

“And to every man is given a gift by the Spirit of God. To some is given one, and to some is given another, that all may be profited thereby.” —D&C 46:11–12

REFLECTIONS OF A PUBLIC DEFENDER

By Ken Driggs

I AM A SIXTH-GENERATION MORMON, RAISED WITH very conventional Latter-day Saint views on free agency and individual responsibility. I was always especially impressed with the Second Article of Faith, setting out that “we believe that men will be punished for their own sins, and not for Adam’s transgression.” Mine was a very comfortable upper-class family. My father was a university professor of psychology; my mother, a government administrator. I grew up in privilege and comfort. Moderate social, political, and racial views were taught in my home. It wasn’t until I graduated from law school in 1980 and became a public defender that I began to reconsider my views on agency and sin. I fear some Mormons understand LDS teachings as implying that all human beings have unrestricted free will and the same life choices before them.

Since 1981, I have been a public defender specializing in mentally ill defendants, an interest I inherited from my father. Since 2000, I have been a public defender in metro-Atlanta with a regular felony caseload who also represents one death penalty client at a time. I handle 150–175 felons a year, people whose misdeeds range from minor drug and theft crimes up through a good many armed robberies, rapes, aggravated assaults, and murders. My case load seems to run two to four times what a lawyer in private practice would carry.

From 1990 to 2000, all I handled were death penalty cases in Florida, Texas, and Georgia.¹ I came to death penalty work partly because mental health issues are so predominant there. Including those I have consulted on, I have worked some 75 death penalty cases in my career. More than a dozen of my clients have been executed, and some of those executions I have witnessed, including two in Texas whom I believed to be innocent.²



KEN DRIGGS is an attorney and member of the Atlanta Ward of the Atlanta Stake. He is the author of numerous articles and essays published in professional and LDS journals, as well as the book Evil Among Us: The Texas Mormon Missionary Murders, published by Signature Books.

In my death penalty work, I specialize in the punishment phase—the second part of the trial that follows after the jury has convicted the defendant and must now decide if he or she is to live or die. My job as defense counsel is to develop and present a social and psychological history of the defendant and argue the mitigation present. Preparation involves a detailed investigation of the defendant’s past. We look into everything from genetics to educational, social, psychological, institutional histories, and especially family experience.

DESCRIBING MY CLIENTS

I N DEKALB COUNTY, Georgia, anyone in our 3,000-bed jail who cannot bond out will qualify to receive a county public defender.³ The great majority of these are simply too poor to post bond. For many, a \$100 cash bond is out of reach. To qualify for court-appointed counsel, those who have bonded out must fill out a financial affidavit showing their income is below the federal poverty line.

Obvious poverty is the norm for public defender clients. Rarely do I represent someone who graduated from high school or even has a GED. A substantial number do not have permanent residences. In Atlanta, thousands of people live in motels they rent by the day or week, in small informal boarding houses, or in homeless shelters. Many bounce from one relative or acquaintance to another, moving from place to place as they wear out their welcome. Under every stretch of elevated interstate is a campsite of homeless huddled under dirty blankets or inside cardboard boxes with grocery carts holding their possessions nearby. Many simply sleep in the streets.

Very few of my clients have extended work histories, and even those who do generally are laborers with few skills. The types of employment they most often report to me are landscaping, lawn care, and construction. Many find work by flagging down contractors at the street corners where day laborers congregate. The public defender’s office has a used-clothing closet which I have to draw from for nearly all my

clients' trials. It's rare that I represent someone who owns a suit or even a dress shirt. Most can't even tell me their clothing sizes. The great majority are in their late teens or twenties.

One thing I notice among a good many of my clients is their very limited verbal skills. Very often, they have such limited means of expression that they have a difficult time relating information to me about their crime and their lives. They cannot explain themselves to judges. They often get very frustrated by their inability to be understood. I believe that this limited power of self-expression is directly related to the violent interpersonal conflicts for which so many of them find themselves in trouble.

