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Acquired Brain Injury (ABI) and the Implications for Criminal Law

In 2003-2004 a survey of 200 New South Wales inmates found 82% had an ABI. It is estimated that somewhere between 40 and 60% of all people in custody in New South Wales and Victoria report ABI.
(http://www.bia.net.au/braininjuryasutraliasubmissionempoloymentstrategyfinal.pdf - accessed 10/11/2008)

Homer Simpson: Probably the most well known, and celebrated person with an ABI.

So what is an ABI?

An ABI is an injury to the brain which results in the deterioration of cognitive, physical, emotional or independent functions. Its causes include trauma, hypoxia, infection, tumour, substance abuse and degenerative neurological diseases. Its impact is devastatingly varied due to the complexity of the brain, and so differs from person to person. A widely perceived myth is that a brain injury is simply a type of intellectual disability. This is not the case, people with an ABI retain their intellectual capacity, they do however have difficulty controlling, co- ordinating and communicating their thoughts, feelings and actions.

Some common difficulties are;

- Thinking or planning ahead
- Putting plans in action
- Learning from mistakes
- Thinking through consequences
- Seeing other points of view
- Becoming angry or aggressive quickly
- Saying or doing things without thinking
- Limited self awareness and insight

"…They tell me that I have to go to this place and that place and that I have to be there at this time and that time on this day and that day… But when I get out of the office I can't remember what they said to me."
~ Jim (a 43 year old man with a 20 year history of heroin use, and numerous overdoses)

Substances that can cause and ABI

• Volatile substances including inhalants
• Cannabis
• Stimulants (including amphetamines and methamphetamines)
• Opiates (including heroin)
• Benzodiazepines (including Valium and Serepax)
• Alcohol – long term regular daily alcohol use and regular binge drinking

Many people diagnosed with an ABI also have drug and alcohol abuse/dependence issues. Unless the individual suffered an identifiable trauma (which was medically treated) it is often impossible to determine whether their deficits are a result of the traumatic injury or their substance use, or a combination of the two.

Anecdotal evidence provided by staff at Royal Talbot Rehabilitation Centre (2007) estimate the number of people presenting for treatment with an ABI and a substance abuse issue is approaching 80% of their client group, and subsequently those being treated with a second, third and even a fourth brain injury (resulting as a consequence of their substance use- whether that be the use itself, or behavioral issues associated with that use ie accidents, fights, periods of unconsciousness) is also increasing.

A significant percentage of ABI goes undetected
Most studies of incidence of ABI utilise hospital data, which excludes the many people who acquire a brain injury but do not seek medical attention or neuropsychological diagnosis.

"I fell out of the car when we were going around a roundabout when I was 7 years old…. I was never taken to the hospital"

~Pam (diagnosed with an ABI when she was 27 years old)

An estimate of incidence in Australia, based on hospital data, reported between 100 and 377 per 100,000 people acquire a brain injury every year.

Many people with an ABI are still undiagnosed, just like Homer

Checklist for ABI risk:

- Does the client use any drug (or a combination of drugs) daily?
- Have they been using this/these drugs for longer than 10 years
- Have they experienced significant periods of unconsciousness?
- Have they sustained any injuries or trauma's to the head (ie car accidents, fights, periods of overdose or passing out)

Does the client experience difficulties with any of the following?
- Solving problems
- Learning from mistakes
- Short term memory (remembering appointments etc)
- Learning new information
- Planning and organization

- Seeing the consequences of their behavior (insight)
- Being flexible in their thinking (tendency towards rigid, concrete thinking)
- Easily Frustrated with tasks involving complex thinking

(checklist compiled using ARBIAS recommendations)

Based on the above checklist, Homer Simpson should definitely be sent for a Neuropsychological Evaluation. A neuropsychological assessment (conducted by a Neuropsychologist) will be able to confirm the presence of an ABI, and the severity of their deficits.

nitial assessments can be conducted by clinicians at Ax Consultants to ascertain if a client requires a full neuropsychological assessment.

People with an ABI are radically over-represented in Australia's prisons.

A 2003-2004 survey of 200 New South Wales inmates found that 82% had experienced a brain injury and 22% had sustained four or more injuries.
Client's with an ABI have a reduced capacity to see the consequences of their behavior and thus learn from their mistakes. The combination of their impulsivity, emotional reactivity, reduced insight and poor memory (often clients will not remember the offence and have no insight into the fact that they cannot remember. When this happens the brain will invariably access another memory and the client will not be aware that this memory is not actually the true memory) very regularly translates into antisocial/criminal behavior, re-offending and subsequently a very close relationship with the criminal justice system.

Unfortunately, typical punitive actions and procedures do not increase the likelihood of the

client rehabilitation. Behavior Modification takes time with clients with an ABI, and whilst the clients may appear to be managing well in prison, once they are returned to the community they invariably reoffend. Depending on the severity of the ABI, clients will require a great deal of community based support to create a structured environment that maintains them. Many clients may appear to be functioning well, and have often developed strategies to hide their deficits from others. It is not uncommon for clients to actually require support with communication, transport, meal preparation, paper work, finances, house work and even self care.

<u>Recommendations:</u>

• Accessing community based services (counselling, case management, occupational therapy) to create a structured and supportive environment that will assist them to learn strategies to contain their behavior, contain their emotions and put into place strategies to enhance memory

• Establishing a supportive living environment (engaging family support and carers) that is not over stimulated

• If the client is in custody on remand for a lengthy period of time, encourage them to participate in drug and alcohol education/relapse prevention courses as well as anger management and emotional regulation courses.

If you have any questions, comments or believe a client of yours may have an ABI please don't hesitate to contact us at Ax Consultants for more information.

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