

Reflecting on the Death Penalty

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DURING THE WINTER OF 1994 a man I represented was taken to a small room in Huntsville, Texas, strapped to a gurney, and his life was taken from him by strangers in the name of the state.

For about five years I have been an attorney for death-sentenced men in Florida and Texas. I have often reflected on how I felt about this as a believing Mormon. However, it was always an abstraction until someone I had grown close to was killed in that way.¹

I will call him James Frederick—Jimmy. Everything I have to say about him is colored by the fact that he was a young man I liked instantly. I was especially impressed by his enthusiasm for, his obvious enjoyment of, life. Perhaps the shadow of your own death brings greater appreciation for each day and hour lived. If so, that was certainly evident in him.

Jimmy was an admitted armed robber—this in spite of his growing up in an apparently loving, religious home. What I knew of his childhood was very much an exception in my line of work, as I will explain below. He was convicted of shooting a man to death in the course of one of those robberies and sentenced to die. While the murder was a bad one, it did not stand out as especially heinous, atrocious, or cruel when compared with other Texas homicides.

In the eight years after his conviction, Jimmy was imprisoned on the Texas death row. It is a special section of the Ellis One Unit, a 2,500-bed maximum security prison in the pine forests outside Huntsville. It is a squat, flat, hot, inhospitable place built in the mid-1960s. There is no air conditioning and very poor ventilation. Sixty percent of death row inmates, those not in the work program, are kept twenty-three or more hours a day in 4x8 cells with few possessions. Some have radios and there is a black-and-white television mounted on the wall outside every

1. The other lawyers on the case were Dick Burr and Steve Losch.

few cells. Some have typewriters and busy themselves writing letters to pen pals and, when they have them, lawyers. Twice a week inmates get a little exercise in the "yard," a concrete slab with basketball and volleyball nets, and every few days they get a brief shower. It is literally warehousing in the most uncomfortable conditions, although there are other death rows more notorious than Ellis One.

In Jimmy's eight years on death row, he had become genuinely religious. I have had a lot of experience with the manipulative "faith" of many prison inmates—"riding the Jesus Train," it is called—and that which was a product of mental illness in others. Jimmy's belief was sincere. The pastor of the church where he grew up remained positively involved with him. His deeply loving mother never wavered in her support for her son, writing and making the several hours' drive to visit regularly with other family members. Only a few death row inmates enjoy regular visits and support from family. Jimmy also worked at developing a positive relationship with his child, born about the time he was taken into custody.

Texas has a unique work program making prison system garments where Jimmy, along with about 40 percent of the over 400 inmates sentenced to die, became a productive worker.² Death row guards, adept at learning which of their often disturbed and hostile inmates presented a security risk, regarded Jimmy as a no-problem-responsibility. They dropped many of the handcuffing and other requirements they normally imposed. Jimmy was one of the most popular inmates with his fellow prisoners. He was often a calming influence among them. Guards came to rely on him in that role and he was proud of the respect he had earned.

Everything I learned about Jimmy's life in prison defied the judgment that he was beyond redemption, that he had no worth as a human being, no contribution to make.

When Jimmy reached what death row lawyers call "successor status"—meaning he was entering federal habeas corpus for the second time—he knew he was not likely to survive. More than a third of all executions in the United States now take place in Texas. State and federal courts in Texas are so hostile to death row claims that very few inmates survive execution dates as successors. We talked often by telephone in the days and hours leading up to his execution. He was scared and wanted to live, but he was focused and prepared. Most important, he was at peace with God and ready to return to him.

Through this same period I spoke with his mother almost daily. We developed a bond that I believe we will carry for the rest of our lives. I

2. See Francis X. Clines, "Self-Esteem and Friendship in a Factory on Death Row," *New York Times*, 12 Jan. 1994, 1.

found in her a mother's heart—unquestioning love, indescribable anguish, fear, and tears. One morning a few days before the execution she called me at 6:30 and tearfully said the sound of my voice let her find a calm that otherwise escaped her. That call made me feel all the more inadequate and helpless as one of Jimmy's attorneys because I understood the reality of his situation.

