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Giving the victims a voice in court

Relatives say impact statements are not about 'closure'

"I just have to get this right," James Gahan would say to himself.

For months, he would rise well before dawn to sit by the picture windows of his home, looking out into the darkness and thinking: "For Jimmy, I have to get this right."

He was preparing for one of the most difficult moments of his life, the moment when he would tell a judge what it was like to lose his only child, Jimmy, in the 2003 Rhode Island nightclub fire that killed 100 people.

Under the rules, he would have to keep his remarks under two minutes. But that was not a problem. "I knew I could only hold it together for one and a half," Gahan says.

In the past few weeks, two high-profile cases -- the Zacarias Moussaoui terrorism trial and the Rhode Island fire case -- have spotlighted a relatively recent component of the American criminal justice system. The victim impact statement is an outgrowth of the victims' rights movement that began roughly three decades ago.

Giving voice to the victims

Both cases have been front-page news because of their scope and the number of deaths. But every state has some kind of provision for crime victims or their family members to have a say at sentencing.

Victims' rights advocates call it an essential step toward giving victims a role in the criminal justice system. But what does it do for the survivors? Why do people voluntarily relive the anguish of their losses, and in a public setting?

Interviews with family members show the reasons are varied. Vengeance is only one possible motivation. For some, it is a feeling of empowerment, knowing they have a say in the process. For others, the goal is facing the defendant and showing that their loved one was a human being. The very process of testifying may be therapeutic in itself. And many see it as a way to give a voice to their departed loved one.

But no one will say it gives them "closure." And that, say advocates, should be obvious.

"People are missing the point if they think anything that happens in a courtroom brings closure," says Steve Siegel, who oversees victim services at the Denver district attorney's office and worked on both the Columbine High School shooting and the Oklahoma City bombing case. "We can give support towards healing. But there's no going back to what once was."

Gahan, who says he lost in 21-year-old Jimmy a best friend as well as a son, knows how true that is.

Closure will 'never happen'

"The word 'closure' is used far too generously," he says. "It'll never happen."

Sitting by those picture windows at his home, Gahan realized that his job at last Monday's sentencing hearing for Daniel Biechele, a former tour manager who set off the pyrotechnics that led to the fire, was to give his son a voice.

"At the end it came to me: I had to ask for some mercy for this person," says Gahan, who believes the defendant was "way down in the chain of responsibility" for the tragedy.

"That's what Jimmy would have wanted," Gahan says.

Just as Gahan wanted a voice for his son, so Dan Levy, a decade ago and across the country in Arizona, wanted a voice for his brother. Howard Levy, a father of two young children, was murdered as he waited to play basketball early one weekend morning. Then, at the hospital, as his family stood sobbing upon learning Howard was dead, an intensive care nurse admonished them: "You people really need to keep it down."

The experience thrust Levy into a new profession: victims' advocate. He is a full-time adviser to Gov. Janet Napolitano on victims' issues.

"It was an opportunity for me to talk about who my brother was," Levy says of the impact statement he gave at the killer's sentencing -- even though a life term had already been set. "I wanted the guy to know it wasn't just a 'victim' -- it was Howard Levy."

Every state has some provision for victim impact information at sentencing, although a few limit it to a written statement. On the federal level, a 1991 Supreme Court case held that such statements do not violate a defendant's rights to a fair trial. The idea is gaining hold in Britain; a pilot project began earlier this year.

Loved ones lost on 9/11

The Zacarias Moussaoui terrorism case presented a unique situation because of the sheer number of victims of the 9/11 attacks.

About 45 relatives spoke for the prosecution, trying to convince the jury that Moussaoui deserved death. Only by implication, though -- the rules barred them from speaking about the defendant or about the penalty.

But several 9/11 family members who opposed the death penalty testified for Moussaoui's defense.

C. Lee Hanson described talking on the phone to his son, Peter, the moment before his plane crashed into the World Trade Center, killing him, his wife and their 2-year-old daughter. He said Peter told him: "Don't worry Dad, if it happens, it will be quick." Hanson also testified about the pain of retrieving DNA samples to identify remains: "I was picking hair out of brushes, putting toothbrushes into bags."

Another was Blake Allison, who kissed his wife, Anna, goodbye at the airport in Boston, Massachusetts, went to work and later learned her plane had crashed into the trade center. And yet Allison did not testify for the prosecution. He spoke for the defense, along with about a dozen other family members, in what lawyers call a real rarity of the justice system.

Allison says his opposition to the death penalty was only one motivation. "Also, I felt the government was prosecuting the wrong guy because they had to punish somebody," says Allison, 56, of Lyme, New Hampshire. He also was concerned about Moussaoui's mental state.

"Did I suffer? Absolutely," he says. "But we all experience loss differently. We're all at different places in that journey."

As for Gahan, his journey didn't end with his day in court. He is eagerly awaiting the trials of the nightclub's owners, and is also pushing for more stringent fire safety laws.

"I'm going to be spending the rest of my life seeking my son's approval," he remembers telling the judge. "I think today I have it."

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