

Traumatic Brain Injury: “Focus Groups and Mock Trials: Invaluable Tools for Brain Injury Cases”

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An individual who has suffered a brain injury often looks perfectly normal to the casual observer, but in reality has had his or her life completely altered as a result of the brain injury. Effective advocacy in these cases requires the trial lawyer to know how to educate the jury regarding all of the problems – physical, cognitive and emotional – the client has, and then to motivate the jury to render an award that will fully compensate the client for a life changed forever. Focus groups and mock trials are invaluable to the trial lawyer in formulating the evidence to best educate and motivate the jury in brain injury cases.

Properly designed focus groups and mock trials can provide information regarding the reaction of jurors to: (1) an injury that the jurors cannot see by just looking at the plaintiff; (2) the plaintiff – Was he or she credible? Did he or she seem brain damaged when answering questions? (3) the witnesses – Were they credible? Did they provide sufficient testimony about the plaintiff's ability to function? (4) the scientific evidence – Were the results of the MRI or PET Scan or neuropsychological testing supportive of the plaintiff's dysfunction? (5) the damages asserted by the plaintiff – Can the plaintiff still work? Can the plaintiff still drive a car? Can the plaintiff still enjoy the activities he or she engaged in previously? and (6) the defense to the case – Do the jurors agree with the argument that the mechanism of injury was insufficient to cause a brain injury to the plaintiff? Do the jurors agree with the argument that the plaintiff's current problems are due to pre-existing conditions rather than the traumatic injury to the brain? Such information is extremely helpful to the trial lawyer in deciding the critical issues, such as what themes to emphasize, what evidence to introduce, what type of jurors to keep off the jury, and how much to ask the jury to award.

Focus groups and mock trials are invaluable tools for the trial lawyer in most every case, but especially so in brain injury cases. The information learned from properly designed focus groups and mock trials can make the difference between a poor or mediocre outcome and a really good one.

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