

Summer 2010

# VERDICT

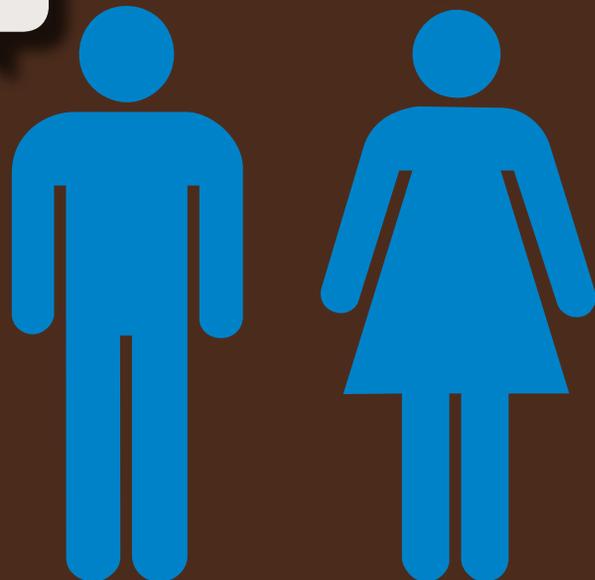
THE JOURNAL OF THE GEORGIA TRIAL LAWYERS ASSOCIATION

## JUROR 2.0: THE ELECTRONIC MEDIA PHENOMENON IN THE COURTROOM



"Please put away  
your phone,  
ma'am!"

RT @ JoeSmith:  
Tweeting from  
jury duty...



# How I Obtained Justice for My Client



*By Jeffrey N. Powers*



**O**n January 7, 2007, Sean Shockley's life was forever changed. He lives by the United States Air Force Code, which is integrity, service before self and excellence in all we do. Tim Hall and I were given the opportunity to represent Mr. Shockley in this case.

Mr. Shockley joined the United States Air Force in 1987. He was born into living the Air Force life as his father was a serviceman in the USAF and moved Sean's family around the country. The Air Force was in his blood. Mr. Shockley married Michelle the same year he joined the USAF and they had three children. On January 6, 2007, Sean drove from Virginia to Warner Robins, Georgia to attend a conference at Robins Air Force base. Upon arriving for the conference, he checked in to the Day's Inn a few miles from the Base.

On Sunday morning, January 7, 2007, Mr. Shockley's son, Chad, went to go eat breakfast at a local I-Hop with his father. They then parted ways so Mr. Shockley could work on his conference

program. While working in his motel room, Mr. Shockley's pen ran out of ink, so naturally he thought to go to the lobby to get another one. He walked out of the room, down the center staircase and when he was almost at the bottom, his feet shot out from under him without warning. He landed on concrete shattering his left elbow into tiny little pieces.

Mr. Shockley managed to drive himself to hospital a couple of miles away. X-rays confirmed that he had severely fractured his left elbow. He was put into a cab at the hospital and went back to the motel to meet his supervisors, Florencio Garza and Magdalena Devitt, who are also in the United States Air Force and had arrived at the motel the day Sean fell. Mr. Garza testified by video deposition and said that the staircase where Mr. Shockley fell appeared to have an oily film similar to an oil spill, and it was down the staircase in splotches where our client fell. It looked like someone had tracked it from the first floor up the stairs. He stated that the foreign substance was not a spilled beverage

but something which was very shimmery and slippery. The day after Mr. Shockley fell, Mr. Garza and Ms. Devitt said the motel employees were pressure washing the floors, staircases and grounds around the hotel.

Tim deposed three of the maids and the owner of the motel. The maids admitted that they sporadically cleaned the floors and staircases with a mop and bucket of liquid laundry soap and water. Sometimes, they would let it air dry and other times they would just sling water around to move the soap and clean the staircases and walkways. The maids admitted that the vapor from the laundry area also blew toward the staircase and that this would cause the floor to be slippery.

Robins Air Force Base is the largest employer in Warner Robins. Before the trial, we obtained a copy of the prospective jurors from the clerk's office. The clerk's office had each juror complete a juror information form which asked how long they lived in Houston County, employer, spouse's employer, their occupation, prior juror service,

what car insurance they had, whether they had filed a lawsuit and whether they were victims of a crime. I called a local law firm in Perry and asked questions about each of the jurors on the list. Talking to a lawyer in the county where we tried the case was invaluable. In fact, the lawyer had represented some of the prospective jurors for accident cases in the past and knew who the leaders in the community were to avoid. Most of the jurors who live in Houston County are connected in some way to Robins Air Force Base—either they work at Robins in the military or in civil service, their spouse did, or somebody in their family is employed there. Of the 24 jurors in our venire, there were eleven who were directly connected to Robins Air Force Base.

