



WINNING BRAIN INJURY CASES

BECOMING A NEUROLAWYER:
DEVELOPING THE KNOWLEDGE AND SKILLS TO WIN

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Introduction:

The odds of becoming a good neuro lawyer are a lot higher if you just let yourself be one. In other words, the only courage you need is the courage to begin. You do not even need a lot of courage. Just enough for today. You simply need to put one foot in front of the other and start studying, buy some books, ask a friend or a colleague for advice, go on the Internet, and take a case! Keenan, George, Jeff, Phil, Pete, Rex, David, Michael, and I would be infinitely flattered and glad to help you in any way possible. None of us will turn you down. I promise. Just ask for help. One of my favorite quotes is from Michelangelo: "The greatest danger for most of us is not that our aim is too high and we miss, but that it is too low and we reach it." Think about this: "Just show up, take it a step at a time, maybe it won't be so bad!"

_____ Even an experienced litigator might find preparing and winning his first brain injury case a daunting task. Many lawyers are driven away from this type of case for one reason or another. When a lawyer first receives his client's medical records from a hospital and suddenly has two banker's boxes full of records, the task at hand may seem overwhelming. When the lawyer then begins a perusal of these documents, he realizes that most of these records are completely illegible, not only containing poorly written notes, but riddled by abbreviations that do not even hint at their meaning. Yet the lawyer perseveres and continues to dig through this mountain of paper. Finally, he finds a radiologist's report. The situation seems to be improving as he realizes that he can actually read this typed report. The only problem is that the radiologist's notes indicate something along the lines of: the brain was contused on its inferior anterior surface and over the surface of the temporal lobe was a subdural hematoma; there was a bruising over the inferior aspect of the temporal lobe and anterior part of the temporal lobe, as

well as the inferior temporal lobe gyrus. While this sounds serious, the novice neurolawyer would find it hard to discern the actual extent of injury to his client from this account. With so little understanding of the brain injury/medical aspects of the case, many lawyers would pass this case on to a more experienced attorney. But wait, with hard work and perseverance, you can handle and win this case yourself.

Another potential brain injury case may present itself differently; a client arrives claiming a soft tissue injury and mentions as an afterthought that he has suffered memory problems since he was involved in a minor automobile accident. The client has no visible injuries and appears to be in good health. In this case, the inexperienced lawyer might decline this case because he feels the client is either a hypochondriac or attempting to push a frivolous claim. However, the client may actually suffer from a mild to moderate brain injury, a serious impediment that may severely limit a person's ability to work, function, and lead a normal life.¹ This client might lose hope after failing to secure a lawyer interested in pursuing a soft tissue case and would thus never be compensated for his or her life changing injuries. In a circumstance like this, the lawyer may even be the first professional to suggest the type of testing which could disclose a traumatic brain injury.

As trial lawyers, we need to be aware of the frequency of brain injury that occurs simultaneously with more obvious bodily injuries. Furthermore, we need to be aware that brain injury can occur when no exterior injuries at all are present such as in a coup-contra coup injury or an acceleration deceleration injury. Often, doctors make this same mistake. Because they see no exterior

¹ For more information about hidden brain injury, see "Mild to Moderate Brain Injury: A Silent Epidemic." Trial, November 1990.

evidence of brain injury such as a skull fracture, they will often negligently conclude an examination having only taken skull x-rays, which are not sufficient to discover soft tissue injury to the brain, but are more suited to uncovering skeletal injury. When an inexperienced lawyer finds that a physician failed to discover a brain injury, he may assume that this study was conducted correctly and propose no additional testing of brain function, even in the presence of signs and symptoms of brain injury such as attention concentration problems, memory deficits, emotional lability and the like.

The purpose of this paper is to make the neurolawyer aware of the pitfalls and opportunities of this type of litigation and to make the difficult task of pursuing this type of case to fruition more successful. When a plaintiff's attorney faces defense lawyers who specialize in cases involving complicated medicine, medical providers that often fail to diagnose brain injuries, and the great expense and risk of trying these cases in a post tort reform world, he must have as much knowledge as possible about to how to succeed in spite of these impediments.

Initial Case Review:

In order to make a living as a neurolawyer, one should consider establishing a relationship with a trusted member of the medical profession, be it a doctor, nurse or neuropsychologist, acting as a case reviewer. The purpose of this relationship is multifaceted.

A case-reviewer should be able to help the lawyer decide which cases are worth pursuing. Evidence of brain injury must be found, or referral to an appropriate diagnostic specialist such as a neuropsychologist must be made to determine if a brain injury really exists. Especially when there is a question of deviation from the standard of care, it is essential that the lawyer be aware of whether or not any standard of care mistakes have been made. While this topic will certainly be covered by expert

testimony should the case continue, it is better to know immediately if a possible medical malpractice case should be dropped when the medical care providers cannot be faulted. It is certainly in the best interest of the lawyer to find out that he does not have a case early rather than later, since medical experts, especially those who specialize in a neurology, neurosurgery, and neuropsychology tend to charge exorbitant rates for their time. The author recently had to pay a defense expert \$3,500 per hour for his time in a discovery deposition.

The case-reviewer should also be aware of the standard policies and procedures of hospitals. Although slight variations exist between different centers, many universal rules apply to medical care providers. A case reviewer need not be an M.D. A nurse or paramedic often will know enough about medicine to serve as a case reviewer and often can pick up mistakes in care simply by looking over the medical records.

To return to the example of the overwhelmed lawyer presented in the introduction, a case-reviewer can act as a translator for the complicated records kept in hospitals. This person should be aware of the meanings of the myriad abbreviations that appear throughout medical records. Furthermore, they should have ample knowledge about pharmaceuticals. While many of us know that acetaminophen is generic for Tylenol, most lawyers would not know that warfarin sodium is generic for Coumadin, a blood thinner which sometimes causes brain injury due to cardiovascular accidents or strokes especially following minor head trauma or an acceleration/deceleration injury. Furthermore, most lawyers would not know that Coumadin levels have to be maintained between certain levels within the blood to be effective, but that too much will cause a bleed-out resulting in a sudden subdural hematoma. A nurse or paramedic should be familiar with these aspects of medical care.

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The case reviewer might also assist the trial lawyer in separating meritorious from non-meritorious trauma induced brain injury cases caused by construction accidents, vehicle collisions, falls and the like. Until the inexperienced neurolawyer masters the medicine involved in these cases, the case reviewer can actually save the lawyer time and ultimately money while the lawyer is working to master the learning curve involved.

