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THE WAR HORSE

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CHRIS SEARCY
GOES TO BATTLE FOR
ACCIDENT VICTIMS

THE WARHORSE

by STAN SINBERG

photography by LARRY MARCUS

Christian Searcy is standing before a large poster board in his office at Searcy Denney Scarola Barnhart & Shipley, crammed with roughly 100 snapshots and fading Polaroids of smiling children and average-looking families.

At first glance, they appear to be pictures of his extended family. But point to any one of the photos and ask "Who's that?" and Searcy will tell you their names and launch into a story that begins with idyllic scenes of kids eagerly piling into a car to go to school, or parents traveling to anticipated family reunions, or couples on vacation. Then he introduces another element, like "tractor trailer" or "freight train" and suddenly his voice cracks and his eyes well up and you shudder because, considering that Searcy is a plaintiff's attorney who represents victims of catastrophic accidents, you know this story is going to turn out horribly wrong.

Even that's an understatement. Those pictured in the photos, or members of their family, invariably wind up paralyzed, brain-damaged, charred, dismembered, disfigured or dead. Perhaps compounding the tragedies, many of the cases involve avoidable human error: a driver on a cell phone rear-ending a car and causing a collision with oncoming traffic; a chain-store pharmacist mistakenly dispensing 10 times the dosage of a blood-thinning drug, resulting in massive brain damage; a physician continually missing common warning signs of a treatable cancer, until it's not.

The only silver lining, if it can be called that, is that many of the photos are signed, thanking Searcy for his assistance in winning a verdict or settlement that compensated the victims, punished the wrong-doers and gave the victims a chance at a new life, sometimes bordering on the miraculous.

Take the vacationing Michaud family: Donna, Jerry and their three small children. While stopped in the emergency lane in broad daylight, their car was run over by a speeding tractor-trailer, killing Jerry and his daughter. The car burst into flames, burning the 3- and 6-year-old sons to death. A person described by a witness as a "black woman" (Donna is white) crawled through the cracked windshield.

Shortly thereafter, John Berger, Jerry's best friend, arrived. He and Jerry had a pact that if something happened to one of them, the other would look after his family. Donna, who has since recovered but not 100 percent, was in a full burn suit for a year, and John

visited her every day. Romance eventually blossomed, and they married. Although Donna had previously had her tubes tied, the couple tried various methods to get pregnant, all of which failed. Meanwhile, the first trial on the case ended in mistrial. Before the retrial, a fertility specialist told Donna that her stress levels were off the charts, inhibiting conception. The couple directed Searcy to settle the case, and nine months later, Donna gave birth to twins, Meredith and Christian, "named after me," Searcy says, proudly.

If Searcy seems to take these cases personally, it's partly due to his practice of interviewing the aggrieved parties for hours. "You need to know who these people were 'before,' so a jury truly understands what was lost," he says.

PERSONAL INTEREST

Searcy grew up in the Lakeshore section of Jacksonville and graduated with distinction from the University of Virginia, where he played on the varsity tennis team, was light heavyweight champ for two years and, on the suggestion of his father, plaintiff's attorney Henry Martin Searcy, majored in speech and drama because they were "essential trial lawyer skills."

He attended Stetson University College of Law on an academic scholarship. Right before Searcy graduated, his father recommended that he interview with Bob Montgomery, an insurance defense lawyer whom he'd opposed in court several times. Montgomery offered him a job, but Searcy wanted to represent plaintiffs, so he took a position with a Miami firm instead.

A year later Montgomery re-approached Searcy, informing him that his firm was moving more into plaintiff's law, and offered to double his salary. Out of loyalty, Searcy rejected the offer, but when Montgomery learned that Searcy's wife was driving a "clunker" of a car with some safety concerns, he sweetened the pot with a brand new Cadillac. Searcy relented. "I sold out for the car," he laughs.

In those early days, Searcy represented insurance firms many times. While his desire to win trumped all, after he won a case he'd find himself feeling sorry for the victims.

For Searcy, this wasn't some abstract consideration. When he was 12 years old, his family was driving back from their beach house when a drunk driver in a Lincoln Continental ran a stop sign and broadsided their car. Searcy estimates the vehicle spun around eight



Searcy regularly lands jury awards in the seven figures.

or nine times. When it stopped, Searcy was OK, but his 13-year-old sister was in a coma, and his little brother Henry, 6, had a hole in his forehead. He died that night. His sister emerged from the coma after three weeks and eventually went on to marry and have a family, but with, Searcy says, a "substantially changed personality."