We have both a culture of the poor and a culture of the comfortable in our society. Much of what I have observed as a public defender is the result of the friction created as these cultures collide.

No matter how long I do this work, I am still regularly stunned by the ignorance of some of my clients, manifested by their foolish, often self-destructive, decisions in their cases. As often as not, I am appointed to represent someone who has a lifetime of bad decision-making, and my job becomes an effort to try to get them to make rational decisions about how to handle their criminal case. It's a tough sell. On a purely intellectual level, I feel I have insight into the forces which brought them to this point in their lives, but the reality of dealing with this client base can be frustrating and, at times, infuriating. At least once a week, I have to suppress the urge to strangle someone.

My public defender clients fall roughly into the following groupings (though there is considerable overlap, with many falling into several of these descriptions).

The Real Anti-Socials. These are the truly mean, those whom mental health professionals would likely classify as having an Anti-Social Personality Disorder. Fortunately, they are a very small slice of my client base. Generally, they do not or cannot feel empathy for other people. They do not concern themselves with the physical fear or pain, or the psychological terror, economic hardship, inconvenience, or just plain damage that they do to others. A few twisted individuals seem to take pleasure in inflicting pain and fear. It gives them a sense of power or control they don't otherwise feel in life.⁴

This delight in hurting others does not make them especially accomplished criminals because they get caught often with minimal effort by law enforcement. Much of their conduct is self-defeating. Usually the gain they realize, or hope to realize, for their criminal behavior is minimal: fifty-dollar armed robberies, five-hundred-dollar forged check scams, sexual assault in a world where consensual sex is easy to find.

Included in this group are those filled with rage. I see a lot of anger targeted at almost anyone they see as an authority figure or who just seems to be in their path. The more angry and defiant they are, the more likely they are to be self-destructive in their behavior. I suspect there is often a lot of self-loathing behind their anger.

Not surprisingly, this group includes some of the murderers I have defended in capital cases, but it's a minority of them. If I had to make a mental note of the meanest people I have represented through the years, very few of them would be murderers, and in those cases, they would be the chronic, violent young men whose lives are filled with conflict and almost no meaningful relationships.

Substance Abusers. A substantial portion of those charged with drug crimes are either addicts, who are often small-time dealers simply trying to support their own habits, or the mentally ill and the damaged who are self-medicating. Many people in this category live lives of complete disaster. They are poor, have no job skills, few interpersonal skills; they have terrible diseases such as AIDS or schizophrenia with little or no treatment; they are not part of intact families, sometimes for reasons completely beyond their control; they have been raped or abused as children; they are simply overwhelmed by the challenges of life. They drown in hopelessness and see nothing but more despair in their future. Drugs and alcohol serve as an opiate to make the hours tolerable.

Another part of this subset is the mentally ill who for reasons we are still trying to understand are disabled by hallucinations, extreme anxiety, deep pits of depression, or manic episodes. The beer and the crack dampen the voices in their heads, quiet the jangled nerves, or bring sleep or stupor.

There is a much smaller group who use various illegal drugs and alcohol primarily, they say, because they enjoy the sensation, but I am rarely called upon to represent one of them. Typically, I interact only with such a user when they run over someone while under the influence.

Because of my Mormon upbringing, it has been hard for me to fully understand the pull of substance abuse. Other than minimal college experimentation in the 1960s—I *did* inhale—I simply have no personal experience to measure against what I learn about these clients' lives. One addicted client described his relapse into cocaine use as his "being possessed by unclean spirits." He had been in a faith-based treatment program and meant it literally, but it struck me as a very apt metaphor. He was one of the fortunate few with a supportive middle-class family who made sure he was admitted to a residential treatment facility.

