may accord to aggravating and mitigating evidence.[115] "The requirement of individualized sentencing is satisfied by allowing the jury to consider all relevant mitigating evidence"; there is no additional requirement that the jury be allowed to weigh the severity of an aggravating circumstance in the absence of any mitigating factor.[116] So, too, the legislature may specify the consequences of the jury's finding an aggravating circumstance; it may mandate that a death sentence be imposed if the jury unanimously finds at least one aggravating circumstance and no mitigating circumstance,[117] or if the jury finds that aggravating circumstances outweigh mitigating circumstances.[118] And a court may instruct that the jury "must not be swayed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion, or public feeling," because in essence the instruction merely cautions the jury not to base its decision "on factors not presented at the trial."[119] However, a jury instruction that can be interpreted as requiring jury unanimity on the existence of each mitigating factor before that factor may be weighed against aggravating factors is invalid as in effect allowing one juror to veto consideration of any and all mitigating factors. Instead, each juror must be allowed to give effect to what he or she believes to be established mitigating evidence.[120] Due process considerations can also come into play; if the state argues for the death penalty based on

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text of assessment of future dangerousness); Brewer v. Quarterman, 550 U.S. 286 (2007) (same). *But cf.* Franklin v. Lynaugh, 487 U.S. 164 (1988) (consideration of defendant's character as revealed by jail behavior may be limited to context of assessment of future dangerousness).

[115] "Neither [*Lockett* nor *Eddings*] establishes the weight which must be given to any particular mitigating evidence, or the manner in which it must be considered; they simply condemn any procedure in which such evidence has no weight at all." Barclay v. Florida, 463 U.S. 939, 961 n.2 (1983) (Justice Stevens concurring in judgment).

[116] Blystone v. Pennsylvania, 494 U.S. 299, 307 (1990).

[117] 494 U.S. at 307.

[118] Boyde v. California, 494 U.S. 370 (1990). A court is not required give a jury instruction expressly directing the jury to consider mitigating circumstance, as long as the instruction actually given affords the jury the discretion to take such evidence into consideration. Buchanan v. Angelone, 522 U.S. 269 (1998). By the same token, a court did not offend the Constitution by directing the jury's attention to a specific paragraph of a constitutionally sufficient instruction in response to the jury's question about proper construction of mitigating circumstances. Weeks v. Angelone, 528 U.S. 225 (2000). Nor did a court offend the Constitution by instructing the jury to consider "[a]ny other circumstance which extenuates the gravity of the crime," without specifying that such circumstance need not be a circumstance *of the crime*, but could include "some likelihood of future good conduct." This was because the jurors had heard "extensive forward-looking evidence," and it was improbable that they would believe themselves barred from considering it. Ayers v. Belmontes, 549 U.S. 7, 10, 15, 16 (2006).

[119] California v. Brown, 479 U.S. 538, 543 (1987).

[120] Mills v. Maryland, 486 U.S. 367 (1988); McKoy v. North Carolina, 494 U.S. 433 (1990). *Compare* Smith v. Spisak, 558 U.S. ___, No. 08–724, slip op. at 2–9 (2010) (distinguishing jury instructions in *Mills* from instructions directing each juror to