Proponents argue that the system outlined in the DSM is reliable based on the widely held notion that patterns of behavior emerge for certain people with certain mental health disabilities. The validity of the diagnoses made through the DSM system is difficult to judge because there is a lack of neurological or laboratory tests to confirm the accuracy of diagnoses made through the DSM system. Critics point to the subjective nature of the criteria providing the bases for the diagnoses; specifically, the criteria are not scientific—i.e., able to be subjectively and objectively repeated in a clinical setting—and because of the lack of science behind the criteria, the decision to reach a diagnosis is largely subjective and simply a matter of personal choice.

Rules of Evidence govern the admissibility of evidence in criminal trials. Specifically, preliminary questions outlined in Fed.R.Evid. 104 give rise to issues involving the diagnostic system used within the DSM. Fed.R.Evid. 104 provides, in relevant part:

1. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the judge subject to the provisions of subsection (2) of this section.
2. When the relevance of evidence depends upon the fulfillment of a condition of fact, the judge shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

When representing a criminal defendant suffering from a diagnosis of schizophrenia, one must consider Fed.R.Evid. 104 and the subjective nature of the DSM criteria. Specifically, considering diagnoses offered by those using the criteria outlined in the DSM, subsection (2) of Fed.R.Evid. 104 requires consideration of whether the DSM system is reliable and valid, or as an example, whether the DSM criteria proves, in a reliable manner, that the defendant did, in fact, suffer from schizophrenia when the crime occurred. It is helpful to *voir dire* any opposing expert before he or she gives an opinion. Typically, the question as to an opinion will be asked, and defense counsel will say, “Excuse me, your honor. Objected to as to foundation. May I inquire?”

A good *voir dire* of an expert about to give an opinion is at least as thorough as your cross-examination of him. There is a chance you can get the opinion kept out or limited, and you will certainly have questions in the jury’s mind before he gives his opinion. When you come back with your cross-examination, you have hit him twice because you already caused uncertainty with the jury.

There are psychiatrists who simply will not function in the DSM structure, and they can be of some help. In one case, a husband had fought to take the custody of the child away from his former wife. When he finally got the child, he left the child alone with his severely depressed girlfriend. At some point, she strangled the child with a television cord. She then took a shower, put a robe on, wrapped the robe with the TV cord, and called the police.

We litigated the woman’s mental state in pre-trial motions and depositions, and my psychiatric witness, who had been around for a number of years,

went back to some old terminology, including “depressive rage.” That term is not mentioned in the DSM, and I did not get an acquittal, but instead made the best deal I could and used my mental health expert for sentencing purposes.

### *The Importance of “Reading” the Judge*

It is important to understand the mindset of the judge when you are using psychiatric testimony for matters of mitigation and extenuation. I had one case in which a man had taken a pillow and smothered his ailing mother to death while she was in a nursing home. Because of suspicious circumstances, the police had lied to him (a time-honored tradition—sometimes you will be able to point out to a jury that the police are actually taught the protocol of lying to a witness). As a result, he became convinced that his mother’s roommate (who was pretty much incapable of observing or communicating anything) had seen him do it and had told on him. The client made a full confession.

The man was locked up in jail the day before I arrived back from trying a court martial in Japan (as civilian counsel), and he had talked to his wife to get her to engage my services. So she came to my office and hired me. The county attorney then did one of his slick little tricks. He attempted to take her deposition as to anything he had told her prior to hiring me because in a murder case, the husband/wife privileges are eliminated by Nebraska statute. I was able to raise a Sixth Amendment objection that he had to talk to her so she could hire me, and the judge sustained my objection.

Meanwhile, during the deposition, the police obtained and executed a search warrant of the couple’s house. Nobody would be home. I had gotten the client out on bond, and he had many notes at his house, but, per my instruction, they were all in a large envelope labeled, “ATTORNEY/CLIENT PRIVILEGE AND WORK PRODUCT, PROPERTY OF J.S. BERRY, PRIVATE AND CONFIDENTIAL, DO NOT OPEN.”

This particular judge abhorred the notion of mercy killings, so the theory of the case was that it was not a mercy killing, but an act caused by certain mental disorders. I went up and down that DSM and ended up getting him

a kind of probation that involved his spending six months in the trustee dorm and doing a great deal of community service. I do not think it hurt my case that his Sunday school teacher at the local Methodist church was Tom Osborne, fabled coach of the Nebraska Cornhuskers. But my point is that if I had gone in with some sort of idiotic mercy killing defense and had not played the DSM and my psychiatric and psychological witnesses like a country banjo, my client would still be locked up. A good defense lawyer reads and has read the current DSM like a favorite novel. Your copy should be dog-eared and yellow-highlighted.