Case reviewers also may be helpful in determining the specialists needed to testify about each specific aspect of a complicated case such as neurologists, neuropsychologists, neuroradiologists, neuropathologists and the like. They also often may be helpful in recommending particular experts.

Lastly, case reviewers can be helpful to the trial lawyer by educating him as to the relevant aspects of medicine. Often, they may be able to recommend textbooks or other instructive material so that the lawyer can learn enough about the medicine to carefully examine both factual and expert witnesses. The case-reviewer might actually suggest deposition questions for each witness if the medicine is sufficiently complicated. In fact, many neurolawyers bring a trained medical professional such as a nurse paralegal to depositions of other medical professionals.

In the post "tort reform" legal climate, it is more important than ever to avoid nonmeritorious cases. Loser pays and frivolous claims damages can wipe out a plaintiff's finances. Be very wary of accepting cases involving clients with past history of psychiatric problems and illegal drug use.

A Lawyer's Medical Education:

In order to be an effective advocate in a brain injury case, the lawyer absolutely must learn the medicine. Cross examining the other parties medical experts without being adequately prepared is a recipe for disaster. Expert witnesses often make a significant portion of their income giving depositions

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and testifying at trial. Therefore, they are very familiar with their roles and confident in their opinions, and are not generally intimidated by lawyers. In order to compete with these professionals, the lawyer must train himself in the medical terms of art and be able to identify and exploit weak portions of testimony. Without the foundation to interact with these professionals, the lawyer will come across looking unprepared and inadequate in front of the jury, exactly what the opposition desires. This is not to say that the lawyer should aggressively display his knowledge of medicine. This tactic may infuriate the witness and may come across as pretentious towards the jury. The best tactic is to “speak softly and carry a big stick.” In other words, question the witness kindly using natural language that the jury will understand and only utilize medical jargon when the witness is clearly taking liberties with his testimony. The witness may envision his encounter with you as a battle of egos, so you want to let him or her appear to be the aggressor. With sufficient knowledge of medicine, the lawyer can play nonthreatening and dumb to great advantage. Oftentimes, when the lawyer shows his thorough understanding of the medicine involved yet treats the witness fairly and respectfully, the witness will stick to the true medical aspects of the case and not venture too far out on a limb for fear the lawyer will chop it off.

To begin to educate oneself about brain injury, extensive research and familiarity with the basic medical and to be more specific, neuropsychological concepts, is completely necessary. A good brain injury textbook such as The Head and Neck Injury Handbook published by the Shepherds MacGraw Hill Trial Practice Series might be a good place to start. Doctors generally learn new techniques and remain current within their fields of medicine by reading peer reviewed journals. Fortunately, these journals are relatively easy to obtain at any medical library and on the internet at Google.com or

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Medline. For a complicated case, the lawyer should obtain any articles about that particular aspect of medicine up until the time of the injury. Furthermore, any articles written by a witness, expert or otherwise, should be obtained before deposition. A quick perusal of a doctor's CV will usually provide enough information to find these. With these in hand, pinning the doctor down on his opinions becomes a much simpler task. Previous deposition testimony can be found through - GAPI or Trialsmith.

_____ Other handy references for this type of litigation include a Physician's Desk Reference (PDR), a compendium of information about medicines and their interactions with each other. A number of other useful resources are published concerning this particular issue.² A useful notice to produce at the deposition of an expert witness is attached to this paper.

Brain injury resources on the world wide web include:

American Academy of Neurology

<http://www.aan.com>

Review of neurological conditions and neurology related links.

American Association of Neuroscience Nurses

<http://www.aann.org>

Organizational information and links to other neurological sites.

Brain Injury Association of Georgia

² Brain Injury Association, "Winning Brain Injury Cases: Legal and Medical Issues." September 2000.
Preiser, Stanley E. et al. "Preparing and Winning Medical Negligence Cases." The Michie Company 1989.

<http://www.braininjuryga.org>

Provides education, advocacy and support for those affected by brain injury.

Brain Injury Association of Georgia Info & Resources

http://www.braininjuryga.org/info_resources-frame.html

FAQs and a directory of brain injury services and resources in Georgia

Global Brain Stem '97

<http://www.anatomy.wisc.edu/bs/text/bs/bs.htm>

University of Wisconsin Medical School's online textbook.

Hydrocephalus Association

<http://www.hydroassoc.org/>

Organizational information and newsletter articles.

Institute of Neurotoxicology and Neurological Disorders

<http://www.innd.org>

Consumer health resources for neurological disorders.

Journal of Neuroscience Online

<http://www.neuroscience.org>

Searchable database with full text on abstracts.

Malignant Brain Tumors and Neuro-oncology Resources

<http://neurosurgery.mgh.harvard.edu/nonc-hp.htm>

Massachusetts General Hospital Harvard Medical School site with information and links to other

neurological resource sites.

Medical Matrix - Neurology

<http://www.medmatrix.org/>

Neurological news, articles, abstracts, diseases, patient education and more.

The National Institute of Neurological Disorders and Stroke

<http://www.ninds.nih.gov>

A searchable site with information on selected neurological disorders.

Neurosciences on the Internet

<http://www.neuroguide.com/>

Searchable database and links to resources.

Neuro Trauma Law Nexus

<http://www.neurolaw.com/>

Resource for understanding the legal system's involvement in brain and spinal cord injury cases.

Society for Neuroscience

<http://www.sfn.org/>

Publications of the Neuroscience Society.

The Virtual Hospital: The Human Brain

<http://vh.radiology.uiowa.edu/Providers/Textbooks/BrainAnatomy/>

7BrainAnatomy.html

Online textbook with images of dissections of the real brain.

Whole Brain Atlas

<http://www.med.harvard.edu/AANLIB/home.html>

Searchable site with images of various medical conditions and a neuro-imaging primer.

Medical Resources on the world wide web include:

Johns Hopkins University School of Medicine

<http://prospero.bme-mri.jhu.edu/>

MedWeb @ Emory University

<http://www.medweb.emory.edu/MedWeb>

MedWebplus

<http://medwebplus.com>

Medscape

<http://www.medscape.com>

The National Library of Medicine

<http://www.nlm.nih.gov/nlm/online>

A very basic summary of brain anatomy and traumatic brain injury mechanics is as follows:

Brain injuries can result from a traumatic event, such as an acceleration/deceleration mechanism with or without a blow to the head. These include skull fractures, contusions of the gray matter, lacerations of brain tissue, shearing injuries, diffuse axonal injuries, and intra-cranial/intra-cerebral hemorrhages.