While handling a Florida death penalty case, I first encountered the devastating condition of Fetal Alcohol Syndrome and the less-often-diagnosed, and therefore more sinister, Fetal Alcohol Effects. These devastating disorders of the brain and neurological system that affect behavior result from their mother's alcohol consumption during pregnancy. There is no cure. All of their lives, these children are disabled by conduct that occurred while they were in the womb.⁵

The Mentally Retarded and Mentally Ill. Only rarely are criminal defendants evaluated to determine the extent of mental retardation or mental illness. Defendants can be very disadvantaged in these ways yet still be competent to stand trial.⁶ An insanity defense requires that their mental illness com-



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"JESUS HEALING THE LUNATIC" BY GUSTAVE DORÉ

pletely rob them of the ability to differentiate right from wrong.

I would estimate that, if evaluated, at least a quarter of my clients, perhaps half, would be diagnosed with mental retardation or a mental illness. At any given time, the mentally retarded constitute about one percent of the population. About 85 percent of these are considered to be mildly mentally retarded.⁷ Mental retardation is defined as having an IQ below 70 from childhood, in contrast to diminished capacity due to subsequent brain injury.⁸ It took the United States Supreme Court until 2002 to decide that executing the mentally re-

tarded violated the Eighth Amendment prohibition on cruel and unusual punishment.⁹

Mental illness is much more difficult to quantify than mental retardation, but it is present in a disabling way in a substantial portion of my clients. I had a highly publicized Americus, Georgia, client who, after more than a decade and a half of being tormented by an especially evil mental illness psychiatrists have classified as Schizoaffective Disorder,¹⁰ shot to death two strangers in a Wal-Mart parking lot.¹¹ In his confession to police that day, he said he sought to commit suicide by being executed in the state's electric chair. He came to this point in spite of a very close, loving, deeply religious family that did everything they knew of to address his illness. In high school and college, he had been a football player of considerable ability, but all the while, the illness was growing at his center until it completely destroyed his ability to lead anything remotely resembling a normal life. Preceding the fatal shootings were several attempts at suicide, much strange behavior, many psychiatric hospitalizations, and a growing morbid desire to die.

A competency evaluation undertaken shortly after his arrest found him experiencing chronic depression and exhibiting a profile of people who feel

unhappy, sad, and pessimistic about the future. They often feel guilty and are self-critical. Suicidal ideation is common. These individuals often feel inadequate and helpless and lack self-confidence. They tend to be socially withdrawn with poor concentration and sleep and appetite disturbances.

The state psychologists opined that such people "generally feel that it is futile to try to make improvements in themselves, in their relationships, or in any significant aspects in their lives because they have come to accept their depressive symptoms as their lot in life." The doctors reported that they believed my client was competent to stand trial but that because of his depression he was unlikely to work with defense attorneys. They concluded with the observation: "Whether a defendant can choose to forgo a defense in order to bring about his own demise is a legal question."¹²

I distinctly recall my first meeting with him. He was in the Sumter County Jail shortly after his arrest for the two murders. He was so deep in depression that he could not clean himself, lift his head to look me in the eye, nor construct a

paragraph of speech. I have never seen a human being in so much agony. A great, dark presence of despair filled his space.

After months in a maximum security unit of the Central State Hospital at Milledgeville, he was declared competent to stand trial, though he was far from cured of the illness. In court, he said he still wanted to die in the electric chair, but at other times, he expressed a desire to live if he could get adequate mental health treatment. In the end, he insisted on pleading guilty and demanded that the jury sentence him to death. In dramatic testimony, he threatened the jury if they did not do so.¹³ Twelve citizens of the small community that once cheered him on the football field agreed and sentenced him to death.

