

Need a lawyer to take on the medical industry, the NFL or some other massive entity? Alan Milstein is your man

The Goliath Slayer

Alan Milstein — the lawyer who broke new ground when he sued the University of Pennsylvania over its medical-research standards, who may redefine when a young football player is allowed to go pro, who is helping to forge new law in the frontier field of medical ethics — *that* Alan Milstein would rather talk about classic rock.

“Primarily Dylan,” he says. “Seventy-five percent of what I listen to is Dylan. Also some Dead, some Springsteen, but largely Dylan.”

Having just returned home from his office at Sherman, Silverstein, Kohl, Rose & Podolsky in Pennsauken for an irregular Saturday-morning meeting, Milstein is dressed casually. He sports

longish hair that, combined with his direct but jovial eyes, makes him look like a cross between a tall Robert DeNiro and a less diabolic Chris Sarandon. He’s leaning back on the sectional in his living room, and if you have no idea the owner of the house is a lawyer, by the looks of the place — no study, lots of pictures of the kids (he and his wife, Audrey, have two daughters and

a son), stacks of books on history, philosophy and, of course, the music of the ‘60s and ‘70s — you’d picture him teaching American studies at a college, something Milstein actually did for a few years. Before entering law school at Temple University, he was at the University of Kansas teaching, among other things, a course on influential American artists such as Dylan.

“He’s somebody who speaks to me,” Milstein says. “He allows me to contemplate, to think about things, see different patterns in what he says.”

But don’t mistake Milstein for some moldy remnant from Woodstock grooving to his own long-unfashionable beat. An old hand at the interview game, Milstein is as canny as they come. He’s well aware of how important perception can be for a lawyer both in the courtroom and outside of it. When one newspaper article mentioned that the legal rebel zoomed to and from work in a silver Spider sports car, Milstein was quick to get rid of it for something less showy, a Toyota Solera. The Spider really wasn’t comfortable for his tall, lanky frame, he explains, but he confesses that it also wasn’t the kind of image he wanted to project.

A native of Baltimore, Milstein earned his Bachelor of Arts at



Left: Jesse Gelsinger, before his tragic death in 1999
Right: Milstein, left, takes on the NFL with Maurice Clarett, far right, his mother and legendary running back Jim Brown

BY MICHAEL Y. PARK
PHOTOGRAPHY BY LARRY MARCUS

the University of Maryland in 1975 and a Master of Arts at the University of Kansas. He ended up staying in Lawrence for five years as an instructor in the English literature and American studies departments. When Milstein's wife became pregnant with their first daughter, Sara, he realized he couldn't support his family the way he wanted on an instructor's salary. So he enrolled in Temple Law School. While attending classes, Milstein was also an art critic for the now defunct *Philadelphia Bulletin*.

After graduating in 1983, he clerked for one year for Judge Abraham Gafni of the Court of Common Pleas of Philadelphia before taking a job there with the now-defunct Mezivro Gelman Jaffe Cramer & Jamieson. He spent eight years there before joining Sherman, Silverstein, Kohl, Rose & Podolsky, where he has been the past 13 years.

His career has been filled with memorable battles on behalf of heroically tragic figures, such as Paul Gelsinger and his son Jesse. Gelsinger is a simple, hard-working family man, a bit naive by his own description, earning a living as a handyman outside of Tucson, Ariz. Jesse, his 18-year-old son, had been taking part in an experimental gene therapy program at the University of

understanding. We started talking about the case and the philosophy of [mystic writer] Carlos Castaneda and we just had an immediate connection."

In pursuing the institutions they held responsible for Jesse's death, Milstein would take American law into places it had never gone before, drawing parallels to what was established in the Nuremberg trials of Nazi war criminals, arguing that the paramount right of a human being is the right to human dignity. A test subject doesn't have the ability to give consent, Milstein says, if the research is being conducted unethically.

"Human beings have an inherent dignity and they cannot and should not be used as guinea pigs for medicine," Milstein says. "The reason we have rules in place is that we all know who makes these sacrifices: the poor, the blacks, the Jews, the oppressed. It's not rich people's kids doing this. Eighteen-year-old Jesse Gelsinger should not have been put in that position, even if he was willing."

Milstein won the Gelsingers an undisclosed — but by most accounts hefty — settlement in the case, and established himself as a lawyer to be reckoned with in the field of bioethics. He also

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Pennsylvania that was supposed to help babies born with the fatal form of the rare liver disorder he suffered from. Though he had his own disease under control, Jesse had signed up in the hope that the research would help newborns live long enough to receive drug treatments. Researchers injected him with a modified virus that served as a vector for the gene. Shortly after his first and only injection, he developed a high fever and went into a coma. Jesse's own immune system began attacking him. The immune system reaction led to a multiple organ failure. Within hours, Jesse was dead.

It was later revealed that several of the protocol requirements had been violated that could have shut down the experiment and prevented Jesse's death. The Food and Drug Administration concluded that laboratory primate deaths hadn't been reported or disclosed in the consent documents. The principal investigator in the research was revealed to have a majority interest in the biotech company Genovo, which would have profited if the gene therapy had worked.

"I was a very angry man," Paul Gelsinger says. "I was adamant that this wasn't about the money, not about us. This was about what was right. And we needed to get this out."

Gelsinger's brother, who was good friends with one of Milstein's partners, referred him to Milstein, and the connection was instantaneous.

"For me, my life has clearly been about doing what's right," Gelsinger says. "I started finding out about how this was wrong, very wrong, on every level. And [Alan and I] had an instant

made more than a few enemies in both the medical and legal professions. Other attorneys accused him of an "ambulance chaser" mentality that left those even remotely connected to a case open to lawsuits. Medical researchers said he was holding back science that could save thousands of lives. Yet he's become a popular lecturer at universities and research organizations on research ethics.

"There are more important things than the advancement of medicine and science, particularly when it comes to the dignity of human life," he says. "Sometimes I say to researchers that there's too much research going on. For the money, for the grants, for tenure, for an article in a journal with your name on it. But then you're using people as things."

Milstein has recently received national notoriety for his work on the case of Maurice Clarett, the Ohio State football player who took on the National Football League in an effort to turn pro before he was old enough. (The NFL requires players to be out of high school for three years before enrolling in the league; at the time Clarett was just two years removed.) Milstein rolls his eyes and chuckles when reminded that it's football, not his work in biomedical ethics, that has made him famous. But Clarett is still another little guy taking on the big man, he says. Milstein and Clarett are preparing an appeal to the U.S. Supreme Court.

"The NFL is bigger than big, and he's a heroic figure for taking them on," Milstein says.

With that he gets up from the interview as he's planned a trip with his wife and kids. "I'm not a workaholic," he says, shrugging. He's just a lawyer looking for answers blowing in the wind. ❖

THE ETHICIST

His critics say he's holding back science, but Milstein says individual rights are more important

