

Editor:

I would like to comment on Drs. Erickson and Ciccone's review (*J Am Acad Psychiatry Law* 32:452–4, 2004) of *Wiggins v. Smith*, 539 U.S. 510 (2003). While I felt that the review was generally excellent, I had a few thoughts that I would like to share.

First, Drs. Erickson and Ciccone write, "In *Wiggins*, the [Supreme] Court tacitly endorsed the need for comprehensive psychiatric evaluations of mentally ill offenders and the need for thorough investigation by counsel of mitigation evidence."

Wiggins v. Smith is a landmark case because it mandates the presentation of a mitigation evaluation and report by a "forensic social worker." Social workers are uniquely qualified for this work, given the discipline's focus on the individual's biopsychosocial background.

The Court was not tacit at all. It overtly recognized the forensic role of social workers in providing consultation in family, criminal, and immigration court cases for many decades. While psychologists and psychiatrists can provide expert testimony about mental illness, the social worker is called on to provide expert assistance in this area and also to inform the court about a wide range of matters that may serve to mitigate a defendant's case. Indeed, there are defendants who present with psychopathology, but the main mitigation questions concern nonpsychopathological issues. And there are defendants who present without psychopathology, yet have strong mitigation evidence, given their biopsychosocial history that the expert forensic social worker must present to the court.

Second, the reviewers state that the ruling pertains to "death penalty cases."

I am not convinced that the Court's ruling is limited to death penalty cases. After all, if the mitigation report had been submitted in a timely and correct manner, *Wiggins* may never have been sentenced to die. I submit that for several reasons mitigation reports should be included in all felony cases. First, the cost of housing a criminal in the penal system is very expensive, and it behooves the courts to invest in a forensic mitigation expert to illuminate all relevant

facts about the individual so that the defendant can be directed toward a judgment that is balanced and targets the three goals of the penal system: rehabilitation, deterrence, and punishment. Second, while the rules of evidence disallow many facts about the defendant during trial, the mitigation report permits the trier of fact to consider the defendant through another lens, which serves to humanize the defendant; contextualize his behavior, thoughts, and emotions; and outline all the relevant mitigating evidence at hand.

Finally, many defendants appeal death sentences—a procedure that is very time consuming and expensive. The presentation of a mitigation report to the trial court may serve to direct the trial court to rule in such a manner as to provide the defendant with the satisfaction that all facts that he and his lawyer believe are relevant are presented, making a protracted fight through appeal procedures unnecessary or (legally) moot.

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Editor:

We welcome the opportunity to respond to Dr. Mark S. Silver's letter.

We do not agree with Dr. Silver's claim that the Court in the *Wiggins* case mandated reports by "forensic social workers." Nothing in the opinion of the Court stated that forensic reports must be completed in death penalty cases or that these reports must be completed by social workers. If the Court had decided to embark on such a stringent and novel standard, it would have stated so explicitly.

The Court, citing the American Bar Association's guidelines for representation in death penalty cases, stated that "investigations into mitigating evidence 'should comprise efforts to discover *all reasonably available* mitigating evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor'" (*Wiggins* at 524, internal citations omitted, emphasis in the original). The Court, noting that defense counsel "put on a half-hearted mit-