

How Attorneys Can Recognize and Present a Traumatic Brain Injury Case

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Unlike a case of a broken bone that might easily be seen on an X-ray, traumatic brain injury (TBI) cases are often much more difficult to diagnose and ultimately present to a jury. Having worked on many of these types of cases—first as a trial attorney, now as a consultant and litigation graphics expert—I developed the following tips and linked to a couple of sample animations below to help other attorneys better recognize a TBI case and prepare it for mediation or trial.

At a recent Consumer Attorneys of California annual conference in San Francisco, attorney Bruce Stern gave a talk on “mild” traumatic brain injury cases, which are often referred to as a concussion, and he made the point that attorneys often overlook the long-term effects of these injuries. One of the reasons cited is that the signs of such injuries can be quite subtle, and they require specialized neuropsychological testing in order to confirm.

However, there are ways attorneys can help to diagnose and present these type of cases. In the first place, making a record of the complaints of the plaintiff is key. Typically symptoms in a mild TBI case are as follows:

- Fatigue
- Headaches
- Visual disturbances
- Memory loss
- Poor attention/concentration
- Sleep disturbances
- Dizziness/loss of balance
- Irritability/emotional disturbances
- Feelings of depression
- Seizures



In most cases, these symptoms will get better over time, but in a significant part of the population they do not. If you have a client who is suffering for more than 18 months with these symptoms after the injury, the likelihood of recovery becomes remote. If symptoms do not resolve, the following diagnostics should be obtained by an attorney if the client has not already had this testing performed:

- A detailed neurological examination is important and will bring out evidence of brain injury.
- Brain imaging with CAT scan, MRI, SPECT and PET scan may be useful.
- Cognitive evaluation by a neuropsychologist with formal neuropsychological testing.

If there is a medical diagnosis that confirms the TBI, then the importance of being able to explain this invisible injury to the jury or mediator becomes the attorney's top concern. Since a TBI diagnosis involves many subtle issues, it is generally quite easy for the other side to come up with precisely the opposite diagnosis based on the same information. In my experience, the best way to create understanding of a TBI for a juror, mediator or other counsel comes down to the old adage "show, don't tell."

In order to bring the issue alive, the essential visual of any TBI case has to be centered around the injury itself, how the body moved, how the head moved and how the injury occurred. This allows the jury to virtually see the injury, and then learn why that movement can result in brain damage.

In a recent case, Cogent Legal was hired by a firm representing a plaintiff who was injured in a bar fight by a bouncer who struck the plaintiff with a glass while he was being held by another bouncer (who was actually wearing a dress for a costume that night). We realized immediately that the facts of the case were compelling, but would be greatly enhanced by an animation of what occurred.

The point of this animation ([view on YouTube](#)) was to visualize the substantial hit to the head that a person takes when they get hit with a fist and glass. We used the plaintiff's own face in this animation by photographing him and then making those photographs into the 3D model. In order for this animation to be admissible, we met with the plaintiff's medical doctor to assure accuracy of the animation. The doctor described what's known as a "coup-contrecoup" injury to the brain in which the brain strikes the side of the skull twice, bouncing back and forth, which is typical of a mild TBI injury.

The animation finished with a short tutorial on how the movement of the brain caused the axons that connect the white and gray matter of the brain to stretch, twist and die. It is this death of the axons that caused the long-term effects. Our medical illustrator attended the meeting with the doctor to assure that her tutorial was precisely in line with the opinions of the doctor.

This case settled before trial, and this video was helpful to the client in the settlement process to show their preparation, their expert opinions and how they would present this case to the jury. As such, the case serves as an example of the argument I made in an earlier post, "[Why Attorneys Should Treat Mediation Like Trial](#)," because being fully ready for trial led to a successful resolution for the attorney's client and avoided a costly, uncertain trial. Had this case gone to trial, having met with the medical doctor and having his review and approval of the final animation would have provided the foundation for this evidence at trial.

In a second case involving a TBI injury to a plaintiff, a different mechanism of injury existed, but a very similar coup-contrecoup injury to the head resulted from a bag of debris being thrown off a roof onto the injured party's head. This video ([view on YouTube](#)) is highly effective because it makes the head transparent to allow the viewer to see inside the head and understand the forces that are exerted on the brain and skull.

Attorneys representing the injured party will have a much greater ability to make their case in the most clear, compelling manner by visualizing and showing the invisible traumatic brain injury with the aid of medical experts, legally admissible medical illustrations, and well-produced, accurate animations.

Please [contact me](#) if you have any questions about Cogent Legal's medical illustrations and animations, or if you'd like to find out more about my firm's expertise in this area.

Morgan Smith is the owner of [Cogent Legal](#), a litigation graphics firm based in the San Francisco Bay Area that develops clear and compelling visual presentations for attorneys to use in mediation or trial. Services include animations, 2D and 3D graphics, medical illustrations, PowerPoint or Keynote presentations, interactive timelines, videos, strategic consulting and trial support. Cogent Legal integrates the legal expertise of a successful trial attorney with the creative and technical talent of a design firm.