At one point the newspapers quoted the mother of the victim saying that Jimmy was a monster who should have been killed years earlier, and that she was angry that Texas law did not allow her to attend the execution. (Victims' families now are allowed to witness executions, although not in the same room as the condemned man's family.) I remember Jimmy's mother being bitter about the press—the media significantly increased her pain—and the state's seeking the life of her son, but she refused to find any anger in her heart for the woman. "She is a mother, too," she told me, "I understand her pain."

On Jimmy's last day his mother, child, sister, and some other relatives were in Huntsville to be with him. Even with the remainder of his life measured in hours, Texas still does not allow contact visits with family for a final embrace or kiss. Everything happened on either side of a wall of thick glass and heavy wire in the death row visitor's area. At 4:00 in the afternoon his family was required to leave Ellis One Unit. Jimmy was moved to the Walls Unit, another old prison in the center of town where the death chamber is.

Death chamber is the correct term. It is a room where men assemble for the planned killing of a human being while a group of strangers watches from behind a glass wall in an adjoining room. Texas executions were then set for 12:01 a.m. By law and tradition they must be completed before dawn. More recently they have been shifted to an early evening time.

I could not be with Jimmy and his family in person because I was trapped in my Austin office waiting for the United States Supreme Court to call with a ruling on our final appeals, a Petition for Certiorari filed that afternoon. About 8:30 I got that call from their capital appeals clerk, Cynthia Rapp. It was a very formal and quiet exchange undertaken almost in whispers. After she told me our Petition for Certiorari had been denied 8-1, she asked me a question I had not been prepared for: "Will you be filing anything else tonight?" I remember how cold I felt as I told her, "No." We both knew "no" meant we had given up, that Jimmy was going to die in less than four hours.

Then I had to call Jimmy with the news we had expected but hoped we would not hear. Lawyers calling at this point must work their way through the prison system director's office, finally getting transferred to a phone at the far end of a long extension cord near the death chamber

holding cell. I remember Jimmy's mouth was very dry and I asked if he had been drugged. He said no. He sounded as though he was speaking to me from inside some big metal tank, his voice bouncing off steel.

We talked for maybe twenty minutes, with me seemingly more anguished than Jimmy. Then he wanted me to patch together a conference call to his family in a Huntsville motel to tell them good-bye. His mother first, his child, his sisters, the phone passed from hand to hand. He spoke to each with love, strength, and courage. That was the most painful, excruciating 90 minutes I think I have ever lived through. His mother cried out when she heard the news and the rest of his family knew that hope was at an end. Jimmy tried to explain to his bewildered child why he was about to die. I remember struggling to keep the others on the line from hearing me cry in my office 160 miles away along with his family in Huntsville. For months I could not tell people about it without fighting back tears.

Jimmy wanted his mother and one sister to be among the small group of witnesses to his execution. It was hard for him to ask his mother to do such a thing, but he finally did. His poor mother could not bare the prospect of watching her only son die and would not promise to be there, yet she summoned all her courage to do so. She later told me she realized how important it was to him by the obvious affection on his face as he lay on the executioner's gurney.

Minutes before the execution family members and press are brought into an adjoining witness room where a window facing the death chamber is covered by a closed curtain. When it is drawn, they see the condemned strapped onto a gurney, arms extended as if on a cross, with the poison tubes already inserted into his arms or thighs. They can converse between rooms by way of microphones hanging from the ceiling.

Jimmy made no final statement but died with tears on his cheek and a profession of love for family. He was pronounced dead about fifteen minutes after the poisons were fed into his body by the state executioner.

