Recognizing a Mild Traumatic Brain Injury During the First Interview

We all have our own personalities, strengths and weaknesses. Therefore we will all have our own methods of conducting a first interview. This is an overview of how I conduct mine.

I ask the clients to fill out a form before I see them with the usual information: Name, address, phone number, email address, emergency contacts, date of birth, injury, occupation, place of injury, how injured, body parts injured, prior injuries, treatment histories, all the places they have been treated in the past and current complaints.

As I go to the outer office to meet them, I observe things about them. I notice whether they are sitting or standing, if sitting, how they rise. If they are standing, how they are standing. How they walk. If they are with a support person, usually their spouse, how the spouse reacts to them. I want to get to know as much about my prospective client as possible before they come into my office.

As all attorneys are different, all clients are different. Most want to talk. Most want to tell me how poorly they are being treated by the insurance company or their employer. I listen for a bit to allow them to vent, but assure them that I have heard these stories before and am more interested in them and how to help them than I am in hearing about their past experiences with the California workers' compensation system right now. I tell them I presume they have been treated badly because most people who have been injured at work are treated like criminals who only want to use their injury to make money. It's insurance company propaganda and it works. Welcome to the workers' compensation world.

Speaking of successful insurance company propaganda, once a guy called me to ask me to represent him. He assured me that he wasn't like "all the other people who claimed to be injured at work." He kept telling me he wasn't like all those other people faking injury because, unlike them, he was really injured. I asked him if he was telling me that my other clients were faking. He said yes, he was pretty sure at least 90% of them were and he wasn't like them. He was really injured. He confirmed for me that the insurance company propaganda has seeped in deep. I told him to find another lawyer.

Getting back to the initial interview, which only occurs after I approve an appointment after the initial phone call, I use the interview to observe and judge.

"Is this person honest?" "Is the injury real?" "Does he/she need/have a support structure?" "Can I help them?" "Do I want to help them?"

Occasionally a compensation attorney will see a stroke or gunshot case. Occasionally we will see an hypoxic (Loss of sufficient oxygen) brain injury which can happen in various ways: Working in an enclosed inadequately ventilated area such as cleaning out a tank or by bleeding out after a serious wound to the point where the brain does not receive an adequate blood supply.

Most of the brain injuries I have seen as a workers' compensation and civil plaintiff's attorney have been caused by falls, auto accidents, fights, impact to the head directly or the result of sudden changes in directional momentum/acceleration/deceleration without direct impact to the head. I call this latter category of cases "Shaken Baby" injuries because there will be no evidence of a direct blow to the head and therefore little evidence in the medical records of a brain injury.

If the potential client comes in claiming broken bones from a fall, cervical or lumbar spine injuries from sudden change in directional forces, such as in an auto accident, or even slip and fall case, my antenna goes up to look for signs and symptoms of brain injury. These are the situations where brain injury is often missed because the doctors and medical personnel are attending to the other injuries.

Although you can look through the internet for great information about symptoms of brain injury, I have enclosed my favorite "go to" checklist for signs and symptoms of brain injury: The Centre For Neuroskills pamphlets that describe the skills and functions associated with damages to the various lobes of the brain, changes that can occur after a brain injury, and the "red flags" to look for that might indicate a brain injury has occurred.

The Centre for Neuroskills puts out many laminated, easy to read, color information sheets that I highly recommend to any professional who may interact with a brain injured person. Their website is a fountain of information. Their locations are worth a visit and a tour of their facilities. Here's the link: https://www.neuroskills.com.

How is it that I seem to identify brain injuries more often or earlier than workers' compensation mill physicians and sadly, other attorneys?

I take time. I listen. I observe. I ask questions.

After going through the initial information on the questionnaire with my client to be, I ask, “How are you feeling today?” Invariably I get the answer, “I’m okay.” Or, “I’ve been worse.” Or “I’m getting better.”

I follow that up with a response like, “Don’t lie to me. Tell me how you are feeling today, now.”

I then get to hear some of the muscular or pain issues. I usually don’t get information related to the symptoms of brain injury because most brain injured persons don’t want to face the fact that they have symptoms related to a brain injury. I might hear about headaches, but at least initially, most of them are in denial about the extent of the problems they are having and often don’t recognize the cause of those problems.

I gave the example about the woman who was calling me for help with valuing her case in a settlement with the insurance company in my other article. I noted I asked her how she was doing and she said, “Fine.”

My response was, “Okay then, settle your case for $8,000.00, but let me ask you some questions first.” Her response to my asking her how her hearing was doing was that she seemed to be losing her hearing in the lower ranges, but that always happens when a person gets older. Not true. A person getting older usually loses hearing in the higher frequency ranges. Her audiologist said it was “odd”, but not that unusual and did not ask about a brain injury or concussion.

She told me that she did have tinnitus, but that it was getting better and only occurred when she was stressed and then only her heart beat, so it wasn’t a continuous buzzing as it was right after her injury. It had “gotten better” to the point where now it was more like a chirping in time with her heart beat when she was stressed or experiencing episodes of high blood pressure. Her audiologist said this was also “odd”, but again did not explore the potential causes with her and did not suggest that she might talk to a neuro-audiologist to get some noise dampening mechanisms that would help her cancel out the tinnitus chirping and hear better.

