

Vera Institute of Justice

Criminal Justice Issues and Prisoners' Rights

<https://www.vera.org/blog/mitigating-circumstances-matter>

Public Facing Advocacy Writing

On Wednesday, the [New Jersey Supreme Court ruled](#) that defendants family members do not have an unequivocal right to make statements on the defendants behalf at sentencing. The court held that although such statements are commonplace, a judge may refuse to allow them so long as he is able to provide a valid explanation and his refusal is not arbitrary or unfair. Citing the legislature and the United States Supreme Courts silence on this issue, the New Jersey Supreme Court said it would not create a right where no right yet existed.

Wednesdays decision highlights two key issues: first, the importance of mitigation evidence at sentencing, and second, the need for legislation preserving the entry of this kind of evidence. These concepts are perhaps best illustrated in the death penalty context, where the inclusion or exclusion of mitigating evidence is literally the difference between life and death. Capital cases are split into two phases: a guilt/innocence phase, and then, upon a finding of guilt, a sentencing phase. In the sentencing phase, jurors must weigh statutory aggravating factors against mitigation factors to decide whether a death sentence should be imposed.

An anecdote: Four years ago, I held an externship with the Philadelphia Federal Defenders Capital Habeas Unit. I worked on a team for a Pittsburgh man who had been convicted of a triple homicide, and the client declined to reveal anything about his past beyond what his school and prison records indicated. As the lawyers worked tirelessly on his habeas corpus petition, office investigators made the trip back and forth between Pittsburgh and Philadelphia, attempting to locate anyone who might be able to shed some light on his background. A late-night Internet search revealed that our client had spent several years as a child enrolled in a Scared Straighttype program that had been the target of a national investigation related to widespread child abuse and fraud. The experience of program participants had been so traumatic that an alarming number of alumni had even committed suicide. None of this had ever been mentioned to the jurors who sentenced him to death.

The point is this: mitigating circumstances matterand in some instances, family members may be the only ones who can describe those circumstances. Although a persons background, upbringing, and previous trauma can in no way excuse whatever pain they have inflicted on a victim, all of these things do help explain how the defendant wound up in the courtroom. And all of these things should matter when society deals with that defendant. This is no less true for a person facing 10 years in prison than for a person facing death.

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