Sometimes patients who are anticoagulated, such as on Coumadin, are more susceptible to tearing or

shearing of blood vessels in the brain followed by secondary injury due to swelling and ischemia.

Delayed or secondary brain injuries can arise from post-injury elevated intra-cranial pressure, epidural, subdural and arachnoid hemorrhages, hypoxic injuries, ischemic injuries, excito-toxicity injuries, apoptosis, and status epilepticus.

Skull fractures may be linear, with or without displacement of bone fragments, or depressed when fragments of bone are forced towards the brain. Diastasis fractures occur when a blow to the head causes plates of bone to separate from each other. Damage to the brain may occur without fracture to the skull, causing permanent damage such as in an acceleration/deceleration injury in a fall or motor vehicle collision. Even fatal injuries occur without skull fracture (i.e. shaken baby syndrome).

The brain itself may be injured in an Acceleration/Deceleration injury even in the absence of a blow to the head, where the brain tissue strikes the interior of the skull, which is not smooth, but has many sharp boney protrusions. A contusion may result. The skull decelerates faster than the brain, which is floating within cerebral-spinal fluid. Tears of the brain may occur when the brain strikes boney protrusions within the skull, or when the mechanism of the injury causes twisting, shearing, or deformity of the brain tissue without striking the inside of the skull, which has the consistency of oatmeal or jello. Moreover, tearing or shearing injuries may take place at the time of the initial injury or the injury may take as long as 24-48 hours for the process to be completed because of swelling secondarily causing lack of perfusion of blood oxygen and glucose resulting in excito-toxicity and poisoning of brain tissue by release of glutamates free radicals and apoptosis. Microscopic damage to brain tissues (neurons, axons, dendrites) may or may not appear on CAT scans or MRIs. Newer imaging devices such as

PET and SPECT scanning are better at demonstrating such injuries by visually demonstrating glucose metabolism in the brain. However, the gold standard for detecting such injuries remains neuropsychological testing.

Intra-cranial hemorrhages are caused by the result of direct tearing of brain tissue, or tearing of thin-walled bridging veins within the brain. Damages result from direct tearing of brain tissue, or compression by the expanding mass of blood and chemical damage to surrounding brain tissue (excitotoxicity). Increased pressure within the brain is caused when bleeding occurs within the brain. The brain is surrounded by the rigid structure of the skull, and the swelling compresses the brain tissue. Blood, glucose, and oxygen supplied to brain tissues are diminished as intra-cranial pressure, relative to mean arterial blood pressure, increases. As intra-cranial pressure rises, cerebral blood flow decreases. MRI or CT may demonstrate compressed ventricles or midline shift showing increased intra-cranial pressure.

Hypoxia or anoxia injuries are caused when oxygen is cut off from brain cells, which need oxygen and glucose for survival. Below certain critical levels, permanent brain damage occurs. Such injuries occur with drug overdoses and in complicated deliveries of babies where there is a failure to timely perform a caesarean section or failure to resuscitate the newborn.

Intra-cranial hemorrhages can occur in different compartments of the brain. The dura mater is the thick, outer-most membrane surrounding the brain. The pia-arachnoid is a thin, inner membrane. Hemorrhages (epidural, subdural or subarachnoid) can occur within the epidural space (the space between the inner surface of the skull and the dura mater), in the subdural space (the space between the

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dura mater and the pia-arachnoid), or the sub-arachnoid space(the space between the pia-arachnoid and the surface of the brain). When brain cells are injured, damaged neurons release their neurotransmitters, the chemical messengers by which brain cells communicate and transfer information. Excessive release of excitatory neurotransmitters, including glutamate and aspartate, over-stimulate neighboring neurons, causing a chain of events culminating in death of brain cells over 24-72 hours. This is why signs and symptoms of brain injury are sometimes delayed.

Sometimes brain injuries cause seizures such as status epilepticus, a condition in which an individual experiences a single seizure lasting more than 30 minutes, or a series of seizures lasting at least 30 minutes, where the individual does not regain consciousness between seizures. The brain's need for blood flow, oxygen, and glucose can increase five fold. An enormous increase in metabolic needs, which may not be met, may result in an additional brain injury during these seizures.

Seizures after brain injury may require lifetime treatment with phenobarbital or other seizure medications.

Hospitals & Medical Records:

Especially when the hospital is a party defendant, but at other times as well, medical providers are reluctant to provide the appropriate records. It is extremely common for a hospital to provide partial records with no indication that the rest are missing. It can also be expected that most records will be produced out of order. In order to organize medical records and ensure that all records have been provided, the best thing to do is organize these into categories according to the type of document. Such as admission history and physical, nurses' notes, x-rays, labs, medication administration records,

consults, and the like.

It is not unheard of for hospitals to change medical records after a lawsuit is filed. Hospitals will also refuse to allow records to be released due to bizarre technicalities, for example, the doctor has not signed off on a procedure performed six months prior. As a lawyer, if you feel concerned about the handling of records, you should go down to the hospital and with your HIPPA authorization and request to see the original records in their entirety. Not only will these be easier to read, but you may notice discrepancies between what has been produced and what the hospital has. Sometimes the back of two sided documents are not copied. You may elect not to take the case before you spend and waste substantial money on records.

Mild to Moderate Brain Injury:

When a lawyer first meets with a client who has suffered an automobile or construction accident, he or she may focus on the more physically obvious injuries and completely miss a brain injury claim. Orthopedic injuries (fractures) and soft-tissue injuries (torn or bruised ligaments, muscles, and nerves) are much more obvious to the lawyer and to the doctors such as the emergency medicine doctor or general practitioner. Even treating physicians will miss cases of mild to moderate brain injury. Because brain injuries can be so life changing, it is essential that the lawyer be on the alert for and recognize the symptoms of brain injury to help his client be properly evaluated and diagnosed.

The signs of brain injury can be divided into three categories: physical, cognitive, and psychosocial.