The next day his mother called me and asked that I speak at his funeral. I dreaded the prospect but could not say no to this beautiful woman. It was especially important to me to be able to do this as a Mormon. As it happened, that funeral service was one of the most positive, validating experiences I have ever enjoyed. I met all of his close-knit family at their home before the services. Later the church was packed with people who had known Jimmy as a boy growing up and as a man who had found positive directions for his life even while awaiting execution. I sat next to his young child until it was my turn to speak. It was a joyful celebration of the good in his life and his final release from mortal pain. No one there doubted that he would be found in heaven. I will always be thankful to his mother for asking me. I am certain I gained much more

from it than I was able to give.

I have had other clients executed, but this case drove home to me just what an evil thing the death penalty is. Executions do not bring real peace to the families of victims and only extend the ring of suffering to more lives. Absolutely nothing in that mother's life, or in any other member of Jimmy's family, made them deserving of that kind of suffering. If there was any way for that woman to have exchanged her life for the life of her son, she freely would have. Jimmy's eight years of life on death row defied any attempt to characterize him as a man beyond redemption, without value as a human being, a man society had to kill to protect itself from.

Most people do not know how a death penalty trial works. You may only receive a death sentence for the crime of murder.³ A capital trial has two parts. First, the jury arrives at a guilty verdict on the crime charged. If they acquit or convict on a lesser included offense, such as second-degree murder, the trial is over.

If they convict on the capital offense in most states,⁴ the same jury then sits in a second phase which usually begins the following day. At this Punishment Phase the jury hears testimony of aggravating and mitigating circumstances—if any are offered—and renders another verdict. They either recommend or impose a sentence, depending on state law. In Texas the jury's death verdict must be unanimous and is binding on the trial court. In Florida the vote is advisory to the judge who imposes sentence and need not be unanimous. The only sentencing choices are death or life in prison. For all practical purposes capital life now means you die in a prison cell.

In most states an appeal to the state's highest court is required, whether the condemned wants it or not. An initial Petition for Certiorari to the U.S. Supreme Court often, but not always, follows. A second round of appeals called habeas corpus follows in most instances.

My personal opposition to the death penalty comes from several reasons.

For starters, our court system is a very good one but it is not perfect. Innocent people are sentenced to death, in part, because the quality of the

3. The Supreme Court has ruled that death for the rape of an adult is excessive and violates the Eighth Amendment prohibition on cruel and unusual punishment. *Coker v. Georgia*, 433 U.S. 584, 53 L.Ed.2d 982, 97 S.Ct. 2861 (1977). Death as punishment for the rape of a child is still a constitutionally open question, but few legal scholars believe it would be approved by the Supreme Court today.

4. In a few states, such as heavily Mormon Nevada, a special three-judge panel determines the sentence after the jury convicts.

defense provided indigents is often pathetic.⁵ Fiscal pressures, poor compensation of appointed counsel, public outrage over the crime, and a shortage of competent death penalty trial lawyers all contribute to this. A 1993 congressional study of the problem counted forty-eight men released from death row from 1973 to 1993 as innocent and noted that Texas, Georgia, and Florida were the states most prone to such miscarriages of justice.⁶ But not all are found and released. On 4 January 1995 Texas executed Jesse Jacobs even though his prosecutor later obtained a conviction of his sister for the same murder, telling the second jury that he was mistaken in the first trial and that Jacobs had actually not killed the victim. The execution caused a national outcry, but Texas prosecutors were completely unrepentant and a majority of the Supreme Court refused to intervene.⁷

One of the most chilling rationalizations to me is that a certain number of executions of the innocent must be accepted in order to enjoy the supposed benefits of the death penalty.⁸ What are we to tell the mothers of those whom the state has killed by mistake? That we are sorry but hopefully society is safer for all, except possibly their dead child?

The death penalty is increasingly arbitrary, making less and less effort to distinguish the worst offenders from the majority who receive life sentences. That comes with the past decade of Supreme Court holdings seeking to eliminate restrictions on state imposition of the death penalty. The difference between those who get death sentences and those who get life is mostly found in the quality of the lawyering involved, chance fac-

5. After a six-month, six-state study, the *National Law Journal* found the capital defense system to be largely populated by the least skilled and poorest paid lawyers. Marcia Coyle, Fred Strasser, and Marianne Lavelle, "Trial and Error in the Nation's Death Belt: Fatal Defense," *National Law Journal*, 11 June 1990. Utah was not discussed in this article.