She did not think to tell me about the fact that she was seeing two images and needed prism glasses until I specifically asked about her vision. “How is your vision doing?” “Funny you should ask. The optometrist says I needed prism glasses.” “Prism glasses?! What do you need those for?” “Well, the doctor said they will help the two images merge back into one.” “What did the doctor say about your needing prism glasses?” “She said it was odd.” “Did she ask you if

you ever had a concussion?" "No." "You've been living with double vision since your accident?!" "It hasn't been too bad." I told her she had to see a neuro-ophthalmologist as soon as possible.

She never did tell me that she had been precluded from driving at night because she could no longer see well enough in the dark to be safe. I heard that from her husband when I asked him how her vision was doing.

I also heard from the husband that when he thought about it, she did seem to be having some comprehension issues. Before her injury she was brilliant and quick. Since the injury there have been times when she's told him to slow down or to repeat himself. She seemed either to be slower or having difficulty understanding complex conversations. That did not happen before the injury.

She did not think her memory had deteriorated much. She said she was getting older and that was what happened as everyone got older, isn't it? People have trouble finding words more often? They forget things? "Yes, but when did this start for you?" "Oh, after the injury."

She said she wasn't depressed. Her husband confirmed this. She had not been getting headaches any more often after her accident than she did before. This surprised me because that is one of the more prominent symptoms of even a mild brain injury. Every brain injury and every person's reaction to a brain injury is different.

This woman really did not want to admit she was having symptoms related to a brain injury. She said, somewhat surprised, that none of the doctors she had seen had ever asked her some of the questions I had asked her. None of them suggested that perhaps her symptoms were related to a brain injury.

I don't think she sustained a "severe" or even "moderate" brain injury. The CT scan in the hospital after the incident was negative. That is one of the hallmarks of so called "mild" brain injuries, negative CT scans and negative MRI scans. But no one measured her brain's glucose uptake and so no one determined whether her immediate post injury cerebral metabolic rate of glucose was normal or impaired.

Most emergency rooms will give a potential brain injured person a CT scan, but not an MRI. They are looking for bleeding. If they see the bleeding in the CT, they often will go to an MRI, but it is usually on a 1.5 machine, not a 3.0 machine. They don't do any of the fancy stuff that Dr. Murray Solomon at Los Gatos MRI does: 3.0 MRI with diffuse tensor imaging and neuroquant. Also, if they get

bleeding on the first CT right after the injury, they may do a second CT in a day or so to see where things are. If the bleeding is gone, the person is considered "okay."

Consequently, if the CT is negative on the first run, there often wont' be a brain injury diagnosis. Recall that the so-called "mild" traumatic brain injury is diagnosed clinically. The diagnosis includes negative CT and MRI scans.

The result of the phone call with this lady is that I will bring her into the office with her husband and that I will take her case. She will be seen by a neuro-ophthalmologist, a neuro-audiologist and a neuro-psychologist. We'll see how she does. If she proves positive for tinnitus with positive testing, that and the fact that she can't drive at night, has double vision and a loss of hearing means that her case will be worth a bit more than $8,000 because she talked to someone who knew how to ask the right questions.

I don't think she has sustained a "serious" brain injury, but she did suffer a brain injury that has been having serious consequences on her quality of living. Without talking to me she might have settled with the insurance company for a minimal sum never even knowing that her symptoms were not the result of aging, but of a brain injury arising from her being hit by a car while walking in a cross-walk.

When a client does come into my office because of a "Shaken Baby" incident, such as occurs in a rear end auto accident, I want to observe them carefully.

Are they squinting? If so I think, "Headache or Photophobia". So I ask them, "Are you squinting?" I can get a number of answers. "Yes, it's bright in here. I've got a headache. Bright lights bother me. No, I don't think so."

The important part is to follow up as if you were in a deposition. "When did your headaches start? How often? Are they getting worse, better, or staying the same? Are they worse since your accident or the same as they were before the accident?"

"You think it's bright in here?" "When did bright lights begin bothering you?" "Do you wear sunglasses?" "Have you talked to an optometrist or ophthalmologist about this?" "If so, what did they tell you about this?" "You're not having double vision, are you?"

I will ask them about "floaters", spots in their vision. These can look like black or gray spots or strings that are often more apparent when a person closes their eyes. They are difficult to look at directly as they tend to move away from a direct gaze.

Often people who have sustained a brain injury, even so called “mild” brain injuries do experience the sensation of seeing floaters. I ask them, “When did you start seeing these things?”

If they ask me to repeat my questions, or look as if they don’t understand, then I’ll start asking the questions that inquire into their comprehension and memory since the accident.

If you have a spouse or relevant other of the individual there, ask whether they have observed any personality changes. Has there been any indication that the injured person is having difficulty understanding sentences? Have they been thinking more slowly? Has their personality changed at all? Do they become angry more easily? Have they been depressed? How have they been sleeping?

Even without a spouse there I’ll ask the potential client these questions. If the client’s spouse is there I’ll ask the potential client first and watch to see whether the spouse rolls their eyes.