His severe mental illness was so apparent that the National Alliance for the Mentally Ill filed a direct appeal amicus brief in the Georgia Supreme Court opposing his execution, but the court affirmed his death sentence without any meaningful discussion of his illness.¹⁴ He again changed his mind and asked lawyers to help him challenge his conviction and death sentence in the final set of appeals. Before we could mount this challenge, he hung himself with a bed sheet in his Jackson, Georgia, death row cell.¹⁵

His funeral was held in Plains, Georgia, at a small African-American Baptist church where his family had been respected members for generations. During the two-hour service, those who knew him as a friend, family member, and local football hero spoke movingly of their experiences with him. I spoke briefly but sobbed through my remarks. No one present had any doubt that their friend was in heaven with Jesus, finally relieved of his pain. The only evil recognized there was that of the mental illness that came to possess him. I certainly felt that way.

That funeral was one of the most moving and validating days of my life. It is difficult to express the emotions I felt when, at the urging of the pastor, the congregation stood to applaud me and the other lawyers who had represented this young man.

The Inadequate. The great majority of my public defender clients could best be described as “inadequate.” They just do not have the skills to cope in our demanding society. They have poor communication or interpersonal skills that lead them to misunderstand others and often to argue and fight when it is completely unnecessary. They are impulsive. They lash out in anger without thinking. Self-defeating outbursts in court are not uncommon. For instance, you don’t curse and insult the judge or rant at your lawyer while seeking a shorter prison sentence! They cannot analyze and understand the consequences of their conduct, thinking things through to points B, C, and D that will follow naturally from their point A behavior. It is not so much a matter of being hot-blooded—more dull and foolish. Maybe it is a matter of their just not learning from past conduct and consequences, which is a feature of mental retardation. They are easily led by vocal and stronger-willed acquaintances.

Those from Dysfunctional Families. Rarely do I see in the families of my clients anything which even remotely resembles the ideal set forth in the Church’s Proclamation on the Family. The norm among my clients is being raised by a mother who often is a substance abuser and/or who gravitates to abusive and predatory men or by grandmothers who often are well-intentioned but overmatched. Often it’s someone who has been shuffled around in our dreadful foster care system. Their formative years are most often dominated by arguing and violence, substance abuse, lack of economic planning and motivation, as well as a variety of other ills that do not produce healthy children. They grow up in chaos. Some are runaways, growing up in the just-as-chaotic and predatory streets. They learn that they have no value as human beings, that the world is an angry and violent place, and that in order to survive, they must act accordingly. So often, they are people whom we as a society have thrown away.

Trouble with the law often seems to run in families. “A study by the U.S. Department of Justice found that about half of the nation’s inmates are parents of children under eighteen. The study also found that almost 1.5 million children had a parent in prison, an increase of more than 500,000 children since 1991.”¹⁶ I rarely ask my clients if they have relatives with criminal histories, but if the subject comes up, the answer is usually yes.

