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### **Sunshine**

**“Mr. Malpractice”**

**How do you put a price on pain? In South Florida, no one is as persuasive as attorney Sheldon Schlesinger, the man who makes doctors see red.**

Every Sunday at St. Anthony's Catholic Church in Fort Lauderdale, they pray for Susan Von Stetina. Her name is evoked so regularly it seems a part of the liturgy, along with “In the name of the Father and of the Son and of the Holy Ghost.”

The congregation has been praying for Susan Von Stetina for almost 10 years, beginning that day at Florida Medical Center in Lauderdale Lakes, where she was hospitalized after an automobile accident. Susan was 27 years old when her respirator shut off, and nobody noticed for 20 minutes. She has lain comatose ever since.

A malpractice suit followed, the settlement of which is widely known in legal circles, as is Sheldon Schlesinger, the attorney who handled Susan's case. At the time, the award, which eventually could reach \$38 million, was the largest settlement of its kind in Florida history.

The case startled South Florida's legal community to such a degree that now the name Von Stetina is almost synonymous with Schlesinger, who is one of the most powerful personal-injury attorneys in the country and, quite simply, the man doctors love to hate.

As befits a man of his reputation, Sheldon Schlesinger has a face of distinctive features. Sandy hair recedes slightly above a furrowed forehead. His eyes, which in court often gleam with anger and suspicion, are a shade of almond. Perched above a double chin are a set of jagged lower teeth that appear ready to gnash at an opponent's jugular. It is a face capable of inspiring confidence, or instilling fear.

It was this face that caught the jury's attention when Schlesinger recently appeared in court to represent an 18-month-old boy named Justin Bates, who had suffered permanent brain damage after checking into the emergency room at Broward General Medical Center with a respiratory ailment.

The medical malpractice in the case was so blatant that the hospital administration acknowledged liability before the trial began, and three of the four other defendants – radiologists, neurologist, emergency-room personnel – settled on the eve of the opening statements.

Based on its admission of liability, Broward General was ordered by the court to pay Justin's family \$8.5 million. Because a new Florida law limits the liability of hospitals to \$200,000, Schlesinger will pursue other avenues to collect the money, possibly even appealing to the state Legislature.

After 36 years and a string of major successes that have made him a millionaire, Schlesinger is in the happy position of taking only those cases he figures he can win. Currently, his firm accepts about 10 percent of the cases that come its way.

Forty years ago Sheldon Jules Schlesinger would not have predicted such a high-powered future for himself. The son of a Brooklyn architect, Schlesinger moved with his family to Miami in 1947 and was graduated from the University of Miami law School in 1954.

“I always wanted to be a lawyer,” says the 61 year-old attorney as he relaxes in his Fort Lauderdale Office. “I knew I wanted to be a trial lawyer, to work in the courtroom. I realized very early that reading abstracts was not for me.”

Personal-injury law was a minor specialty when Schlesinger went to law school. Seven- and eight-figure awards were rare, and contingency fees – where lawyers work for a big percentage of the award – were almost unknown.

Schlesinger started out at a time when a young lawyer interested in serious money hooked up with an old-line law firm that represented corporate clients.

“The whole concept was different then,” he says. “In fact, I wasn’t sure I could make a living practicing law. I didn’t even know where to stand in the courtroom.”

His first case, which was a disaster, did nothing to bolster his confidence.

“My client told me he was disabled,” recalls Schlesinger. “It turned out he wasn’t.”

But Schlesinger learned something important from that first case – that a lawyer must make sure his clients are telling him the truth.

Today, when he goes into court he knows everything there is to know about his client. That helps explain, in part, his ability to make the jurors feel the pain his clients are suffering, as if they were victims too.

As a young attorney, Schlesinger had no ready role models. He learned, so to speak, by trial and error. Today he is one of South Florida’s malpractice heavyweights, along with J.B. Spence of Miami and Robert Montgomery of Palm Beach.

“I really learned on the job,” he says. “I didn’t develop my style – my style is me. I tell young lawyers, be yourself. And be prepared.”

Schlesinger is sitting in a room in his office that serves as both library and museum. He is surrounded by a clutter of exhibits that are examples of his preparation and evidence from past cases; replicas of human torsos, sketches of skulls, mounted medical items.

In his hand he is holding a replica of a splinter that lodged behind the eye of an 8-year-old Blake Drysdale when he fell on a stake in 1978. The splinter went undetected by a

variety of doctors, even after Blake had surgery and spent nine months in the hospital. The boy eventually suffered neurological damage. Eight physicians were sued, resulting in one of Schlesinger's most impressive victories.

Another souvenir of sorts is a gas cap, similar to the one that popped off a Toyota Corolla in a 1979 accident on I-95. Three young women who were trapped inside the car died when it burst into flames.

As he speaks, Schlesinger's precise words evoke the same anger he expressed 11 years ago to the jury that awarded his clients \$5 million.