We started voir dire with damages. Before I introduced Tim and myself to the venire, I asked, “Has anyone ever walked down a flight of steps and fell because of a very slippery substance that they could not see and shattered your left elbow? Has anyone ever been 750 miles away from home after falling down concrete steps yelling out for help and no one came and then had to crawl to their car? Anyone here ever had three surgeries on their left elbow for any reason? Anyone here ever develop frozen shoulder on their left elbow for any reason? Has anyone ever mopped or cleaned a floor with liquid laundry detergent, such as Tide or some other liquid soap because this is what the motel had done to clean the exterior concrete floors? Of course, we had a fantastic response from a member of the venire when he spoke up, “Now why would anyone do that...If you cleaned the floors with liquid soap that sure would make it slippery, right?” The jury knew we had a very serious injury case and the only thing they had to decide is what caused him to fall down and how much to award.

The jury was then asked if anyone in the panel knew or was ever represented by attorney Ms. Lynn Roberson,

a lawyer from Atlanta who works for the firm, Swift, Currie, McGhee & Hiers? Of course, no one had but the point was made that this national motel chain hired a sharp Atlanta lawyer to represent them. During voir dire, we had a woman who worked as a district manager in safety and loss prevention for Kroger. Her job was to find ways to deter shoplifters and make sure there were no accidents in the store. She had handled accidents like Mr. Shockley’s and reviewed videotapes of customers who fell down shopping in grocery stores and working with defense counsel on accident claims. I asked if she would be able to put that aside in this case and not allow her job experiences to influence her decision if she were picked for the jury. She said she thought she could be fair. I asked if the fact that she was involved in injury claims for Kroger cause her to lean more heavily to the motel’s side? Would she be more likely to believe the Defendant’s arguments? She finally said that she would probably lean closer to the motel but would try to be impartial. Tim and I walked

up to the bench and made the motion to have her struck for cause, but the Judge denied our motion and said that this woman hadn’t yet said the magic words. She was our first strike.

After voir dire, a gentleman on the front row came up and shook my hand and said I sure wish you had put me on that jury because I was going to give you a lot of money because I knew your client’s arm was really messed up. The gentleman had a pony tail, was a self-employed electrician and taught martial arts classes. He had also been a foreperson of another jury which caused us to strike him for two reasons: he was self-employed and had been a foreperson of another jury. He told me that he would have awarded us at least \$300,000 without hearing any of the evidence.

Mr. Shockely’s medical bills were paid by Tricare and they had a lien. The government also asserted a lien of his lost wages because he was paid while being out of work after each elbow surgery. Our client had continued working from home on his laptop even

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*While never seriously injured on active military duty, Sean Shockley sustained a life-changing injury on January 7, 2007 as a consequence of the defendant's negligence. Justice was served, however, by the jury's verdict of \$875,000.*

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though he wasn't physically at work after surgery. Fortunately, when we began negotiating the lien, our client was able to contact his commanding officer and get a waiver of the lost wage lien. We told the jury in both of our closing arguments that the U.S. government had paid the medical expenses and lost wages. Tim and I discussed at length how to explain to the jury the lien situation but realized that people who work for the government had the same benefits our client had, we needed to tell them the truth.

Our client testified that he had to take an annual fitness test to stay in active duty with the Air Force and there would be a possibility that he would face a medical board if he couldn't pass the test. A medical board could force him to take an early retirement from the military. Mr. Shockley was worried about this. The annual fitness test included that he either do pushups, sit ups, run or bike within certain time limits and keep his weight under control. Of course, since he injured his elbow, he had difficulty keeping his weight manageable. Simple things like flossing his teeth, fishing, bowling, tying a necktie and swimming were activities that Mr. Shockley would not be able to do.

Dr. Paul Grutter testified that Sean's elbow had so many broken pieces of bones in his elbow that some were too

small to put back in place. He said that Sean would eventually need a total elbow replacement but was too young to have it. His arm was as good as it was going to ever be.