The day after his brother died, Searcy was walking on the beach and his cousin introduced him to "the most beautiful girl I'd ever seen." He's been married to Priscilla for 39 years, after dating for seven.

A second tragedy occurred on what should have been one of most joyous days of his life—the birth of the first of his four children. Although this type of pregnancy typically called for a C-section delivery, the obstetrician in charge objected to performing one, saying Priscilla was a "beautiful young lady." Instead he performed a much riskier "high-forceps delivery"—now illegal—and Henry Faulk, named after Searcy's deceased brother, suffered extensive brain damage. Today, Henry, 34, comprehends at the level of a 5-year-old, although Searcy says when it comes to video games, Henry is somewhat of an idiot savant. Perhaps surprisingly, Searcy

didn't sue the obstetrician. The doctor was a family friend, Searcy says, who "made a mistake of the head, not the heart."

MAKING A NAME

The firm, then called Montgomery, Lytal, Reiter, Denney & Searcy, gradually moved to representing plaintiffs half the time, until the ethics committee of the Florida Bar issued an advisory opinion "for which we might have been the inspiration," declaring it was unethical to sue an insurance company for which you also performed substantial work. Thereafter, with a few exceptions, the firm represented plaintiffs full time.

The case that put Searcy on the map was one that virtually every other plaintiff's attorney in town had turned down. In 1976, fresh from getting paid at his temporary construction job, Rick Bernard went drinking at a college bar across the railroad tracks. At 3:15 a.m., police were notified that a Florida East Coast freight train had hit someone. When police arrived, they found Bernard on the tracks, unconscious, his legs severed at the knees. A police officer shone a light in his face. Bernard, regaining consciousness, waved him off, saying "Don't mind me, officer. I'm just drunk." Later, Bernard sought to sue the railroad, but he couldn't find anyone willing to represent him.

Searcy took the case, pure and simple, because "I was hungry for plaintiff's cases." Upon investigation, he discovered that police scouring the scene never found Bernard's freshly filled wallet, indicating that he'd been robbed. Buttressing that theory was the big lump on his head, unrelated to the accident. His drinking buddies further told police that he'd left the bar much earlier and not overly intoxicated. Having established that Bernard was likely mugged and hadn't passed out drunk on the tracks, the main issue turned to whether the train should have been able to stop in time from the moment the engineer first spotted an object the size of a man "fouling the tracks,"

as it's called. Searcy established that the engine spotlight threw an 800-foot beam, and that traveling at the 25 mph speed limit, the train had sufficient time to stop without incident. The \$1 million verdict made Searcy the youngest attorney to get a single-injury verdict of that magnitude.

Two other cases within the year further established Searcy's reputation. Another "train" case—this one involving a cement truck that was struck after it went through a private crossing—had been dismissed for failure to prosecute after the plaintiff's lawyer committed suicide. Searcy took it, and got the case reinstated.

That was followed by another case he got because the plaintiff was his secretary's father-in-law. Both trials brought back seven-figure verdicts.

Currently, there are 21 attorneys in the firm, and an equal number of paralegals. At any one time, Searcy supervises about 100 cases, reserving, if possible, the most difficult trial cases for himself.

Yet another case involving Searcy and a railroad was featured in the bestseller *Free Lunch* by Pulitzer Prize-winner David Cay Johnston. Paul Palank, a Miami police sergeant who was traveling to

a family reunion by train because he feared flying, was one of eight fatalities when an Amtrak train traveling from Miami to New York hit a faulty Orlon mainline switch in Lugoff, S.C., derailing several passenger cars, which crashed into parked freight cars. CSX, who owned and maintained the tracks, offered payouts that precluded punitive damages and were accepted by all the aggrieved parties, except for one: Angel Palank, Paul's widow. She rejected CSX's claim that the disaster was an unforeseeable tragedy. She retained Searcy and law partner Greg Barnhart.

At the 1997 trial, Searcy showed that, two decades earlier, CSX had cut its track-maintenance spending in half, and a switch stand in the accident had been installed backward 11 years prior without anyone noticing. A part that federal safety regulations required be checked twice weekly had been broken for seven months. Supervisor oversight was extremely lax and, in some cases, nonexistent.