Physical effects of brain injury can include headaches, lack of coordination, muscle spasticity,

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paralysis, seizures, not to mention verbal, auditory, balance, visual, tactile and olfactory dysfunction.

On a **cognitive level**, there may be memory deficits, concentration problems, slowed thinking, and problems with perception, sequencing, judgment, and communication, including impaired reading and writing skills. **Psychosocial symptoms** of brain injury may include behavioral and emotional dysfunction, fatigue, loss of empathy, depression, anxiety, sexual dysfunction, lack of motivation, and emotional lability (volatility), including violent mood swings from anger to sadness, rage to weeping and difficulty relating to others. Generally speaking, if a client or his or her significant other(s) experiences a noticeable change in his perception of or interaction with the world around him or her, he or she may be experiencing more than simply an accident related phobia; he or she may have suffered a brain injury.

Oftentimes the spouse of a brain injured person may feel that the person they are now with is different from the person they married.

While symptoms of brain injury often fall under a diagnosis of "post-concussion syndrome," a person need not lose consciousness in order to sustain a cerebral impairment. Unfortunately, those patients who never lost consciousness are more likely to have their brain injury go undiagnosed. Also people sometimes lose consciousness but do not remember it or just report being dazed. As lawyers we must remember that even modern medical diagnostic tools will not detect microscopic injuries to the brain. A microscopic brain injury cannot be ruled out merely because a CAT scan, MRI, or EEG study was conducted. These devices are excellent for detection of hematomas and hemorrhages, but will not detect subtle or microscopic tissue damage.

The Neuropsychologist and Damages:

Neuropsychological evaluation is the best way to establish and treat mild to moderate brain injury. A neuropsychologist relies on a series of tests of various aspects of cognition beginning with a 6 to 12 hours interview. A typical test battery such as the Halstead-Reitan Test Battery includes the Wechsler Adult Intelligence Scale Revised (WAIS-R). This test can identify injury to specific parts of the brain by discovering the corresponding deficits on various tests. Furthermore, some of these tests can measure pre-injury IQ level. An alternative is to obtain testing from the client's school records and compare them to the client's post-morbid test scores.

The specific tests within a battery include the Complex Figure Test, the Wisconsin Card Sorting Test, and the Category Test. Language skills are measured by the Controlled Oral Word Association Test and the Boston Naming Test. Verbal memory is evaluated using the Auditory Verbal Learning Test (AVLT) or the California Verbal Learning Test. Attention is tested with the Wechsler Memory Scale, the Trail Making Test, and the Stroop Test. The Complex Figure Test assesses organizational efficiency, visuo-motor memory, and the retention of motor information over time. Visuo-motor function can be evaluated with the Bender-Gestalt Test. Tests to determine emotional status include the Minnesota Multiphasic Personality Inventory (MMPI), the Thematic Apperception Test, and the Rorschach Test. Diagnostic tools that may aid in the detection of mild to moderate brain injury include the Brain Electrical Activity Mapping (BEAM) test, a computerized EEG that compares an impaired person's responses to visual and auditory stimuli with those of a normal person. Also, Positron Emission Tomography (PET) scans can detect regions of dysfunction by identifying areas of decreased glucose metabolism. Evoked potential testing will determine the brain's reaction time to stimuli.

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In order to make these various tests useful in court, some assessment of the client's pre-morbid functional level must be included. Standardized testing such as IQ tests and the Iowa test are conducted even in elementary school and these records are easily attainable and already offer a comparison to other students of that age. For older clients, SAT scores can be useful as well as college, vocational school, and graduate school records and grades as well as records of employment or military service. It is essential that the neuropsychological evaluation include a statement as to the change in cognitive functioning due to the injury in order to establish damages properly. Be sure to have your neuropsychologist explain what these various tests do, how they work, and what they demonstrate in layman's terms.

Altered sleep patterns may also accompany brain injury. Clients may feel like they are constantly exhausted, even when spending what had previously been more than sufficient time in bed. A healing brain injury requires increased amounts of energy expenditure and results in fatigue. The client may not realize it, but he or she may suffer from nocturnal seizure activity. These seizures severely limit the quality of sleep resulting in chronic fatigue but will go untreated if not diagnosed. A sleep study in a hospital setting is often required to make the proper diagnosis utilizing EEG in an overnight study. Medication can often eliminate this side effect of brain injury.

Brain-injured people are also entitled to compensation for the subsequent depression that follows a loss of functional ability. A lack of ability to conduct life smoothly often leads to feelings of doubt and remorse as well as low self-esteem. Neuropsychological testing such as an MMPI will usually detect these types of feelings. However, when a person suffers a brain injury, the differences in

personality are usually not temporary. Suffering a brain injury means that the brain is altered in such a profound way that the person actually may behave like an entirely different person. Due to these changes, romantic relationships often suffer severely because the injured person behaves differently, thinks differently, exhibits a different sex drive, and has different interests from the pre-injury person. Spouses often report that they feel like they are married to a different person. It is statistically documented that marriages often result in divorce because the spouse cannot cope with the altered personality of the injured party. Thus, loss of consortium claims are a certainly warranted and should be included with the damages in these cases.

Ofentimes, the greatest portion of damages usually goes to compensate the injured party for the expensive cost of rehabilitation. A neuropsychologist will be able to prescribe therapies that will help the client to regain as much functional ability as possible, although in most cases, even cognitive retraining will not restore the person to his or her pre-injury level of ability. Ofentimes, systems of memory aids or queing are required on a permanent basis. A neuropsychological evaluation should suggest the proper therapies so that the party can make as complete a recovery of possible. Therapy may last for a number of years. The client must receive rehabilitation as that includes attention to cognitive deficits, emotional damage, and resulting behavioral problems. The goal of this therapy should be the patient's reintegration into the community. In order to document the costs of future care, a "lifecare plan" may be created by a qualified professional. This document should break down the future costs of care for the life expectancy of the client. In order to translate these figures into a meaningful number for damages, an economist can be retained to translate these values into present cash value - how much cash is needed now to pay these costs of care over the plaintiff's lifetime.

Medical Experts:

Preparation is the key to handling medical experts. Whether choosing your own experts or planning your examination of an opposing witness, the best strategy is to eliminate as much guesswork as possible.