"The key to that case was that, under pressure, the gas cap popped off," he said. "Toyota had known for years that that would happen if the gas tank was struck. No only that, but all cars are designed to crush upon impact, because that's the way to take up the shock. But in this car the predictable mode of deformation meant that the doors locked. With the gas spewing and the doors locked, the car became a crematorium."

The gas-cap problem has long been corrected on newer models, but Schlesinger says he still sees some of the old Toyotas on the road, presumably capable of the same kind of accident.

"When I'm driving down I-95 and I see one," he says, "I shudder."

Schlesinger will soon move into new, bigger offices in southeast Fort Lauderdale that are being built by his son Greg. (Another son, Scott, is part of Schlesinger's 11-lawyer operation.) the new offices will contain a full-size replica of a courtroom.

"I guess it's the educator in me coming out," Schlesinger says, smiling. "We'll use the room for law seminars."

Schlesinger started his practice with then-partner Jay Simons in Miami Beach in the late 50's. Later, he went off on his own and opened an office in Hollywood, where he quickly began building a reputation.

"Shelly Schlesinger is a *great* lawyer," says Kevin O'Brien of Thompson and O'Brien, another Fort Lauderdale law firm that specializes in personal injury.

O'Brien should know. In the mid-70's he represented hospitals and doctors and often was Schlesinger's courtroom opponent. One of the confrontations he remembers best is Susan Von Stetina case.

"I represented the insurance company and advised them to settle the case," O'Brien recalls.

But the insurance company decided to fight it out and the case was tied up in the courts for six years. The original \$14.5 million award was overturned on appeal, and the case

was finally settled for between \$8 million and \$38 million. The longer Susan Von Stetina lives, the more the amount increases.

“Shelly is the best malpractice lawyer I’ve seen, not only in terms of time and preparation but in the actual arguing of his cases,” says O’Brien. “He surrounds his cases with a large quota of secrecy, which is to the client’s benefit and also to his own. He is determined to get everything his clients are entitled to, and he’ll take advantage of every situation. But there’s never a question of integrity or dishonesty.”

Young lawyers quickly learn to appreciate Sheldon Schlesinger’s command of a courtroom. In questioning his own experts, Schlesinger treats them as he might a hostile witness, barking out questions and demanding swift answers.

*Do you know what a pneumo thorax is?”*

*“Yes.”*

*“WHAT IS IT?”*

Milton Shafran, an adjunct professor at Nova University Law School advised his students to watch Schlesinger’s opening statement in the case of Justin Bates, the 18-month-old boy whose respiratory ailments was mishandled, resulting in brain damage.

“This is how you learn,” Shafran told his students. “This man is as good as they come.”

It is Schlesinger’s results, rather than his techniques, that seem to impress other lawyers. For example, after considerable legal wrangling, he received a fee of \$4.5 million for his work on the Von Stetina case.

Though Schlesinger tends to be theatrical in court, he senses the fine point between evoking jurors’ emotions and turning their stomachs.

“It’s not a benign approach,” he says. “I’m not unemotional, and it’s not purely cerebral.”

While he won’t talk about cases in progress, Schlesinger gladly returns to the scene of his more dramatic successes.

He displays an elaborate drawing he had prepared to illustrate the size of the splinter that lodged behind the eye of 8-year old Blake Drysdale. The Splinter is more of a fat chip, exceeding an inch in length and almost a quarter-inch wide. The object looks too large to have gone undetected by doctors.

“I decided not to use the drawing because I was afraid the jury would see that huge object and it would hurt credibility,” Schlesinger explains. “They would say, ‘Come on, that’s impossible.’”

“The way I got the splinter in evidence was to have this duplicate made of it. I showed it to a doctor, who was not my witness, and I asked him if he could identify it. He said he thought the actual splinter was a little smaller. So I turned to Judge (Louis) Weising and said, ‘Judge, have you got a pocket knife?’ He said, (and here Schlesinger slips into the judge’s Southern twang) ‘Have ah git my britches on?’ and pulls out a knife.

“I said to the doctor, ‘Be careful and take your time. Just whittle that splinter down until it looks right.’ Well, he whittled a little bit and then gave it back, and that’s what we put in evidence.”

It was brilliant courtroom theater, the type of ploy that opponents expect from Schlesinger. “You see people trying to outperform him, and that’s a mistake,” says Kevin O’Brien. “If you do that, you’re succumbing to his charm just like the jury does.”

JUSTIN BATES’ TRIAL IS SCHEDULED to begin at 1:30 p.m. at the Broward County Courthouse. Schlesinger huddles with his associate, Gary Cohen, on a seventh-floor stairway as the courtroom fills. Everybody is in place but Schlesinger. Judge Cail Lee asks where he is.

“He’s being sought,” comes the reply.

Finally, the lawyer strides into the courtroom.

“Mr. Schlesinger, are you ready?” the judge asks patiently.

“Yes, your honor,” says Schlesinger, walking to the lectern.