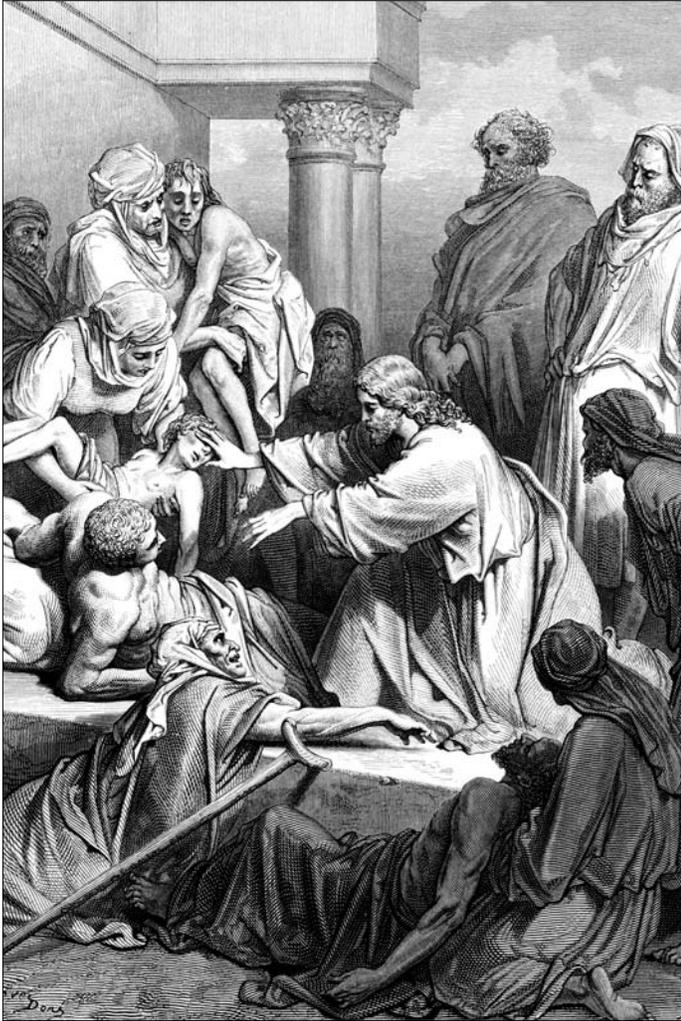
It wasn’t until I represented a Florida death row inmate who grew up as an alcoholic and heroin addict that I fully appreciated what a destructive influence battling parents can have on a child. My client was never beaten himself. He was mostly ignored while his parents drank, screamed, and threw things at each other nearly every day. He grew up to become a fragile adult with no sense of self-worth, one who could not deal with any kind of stress in his life and had to stay intoxicated to survive. He was so intoxicated at the time of the murder that he could not recall bashing in the head of a drinking companion in front of a half-dozen witnesses, for no apparent reason. This man had also been an LDS convert earlier in his life and, as far as I know, is still carried on the Church’s membership roles.

The Survivors. Running through all these types to varying degrees are those I’ll call “the survivors.” These are the poor and unskilled who steal and burglarize to eat and to find a place to sleep. Those who sell sex to survive often have ever-present predatory “drug boys” lurking nearby, taking their prostitution earnings as payment for drugs. Survivors often take advantage of criminal opportunities they can rationalize as simply “lucky” for them. By and large these criminals do not physically hurt anyone else. Many engage in or make a living from so-called “victimless crimes.”

Women. Women constitute a small portion of my caseload, less than one in twenty. However I have observed some noteworthy differences between them and my male clients. Some of the most pathetic, broken human beings I have ever en-



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"JESUS HEALING THE SICK" BY GUSTAVE DORÉ

countered have been female clients with histories of abusive relationships that have resulted in violent injury and severe substance abuse problems, as well as in their no longer having an intact family to turn to for support.

I have heard forensic social workers remark: "Boys act out; girls act up. That's why boys fight and girls get pregnant." Whereas men are more likely to lash out at the world, women tend to turn their anger against themselves. My women clients are more likely to be substance abusers or mentally ill. When I have our office social worker prepare a social history, more often than not, I find a great deal of sexual molestation and violent abuse, along with a lot of self-medicating. My

own reading is that there is a lot of learned self-loathing among these women.¹⁷

Criminal lawyers often joke about the "bad boyfriend defense." Though often said cynically, the phrase also recognizes that many women are so needy where relationships are concerned that they are vulnerable to strong personalities whom they are anxious to please. Just as many women stay in abusive relationships, many follow men into criminal acts. And even if they are minor players, they are still criminally liable under conspiracy, aider and abettor (or party to the crime), laws.

I recently represented a very pretty, personable, and smart young woman whose life contained all these shortcomings, leading her by age seventeen to come under the control of a predatory Atlanta pimp. Using false identification, she became a nude dancer at sixteen. Within a year, and pregnant, she was captured by this pimp. After months of manipulation and brutality, he ordered her to rob and murder three johns. With the help of another of the pimp's prostitutes, she did so over a twelve-hour period. She was just shy of nineteen.