6. The 21 October 1993 congressional report, "Innocence and The Death Penalty: Assessing The Danger of Mistaken Executions," by the House Subcommittee on Civil and Constitutional Rights, said that "Judging from past experience, a substantial number of death row inmates are indeed innocent, and there is a high risk that some of them will be executed." On the problem generally, see Mike L. Radelet, Hugo Adam Bedau, and Constance E. Putnam, *In Spite of Innocence: The Ordeal of 400 Americans Wrongly Convicted of Crimes Punishable by Death* (Boston: Northeastern University Press, 1992). On a specific incidence of such a mistake, see Randall Adams, *Adams v. Texas: The True Story Made Famous by the Highly Acclaimed Film The Thin Blue Line* (New York: St. Martin's Press, 1991).

7. See Sam Howe Verhovek, "When Justice Shows Its Darker Side," *New York Times*, 8 Jan. 1995. Three justices of the Supreme Court voted to stay the execution and two wrote a stinging dissent saying his death sentence was "fundamentally unfair" and that "The injustice . . . is self-evident." See *Jacobs v. Texas*, 130 L.Ed.2d 618 (1995).

8. See Ernest van den Haag, "Why Capital Punishment?" *Albany Law Review* 54 (1990): 501-14.

tors of geography and jurisdiction, the race of the victims and the perpetrators, elections, the composition of juries, and other factors which have nothing to do with the defendant as an individual.

One inevitable result of this arbitrariness is that today's death penalty is racist. Every study recognizes that the death penalty is disproportionately applied to racial minorities.⁹ This is, perhaps, an inevitable result of the fact that the death penalty is reserved almost exclusively for the poor. The current Supreme Court has, unbelievably to me, held that while this racism does exist it is an "inevitable" but not fatal blemish on the execution machine.¹⁰ By 31 August 1995 death rows in the United States were 48 percent whites and 52 percent racial minorities.¹¹ The race-based use of the death penalty is now on the rapid increase.

The death penalty is bad public policy in that it is terribly expensive—maximum security life imprisonment costs around \$.5-\$1.75 million

9. See Robert M. Bohm, ed., *The Death Penalty in America: Current Research* (Cincinnati: Anderson Publishing Co., 1991). Florida, where I first began doing death row work, has never in its history executed a white for the murder of a black. The Florida Supreme Court's Racial and Ethical Bias Study Commission found in 1990 that killers of whites were 3.4 times more likely to receive a death sentence than killers of blacks. See Ken Driggs, "A Current of Electricity Sufficient in Intensity to Cause Immediate Death: A Pre-Furman History of Florida's Electric Chair," *Stetson Law Review* 22 (Summer 1993): 1169-1209; Michael L. Radelet and Glenn L. Pierce, "Choosing Those Who Will Die: Race and the Death Penalty in Florida," *Florida Law Review* 43 (Jan. 1991): 1-34; and Bob Levenson and Debbie Salamon, "Prosecutors see death penalty in black and white," *Orlando Sentinel*, 24 May 1992, 1, which studied 283 first-degree murder cases in central Florida in 1986-91 and concluded, "Justice, however, is not colorblind in Central Florida when it comes to the prosecution of first-degree murder cases."