### *Challenges of Jury Selection in an Environment of Restricted Voir Dire*

The process of jury selection is increasingly important. Unfortunately, judges are less liberal with the time they give defense counsel to conduct *voir dire*. Gone forever are the days when I could spend a few weeks picking a jury in a murder case. But you can get a sense of the jury, and their composition, and that does lead to strategic decisions.

If you have a largely rural jury, they may react badly to the fancy professors and physicians the prosecution brings in. You may be able to become the “thirteenth juror” by being as puzzled as they are with all that fancy talk and telling them the case is really a matter of common sense. More than once, I have seen a prosecution’s case collapse under its own weight (*see* the Casey Anthony trial), and it is sometimes possible to beat an army of experts by simplifying a case to the point at which the jury gives you a better chance of an acquittal. Of course, if your strategy fails, someone else will come along and say you were ineffective, which is bad for the lawyer, but may be a good thing for the client.

### **Best Practices in Defense Strategy**

#### *Finding an Advantage from Unlikely Sources in Federal Trials*

Federal court is trial by ambush. Defense counsel is not allowed to take depositions.

A number of years ago, I was trying a felony in federal court in Pennsylvania, and I had flown out from Nebraska to pick the jury. When it was time to try the case, the prosecutor presented me with Jencks Act

materials at 11 p.m. on Sunday night right before the Monday morning start. There is no reason he could not have gotten those materials to me earlier, but I suppose I should be grateful that I got them at all. Anyone who is not willing to give up a night's sleep to work on a federal case has no business trying it.

On the positive side, sometimes we can get a peek at what is going on forensically, even in federal cases. We were once involved in a case in which a large manufacturer claimed that silver was being extracted from its product and sold to a fence. We decided to represent the clients at their union grievance hearing and use that for discovery purposes to know what the forensics would be in the federal trial. Of course, the assistant US attorney was furious but there was nothing he could do about it. We had seen their scientific tests and cross-examined their experts, all under the legitimate pursuit of our client's union grievances.

The practice of criminal trial law requires imagination. One aspect of imagination is figuring out every angle from which the prosecution's case can be attacked and figuring out how to take "depositions" in federal court, where defense counsel are not allowed to do so. Sometimes by filing motions that will require evidentiary testimony, you can get a crack at the witnesses. And sometimes there may be concurrent civil or administrative hearings that can be used either by you (we discuss this later) or by a friendly, cooperating counsel to get the information you need.

### *Dual Representation in a Criminal and Civil Case*

In another case, I represented a septuagenarian nun who was accused by the Archdiocese of Omaha of stealing hundreds of thousands of dollars and gambling much of the money away on river boat casinos or passing some of it on to her family. There is always an ethical question when you are representing someone who is being both prosecuted and sued. As a defense counsel, you have a duty to keep her out of jail. And yet if she does not defend herself in the civil action, judgment will be taken against her that cannot be discharged in bankruptcy.

In this case, the nun and her extended family were being sued. We had the problem of trying to abate the civil case until the criminal case could be

disposed of, and when we could not do that, we at least participated in discovery to the point that we could work with our own forensic accountants. By a great deal of juggling, we were able to eventually settle the civil case without the nun having her deposition taken, and were free to pursue the criminal matter as we wished, her Fifth Amendment rights intact.

The existence of a companion civil case will give the criminal lawyer opportunities for discovery and facts to pass on to our own forensic accountants and economists. However, it is a mistake to represent a person in both a civil and criminal case unless you have previously consulted with your state Counsel for Discipline and have a lengthy, recorded conversation with your client explaining why she might be better off with a different lawyer in the civil case. Still, if you can do it, the discovery available in civil cases often leads to materials your forensic accountant or economist will need and be very grateful for.

Dual representation is, by its nature, a nightmare. It can only be done under circumstances in which your client will not (or cannot) get someone else to represent her in the civil case. But you are able to make recommendations of good lawyers for her, and you are able, with her written consent, to work closely with those attorneys, as they are doing the virtually unlimited discovery of civil practice.

