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Civil • Criminal • Probate

TRAUMATIC BRAIN INJURIES **Understanding the Cause and Effects of TBIs**

The experience of Karen and I in dealing with personal injury and death comes from both personal and professional events. Such events are not selective based on race, color, religion, sex or socio-economic status - they impact all of us. That is, in part, what has drawn us to this profession.

On a personal level, Karen and I experienced our own traumatic event on September 01, 2000. On that date I was driving my Dad and I to his sister's house near Colorado Springs. Just a few miles and minutes from her home we were t-boned by an 18 year old male driving intoxicated. It was an event that changed our lives and set in motion a future much different than we expected.

The wonderful thing about a Traumatic Brain Injury (TBI), formerly referred to as a Closed Head Injury, is that you have no idea of its existence or impact – personally, upon your family, and professionally.

While in the emergency room I was contacted and interviewed by the responding Colorado State Trooper. He asked me what I could recall of the incident. Apparently, and not to the credit of any current memory, I was able to recall many details – from where we were and our destination, to what we were driving (it was a car I had purchased on my way to Colorado Springs that afternoon), and a full description of the vehicle and driver, including my observations of his actions and my own evasive maneuvers. To this day I do not recall those details and can only provide those that I have read in the reports. In fact, before I had checked out of the hospital, I had a clean slate of any memory of the incident.

After being released from the hospital and returning to Fort Collins, I was directed for follow-up to a local trauma surgeon. After sitting on the table he asked if I had lost consciousness – which I was told I had and I did have many blank spots in my recollection of the incident. He immediately referred me to the local brain injury rehabilitation clinic. For the next two years Karen and I would work on improving the functions most do not realize are lost. Although there were physical injuries – soft tissue injuries – they were insignificant in comparison to the effects of a TBI.

A TBI is an 'invisible' injury – it is not seen by the victim or those around them. There are multiple signs, the following are those I have personally experienced and professionally observed.



Signs and Impact of a TBI

- Loss of consciousness, for even a brief period of time – minutes. Particularly multiple and extended episodes;
- Short term memory loss * - including events immediately prior to and following the incident. Memory from the time of the incident forward is impacted. Events may be immediately forgotten, or forgotten weeks, months or even years after;
- Loss of embedded (long term) memory – such as childhood events, and events up to the incident, are usually not effected by minor TBIs.
- Inability to form cohesive, sometimes coherent, thoughts – particularly concentration;
- Inability to multi-task, maintain organizational skills;
- Mood swings, elevated irritability, impulsiveness and diminished concern for historically significant responsibilities;
- Elevated anxiousness and nervousness, elevate or onset depression;
- Blurred or altered vision and vertigo;
- Insomnia or other sleep pattern changes.

More severe TBIs may include the following:

- Incoordination of movements
- Loss of balance; difficulty walking or sitting
- Seizures
- Slurred and/or slowed speech
- Tingling, numbness, pain, or other sensations
- Weakness in one or more limbs, facial muscles, or on an entire side of the body

* Short term memory (a/k/a recent working memory) loss is NOT forgetting an instant experience, conversation or details. Short term memory is the temporary storage and management of information (think of a computer Random Access Memory – RAM) vs. long term or more permanent memory and events (think of a computer hard drive). loss is the permanent (or likely permanent) loss of the ability of information processing functions and time frames. As an example, telephone numbers and other common numbers carry a length of 7-10 digits because the average memory span for an adult is in this range. A credit card number is 16 digits for two reasons – volume of issued credit cards and difficulty for a person to immediately memorize a card presented to them by the holder for payment. There are other reasons, and technology has eliminated the need to memorize these numbers for the purpose of identity theft, but those were two considerations. Prior to my collision, I could easily memorize a 16-20 alphanumeric sequence, never had an address book, calendar or notepad. Today, a sequence of 12-16 is normal, and the need for an address book, calendar and notepad

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– though still required – is less of a need. Similarly, parking in the same parking area at the local mall or store is no longer necessary.

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In November of 2009 I attended a Traumatic Brain Injury seminar hosted by the Colorado Trial Lawyers Association. This seminar was of particular interest to me as both a professional legal investigator, and having been in the motor vehicle collision that resulted in my Dad and I both having a MTBI in September 2000.