Schlesinger begins to address the jury, giving his version of 17 fateful hours after the “18-month-old, beautiful, blue-eyed, blond-haired, bouncing baby boy” entered Broward General Medical Center with a wheeze that disturbed his mother. Schlesinger talks about the buildup of problems as he drums his fingers on the jury box. He describes “little pocket of air” developing in the boy’s chest. Then he moves to the critical moment.

“The match is lit,” he says. “Whether it’s going to run into a raging inferno at this point depends on what happens next.”

With his left hand he strikes an imaginary match on the jury box. You can almost hear the crackle of ignition. The defense attorney shouts an objection. There is a brief conference with the judge, then Schlesinger resumes his opening statement. His voice, at first hushed, rises as he stresses the progression of events in the intensive-care unit.

“He is taking 60 breaths a minute,” Schlesinger says of Justin. “He has a heart-beat of 180 beats a minute. He’s trying to blow carbon dioxide out. Phoooh!”

The jury seems to be breathing hard as Schlesinger transports them inside Justin Bates' tiny body. Now the medical jargon is flying. He speaks as if the jury knows what he means by *subcutaneous, intubate, cyanotic, a PCO gas level beyond 60*.

Suddenly, he grabs an easel and begins sketching.

"Let me show you," he says, apologizing for the quality of his drawing of a chest cavity, which is actually quite good.

"Midnight came and midnight went and no blood gases were done," he says, pausing to let the jurors share his disbelief. He turns toward the boy's mother, Cynthia Bates, sitting in the courtroom gallery.

"The mother is sitting there. From 7:30 in the morning she sat there with the child's grandmother until 3:30 the next morning, when she was asked to sign a consent form to inset arterial and chest tubes."

Now his is talking about the tragic events of 4:30 a.m.

"Justin's heart began to slow down," Schlesinger says. "And an alarm went off in the intensive-care unit."

Talking rapidly, he describes a panicked effort to inset a needle in the boy's stomach. Again he slaps the jury bench.

"Justin Bates wasn't there anymore," he says angrily. "They saved his life. But he was not the Justin Bates they brought in, not that bouncing baby boy."

Schlesinger describes the boy as he is today, a spastic quadriplegic. He talks of the spiraling medical costs, already totaling more than \$1.5 million in five years.

"None of us will ever be in Justin's world," Schlesinger says. "We know he feels. We know he responds when uncomfortable, like when they discovered he had a broken leg. He has continued to grow. But no one will ever be able to enter his world."

The lawyer looks again toward Cynthia Bates. "She loved her son," he says quietly. "She loved him then, she loves him now. But she will never be able to have him."

After addressing the jury for an hour, Schlesinger is nearly finished.

"Justin Bates did not receive the medical care he deserved," he says, summing up. "Hopefully, at the conclusion of this case, he will receive the care he deserves for the rest of his life. That is what we will prove to you, ladies and gentlemen."

He returns to his chair, slumps down and crosses his long legs, seemingly fatigued from the ordeal he has just relived.

A week late, the jury awards Justin Bates and his family \$8.5 million.

Schlesinger's fee? He won't say.

Is Sheldon Schlesinger an ambulance-chaser or a Good Samaritan? Ask 10 doctors and the vote probably would be split. They cringe at the sound of his name, even when heard in other contexts, such as the 16 years he served on the board of trustees of Broward Community College, or his years on the board of Nova University Law School.

But one doctor who has treated Schlesinger, openly admires the attorney's extraordinary medical expertise. "I've taken care of Shelly and his family," the doctor says, "and I tell him, 'if you have a problem, come to me. Don't go in the hospital – they might kill you!'"

ONE MAN WITH EXTENSIVE COURTROOM EXPERIENCE opposite Schlesinger is Richard Stull, president and chief executive officer of the North Broward Hospital District. For 13 years Stull provided liaison between Broward General Medical Center and its doctors on malpractice matters. After participating in 18 medical mediations, 33 trials and 300 depositions, Stull says, "I've seen a lot of lawyers, but Schlesinger stands out above all the others. A lot of people claim not to like him, but if you were truly wronged through medical negligence, I think even many doctors would admit they would go to him."

Stull knows all of Schlesinger's courtroom techniques, and has seen them work time and gain.

Explains Stull, "One of his techniques is to hold up the medical record before a doctor or nurse and say, 'Now wouldn't you agree this is the best evidence we have of what happened in this case?' And the fools usually say yes. The correct answer would be 'no sir, there may be something in that medical record that when I see it will bring up an independent recollection.' Once he gets you to admit the record is the true account, he's got you."

While some doctors may dislike Schlesinger and what he represents, the feeling is not mutual.

"I am not a frustrated doctor," the attorney says emphatically. "I'm a lawyer. I have the greatest respect for the medical industry. But like anybody else, sometimes they make mistakes, and their mistakes can be catastrophic.

"I expect a medical professional to treat me professionally, just as if they came to me I would treat them professionally. I suppose we are adversaries, but I have given advice to doctors, and if I have no conflict of interest, I help them in every way I can."

Schlesinger said that on a Friday morning. The following Sunday, as always, they prayed for Susan Von Stetina at St. Anthony's Catholic Church.