### *A Cautionary Tale about the Media*

It is impossible to avoid all of the ambushes inherent in federal criminal defense, but there is usually a way of finding out enough that you can work with your own forensic team in preparation. Forensic evidence surfaces where it will. And in Nebraska state cases, we are allowed discovery. In one case, I defended a police officer who was charged with homicide after the death of someone he was taking into custody. The person was of a minority race, and there were pickets, a press conference, and more. One of my sons told me that he had seen me described as “the devil” on a late night television show.

But the police union was very good at providing me funds to get expert witnesses. I got Bruce Sittel, a world-renowned expert on the continuum of

force protocols. He had taught at Scotland Yard, in Hong Kong, and in Israel, as well as with the armed forces. He testified at great length as to when various methods of force were appropriate and were to be used and how they worked.

Mr. Sittel performed an unusual courtroom demonstration. I had spent more than two hours qualifying him, despite the prosecution's frequent offers to stipulate to his expertise. With the court's permission, I had him give a brachial stun to a deputy sheriff. The deputy was a former football player and weighed well over 300 pounds. He towered above Mr. Sittel. After I had asked Mr. Sittel to give the deputy a brachial stun, Mr. Sittel turned to the court and said, "May I?" The court agreed that he could, and Mr. Sittel slapped the deputy hard across the left side of his neck. The deputy hit the floor like a ton of bricks. Of course, the prosecution had the police manual for use of force, but it turns out that it was taken from Mr. Sittel's standards. They had their own expert who had studied Mr. Sittel's methods and who became a defense expert before we were done.

Unfortunately, I made a mistake post-trial that I always regretted. After my client was acquitted, I told the press that I would visit with them in my office. I removed the wrapper on my usual afternoon cigar and planned to enjoy it privately while the TV cameras were being set up. It was pure bliss until the next day, when the newspaper showed a picture of me smoking the cigar, and a caption read, "Berry smokes victory cigar while victim's family goes to Methodist church to pray." There is nothing very flattering in being made to look heartless. Never trust the press.

### *Acquittal or Favorable Sentence?*

There are two ways you use forensic science with mental health experts: going for acquittal or hoping for a good sentence. I had a case in which a young man feared his mother was being abused by his drunken father, so the young man (a good student of excellent reputation) went downstairs and fired two shotgun blasts into his father, who was stretched out on the couch, killing him instantly.

I did not prepare for acquittal—I prepared for probation. I loaded up with psychologists, sociologists, school counselors, and my client spilling his guts to anyone who would listen, including any police officer who wanted to talk

to him (in my presence, of course). I was not entirely successful, as my client served seven months' incarceration, but I am convinced that I made the right decision to use my forensic psychiatrist for purposes of sentencing, rather than guilt and innocence.

Similarly, I had a death penalty case in which my client was convicted. She took the stand and may have been less than honest. Because we would be trying the death penalty phase to a three-judge panel, I called a number of expert witnesses. I worked toward the notion that she had either a borderline personality disorder or some other kind of personality disorder and that her lying on the stand was consistent with whatever made her kill her husband's girlfriend, set the car on fire, and then kill the good Samaritan farmer who tried to drag the girl's body from the car. The former client is doing life sentences instead of being on death row.

### *Your Expertise and the Law Prevail*

You will occasionally be ambushed when you are facing an expert witness with no preparation whatsoever. You will not be given an adjournment or an opportunity to interview the witness or take a deposition. There are jurisdictions and judges who will place those restrictions on you. However, you know the law, and your expert does not. As you slowly dismantle the expert, getting the judge to threaten to strike all of his testimony unless he answers questions directly and without lectures, you will discover that you are having a tremendous amount of fun. If this is not your idea of fun, you may wish to switch to civil law, where there is nothing more at stake or risk than money.

Many years ago, a young woman with pneumonia went to a chiropractor and to her physician. The physician's nurse gave her pain medication, and the chiropractor gave her a chiropractic adjustment. It was the chiropractor who dialed 911. She died with a great deal of liquid in her lungs. The chiropractor was charged with manslaughter.

During the preliminary hearing, I was not allowed to question the attending physician or his staff. I was not allowed to question the pathologist as to what actions by the attending physician may have saved the girl's life. She drowned, from her own pneumonia, and the prosecutor was hell-bent on blaming it on the chiropractor. I was not even allowed to get into evidence a thank-you

note the mother had sent the chiropractor for his excellent efforts. The courtroom during that preliminary hearing was stacked with fans of the chiropractor and of chiropractic in general. They would moan and groan at the judge's rulings. He was furious, but he felt much worse when, after he had bound my client over and before my client was arraigned, I filed a plea in abatement in the district court that booted the case.