There were several issues which the speakers nailed perfectly. For me personally and professionally, the injury and associated rehabilitation interrupted my ability to navigate business matters and I began training and transitioning into a job change to the medical examiner's office in late 2002.

It was not until about two years ago that I was able to realize the success I had with my recovery and returned to the private sector. Those experiences and transition have made me a better investigator and allow us to offer the injured client the security and comfort knowing that I truly understand their circumstances.

From an investigative standpoint, it is important to act on all cases as soon as possible. Time truly is of the essence with regards to physical evidence – such as scene documentation; eye witness evidence; and records from law enforcement and medical treatment. Documenting the progress of the client is also very important.

Personally knowing the life-changing experience your client is going through, as well as the investigative tasks to be accomplished, puts us in the unique position of knowing what needs to be done and making it a priority. Our investigative philosophy is to cover a complete and full investigation without delay. Of course, our tasks and assignments are dictated by your legal strategies and we are available to discuss these at your convenience.

The first issue with the TBI client is the interval between the injury causing incident and when they contact the attorney to pursue legal remedy. This cannot be controlled by the attorney, but what can be is the interval from attorney contact to putting the legal

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investigator on the case. It is imperative, both from a legal standpoint and rehabilitation standpoint, that the investigative process begin immediately and be thorough. An expedient and thorough process will greatly enhance the ability to reach a fair settlement in the earliest stages of the process – possibly before filing. Once the case is filed, the disclosure process begins and depositions are begun, the role of the investigator is greatly limited and less beneficial to the case. This may actually make the healing process of the client much more complicated.

Plaintiff's attorneys have developed a true sense of empathy for their clients – it is why they are in the profession. The legal investigator, particularly, may not understand the severity of TBIs and the life changing consequences. This does not necessarily negatively impact the investigative process or overall case, but it does not positively further it, either. It is imperative that the legal investigator understand this process. Having the understanding, even the empathy, for the client – which may be the incident victim or the family of a decedent – will bring a new understanding to the importance of their role in legal-investigative team that is bringing resolution to a very traumatic time of their lives. This also assists in laying the foundation for the appropriate questions and investigative process.

Having an understanding of the incident, the TBI itself, medical and rehabilitative treatment, and process the client is going through will give the legal investigator the insight to read the discovery, investigate the scene, and ask the questions that bring the real life experiences of the victim – the client – to the witnesses they speak with and conveying relevant data to the attorney. The attorney will be able to formulate the appropriate legal strategy that incorporates the experience of the TBI – and tells the story to the trier-of-fact.

Finally, understanding what causes a TBI, how it is treated and how it impacts the life of the victim and their family, will give the legal investigator the insight to understand the value of the appropriate questions, what the discovery – particularly medical records – is really telling them, and what it will take to make the victim and their family as whole as possible again.

Personal injury and death cases are serious events to the victim. They are serious cases for attorney – and they are serious cases for the legal investigator. There is nothing routine about being involved in being on the legal-investigative team that the client counts on to understand, empathize and fight for the resolution they deserve.

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Dean A. Beers, CLI is a Certified Legal Investigator and expert in criminal defense homicide and civil equivocal death investigations. He is certified in Medicolegal Death Investigation and served as a forensic autopsy assistant. He has lectured and authored multiple articles, peer-reviewed white papers, and provided expert testimony on private investigator protocols. He authored *Professional Locate Investigations* and recently completed *Practical Methods for Legal Investigations: Concepts and Protocols in Civil and Criminal Cases* that will be available in January 2011.

Mr. Beers is the Board Chairman of the Professional Private Investigators Association of Colorado, Region 6 CLI Representative of the National Association of Legal Investigators and has a column called *Forensic Focus* in *The Legal Investigator*, NALI's trade magazine, Membership Chair of the National Council of Investigation and Security Services, Affiliate Consultant member of the National Association of Medical Examiners, and holds additional memberships in the World Association of Detectives, International Association for Identification, and Mensa USA.

He began his investigative career in 1987 and operates his agency, Forensic Investigators of Colorado LLC, with his wife, Karen, also a legal investigator and certified in Medicolegal Death Investigations. They have two daughters, a granddaughter and identical twin grandsons.