

**Wall Street Journal 10/26/07**

## **Doctor Roils Colleagues in Debate on Fetal Monitors**

### **Barry Schifrin Testified Against Peers for Decades; A Professional Censure**

By  
Heather Won Tesoriero

As a young doctor 40 years ago, Barry Schifrin worked with the Yale medical team that pioneered the electronic fetal monitor. The machine, which tracks a fetus's heart rate during labor, was developed to help reduce fetal death and brain damage.

But in an early experience, Dr. Schifrin says he saw trouble ahead: He was a bystander as an obstetrics team interpreted a fetal monitor's reading to be an impending crisis and rushed to deliver the baby by Cesarean section. Dr. Schifrin took a look at the reading and thought the baby was fine, but kept his opinion to himself. The baby emerged healthy, he recalls, and the surgery had been unnecessary.

The incident, he says, showed him doctors could misinterpret data from this technology to the potential detriment of patients. His crusade against that has put him squarely in the middle of a debate in academic halls over the usefulness of fetal monitors. But it is his work as a paid expert witness, testifying against other doctors, that has antagonized his profession and solidified his reputation as a renegade.

Dr. Schifrin, 69 years old, has fallen out of favor with peers. Even so, questions he has raised around fetal monitors remain contentious -- partly because they are often at the heart of malpractice cases. His career arc is a window into the interplay of technology, medical practice and the legal system when things go wrong.

Obstetrics is one of the most sued medical specialties in the country, and its doctors shoulder some of the highest malpractice-insurance costs. "Fetal monitoring has become one of the tipping points in the evaluation of medical-malpractice cases," Dr. Schifrin says. "It's not the only factor." He calls his expert-witness work "the greatest education of my adult life."

Dr. Schifrin has testified against other doctors hundreds of times in the past three decades. In 2004, the American College of Obstetricians and Gynecologists censured Dr. Schifrin, for testimony he gave in a malpractice case. He later resigned from the organization.

In "Damages," a 1998 book that chronicles a Connecticut family's odyssey in a medical malpractice case, Richard Jones, a former president of the American College of Obstetricians and Gynecologists,

is quoted as calling Dr. Schifrin someone "most of us view as a terrible waste, a guy of enormous talent who could put it to better use."

There were great hopes for the fetal monitor when it was introduced into widespread practice in the 1970s. Fitted to the belly of a woman or placed directly on the fetus during labor and delivery, the monitor tracks the rates of the mother's contractions and the fetus's heart. Readings create a line with small but unpredictable peaks and valleys. When the baby's heart rate drops, the peaks and valleys are deeper and more varied.

Before monitors became widely used, doctors or nurses would use a stethoscope to periodically check for the baby's heartbeat, a procedure that was time-consuming because it required care providers to take the baby's heartbeats at regular intervals.

#### **Valuable Information**

Fetal monitors are now standard in virtually every U.S. hospital. In 2002, 85% of fetuses in the U.S. were assessed with the electronic fetal monitor. The medical community agrees that the devices have almost eliminated stillbirths and can provide valuable information about a baby's status during labor.

But there are limits to the technology; fetal monitoring readings are subject to interpretation, which can play a part in lawsuits.

Some doctors say the monitor may cause unnecessary C-sections. According to data pooled from several studies that appeared in a bulletin issued by the American College of Obstetricians and Gynecologists, use of the fetal monitor, compared with stethoscope monitoring, increased the overall Cesarean delivery rate by 53% and C-sections for suspected fetal distress by 155%. The monitor also contributed to increases in the use of vacuum and forceps during delivery, the bulletin said. Vacuums and forceps are applied to a baby's head when the baby won't come out. The instruments may increase risk of injury to the baby during delivery.

The report concluded that the false-positive rate of electronic fetal monitoring for predicting adverse outcomes is high.

#### **'More Harm Than Good'**

"It's done more harm than good," says Todd Rosen, an obstetrician and assistant professor at Columbia University College of Physicians and Surgeons. "We monitor way too much."

Yet there are currently few alternatives to fetal monitors, and doctors say the device is likely to remain part of most deliveries.

Even doctors who say that the fetal monitor isn't perfect are concerned about the way that the readings, known as "tracings," are often used against doctors in malpractice cases. Maurice Druzin, chief of the division of Maternal-Fetal Medicine at Packard Children's Hospital and vice chairman of the department of obstetrics and gynecology at Stanford School of Medicine, has been an expert witness in several cases, on the opposite side of Dr. Schifrin.

Fetal monitoring "has been used in litigation to prove the point, oftentimes inappropriately," says Dr. Druzin. "I spend a lot of time trying to defend doctors from inaccurate, dishonest testimony."

Dr. Schifrin says he has always maintained that the fetal monitor itself isn't flawed; the problem is how doctors and nurses put it to use. Being able to review monitor readings from so many birth-injury cases, he says, has enabled him to understand where things go wrong.

Dr. Schifrin grew up in New Rochelle, N.Y., the son of a prominent obstetrician. His father was a founding fellow of the American College of Obstetricians and Gynecologists. After attending Chicago Medical School, he got a fellowship at Yale to work with Edward Hon, an early developer of the fetal monitor.

A father of three, Dr. Schifrin estimates he has delivered some 6,000 babies in his career. His favorite part of the job never changed. "Right after the baby's born, when you're standing with Mom and Dad and the baby, getting your photo taken, to me, that was the happiest moment," he says. "I never got tired of that."

Early on, he was approached by a lawyer who had read one of his fetal-monitoring articles. The lawyer asked if he would be an expert witness in a "bad baby" case, a term sometimes used in legal circles for birth-injury cases.

Dr. Schifrin says that at the time he knew nothing about medical malpractice or the role of expert witnesses. He took his first case out of curiosity, he says. By word-of-mouth, he was soon a sought-after expert.