Shortly after her twentieth birthday, our team was able to save her life by working out three consecutive sentences of life without parole. As I write this, the pimp has not been prosecuted for the murders; he continued to ply his trade until finally locked up, all too briefly, on drug charges. As we pieced this client's life together, her extreme neediness for male relationships became obvious. The whole case was a tragedy. In spite of the three murders, I still consider this woman to be one of the nicest people I have ever represented.¹⁸

Another stress in my criminal defense work involves fielding calls from girlfriends, wives, and mothers who are upset that the defendant has been accused of a crime or continues to be held on what they believe are minor matters. Usually, the defendants have lied to these women about the case against them as well as about their past criminal history. These callers have often blinded themselves to the real nature of their loved ones. Yet my clients have not authorized me to speak candidly with the people in their lives, so I often get yelled at for not being a zealous advocate by people who have very little accurate information about the situation while I have no legal way to set them straight. This is yet another aspect of the socially dysfunctional lives so many of my clients lead.

HOW DO PEOPLE BECOME THIS WAY?

AFTER A FEW years as a public defender working with client after client with these many types of problems, I began to wonder how apparently normal babies grow into adulthood with so much anger and potential violence in them. I found some clues in the work of forensic psychologist James Garbarino, who explains in his *Lost Boys* how children who grow up in lives of abuse, violence, and rejection often become the angry, violent adults whom criminal defense lawyers like me are called to represent. Early in his book, Garbarino observes:

Psychiatrist Leonard Shengold called his book on the effects of severe child abuse *Soul Murder*. He chose this title to reflect his belief that the catastrophically abused child, subject to so much internal devastation, is driven beyond the limits of humanness. I'm not in a position to debate the theological issue of whether or not souls can die or be killed, but I do believe that Shengold's view contains an important insight: at the very least, souls can be wounded. At the extreme of human devastation and degradation, it may well be true that the human psyche can be so terribly mutilated that the soul departs, leaving behind something else to fill the void—or perhaps just leaving an unfilled void.

From what I have seen, the more likely course of development is that when forced to live in hell, the soul withdraws, perhaps shutting itself off from the world outside in a desperate attempt at preservation. Once hidden away, it covers itself with layers of insulation. As the years pass, this protective shell may harden to the point where eventually the soul seems dormant, so out of touch with the day-to-day self has it become even to the tormented person itself [sic].

There are such individuals in our midst, although most of them seem to end up in prisons or mental institutions.¹⁹

Abandonment by a significant adult in a child's life is also a huge issue with some individuals. Most of us gain self-esteem as we grow up valued by someone important to us. Parental abandonment is destructive to self-esteem, communicating to a child that he was abandoned because he was not worthy of parental presence. Dr. Garbarino observes that "deliberate abandonment evokes in boys a deep shame."²⁰ Studies have found that "although cultures differ in how they express rejection, rejected children everywhere are at heightened risk for a host of psychological problems ranging from low self-esteem, to truncated moral development, to difficulty handling aggression and sexuality."²¹ A child who has not experienced the love of a parent, or a parent figure, surely has a more difficult time experiencing and appreciating God's love.²²

Some types of abandonment are not physical but social, as when a parent simply withdraws or becomes emotionally unavailable. Mental illness, substance abuse, family violence,

and the pressures of extreme poverty can all effectively remove a physically present parent from a child's emotional life. Absent fathers are a well-known topic, but absent mothers are surprisingly common as well. Every grandmother raising a child stands in for a missing mother.

In 2003, I attended a death penalty defense lawyer's training in Austin, Texas, that included several sessions about investigating, understanding, and presenting the often toxic lives of capital defendants to juries. One session on abandonment issues in defendants' lives especially struck home as one recent death penalty client of mine had been rejected by his father, who frequently questioned his paternity of his son and would pop in and out of his son's life in extremely disruptive ways. My client had an obvious inability to emotionally connect with other people and a boiling internal anger that was specifically related to his father's behavior.

DISCUSSION

AS LATTER-DAY SAINTS, we believe in eternal progression, spiritual movement—an eternal life where our spiritual state is not static. We learn, we grow, we apply what we have learned, we move to another level. We can also backslide, but we're always in progress, heading one way or another. But in whatever direction we're moving, we are not acting in a vacuum.