These small, colorful victories make it rewarding to be a country lawyer. I have never gotten around to thanking the over-reaching prosecutors who have made my professional life so interesting.

## **Conclusion**

The proliferation of the use of expert witnesses and forensic evidence should not be seen as a burden, but rather as an opportunity to learn, and there is a certain sense of fun in going into new areas and disciplines. The good trial lawyer should always make the prosecution prove its case and should be prepared to counter-attack. But the great danger to be avoided is that of allowing your defense to become too disperse.

In the final analysis, if you are properly prepared, you will occasionally find an amazing hole in the prosecution's case and drive right through it. But in most cases, it will come down to the real job of a criminal trial lawyer: you find the primary weakness in the prosecution's case; you put your head down; and you charge.

## **Key Takeaways**

- Keep the inflammatory or gory evidence, usually in the form of graphic photographs, away from the jury. Similarly, do everything you can to prevent the prosecution from presenting photos or information that plays on the jury's emotions.
- Be aware that when you raise issues of mental competence or legal responsibility due to personality disorders, illnesses, defects, etc., you may be opening the door to some aspects of your client's history that otherwise would not go before the jury. Know the DSM thoroughly; use it carefully; and decide whether you have a

real defense or rather matters in mitigation and extenuation for sentencing purposes.

- Consider carefully your ethical and professional obligations when thinking about representing a client in both criminal and civil actions. While there may be an advantage derived from the information you pass between teams, you must check with the ethics authorities to ensure that you are not violating regulations.
- Manage the interactions that you and your client have with the media. In most cases, err on the side of extreme caution because you are “live” even during downtime or “setup.”

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*In 1968 and 1969, Mr. Berry was the chief defense counsel for the largest general court martial jurisdiction in Vietnam, II Field Force Vietnam, numbering over 80,000 soldiers. He also served as defense counsel on a temporary duty basis with the 101<sup>st</sup> Airborne, the 82<sup>nd</sup> Airborne, the 1<sup>st</sup> Infantry Division, the 1<sup>st</sup> Cavalry Division, the 199<sup>th</sup> Light Infantry Brigade, the 11<sup>th</sup> Armored Cavalry Regiment, and the 5<sup>th</sup> Special Forces. His efforts in the defense of the commander of the Green Berets in Vietnam and some of his officers on a charge of murder and conspiracy to commit murder is the basis of his Vietnam memoirs, *Those Gallant Men*, which was selected Book of the Month by the Military Book Club in 1984.*

*After his duty in Vietnam, Mr. Berry served as chief defense counsel at the Presidio of San Francisco. His military decorations and awards include the Bronze Star, the Vietnamese Cross of Gallantry with Palm Device, the Vietnam Medal of Honor 1<sup>st</sup> Class (Gold), the Vietnamese Medal of Honor 2<sup>nd</sup> Class (Silver), and other awards and decorations.*

*After his military service, Mr. Berry worked briefly at the law office of Henry Rothblatt in New York. Mr. Rothblatt's practice included many celebrities, and Mr. Berry appeared with Mr. Rothblatt in Federal Court in San Francisco representing the sound manager of the Grateful Dead, and had many other interesting cases with the Rothblatt firm before he returned to Lincoln, Nebraska, to found his own firm.*

*Mr. Berry has appeared in court in twenty-seven states. As civilian counsel, he defended the largest drug bust in the history of Japan in a court martial. He is a fellow of The American Board of Criminal Lawyers and a past president of the Nebraska Criminal Defense Attorneys Association. He has moderated and presented numerous seminars (including on forensic law and expert witnesses) and has been invited to lecture at numerous universities, including Wake Forest University, the University of Virginia, the University of Nebraska, Creighton University, Nebraska Wesleyan University, and the J-AG School. He has done pro bono work for a number of individuals and organizations, including the Native American Rights Fund and numerous disabled veterans. Mr. Berry has been listed in The Best Lawyers in America, has an AV Preeminent rating for Martindale-Hubbell, and was selected to Great Plains Super Lawyers in 2011.*

*Mr. Berry's three sons have served as officers in the Army, Navy, and Air Force. His oldest son, John, is an Airborne Ranger who commanded a company in Iraq and is his law partner. In addition to their criminal practice, they have developed one of the largest veterans' disability firms in the nation. The website for that phase of the practice is [www.ptsddl.com](http://www.ptsddl.com).*



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