10. In a 5-4 decision the U.S. Supreme Court dismissed statistical evidence of racial bias in Georgia capital cases as "an inevitable part of our criminal justice system." *McCleskey v. Kemp*, 481 U.S. 279, 312, 95 L.Ed.2d 262, 291, 107 S.Ct. 1756 (1987). The four dissenters saw clear evidence of racial bias in the Georgia experience:

The capital sentencing rate for all white victim cases was almost 11 times greater than the rate for black-victim cases. Furthermore, blacks who kill whites are sentenced to death at nearly 22 times the rate of blacks who kill blacks, and more than 7 times the rate of whites who kill blacks. In addition, prosecutors seek the death penalty for 70% of black defendants with white victims, but for only 15% of black defendants with black victims. Since our decision upholding the Georgia capital sentencing system in *Gregg*, the State has executed seven persons. All of the seven were convicted of killing whites, and six of the seven executed were black. Such execution figures are especially striking in light of the fact that, during the period encompassed by the Baldus study, only 9.2% of Georgia homicides involved black defendants and white victims, while 60.7% involved black victims (481 U.S. at 326-27, 95 L.Ed.2d at 301; emphasis in original; citations omitted).

11. *Death Row, U.S.A.*, a detailed quarterly report compiled by the NAACP Legal Defense Fund; see report dated summer 1995.

while executions run over \$3 million each¹²—and is not a deterrent.

We execute, I think, not out of any instinct but fear and revenge. We are afraid of what we think is increasingly random violence in our society. We are angry because of the often terrible crimes these defendants have committed. We select a few of them—in a process that is very close to random—and kill them. One legal scholar who follows the death penalty has said, "There are 22,000 homicides a year, 18,000 arrests and maybe 300 death sentences, leading to maybe 50 or 60 executions. How do you figure out why lightening strikes one defendant and not another? It's been studied for 20 years, and all I can say is, it's not a rational process."¹³ These are the scapegoats, the unlucky few we have drawn by judicial lot to sacrifice.

I do not believe that society should be blamed for individual human failings. Yet I do believe that a great many people who end up on death row lived lives that clearly signaled this was coming unless some positive force intervened. These men, and a handful of women, are largely "made."

Who among us doesn't understand that violence directed at children is destructive and has long-term consequences? In my files is a newspaper article reporting:

A study of young children finds that physical abuse at home is more strongly linked to later aggressive behavior than are such factors as poverty, divorce or marital violence. John E. Bates, an Indiana University psychology professor said Thursday that a study that followed 309 children from age 4 into kindergarten showed that those who were physically abused by an adult at home were more likely to be aggressive—or even violent—in difficult social situations. Abuse, he said, is more powerful by far than any other home influence on how a child learns to cope.¹⁴

12. One California newspaper estimated each execution there runs \$15 million. Michael Dorgan, "Taxpayers pay high price for death penalty," *San Jose Mercury News*, 12 Apr. 1992, 1A, crediting the *Sacramento Bee* with the cost estimate. A 1988 study published in the *Miami Herald* found each Florida execution had cost taxpayers \$3,178,623 and called its figures "conservative." Dace Von Drehle, "Capital punishment in paralysis," *Miami Herald*, 10 July 1988, 1. Another study set the cost of Texas executions at \$2.3 million each, while life, set as forty years in a maximum security prison, cost about \$750,000. Christy Hoppe, "Life in jail, or death? Life term is cheaper," *Charlotte Observer*, 22 Mar. 1992, 12A. See also Chris Lavin, "Is the death penalty worth it? It costs time, money, answers," *St. Petersburg Times*, 23 Aug. 1992, 1B. Florida spent \$9.5 million building a special 336-bed death row prison which was too small before it opened. The opening of the prison was delayed for several months because the state did not have the \$5.8 million a year required to run the prison and its required staff of 145. See "State lacks the money of open new death row," *St. Petersburg Times*, 14 Apr. 1992, 5B, and "New Walls, No Inmates," *Newsweek*, 18 May 1992, 63.

13. Quoted at "Death Penalty," *Miami Herald*, 5 Mar. 1995, Viewpoint Section, M-1.

14. "Abuse at home called basic reason children rely on violence to cope," *Atlanta Constitution*, 21 Dec. 1990, 4A.

In our society we also have the sexual molestation of children, the scourge of drunkenness and addiction among parents, drug abuse and the even more destructive use of chemical inhalants by children and young adults, lack of parenting skills, racism, grinding poverty, ignorance, and sometimes just an absence of Christian charity, all of which contribute to the making of these men. At some point nearly every one of them could have been diverted from this killing by something that worked better in our society. Often it was indifference to their plight which was the most damaging.