Mrs. Shockley was a powerful witness. She testified that Sean bowled regularly, fished with their son, played softball and rode horses. She had been with Sean through all the surgeries and rehabilitation. She slept next to him as the loud constant motion machine kept them awake. This is a machine that he had to use to keep his arm from becoming frozen and he used it 21 hours a day. On the last surgery, Sean had difficulty regaining consciousness from the anesthesia and he almost coded in the operating room. Mrs. Shockley was terrified of Sean having to undergo another surgery and having to live without a husband.

Tim deposed the owner of the motel, Mr. Bhavesh "Bobby" Patel, on November 2, 2007. Mr. Patel testified that Molly Fooks was in charge of running the motel while he was in India getting married in January of 2007 and he was not at the motel when our client fell. In Mr. Patel's deposition he said Ms. Fooks was fired because she got caught stealing money from the motel and that he did not trust her. She was never prosecuted or arrested for stealing money from him. But at trial, Mr. Patel changed his testimony

and said he did trust Ms. Fooks and must have been mistaken when he was deposed. Mr. Patel said on a monthly basis, the motel would undergo a routine pressure washing of all walkways, breezeways and staircases, but this had been done before Mr. Patel left for his wedding in India. There was no reason to be pressure washing the area of where Mr. Shockley fell unless the motel employees realized there was truly something slippery on the concrete. We argued that they were cleaning the area where Sean fell because all of our witnesses felt the slippery film on the concrete.

The Defense called Ms. Fooks who lived in North Atlanta to testify that she inspected the entire property after the accident was reported and could not find any slippery or dangerous areas. Why then did she tell the maids to pressure wash the concrete after the accident? The Defense fought hard to keep us from telling the jury about the subsequent remedial cleaning, but we were able to show the jury the pictures our client took on a cell phone camera and the testimony of our witnesses who saw the maids cleaning the areas. This case was about which side was telling the truth: members of the US Air Force or an employee who once worked for this motel owner but was fired for stealing money while he was out of the country.

The Defense never asked to mediate the case. They disclosed a commercial policy of \$1 million. We demanded the policy limits before the lawsuit was filed. I remember waiting for Tim to depose Dr. Grutter in Baltimore, when Ms. Roberson said, "We never said your guy wasn't hurt from this accident; we just contend that we don't know what caused him to fall down." One week before trial, Ms. Roberson called and said her client was now offering \$100,000 to settle the case. We tried to get the Defense to agree to a high-low but after several phone calls the weekend before trial, they would not agree. After voir dire and a jury was empanelled, Ms. Roberson's client disclosed an excess policy of \$3 million with AIG insurance company. Judge Richardson advised us that he could declare a mistrial or qualify the jury as to the existence of the \$3 million excess policy with AIG. The parties agreed to stipulate to the qualification of additional coverage.

Defense counsel attacked Mr. Shockley about his injury and tried to insinuate that his injury was not that bad and he still hadn't undergone the elbow replacement. They further criticized him for not being in active combat and that his job was mostly sedentary. Lastly, he was attacked for not watching out where he was going when he walked down the stairs. Tim asked the jury to award \$1.4 million. After closing arguments, we were offered \$150,000 to settle. The offer was conveyed to our client and we agreed to let the jury decide the case. After 2.5 hours of deliberation, the jury awarded \$875,000. The jury was very upset about Mr. Shockley sustaining this injury at this motel. After the verdict, the judge allowed the jury to ask questions, and one juror stood up and pointed at the Defendant's table, "You knew the floor was slick...why did this have to happen to this man... why didn't you do something to fix the problem...why didn't you get some-

body to clean the walkways around the motel?" The case was settled approximately one week after the verdict. Amazingly, Sean Shockley was never seriously injured while in active combat when serving our country in the Persian Gulf, Central America, and Europe. But justice was served in a conservative county for a man who had his arm stolen from him by a corporate defendant who refused to take responsibility.

*Jeffrey N. Powers is a solo practitioner in Macon, Georgia. He represents the injured and disabled in personal injury*

*and workers' compensation claims. He received a BA in psychology from Florida State University in Tallahassee, FL in 1990. He received his law degree from the Walter F. George School of Law at Mercer University in 1995. He is a former Bibb County Prosecutor (1995-98) in the Macon Judicial Circuit and since 1998 has practiced civil litigation. He is a member of the State Bar of Georgia Workers' Compensation Section, The Florida Bar, Georgia Trial Lawyers Association, Middle Georgia Trial Lawyers, Macon Bar Association, Workers' Compensation Claimants' Association and American Association for Justice.*

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