SPRING 2024 NEWSLETTER

SPANGENBERG SHIBLEY & LIBER

TRIAL LAWYERS



CIVIL RIGHTS TEAM



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To say Spangenberg's attorneys put their hearts and souls into their civil rights practice would be an understatement. "There is not another area of law more powerful than in these cases," says Spangenberg lawyer Jeremy Tor. "Our firm has represented clients in precedent-setting litigation," adds Spangenberg attorney Nick DiCello, "and there a very rich tradition here steeped in civil rights law."

And the importance of that history—that expertise—cannot be overstated. "This is a very specialized area of the law," Nick says, "and if an attorney doesn't know how to handle the thorny, tricky issues that often arise, they can lose a case for a client that they should have won."

"You have to understand how to overcome what's known as 'qualified immunity,'" says Jeremy. "If you don't know how to do that well, your case could be tossed out by a judge before you ever get near a jury." Qualified immunity shields government employees from civil liability unless they violated a clearly established constitutional right. Thus to overcome qualified immunity, a plaintiff must show both that her constitutional right was violated and the right was, at the time of the violation, clearly established. Clearly established means an appellate court had previously declared the same misconduct unconstitutional. An implication of qualified immunity is that a government employee can in some circumstances violate an individual's constitutional right but escape civil liability.

Both Jeremy and Nick give lectures to other attorneys on how to approach the issue. And both have vast experience in the place where these cases are usually heard—the federal courts. "Jeremy and I both clerked for federal judges," Nick says, "so we know first-hand what judges consider when deciding whether to grant a motion to dismiss a case based on qualified immunity." "If the judge rules for the government on that motion, the case is over," Jeremy says, "and you never have the chance to present your facts to a jury."

With both trial and appellate expertise, Spangenberg is continually arguing cases before the Sixth Circuit and is very much on the front lines in shaping constitutional law when it comes to excessive force cases. Recently, Spangenberg won a case at the Sixth Circuit in Cincinnati that the other side then tried to take to the U.S. Supreme Court. The brief Spangenberg filed with the U.S. Supreme Court helped convince the Court to let the appellate court's ruling stand.

Spangenberg's expertise is a big reason why this has grown into a national practice for the firm. Besides their home state of Ohio, Spangenberg's attorneys have represented clients in Florida, Illinois, West Virginia, as well as other states.

Police officers are not allowed to abuse their power or unlawfully kill another human being. "These cases and the decisions that come from them establish and then enforce legal standards by which a local, state, or even the federal government must treat people," Nick says, "and, in doing so, they make our communities safer."

Wrongful Death-Medical Malpractice

$7 MILLION VERDICT

LAWYERS: STUART SCOTT & MICHAEL LEWIS

Michelle Patrick remembers how nervous Brian was to propose. "He'd gone back inside to quickly ask my parents' permission," she recalls, "and when he came back out, we started driving. He told me later he was so anxious, he almost just threw the ring towards me while we were still moving."

Brian didn't need to worry. College sweethearts, they'd been dating for years, and were deeply in love. And they remained that way through 28 years of marriage, two sons, and half-a-lifetime of wonderful memories.

Only "half a lifetime" because of Brian's tragic death at just 53. "It's a depth of sadness I never knew existed," Michelle says quietly. "You not only lose your partner; you lose your 'us.'" And the way Michelle lost Brian put her on a path that led her to Spangenberg.

Brian was taking ibuprofen for back pain. He was within acceptable dose limits, but the medication (NSAID) can lead to stomach issues. One of the risks of NSAIDs is stomach ulcers. A blood thinner, ibuprofen can make it harder for blood to clot. If a blood vessel in the stomach opens from an ulcer, it can bleed profusely. If not treated promptly, it can kill you.

In May of 2020, Brian suddenly vomited blood. He was rushed to Mercy Health hospital in Youngstown. Once there, Brian stabilized. But he had been vomiting bright red blood, and a lot of it. "That's an absolute red flag to doctors," says Stuart Scott. "If a patient is vomiting bright red blood, that means a blood vessel has opened up in the GI tract and an upper endoscopy should be performed urgently."

But Brian's emergency department doctor did not admit Brian to the hospital for an endoscopy referral. Instead, Brian was released home. Two days later, Brian vomited blood again but this time he collapsed in the family kitchen. EMS rushed him back to the hospital, but he never made it. Brian died from rapid blood loss.

At trial, defense attorneys portrayed the case as one where, because the patent was stable, awake, and no longer bleeding, it was reasonable to send Brian home for follow up with his family doctor. But a picture of a large pool of bright red blood from Brian's first incident, what came to be known as the "bucket of blood" photo, combined with Spangenberg's expert witness testimony, destroyed that defense.

"Our expert testified that, in this situation, a doctor can admit the patient, refer for an upper endoscopy test and find nothing serious, and that's fine," Stuart says. "But our expert drove home the point that, if a doctor releases the patient without an endoscopy, he can't be wrong. Period. Because the patient may not get a second chance. Upper GI bleeds can stop and clot off temporarily but rebleed even more rapidly the second time if the clot is unstable and fails." Exactly what happened to Brian.

Michelle was nervous to testify, but says with Stuart, Spangenberg attorney Michael Lewis, and co-counsel Steve Keefe, "I felt like I had three bodyguards protecting me." In measured, somber tones, Michelle told jurors about Brian, and finished by looking towards the defendant doctor, saying: "The next time a patient comes in with these symptoms, I hope he thinks about Brian and makes different choices."

Genuine to her core, Michelle, according to Stuart, "was the best witness I have ever seen." When the jury came back with a $7 million dollar verdict, Michelle's mom told her, "Brian always took care of you and the boys, and he's still doing that." Michelle believes that—and more. "Brian lived by a motto: always leave it better than you found it," she says.

Michelle cherishes what she had in her marriage. "When you lose so much, you learn so much," she says, "and, hard as it is, I try to have an attitude of gratitude." "I have no regrets with Brian. He knew how much I loved him, and he loved me just as much." The life they shared may have ended, but that love lives on in Michelle. And always will.

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CIVIL RIGHTS/POLICE BRUTALITY CASES—RECENT RESULTS

$17.5 MILLION	$1.65 MILLION
$4 MILLION	$750K
$4 MILLION	$500K
$2.6 MILLION	$500K
$2.5 MILLION	$450K
$2 MILLION	$430K
$1.975 MILLION	$375K