I do not argue that personal choices play no role because in many instances they do. But the sad truth in our society is that many people grow up with less ability to make good choices, much less what believing Mormons would consider righteous choices. One may only select from the options life has placed before them.

The death penalty and the bulk of the debate about it distract us from the need to address these causes. We could kill every one of the more than 3,000 men and women on death rows at the end of 1996 in one bloody week and our communities would be no safer because we have not addressed the next wave of violent children we are creating, and the next, and the next. If we could divert even 10 percent of offenders with something like more available drug treatment programs, we would all lead safer lives and save tax dollars dumped into prisons and executions.

This thought leads inevitably to the very Mormon conclusion that the answers do not lie in prison construction and increased executions, but in stable healthy families and loving parents.

I must acknowledge that a substantial majority of Mormons supports the death penalty. *Sunstone* once published an unattributed chart showing only 10 percent of Mormons opposed the death penalty, compared to over 25 percent of Protestants, Catholics, and Jews.¹⁵ Certainly the majority of members in my Florida and Texas wards does.

And there seems to be little doubt that the church is, at least, not opposed to it. Stuart W. Hinckley's section in the semi-official *Encyclopedia of Mormonism*, which states that "capital punishment is viewed in the doctrines of the Church to be an appropriate penalty for murder, but that penalty is proper only after the offender has been found guilty in a lawful public trial by constitutionally authorized civil authorities," is surely ac-

15. "Opposition to Capital Punishment," *Sunstone*, Feb. 1994, 19.

curate.¹⁶ No doubt, at least some murders are what President Spencer W. Kimball described as “sins unto death” or the “unpardonable sin” for which there is no repentance.¹⁷ It isn’t that I disagree. I just think only God can make such judgments. I certainly am not willing to.

So I recognize my own beliefs are probably outside the Mormon mainstream.

I grew up comfortably embracing the free will side in its debate with social and biological determinism. For me, the most unique doctrinal features of Mormonism are those which deal with individual responsibility. These include the rejection of original sin; the doctrine of individual free agency; the belief that baptism should not come until the individual has reached an age and state of moral accountability, which is why we do not baptize infants or many mentally-handicapped individuals. We each are judged according to the knowledge and talents we bring to the temptations of mortal life. We believe that members of the church are judged by a higher standard because we have a greater knowledge and more spiritual opportunities in life.

The prophet Joseph Smith stated these concepts simply in the Second Article of Faith: “We believe that men will be punished for their own sins, and not for Adam’s transgression.” Personally, I have always found the Mormon rejection of original sin, the idea that we are not born inherently evil, to be one of the most positive messages of the gospel.

But these doctrines presume rational, thinking people who enjoy some control over their lives. They depend on good, committed parents who teach their children solid values. They assume people who are “whole.” The doctrines are not applied to all individuals without regard to mental, biological, cultural, and environmental handicaps. The church’s present application of these doctrines in the day-to-day concerns of bishops, missionaries, and priesthood leaders makes this clear. There is a recognition that God did not bless us all equally in our families, our talents, our native intelligence, our worldly wealth, and our spiritual environments.

My religious opposition to the death penalty grew with my understanding of just who the people on death rows are. While there are always exceptions and you should be careful of stereotypes, there are some things which can be said of the majority of those condemned to die. Cer-

16. Stuart W. Hinkley, “Capital Punishment,” *Encyclopedia of Mormonism*, 4 vols. (New York: Macmillan Publishing, 1992), 1:255. See D&C 42:18-19, 79; also L. Kay Gillespie, *The Unforgiven: Utah’s Executed Men* (Salt Lake City: Signature Books, 1991), 14-16; and Dallin H. Oaks, *The Lord’s Way* (Salt Lake City: Deseret Book Co., 1991), 213.