Basics of Expert Examination:

1. Master all of your client's medical records, so that any errors of the expert in reviewing them can be pointed out in deposition or trial.
2. Obtain expert's written report before the deposition.
3. Obtain any testing data from the expert. (Halstead Reitan raw test data, etc.)
4. Review the expert's report in conjunction with the reports of any other experts or treating medical personnel. (Compare similarities and differences.)
5. If possible, find prior testimonies, depositions, articles, and seminar presentations before the deposition, i.e., www.trialsmyth.com. In the expert's deposition, ask questions sufficient to find these source materials for cross-examination at trial or to discover any weaknesses of your expert.
6. Prior to the deposition, review the expert's entire file, including correspondence and billing. Ask the expert if any materials have been removed from the file.
7. Obtain the expert's CV
8. File a notice to produce his billings, all documents with which he was provided, lists of prior

testimony prepared for federal court appearances, etc...

(See example attached as exhibit "A")

It is important to recognize the lawyer-witness dynamic when handling defense experts. Juries will recognize the adversarial nature of an examination between a lawyer and an opposing expert and will tend to side with the expert. When a lawyer attacks an expert, the jury sympathizes with the expert who then becomes the victim. Thus, we must treat the witness with compassion or risk a backlash from the jury. In order to avoid this type of confrontation, the lawyer needs to account for his fears; the fear that the expert will destroy your client's meritorious case is the biggest impediment to an effective cross-examination. Overly aggressive, hostile cross-examinations often make the lawyer look like a bully and often are not very effective because the expert has dealt with this type of attack before and simply remains calm and continues. The goal is to make the expert display negativity: anger, frustration, arrogance, hostility, bias, greed, exaggeration or evasiveness. On the other hand, the lawyer wants to maintain a humble and calm attitude coupled with mastery of the facts and medical aspects of the case. To this end, the lawyer should use real words and language and not become so bound up in having mastered medical jargon that he or she comes across as stilted or fake. Furthermore, the lawyer needs to actually interact with the expert in order to make any headway in either establishing or discrediting a witness. Reading questions off of a legal pad while not looking at the witness or paying attention to the answer is neither engaging nor effective. In order to pick up on the subtle aspects of communication (verbal as well as non-verbal), the lawyer needs to watch the expert as he testifies and

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not be afraid to engage in appropriate follow up questioning when he senses an important admission could be at hand. The inexperienced lawyer misses much important information by keeping his or her head buried in notes.

Demonstratives/Evidence:

The use of proper demonstratives is invaluable in litigating brain injury cases properly. Because the anatomical and medical language is so complicated that the average juror cannot possibly recall all of a doctor's explanation, visual aids are extremely important. A good model of the skull that opens up to reveal a sectioned model of the brain is a good start. When using such devices, the lawyer simply needs to ask the witness if the model "is a true and accurate representation" of the anatomy being discussed. When videotaping depositions, be sure that the videographer is able to capture all of the image without any problems. Color posters are also quite helpful, especially when looking at injuries to specific areas of the brain that would not appear very large on a model. Custom diagrams can be ordered to depict any part of the human anatomy as well as injuries to specific anatomy. As a lawyer continues to try many brain injury cases, he will probably accumulate a ready supply of visual aids for deposition and trial.

A good source for medical demonstrative evidence is Mica Duran.

www.micaduran.com

Conclusion:

Although brain injury cases present some of the most challenging work a trial attorney can perform, with the right tools and preparation, they can also become the most rewarding cases to

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complete. Brain injury clients need an experienced attorney not only to represent them, but often also to ensure that they receive proper care, rehabilitation and therapy. A rewarding adjunct to this type of case is providing advice to someone who may desperately need assistance, but be unaware of the extent of his or her injuries. Guiding the client towards proper evaluation serves the dual purpose of determining the existence or extent of injuries and starting the progression towards recovery. The stakes are very high in brain injury cases. Many of the best trial lawyers in the state of Georgia practice in this field. Experts are very expensive. Medical records are complicated and exhausting to master. The medical science and neuropsychology are complex, however, the reward for helping someone who has suffered such a debilitating injury makes this type of practice completely worthwhile.

**MOTIVATIONAL QUOTATIONS FOR THE TRIAL
LAWYER IN THE CYNICAL POST “TORT REFORM”
WORLD**

The odds of becoming a good neuro lawyer are a lot higher if you just let yourself become one. In other words, the only courage that you need is the courage to begin. You do not even need a lot of courage. Just enough for today. You simply need to put one foot in front of the other and start studying, buy some books, ask a friend or a colleague for advise, go on the Internet, and take a case! Keenan, George, Jeff, Phil, Pete, Rex, David, Michael, and I would be infinitely flattered and glad to help you in any way possible. None of us will turn you down. I promise. One of my favorite quotes from Michelangelo is: "The greatest danger for most of us is not that our aim is too high and we miss, but that it is too low and we reach it." I suggest that you, "Just show up, take it a step at a time, maybe it won't be so bad!" [4]

I find that practicing present awareness keeps me humble and open to situations that may arise. There are many ways to practice present awareness, one of which is Zen Buddhism. Zen practice is the practice of present awareness and non-dualistic thought. Dualistic thought can also be described as egocentric thought. Present awareness is like the ballerina who makes her years of studying and hard work appear effortless on the stage. She is in the moment. There is an excerpt from the Zen sutra Hsin Hsin Ming that states, "step aside from all thinking and there is nowhere you can't go." When you step aside from your fears and remove yourself or ego from the equation you will be able to assist your client and it will also appear to be effortless.

Becoming a neuro-lawyer is nothing more than using your potential. The more confident you are, the less you will brag and boast. Once you are confident, you will have no desire to show off and you will become humble and quiet. At that point you can focus on the client and your intent to help the client. No energy will be wasted on you - wondering if you look knowledgeable, smart, prepared, professional, etc. The power of your intent, is focused like a laser to help the client attain their needs and deserves.

Once you do the work of learning, you can develop what the Japanese samurai called "Heiho" - an indomitable spirit, an iron will that makes you feel that you cannot fail at doing anything. In feudal Japan "Heiho" was the way of the warrior class.

There is an interesting bestseller book out by the popular motivational speaker Dr. Wayne Dwyer called The Power of Intention.

Intention as it is generally understood is a pit-bull kind of determination, propelling one to succeed despite all obstacles by intense drive and will. Dr. Dwyer redefines the concept of intention as a force in the universe that allows an act of creation, or an accomplishment to take place. His book explores intention as not something you do but as something you are a part of; to co-create your life. The book looks at intention as a field of energy you can access as you move towards your goals such as ably and successfully representing a brain injured client.