You get the idea. Observe. Listen. Ask questions. You may be the first person to mention the possibility of their having sustained a brain injury.

I’ve provided a checklist that I have based on the symptoms and signs provided by the CNS pamphlets. Run through the checklist and look for any symptoms or issues that the person themselves may not even be aware of and then follow up with questions.

You can ask these of the injured person and their spouse. Just go through the CNS checklist.

Have they been having trouble focusing? Are they finding it difficult to wake up in the morning? How’s their judgment been since the accident? Are they able to look at situations and figure them out as quickly? Are they able to do a couple things at once? How’s their emotional status; up and down or the same as before the accident? How’s their balance?

Are they having trouble finding words since the accident? How’s their memory? Do they wander off in conversations? Do they forget where they were in a conversation? Are they losing things: Keys? Papers? Wallets? Purses? More than usual? Are they a bit more emotional?

How's their vision? How's their hearing? How is their reading? Do they remember what they read? Are the words staying where they belong, or are they wandering a bit on the page? What happens when they look at patterns, say on tiled floors or wallpaper? Do items jump out at them? Do they move?

When they see something move quickly by, do they get dizzy? Have they had any vertigo since the injury? (The difference between "dizzy" and "vertigo" is that dizzy is when a person feels a bit off balance. Vertigo is when the room starts spinning and it's difficult to walk.)

Do they have trouble moving from one subject to another in a conversation or doing daily tasks? This is known as "Set switching". People with some types of brain injury have difficulty changing subjects of following changes in conversations.

Has their personality changed at all? Are they more emotional? Are they less emotional? Do they experience motivational lapses? Are they able to initiate conversations and actions?

If they are back at work, how's work going?

If they are in school, how's school going?

How's their speech?

My suggestion is that you go through the checklist and ask questions that will elicit answers in all of the areas noted in the CNS forms and you will discover how frustrating it is to be the first one to diagnose a brain injury and how difficult it is to have the defense attorney accept the injury when there has been no mention of it in the initial post injury medical records.

Now for two examples of brain injuries. This was my first brain injury case. He was related by marriage, so I couldn't dump him as a client. He was an army ranger during his life, a gold miner and one tough guy. He did threaten to fire me a few times.

A rock came out of the ceiling of the mine and hit him on the head. It cracked his hard had and sent him face first into a pile of rocks. He suffered a very significant brain injury.

He had serious memory problems, such that he had trouble remembering what he did from day to day. He also perseverated, meaning that he would focus on one

thing and not be able to let it go or switch to another topic. He couldn't help but letting issues consume him at times.

As I said, this was my first brain injury case. It went on for a few years. There was also a civil part to it because the mine was being supervised by a company that wasn't his employer and the negligent supervision was partially responsible for his injury.

There would be months that I wouldn't hear from this guy, even when I was trying to contact him. He would disappear.

Then there were times that he would call me every day, sometimes twice a day, swearing at me, calling me foul names and telling me he wanted me to settle his case IMMEDIATELY! I was a damned fool attorney for not being able to settle his expletive deleted case etc. etc. and getting him what he wanted.

I would tell him, "Jim, you called me (long list of expletives) of an attorney yesterday. Remember?"

There would be a pause in the loud, boisterous series of condemnations and then the question would come, "I did?"

I would assure him that he had definitely loudly and boisterously called me (long list of expletives) of an attorney the day before and the day before that and perhaps that morning, and every day the week before. I suggested he write down when he called me and what he called me so that he wouldn't have to repeat himself.)

There would be another pause in the conversation while he thought about this rather sage advice and then, invariably he would say, "**WELL, JUST IN CASE I DIDN'T!**" and then go off again.

After a couple weeks of this he would disappear again. That's a type of brain injury.

Here is another example. I was going to a mediator's office with a brain injured client who was able to continue working. We were talking about the mediation. I was explaining it to him. We were talking about what he would and wouldn't settle for. We got into an elevator and a few other strangers got in.

His brain injury had affected his social awareness. He continued talking about the ins and outs of the mediation even though there were three or four complete

strangers in the elevators, some of whom could have been the adjuster or the other attorney. He had no idea of the fact that perhaps he should have stopped talking about his case and he definitely should not have announced what it would take for him to settle the case. But he did. Luckily they were not connected to the case.

Brain injuries manifest in many different ways. They are often tough and expensive to prove. They often take the injured person out of the labor market even though they look "fine" because they are no longer able to be reliable, consistent workers 8 hours a day, 5 days a week.

As one vocational counselor told me years ago, I paraphrase. "Hiring a brain injured person is like buying a used car. You can kick the tires, start the engine, check the oil and the plugs, get a full mechanical inspection and the car will check out. So you buy the car. You hire the person. A couple weeks after buying the car it will run off the road for no apparent reason. Hiring a brain injured person is like that."

That is not to say that a brain injured person cannot get back to work. But it does say that the exterior appearance of the individual is not always a good indication of how the individual will perform in a work situation.

I consider it my job to help these folks as much as possible, first by identifying the issue and second by garnering the evidence to prove it.