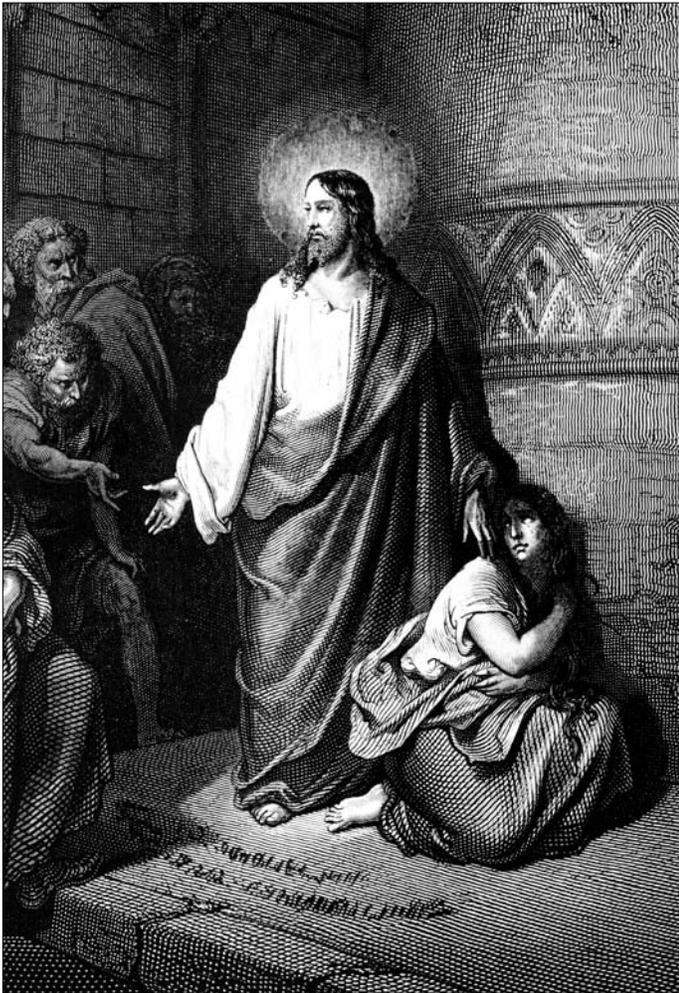
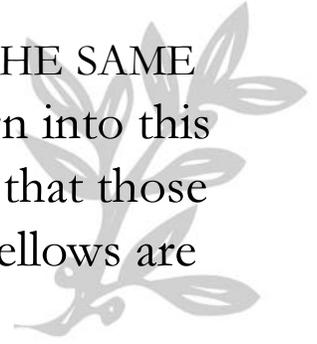
Every spirit is individual, with an individual past, individual future, and individual character. Our past contains individual decisions, and our present is very much determined by those past decisions. This is not predestination or predestination, but influence. We are always free agents. God gave us the ability to make choices: "Thou mayest choose for thyself" (Moses 3:17). He cannot and will not take the power of choice away from us.

We will be judged by the knowledge and experience we have when we make the choices we do. The tests are individual. There is not one big "holy GRE" where each of us takes the same examination and will be graded on a curve with spiritual percentiles.

I believe Christ's parable of the talents is about the life we each live. God has given each of us talents—skills, blessings, burdens, and opportunities, along with disabilities, blind spots, seeming curses. They come in tangible, temporal areas, in purely spiritual domains, as well as in areas we cannot possibly imagine on this side of the veil given our limited understanding. And despite my experiences working with some of God's most difficult children, I do not believe in a God who is angry, petty, vengeful, rigid, or even crabby. My faith is in a God who is much better than all of us. He loves us, understands our weakness, and is pulling for us to succeed. He coaches us when we will listen. He is both loving and fair. I firmly believe we are each judged by what we know, by the opportunities we were given in this life, and what we did with those blessings. If we were not blessed with certain advantages, we will not be punished for not taking advantage of them. Returning to my personal experience, at a bare min-



NOT ALL HUMAN BEINGS HAVE THE SAME range of choices; we were not born into this life as equals. I am of the opinion that those who find it easy to pass judgment on their fellows are absolutely the wrong spirits to do so.