Carlos Castaneda put it as follows:

In the universe there is an immeasurable indescribable force which shamans call intent, and absolutely everything that exists in the entire cosmos is attached to intent by a connecting link.

Einstein postulated that $e=mc^2$

If thought or intention is pure energy why not believe that intention has the power through the Creator to affect outcome? Why not use your good intentions toward a purposeful life of helping deserving clients who have suffered traumatic brain injuries?

If you are of the Christian faith you can think of the apostle Mark's simple words: "All things whatsoever ye pray and ask for, believe that ye have received them, and ye shall receive them."

Mark 11:24

As Dr. Dwyer advises, think: "I am here on purpose, I can accomplish anything I desire if my intent is pure, and I do it by being in harmony with the creative force of the universe."

Dr. Dwyer assures us; Kindness extended, received or observed beneficially impacts everyone involved in whatever situation you are engaged in (even with claims adjustors and defense lawyers)

The ultimate outcome in these cases is not about winning, beating, dominating, tricking, or being right. It can be about helping the other side to visualize a win-win outcome for all the parties involved - A just settlement of a just cause.

It is one of the most beautiful compensations of life that no man can sincerely try to help another without helping himself....Serve and thou shall be served."

Ralph Waldo Emerson

According to Dr. Dwyer, "When the only thing you have to think about is yourself and how you appear to others, you've distanced yourself from the power of intention. Your purpose will be found in service to others, and in being connected to something far greater than your body, mind, ego. People who receive the most approval are unconcerned about it. So, if you really want approval, stop thinking about yourself, and focus on reaching out and helping others. When you emulate the power of intention you will feel joy and passion in the work you set out to do. You'll feel most on purpose when you're giving your life away by serving others." "When you're in the service of others or extend kindness beyond your own boundaries, you'll feel connected to your source or your God. You'll feel happy and content knowing that you're doing the right things."

Dr. Dwyer Power of Intention.

In traumatic brain injury cases now more than ever we have to use our knowledge, work ethic, compassion, intent and will to help these deserving clients.

Our job is harder than ever. We live in a cynical time. The new world of "tort reform" has arrived! Maybe the pendulum will swing back politically, but in the mean time we have to give these deserving clients our very best.

The softest stuff in the world
Penetrates quickly the hardest
Insubstantial, it enters where no room is.

But this I know the benefit
Of something done by quiet being
In all the world but few can know
Accomplishment apart from work.
Instruction when no words are used

Lao Tzu
The Tao Te Ching

Buddhism believes in Karma-cause and effect. Everything we do or say or think causes some change in our environment, and has implications. Intentionally rises, mind movers, energy flows, results happen. The Buddhists believe every time we materially, emotionally, or spiritually are generous with others and in our case when we give our all to help a brain injured client to receive justice for harm suffered we improve our Karma.

Awakening to the Sacred-Creating a Spiritual Life from Scratch

Surya Das

On examination, we'll see that power arises from meaning. It has to do with motive, and it has to do with principle. Power appeals to what uplifts, dignifies, enables. Power is what gives us energy. It is associated with compassion and makes us feel positive about ourselves. Force is associated with judgment and makes us feel poorly about ourselves. Force is associated with judgment and makes us feel poorly about ourselves. Force always creates counter force-power doesn't. This is why authentic power born of good intent always conquers negativity and force.

"Power motivates us endlessly. If our lives are dedicated to enhance the welfare of people we come in contact with (such as our clients) our lives can never lose meaning."

Power vs. Force

The Hidden Determinants of Human Behavior

David R. Hawkins, MD, PhD

The Fallout of TORT REFORM

*This we know: All things are
connected*

*like the blood which unites
one family.*

All things are connected.

Whatever befalls the earth

befalls the sons of the earth

*Man did not weave the web
of life.*

He is merely a strand on it.

Whatever he does to the web

He does to himself.

Chief Seattle

The Antidote:

COURAGE

Being brave enough to do what you should do

Even when you are afraid

CONFRONT INJUSTICE

A Warrior of the Light is never indifferent to injustice.

He knows that all are one and that each individual action affects everyone on the planet. That is why, when confronted by the suffering of others, he uses his sword to restore order.

But even though he fights against oppression, at no point does he attempt to judge the oppressor. Each person will answer for his actions before God and so, once the Warrior has completed his task, he makes no further comment.

A Warrior of the Light is in the world in order to help his fellow man, not to condemn his neighbor.
[1]

SHARE YOUR KNOWLEDGE

A Warrior of the Light shares his world with the people he loves. He tries to encourage them to do the things they would like to do but for which they lack the courage. At such times, the Enemy appears holding two wooden signs in his hand. On one sign is written: "Think about yourself. Keep all the blessings for yourself, otherwise you'll end up losing everything." On the other sign, he reads: "Who do you think you are, helping other people? Can't you see your own faults?"

A Warrior knows that he has faults. But he knows too that he cannot do his growing alone, distanced from his companions. Therefore, he throws the two signs to the floor, even if he thinks they may contain a grain of truth. The signs crumble into dust, and the Warrior continues to encourage those nearest him. [1]

The Warrior of the Light knows that no one is stupid and that life teaches everyone - however long that may take. He always does his best and expects the best of others. Through his generosity, he tries to show each person how much they are capable of achieving. Some of his companions say: "Some people are so ungrateful." The Warrior is not discouraged by this. And he continues to encourage others because this is also a way of encouraging himself. [1]

A Warrior of the Light knows that he has much to be grateful for. Angels help him in his struggle; celestial forces place each thing in its place, thus allowing him to give it his best. His companions say: "He's so lucky!" And the warrior does sometimes achieve things far beyond his capabilities. That is why, at sunset, he kneels and gives thanks for the Protective Cloak surrounding him. His gratitude, however, is not limited to the spiritual world; he never forgets his friends, for their blood, mingled with his on the battlefield. A Warrior does not need to be reminded of the help given him by others. He is the first to remember and he makes sure to share with them any rewards he receives. [1]

A Warrior of the Light shares with others what he knows of the path. Anyone who gives help also receives help and needs to teach what he has learned. That is why he sits by fire and recounts his day on the battlefield. A friend whispers: "Why talk so openly about your strategy? Don't you realize that, by doing so, you run the risk of sharing your conquests with others?" The Warrior merely smiles and says nothing. He knows that if, at the end of his journey, he arrives to find an empty paradise, his struggle will have been a waste of time. [1]

One of the greatest forces in the lives of warriors is fear, because it spurs them to learn. Nothing in this world is a gift. Whatever has to be learned must be learned the hard way. [2]

I have learned if you want assistance from others, extent assistance whenever and wherever you have the opportunity. If you want to be the recipient of generosity, then be as generous as you can, as frequently as you can.

