

Mitigation in Death Penalty Cases: Use of Neuropsychological Assessment to Measure Executive Functioning and Self-Control in Individuals with Acquired Traumatic Brain Injury



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ABSTRACT

The objective of this presentation is to examine the use of neuropsychological assessments in defendants with Traumatic Brain Injury (TBI) facing the death penalty. A large body of literature shows that brain injuries can damage executive functioning and self-regulation abilities. As a result, forensic psychologists have increasingly educated attorneys about the possible effects of TBI on criminal behavior.

INTRODUCTION

- ◆ An estimated 1.7 million people have TBIs per year in the United States (Harcastle, 2015).
- ◆ Research shows that 25% to 87% of inmates report having a history of TBI compared to 8.5% of the general population (Department of Health & Human Services, 2006).
- ◆ Offenders with acquired TBI are more vulnerable to emotional and behavioral difficulties than the general population (Williams, Mewse, Tonks, Mills, Burgess & Cordan, 2010).
- ◆ Attention deficits, impulsivity, aggression, and decreased cognitive endurance are some of the detrimental neuropsychological problems affecting the inmate population in general (Harcastle, 2015).
- ◆ These problems are significantly more likely in individuals with TBI.
- ◆ Research shows a link between criminal behavior and TBI, but most research and assessment occurs with inmates rather than defendants.
- ◆ We propose that neuropsychological assessments of defendants (especially those with possible TBI) will provide useful information to the justice system.

FORENSIC IMPLICATIONS OF TRAUMATIC BRAIN INJURY

- ◆ TBI can alter an individual's personality, cognitive abilities, and everyday functioning (Brenner, Homaifar, Adler, Wolfman, & Kemp, 2009; Elbogen et al., 2012; Simcox, Mattingly & Marrero, 2015).
- ◆ Previous research suggests that anxiety, anger, emotional dysregulation, and aggressive responses may be a result of TBI (APA, 2013; Brenner et al., 2009; Simcox et al., 2015).
- ◆ Lack of control over aggressive behavior and other impulses may increase the likelihood of criminal behaviors.
- ◆ Existing research has also shown that people suffering from TBI are likely to have altered perceptions of reality and adjustment difficulties in prison settings (Williams at el., 2010).

GOALS OF NEUROPSYCHOLOGICAL ASSESSMENTS

- ◆ One of the goals of neuropsychological assessments in capital trials involving individuals with TBI is to determine if the defendant's criminal behaviors are related to their brain injury.
- ◆ Cognitive impairments or emotional disturbances connected to TBI do not legally justify or excuse wrongdoing (Marcopulos, Morgan & Denney, 2008).
- ◆ However, evidence of decreased executive functioning or poor self-control abilities due to TBI may be used as mitigating evidence for a lighter sentence.
- ◆ Such evidence could also enhance attorneys' and jurors' understanding of the person's mental competencies to make decisions (McIsaac et al., 2016).

CONCLUSIONS

- ◆ A capital trial is unique from all other proceedings within the criminal justice system as it is a proceeding that contemplates the possibility of imposing a sentence of death (Williams at el., 2010).
- ◆ This presentation highlights the value of using neuropsychological assessment to measure possible mitigating factors in capital trials.
- ◆ For several years courts have shown resistance to the integration of psychological testing and expert testimony in capital trials due to the subjective nature of some types of psychological test results (Harcastle, 2015).
- ◆ However, neuropsychological assessment results are more objective and therefore more likely to be accepted.
- ◆ Consistent with this, neuropsychological assessments are viewed as essential in assessing the competency of capital defendants (Marcopulos, Morgan & Denney, 2008).
- ◆ For defendants with acquired traumatic brain injury, introduction of neuropsychological test results may enhance the likelihood that justice is served.
- ◆ One disadvantage is that neuropsychological assessments cannot provide specific underlying causes of criminal behaviors.

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