

Chapter 9



Neuropsychological Consultation in the Sentencing Phase of Capital Cases

ROBERT L. HEILBRONNER
DANIELLE WALLER

Death is different
—ANONYMOUS PUBLIC DEFENDER

The death penalty is different. It is an ultimate and irrevocable sanction. For that reason alone it warrants a greater degree of reliability (*Lockett v. Ohio*, 1978) in its application. All involved parties (e.g., judge, lawyers, experts, etc.) must operate at the highest level of ethics and professionalism, as mandated by their particular fields of expertise. Like other areas of forensic psychology consultations, neuropsychological consultations in capital cases involve the same four components: (1) clear recognition of the relevant psycholegal issues, including the implications of the evaluation methods and findings; (2) unwavering adherence to ethical standards, including informed consent, objectivity, and advocating for the data; (3) assessment methods that are both relevant to the issue in question and comprehensive in application; and (4) familiarity and reliance on the best empirical data and research perspectives (Cunningham & Goldstein, 2003). Becoming involved in a capital case is something that requires a personal assessment of one's morals; personal values; and views on the constitutionality of the death penalty, the role of government, and other important theoretical and philosophical issues. It is not for the faint of heart, which perhaps is one reason that very few neuropsychologists perform mitigation assessments as part of their practices and so little has been written on this topic.