In the end, Palank was awarded \$6 million in compensatory damages, and \$50 million in punitive damages. In Searcy's opinion, even that wasn't nearly enough. Aside from not sufficiently punishing CSX, which had saved \$2.4 billion in maintenance costs over 20 years, the corporation got Amtrak's insurance company to pay the sum.

Further disheartening Searcy, Gov. Jeb Bush signed a law severely limiting punitive damages. Mirroring trends in other states, Florida since 2003 has capped "non-economic" medical malpractice awards at \$1 million when only a doctor is involved, and \$1.5 million if a hospital is at fault, which Searcy calls "ridiculous."

"For mild and moderate injuries, that's no deterrent at all. It only punishes the catastrophically injured, who need it the most."

For Searcy, 2007 was a banner year. Despite Florida being a "non-prejudgment interest" state, which means insurance companies can wait—without penalty of interest—until they get to the proverbial courthouse steps before settling, Searcy found that their offers were substantially less than in prior years. As a result, he opted to take to trial four cases that made the *VerdictSearch* "Top 100 Verdicts," for a combined total of over \$100 million.

- A baby born brain-damaged due to an obstetric nurse administering Pitocin to the mother and the hospital staff ignoring signs of complications that should have prompted a halt to the administration of the labor-inducing drug. When faced with a lawsuit, the hospital's owner, Lee Memorial Health Systems, bragged it had never had a plaintiff's verdict against it for more than \$200,000. A jury brought a \$30.8 million verdict.
- A woman talking on her cell phone rear-ended a car, sending it into oncoming traffic and resulting in the driver's death. That resulted in a \$21.6 million settlement.
- A couple who gave birth to a severely disabled baby were assured by University of South Florida geneticists, before trying for a second child, that the disorder wasn't hereditary. The same disabling disorder then recurred in the second child. A jury verdict came in for \$23.5 million.
- A Walgreen's pharmacist erroneously filled a prescription for Warfarin, a blood-thinner used during a 42-year-old woman's breast cancer treatment, with 10 mg instead of 1 mg, resulting in cerebral bleeding and, a short time later, the woman's death. A jury awarded \$25.8 million.

While some lawyers spend their time weaving elaborate strategies,



Notre Dame law student D. J. Ward; Christian Searcy; then-Sen. Barack Obama; Darryl L. Lewis, partner at Searcy Denney Scarola Barnhart & Shipley; and paralegal investigator Chris Pilato attend a fund-raiser for Obama in Jacksonville.

Searcy favors a basic approach. "We need to listen to our clients. They're trying to tell us how to win their cases," he says.

He also makes a practice of presenting key witnesses when jury attention is most focused, in the morning and at week's beginning and end, and also calls witnesses in an unexpected order to help his case.

In one horrific case, several lanes of a highway were closed due to construction, forcing a mother driving her three children to cross five lanes at an intersection to make a turn. Her car was "T-boned" by a speeding off-duty police officer going the other way, resulting in one child dying and two being paralyzed. At the trial, instead of focusing on the driver, who had no insurance, Searcy first called technical witnesses testifying that the maintenance plan for the intersection under construction was defective, because he wanted the jury to hold the construction company, and the county government, primarily liable for the damages.

Because the firm represents "victims of catastrophic injuries both physical and financial," it also handles cases involving commercial disputes, intellectual property, unsafe products and mass torts, including actions against surgically inserted "pain pumps" that destroyed shoulder joints, contaminated contact lens cleaner that damaged corneas, and tobacco companies.

In 2005, the Florida Justice Association (formerly the Academy of Florida Trial Lawyers) bestowed its highest honor, the Perry Nichols Award, on Searcy; in 2006, the Southern Trial Lawyers Association picked him for its annual War Horse Award honoring outstanding skill as a trial advocate and extraordinary contributions to the cause of justice.

About nine years ago, Searcy received a sort of bittersweet justice when he represented the Korzeniowski family, whose delivery-room circumstances were very similar to those of his son Henry. In this case, Bethesda Memorial Hospital offered \$1,000 each for the mother, father and child. Searcy and partner David White brought in a verdict of \$63 million.

It's getting results like that—and looking at the pictures of the families that adorn his office wall—that inspire Searcy to fight another day. ◀