17. Spencer W. Kimball, *The Miracle of Forgiveness* (Salt Lake City: Bookcraft, Inc., 1969), 118-20, 130-31.

tainly it can be said of the overwhelming majority of the forty-odd clients I've been involved with on death rows.

People who kill in the kind of brutal fashion that earns death sentences are largely made, not spontaneously generated. The clients I see were overwhelmingly from single-parent, dysfunctional families. Child neglect is the norm. I always thought the battering of children was a sin, but only in the last few years have I learned how many children are permanently brain damaged as a result of such childhood experiences. Sexual victimization is so common that if death row defense teams don't find it we think our investigation has been faulty.

I had never encountered fetal alcohol syndrome, much less learned to recognize it, until I encountered another death row inmate born with the condition and mild schizophrenia.

Many of those who were abused carry with them a rage that plays a significant role in their crimes.¹⁸

I did not appreciate how destructive a childhood in the hands of screaming, fighting, violent parents was until I had one of my first death row cases representing a fragile, explosive, alcoholic man who grew up that way. Children learn what is played out before them in their homes. No amount of outside influence can completely counteract that.

When I first began handling these cases, my Tallahassee Fourth Ward bishop, Dr. Charlie Madsen, made it a practice in every sacrament meeting to bring youth from the ward to the stand for praise on one or another accomplishment, often very small but still important to the child. I could not help but contrast this with clients who never once heard a word of approval or praise from an adult significant in their lives.

It took me a while to deal with tough, hard men sometimes crying in our conferences as I probed to learn what their childhoods and families were like. All swore me to secrecy as these were not things they cared to acknowledge. In particular, I remember one young black man from another severely dysfunctional family crying as he told the story of how he once hit a home run to win a youth league baseball game and no member of his family was there to see it because they never bothered to come. Youth baseball had brought the only accomplishments in an otherwise failed life, and he knew it.

My death row clients were almost entirely in the grasp of substance abuse—combinations of long-term alcoholism, drugs of all types, and, perhaps most dangerous of all, chemical inhalants like glue, gasoline, paint, and similar substances. Measurable brain damage closely associ-

18. I recommend the movie *A Perfect World* where the Kevin Costner character provides a better understanding of this even though it is greatly understated. For a more uncomfortable account of this rage and where it comes from in a Mormon setting, I recommend Mikal Gilmore, *Shot in the Heart* (New York: Doubleday, 1993).

ated with violence was a common result of this huffing. Most of the time such substance abuse was yet another symptom of much deeper problems.

By almost any measure these people live on the margins of our society. They are the underclass living out pathetic, inadequate lives. The typical death row inmate dropped out of school in the 8th to 10th grade, if they stayed that long. They rarely have a stable employment history, stable relationships with anyone, or anything you could call a success of any kind. It is always possible to hold up a Ted Bundy, the poster child of death penalty proponents, but men like Bundy are rare on our death rows. I've only had one client who ever enrolled in a college course and perhaps four who got through high school.

Mormons believe in quality families as a manifestation of the divine. While we are often short of the ideal, the believing Mormon strives for a home that teaches children solid values, especially in interpersonal relationships, by example. We stress this because we know much of this must be learned by children in our complex, difficult society. Church leaders constantly teach us we must counteract the unhealthy messages taught by our society. The world is always ready to teach children violence as a problem-solving skill, self-absorption and materialism, substance abuse as the way to be happy and popular, predatory sexuality, and that the person who feels a moral responsibility for the welfare of others is a chump.

I doubt that many of us would not feel that the parent who not only neglects to teach his or her children positive values but actually teaches them evil—to steal, to lie, to be violent, to be substance abusers—shares some responsibility for the bad acts of those children.

One thing that has always amazed me about our society is how quickly our sympathy for abused and molested children is used up. When we learn what happens to some children, we are indigent toward the abusers and eager to reach out and comfort the child. But when the child becomes a man, or even a teenager, and acts out in a way that is predictable of those who have endured such things, then we have no sympathy left, we simply don't want to acknowledge that they were in part "made" that way and we failed to do anything about it.