He says he likes examining complex medical situations detective-style to see where things went wrong. He also acknowledges that he's contentious and likes sparring with peers.

Thirty years ago, he set up a consulting company, to review possible malpractice cases. Since then, he estimates he has reviewed more than 1,000 cases, given depositions in 600 to 700 cases and testified in about 150 trials. He has earned approximately \$2.25 million for his expert witness work over the course of his career, according to court transcripts.

He practiced medicine throughout and says his legal work wasn't "much more than 15% of my time." Depending on the number of hours, a single case pays anywhere from a \$2,000 to \$5,000. Dr. Schifrin says the most he ever made from a case was \$25,000.

In 2000, Maria Spraitz gave birth to Sarah, who appeared healthy at over eight pounds, but wasn't able to breathe on her own. Doctors determined Sarah had severe brain damage caused by what they surmised was extensive blood clots and recommended she be taken off the respirator, Ms. Spraitz says. As devout Catholics, the couple struggled with the idea.

Sarah continued to decline and 10 days after she was born, was taken off a respirator and died.

Ms. Spraitz and her husband, Edward, were desperate to know what went wrong. Advised by a doctor to consult an attorney, they were rejected by several lawyers who said theirs was a difficult case and that it would be costly to hire experts. And there wasn't enough money in it for the lawyers because California has a \$250,000 damages cap on birth-injury cases.

A doctor not involved with Sarah's delivery reviewed the records and sent the couple to Dr. Schifrin, Ms. Spraitz says. Ms. Spraitz called Dr. Schifrin and recounted what happened. "He was the only one who gave me a legitimate explanation for why my daughter never woke up," Ms. Spraitz says.

Dr. Schifrin says he has seen many cases where the monitor was detecting the mother's heart rate, elevated by the stresses of labor, rather than the baby's. He says that if the monitor had been reading the baby's heart rate, it would have showed an abnormally low heart rate, suggesting oxygen deprivation. Monitoring with a stethoscope also might have shown this, he says. After Dr. Schifrin reviewed the fetal monitor readings, he agreed to testify in the case.

He put the parents in touch with the attorney who took the case. According to Ms. Spraitz, the five physicians who testified on behalf of the case, including Dr. Schifrin, did so pro bono. Dr. Schifrin says he received no payment for testifying or consulting in this case.

The couple brought suit against the hospital and the obstetrician. The hospital settled, but the obstetrician held out. The case went to trial in Los Angeles in January 2003. On the stand, Dr. Schifrin showed the jurors the fetal-monitor readings and gave his interpretation of them.

The jury deliberated for three days and without knowing there was a cap, voted to award the couple nearly a million dollars. They received the \$250,000 cap amount.

In a written statement issued through her attorney, the obstetrician, Miriam Mackovic-Basic, called Dr. Schifrin's testimony "particularly untruthful." She says that the autopsy revealed that the infant had an extensive clotting disorder that predated the delivery. "The infant's injury and death had nothing to do with the delivery," she said in her statement. "I don't believe that this was a failure of the fetal heart monitoring; this was a failure of the legal system."

Dr. Mackovic-Basic, who is still practicing, said in a phone interview that she felt "terrorized" by the case. Of Dr. Schifrin, she says: "I personally think he's a tragic figure...He's brilliant and well-spoken, but he destroys peoples' lives."

Dr. Schifrin stands by his testimony in that case. "I have invariably kept my remarks to the facts surrounding the medical issues in the case," he says.

A decade ago, the American College of Obstetricians and Gynecologists, known as ACOG, created a peer-review grievance process, which allows members to lodge complaints against peers, including for alleged unethical expert witness testimony.

In 2002, ACOG created an "expert witness affirmation," a document that members can opt to sign, saying they vow to give ethical testimony. Former ACOG president Charles B. Hammond wrote that "expert witnesses play an important role in the civil justice system," but "too often, however, the College learns about expert witness testimony that is neither fair nor accurate."

Two months prior, an obstetrician in Utah filed a formal complaint against Dr. Schifrin regarding his testimony in a malpractice case.

Dr. Schifrin had prepared an expert report and gave deposition testimony in a case, saying he believed the doctor violated the standard of care. Dr. Schifrin gave his opinions on the use of a

vacuum to deliver the baby and the use of a size index that can be used to assess newborns. The case settled in 2002. Terms weren't disclosed.

#### ACOG Censure

In 2004, ACOG censured Dr. Schifrin. The group declines to elaborate on why he received the reprimand. In November of that year, he resigned from the organization.

The ACOG censure was devastating, Dr. Schifrin says. "Understand that a censure isn't saying, you made a mistake," he says. "It's saying you knowingly lied." He says he stands by his opinions.

Dr. Schifrin says that the best thing doctors can do is admit fault when they're at fault. "Look what anesthesia did," he says.

Anesthesiologists were one of the most-frequently sued medical specialists, and carried some of the heftiest insurance premiums. In 1985, the American Society of Anesthesiologists created a database to monitor and review every case brought against an anesthesiologist to understand where things might have gone wrong. It also started a patient safety foundation charged with the sole purpose of researching and improving outcomes. Patient safety has improved and insurance premiums for anesthesiologists in 2005, adjusted for inflation, were lower than in 1985, the group says.

Dr. Schifrin says he gave up delivering babies in 2003 because he was "too old." He is now employed part-time by Kaiser Permanente, the California health network, where he teaches and consults. He also consults at hospitals, reviewing cases with bad outcomes.

Since the censure, Dr. Schifrin says his expert-witness work has declined, which he says he welcomes. He says he's focusing on a new business venture: developing a computer-based training program for doctors and nurses that teaches them about fetal monitoring.