If any of us on this panel can help any of you with your brain injury case, just ask.

MOTIVATION TO LEARN

Every time a man sets himself to learn, he has to labor as hard as anyone can, and the limits of his learning are determined by his own nature. Therefore, there is no point in talking about knowledge. Fear of knowledge is natural; all of us experience it, and there is nothing we can do about it. But no matter how frightening learning is, it is more terrible to think of a man without knowledge.

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Power rests on the kind of knowledge that one holds. What is the sense of knowing things that are useless? They will not prepare us for our unavoidable encounter with the unknown.

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A man goes to knowledge as he goes to war: wide-awake, with fear, with respect, and with absolute assurance. Going to knowledge or going to war in any other manner is a mistake, and whoever makes it might never live to regret it.

When a man has fulfilled all four of these requisites - to be wide awake, to have fear, respect, and absolute assurance - there are no mistakes for which he will have to account; under such conditions his actions lose the blundering quality of the acts of a fool. If such a man fails, or suffers a defeat, he will have lost only a battle, and there will be no pitiful regrets over that.

The Teachings of Don Juan by Carlos Castenada

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Before embarking on an important battle, a Warrior of the Light asks himself: "How far have I developed my abilities?"

He knows that he has learned something with every battle he has fought, but many of those lessons have caused him unnecessary suffering. More than once he has wasted his time fighting for a lie. And he has suffered for people who did not deserve his love.

Victors never make the same mistake twice. That is why the Warrior only risks his heart for something worthwhile. [1]

USE THE POWER OF INTENT

A warrior could not possibly leave anything to chance. He actually affects the outcome of events by the force of his awareness and his unbending intent. [2]

Choose your cases wisely, so that your intent is not destroyed by self doubt and resentment.
Does the client and the case touch your heart?

Anything is one of a million paths. Therefore, a warrior must always keep in mind that a path is only a path: if he feels that he should not follow it, he must not stay with it under any conditions. His decision to keep on that path or to leave it must be free of fear or ambition. He must look at every path closely and deliberately. There is a question that a warrior has to ask, mandatorily: Does this path have a heart?

All paths are the same: they lead nowhere. However, a path without a heart is never

enjoyable. On the other hand, a path with heart is easy - - it does not make a warrior work at liking it; it makes for a joyful journey; as long as a man follows it, he is one with it.

The Teachings of Don Juan
Carlos Castenada

The moment one definitely commits oneself, then Providence moves too. All sorts of things occur to help one that would never otherwise have occurred...unforeseen incidents, meetings and material assistance, which no man could have dreamed would have come his way.

Johann Wolfgang von Goethe

The spirit of a warrior is not geared to indulging and complaining, nor is it geared to winning or losing. The spirit of a warrior is geared only to struggle, and every struggle is a warrior's last battle on earth. Thus the outcome matters very little to him. In his last battle on earth a warrior lets his spirit flow free and clear. And as he wages his battle, knowing that his intent is impeccable, a warrior laughs and laughs. [2]

CHOOSE YOUR CASES WISELY

A Warrior of the Light does not postpone making decisions.

He thinks a great deal before taking action. He considers his training, as well as his responsibilities and duties as a teacher. He tries to remain calm and to analyze each step as if it were of supreme importance.

However, as soon as he has made a decision, the Warrior proceeds: He has no doubts about his chosen action, nor does he change direction if circumstances turn out differently from how he had imagined them.

If this decision is correct, he will win the battle, even if it lasts longer than expected. If his decision is wrong, he will be defeated and he will have to start all over again-only this time with more wisdom. But once he has started, a Warrior of the Light perseveres until the end. [1]

A Warrior of the Light carefully studies the position that he intends to conquer.

However difficult the objective, there is always a way of overcoming obstacles. He seeks out alternative paths, he sharpens his sword, he tries to fill his heart with the necessary determination to face the challenge.

But as he advances, the Warrior realizes that there are difficulties he had not reckoned with.

If he waits for the ideal moment, he will never set off. The Warrior requires a touch of madness to take the next step.

The Warrior uses that touch of madness. For-in both love and war-it is impossible to foresee everything. [1]

If nothing avails but perfection, paralysis is the result!

Winston Churchill

ONCE YOU CHOOSE YOUR CASE COMMIT YOUR INTENT

Intent is not a thought, or an object, or a wish. Intent is what can make a man succeed when his thoughts tell him that he is defeated. It operates in spite of the warrior's indulgence. Intent is what makes him invulnerable. Intent is what sends a shaman through a wall, through space, to infinity.
[2]

The Warrior of the Light is a believer.

Because he believes in miracles, miracles begin to happen. Because he is sure that his thoughts can change his life, his life begins to change. Because he is certain that he will find love, love appears.

Now and then, he is disappointed. Sometimes, he gets hurt.

Then he hears people say: "He's so ingenuous!"

But the Warrior knows that it is worth it. For every defeat, he has two victories in his favor.

All believers know this. [1]

Nothing being more important than anything else, a warrior chooses any act, and acts it out as if it mattered to him. His controlled folly makes him say that what he does matters and makes him act as if it did, and yet he knows that it doesn't: so when he fulfills his acts, he retreats in peace, and whether his acts were good or bad, or worked or didn't, is in no way part of his concern.

A Separate Reality

Carlos Castaneda

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A warrior lives by acting, not by thinking about acting, nor by thinking about what he will think when he has finished acting.

Carlos Castaneda

A Separate Reality

FAITH IS POWER

Once he has learned how to use a sword, the Warrior of the Light discovers that his equipment is still incomplete- he needs armor.

He sets off in search of this armor and he listens to the advice of various salesmen.

"Use the breastplate of solitude," says one.

"Use the shield of cynicism," says another.

"The best armor is not to get involved in anything." says a third.

The Warrior, however, ignores them. He calmly goes to his sacred place and puts on the indestructible cloak of faith.