Support for the death penalty out of a desire for personal or societal revenge is clearly inconsistent with the gospel. Latter-day Saints must be mindful of President Kimball's admonition that revenge is contrary to LDS teachings. The prophet wrote that "[t]he spirit of revenge, of retaliation, of bearing a grudge, is entirely foreign to the gospel of the gentle, forgiving Jesus Christ."¹⁹ In a somewhat different context that I think ap-

19. Kimball, *Miracle of Forgiveness*, 265.

plies as well, Apostle Dallin Oaks has written that “Revenge is never a proper motive for a Christian.”²⁰

I am not opposed to imprisonment, even life with no possibility of parole. I’m not opposed to punishment and think it is obvious that society has a right to be protected from some individuals no matter what the root causes of their violence. But taking their lives, in my mind, is inhuman, unchristian, and serves no positive purpose.

Nor do I mean to suggest that there is not very real pain on the part of victims’ families and friends. There is enormous pain that nothing will ever heal. My heart goes out especially to the parents of murder victims. I have talked with several, I know how real it is. I have been especially struck by that combination of faith, love, and spirituality in some parents who have publicly asked that the murderer be allowed to live, saying that an execution would not bring back the child they had lost. God surely knows the hearts of such people and is pleased by their testimonies.

There are other Mormon subtopics on the death penalty I am deliberately not taking up in the interest of space—blood atonement²¹ and the church’s past teachings on blacks and the priesthood as they relate to black defendants in Mormon cultural areas among them.

I’d like to share the thoughts of two non-Mormons whom I respect. Retired Supreme Court justice Harry Blackmun wrote in February 1994 that he could no longer justify the death penalty in American law. In his initial dissent to that effect in a Texas case, he wrote:

From this day forward, I no longer shall tinker with the machinery of death. For more than 20 years I have endeavored—indeed, I have struggled—along with a majority of this Court, to develop procedural and substantive rules that would lend more than the mere appearance of fairness to the death penalty endeavor. Rather than continue to coddle the Court’s delusion that the desired level of fairness has been achieved and the need for regulation eviscerated, I feel morally and intellectually obligated simply to concede that the death penalty experiment has failed.²²

And Sister Helen Prejean, a Louisiana Catholic nun whose book *Dead Man Walking* I recommend, wrote:

If someone I love should be killed, I know I would feel rage, loss, grief, helplessness, perhaps for the rest of my life. It would be arrogant to think I

20. Oaks, *The Lord’s Way*, 181.

21. See an illuminating discussion of this issue in Gillespie, *The Unforgiven*, 14-16.

22. *Callins v. Collins*, 127 L.Ed.2d 435, 438 (1994) (footnote omitted).

can predict how I would respond to such a disaster. But Jesus Christ, whose way of life I try to follow, refused to meet hate with hate and violence with violence. I pray for the strength to be like him. I cannot believe in a God who metes out hurt for hurt, pain for pain, torture for torture. Nor do I believe that God invests human representatives with such power to torture and kill. The paths of history are stained with the blood of those who have fallen victim to "God's Avengers." Kings and Popes and military generals and heads of state have killed, claiming God's authority and God's blessing. I do not believe in such a God.²³

Finally, I'd like to quote one poor wretch who was executed in North Carolina in 1994. David Lawson had to be dragged into the gas chamber while screaming, "I am human! I am human!" right up until the poison gas took his life.²⁴ Lawson may have been wrong about everything else in his life, but he was still a human being and a child of God.

I must agree with Sister Prejean. The execution of any man or woman is inconsistent with my personal testimony and interpretation of the gospel. I simply cannot imagine Jesus Christ participating in an execution. Nor should we, as individuals or through our government.

23. Helen Prejean, *Dead Man Walking: An Eyewitness Account of the Death Penalty in the United States* (New York: Random House, 1993), 21.

24. "Last Words," *The Angolite*, July/Aug. 1995, 15.