

# Case of botched surgery is tale of greed, selfishness, self-preservation

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When Melodie Simon testified Thursday that she didn't feel victimized by her attorney Noel Gage, you could sense a silent "hooray" from the defense attorneys representing the Las Vegas lawyer on conspiracy and fraud charges.

Whoopee! The supposed victim of the crime doesn't feel victimized! The government's first witness, the schoolteacher paralyzed from the chest down, said she didn't think Gage had done anything wrong in how he handled her case. She felt he worked hard for her and did a good job getting a settlement of \$2.3 million, even though she received only \$1.3 million.

But could Gage have gotten her more if he'd sued the two doctors who operated on her?

Admitting she's no expert on legal strategy, Simon didn't weigh in on whether Gage should have sued her two surgeons, Dr. John Thalgott and Dr. Mark Kabins. Instead, her attorney sued the anesthesiologist, Sunrise Hospital and Medical Center and the radiologist.

Gage told her the surgeons were less culpable and they'd have a stronger case if the surgeons testified against anesthesiologist Dr. Dan Burkhead.

Her opinion of Thalgott, the spinal surgeon who performed the operation that had such horrible consequences?

Simon hesitated just a moment. "Arrogant asshole."

Moments later, Thalgott was proving her correct, telling a story of greed, selfishness and self-preservation. Thalgott is one of the federal government's two star cooperating witnesses who admit they were insiders in the conspiracy. He and Dr. Ben Venger have immunity for their testimony.

Thalgott said he's been a spinal surgeon in Las Vegas since 1986 and in the early 1990s Kabins joined his practice but worked more on cases involving personal injury claims. In 2000, Thalgott reviewed the balance sheets and saw that while he was doing about 400 cases a year and earning \$2 million, Kabins was performing 500 surgeries and making 300 percent more.

Howard Awand, whose trial is scheduled for October, was "the go-between" between Kabins and other doctors and personal injury lawyers, Thalgott said.

When he saw the financial gain, Thalgott decided to pursue more medical-legal work. "I did 14 cases Awand was involved in."

He operated on Simon on Aug. 3, 2000, but had a planned vacation and left her in Kabins' care. The day after the surgery, she experienced a spinal fluid leak. Burkhead put in a catheter to drain the fluid but had trouble, stabbing her repeatedly.

Her condition deteriorated, and on Aug. 9, Kabins performed a second surgery to clean out an epidural hematoma. The government and the defense will present witnesses who will disagree over whether the delay in operating on Simon was substandard care. Thalgott said he wouldn't have waited.

Thalgott's testimony was compelling, though disgusting.

When Thalgott learned of Simon's deterioration, "I was horrified. This was the worst possible thing that could happen to a spinal cord physician."

Oh, and he did feel horrible for Simon.

He thought that if he was successfully sued and this happened again, he would be uninsurable and wouldn't be able to practice. So he asked Awand if he could protect the surgeons from being sued.

Gage, Awand and the two surgeons met in 2001 to discuss Simon, although no lawsuit had been filed. "It struck me as a little odd," Thalgott said. The meeting began with Gage saying: "Are we going to have a meeting that never happened?"

Thalgott said they agreed to place all the blame on Burkhead to protect the two surgeons. In January 2002, the anesthesiologist was sued; the surgeons were not.

Thalgott gave his deposition May 15, 2002, blaming Burkhead entirely. On Thursday, he admitted that was a lie.

Now he contends Kabins' delay in operating after a probable spinal epidural hematoma was diagnosed probably contributed to Simon's paralysis.

At the deposition, he was represented by Robert Eglet rather than his usual attorney. Thalgott said he wasn't questioned about the delay in cleaning out the hematoma.

Why was he willing to lie under oath and shift all the blame to someone else? "It's only natural to circle the wagons for one of the people you work with," Thalgott said.

That attitude launches a lot of corrupt cover-ups today. Protect yourself and the ones you know and to hell with everyone else, including Melodie Simon.

Jane Ann Morrison's column appears Monday, Thursday and Saturday. E-mail her at [Jane@reviewjournal.com](mailto:Jane@reviewjournal.com) or call (702) 383-0275.