Faith parries all blows. Faith transforms poison into crystal clear water. [1]

A warrior never worries about his fear. Instead, he thinks about the wonders of seeing the flow of energy! The rest is frills, unimportant frills. [2]

ACKNOWLEDGE YOUR FEAR BUT CONFRONT IT WITH FAITH

The spirit of a warrior is not geared to indulging and complaining, nor is it geared to winning or losing. The spirit of a warrior is geared only to struggle, and every struggle is a warrior's last battle on earth. Thus the outcome matters very little to him. In his last battle on earth a warrior lets his spirit flow free and clear. And as he wages his battle, knowing that his intent is impeccable, a warrior laughs and laughs. [2]

LISTEN TO THE CLIENTS STORY WITH "YOUR HEART"

The Little Prince

Antione de Saint Exupery

In the book the fox tells the little prince, "my secret, a very simple secret" which is "it is only with the heart that one can see rightly; what is essential is invisible to the eye".

In dealing with brain injury clients they will tell you their story in a manner that is dissociative, devoid of emotion, as if they are describing the injury to their brain as a nonevent - as if they are describing what they had for breakfast.

We must help them get in touch with the emotions associated with their loss, so that they can express it to the jury.

The way to do this is to "listen with your heart."

CONFIDENCE TO SUCCEED

The result of letting go is that you discover a bank of self-existing energy that is always available to you-beyond any circumstances. It actually comes from nowhere, but it is always there. It is the energy of basic goodness. You can invoke and provoke the energy of basic goodness in your life ... you can naturally let go of worrying about your own state of mind and you can begin to think of others. You can acknowledge the strength of basic goodness in yourself and then fearlessly projecting the state of mind on to others.

In this case, confidence does not mean that you have confidence in something, but it is remaining in the state of confidence, free from competition or one-upmanship. This is an unconditional state in which you simply possess an unwavering state of mind that needs no reference point. There is no room for doubt, even the question of doubt does not occur. This kind of confidence contains gentleness, because the notion of fear does not arise; sturdiness, because in the state of confidence there is ever present resourcefulness; and joy, because trusting in the heart brings a greater sense of humor. This confidence can manifest a majesty, elegance and richness in a person's life. [3]

DON'T BE INTIMIDATED

It's odd," the Warrior of Light says to himself. "I have met so many people who, at the first opportunity, try to show their very worst qualities. They hide their inner strength behind aggression and hide their fear of loneliness behind an air of independence. They do not believe in their own abilities, but are constantly trumpeting their virtues."

A Warrior reads these messages in many of the men and women he meets. He is never taken in by appearances and makes a point of remaining silent when people try to impress him. He uses these occasions to correct his own faults, for other people make an excellent mirror.

A Warrior takes every opportunity to teach himself. [1]

Never respond to overt aggression, arrogance, bragging - RECOGNIZE it for what it is "FEAR".

According to a poet: "The Warrior of the Light chooses his enemies."

He knows what he is capable of; he does not have to go about the world boasting of his qualities and virtues. Nevertheless, there is always someone who wants to prove himself better than he is.

For the Warrior, there is no "better" or "worse": everyone has the necessary gifts for his particular path.

But certain people insist. They provoke and offend and do everything they can to irritate him. At that point, his heart says: "Do not respond to these insults, they will not increase your abilities. You will tire yourself needlessly."

A Warrior of the Light does not waste his time listening to provocations; he has a destiny to fulfill. [1]

The Warrior of the Light does not always have faith.

There are moments when he believes in absolutely nothing. And he asks his heart: "Is all this effort really worth it?"

But his heart remains silent. And the Warrior has to decide for himself.

He looks for an example and remembers that Jesus went through something similar in order to inhabit fully the human condition.

"Take away this cup from me," said Jesus. He too lost heart and courage, but he did not stop.

The Warrior of the Light continues despite his lack of faith. He goes forward and, in the end, faith returns. [1]

ONCE THE TRIAL STARTS

Whenever the Warrior draws his sword, he uses it.

It can be used to clear a path, to help someone, to fend off danger, but a sword is a capricious thing and does not like to see its blade exposed for no reason.

That is why the Warrior never makes threats. He can attack, defend himself or flee; all of these attitudes form part of combat. It is not, however, part of combat to diminish the force of a blow by talking about it.

A Warrior of the Light is always alert to the movements of his sword. But he never forgets that the sword is watching his every move as well.

The sword was not made to be used by the mouth. [1]

DON'T BE DEVASTATED BY DEFEAT IN A BATTLE (TRIAL) WELL FOUGHT

The Warrior of the Light knows how to lose.

He does not treat defeat as if it were a matter of indifference to him, saying things like "Oh, it doesn't matter" or "To be honest, I didn't really want it that much." He accepts defeat as defeat and does not try to make a victory out of it.

Painful wounds, the indifference of friends, the loneliness of losing - all leave a bitter taste. But at these times, he says to himself: "I fought for something and did not succeed. I lost the first battle." These words give him renewed strength. He knows that no one wins all the time and he knows how to distinguish his successes from his failures. [1]

The Warrior of the Light never forgets the old saying: The good little goat doesn't bleat.

Injustices happen. Everyone finds themselves in situations they do not deserve, usually when they are unable to defend themselves. Defeat often knocks at the Warrior's door.

At such times, he remains silent. He does not waste energy on words, because they can do nothing. He knows it is best to use his strength to resist and have patience, knowing that Someone is watching. Someone who saw the unnecessary suffering and who will not accept it.

That Someone gives him what he most needs: time. Sooner or later, everything will once more work in his favor.

A Warrior of the Light is wise; he does not talk about his defeats. [1]

**THE PEOPLE NEED US TRIAL LAWYERS
PRESS ON**

From now on-and for the next few hundred years - the Universe is going to help Warriors of the Light and hinder the prejudiced.

The Earth's energy needs to be renewed.

New ideas need space.

Body and soul need new challenges.

The future has become the present, and every dream - except those dreams that involve preconceived ideas- will have a chance to be heard.

Anything of importance will remain. Anything useless will disappear. It is not the Warrior's responsibility, however, to judge the dreams of others, and he does not waste time criticizing other people's decisions.

In order to have faith in his own path, he does not need to prove that someone else's path is wrong.

[1]

VICTORY

Be humble and grateful in victory. It's not about us. It's about the clients.

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