JESUS AND THE WOMAN TAKEN IN ADULTERY BY GUSTAVE DORÉ

imum, God is at least as good and kind and just as my own earthly father.

As I write this, I don't want this essay to be read as an argument that dangerous individuals should be set free among us. Society has a right to protect itself from dangerous people, even if they are dangerous as the result of damage completely beyond their control. I believe in a medical model under which society has a right to protect itself by quarantine from the threat these individuals represent.

For the most part, however, I think we go about the business of protecting ourselves with minimal or no humanity in

our juvenile corrections and adult prison systems, which seem to be designed to appease only the cruelest among us and guided by social science models a hundred and fifty years out of date. As a society, we seem willing to invest only the slightest resources in child welfare and family support, preferring to spend much more on prisons after the terrible damage is done. And I strongly believe that the use of the death penalty on these individuals is just as depraved as these individuals are said to be.

It is my personal opinion that we will judge ourselves when we pass through the veil. I suspect the resurrection and last judgment will be a time when our minds and spirits will be cleared, when we must confront the choices we made in this mortal existence and consider them against the advantages we had. The Church's *Gospel Principles* lesson manual includes this thought:

President John Taylor taught this truth: “[The individual] tells the story himself, and bears witness against himself. . . . That record that is written by the man himself in the tablets of his own mind—that record that cannot lie—will in that day be unfolded before God and the angels, and those who sit as judges.”²³

God has given me a great deal—a good family, a good mind, all the educational advantages one can have, the ability to serve and make good, gospel-directed decisions. I am not poor; I am not stupid; I am not hungry; I have never been abused; I have never suffered racism; I have never wanted for anything. I live in the wealthiest, most privileged society in the world. “For of him unto whom much is given much is required; and he who sins against the greater light shall receive the greater condemnation” (D&C 82:3). In that context, I anticipate I will judge my own conduct harshly.

While I recognize that many of my clients have done terrible things to other people and to themselves, they have often been so disadvantaged that I can't see their judgment being so harsh. Even with their crimes, some have risen a long way from their beginnings.

Not all human beings have the same range of choices; we were not born into this life as equals. I'm pleased when I see anyone who rises above difficult circumstances, disappointed whenever I see someone give into their challenges, surrender the fight. But one conclusion I have reached throughout this journey is that I am not prepared to judge others.²⁴ The

human condition, what blessings and burdens we carry in this mortal sphere, are far too complex for my puny mind to sort through. I have enough trouble evaluating the good and bad in my own life. I am of the opinion that those who find it easy to pass judgment on their fellows are absolutely the wrong spirits to do so.

As I continue my career representing those at the bottom of society, I have a better understanding of the forces that shape their lives—even the lives of those I feel like strangling. My advocacy is especially focused on learning about their lives and presenting their biography to the judge or jury who will decide their fate. I am both uplifted and distressed by what I see in my clients' lives. What I observe does not diminish my faith in a kind, loving, and supportive Heavenly Father who wants his children to succeed and progress spiritually no matter what they struggle with. ☞

NOTES

AUTHOR'S NOTE: Much of this essay has grown out of years of discussions with another LDS public defender specializing in the defense of death penalty cases, Dave Davis, a member of the Tallahassee Fourth Ward in the Tallahassee Florida Stake.

1. In the interest of full disclosure, I should state my personal opposition to the death penalty. On that opposition see my article: "Reflecting on the Death Penalty," *Dialogue: A Journal of Mormon Thought*, 29 (Summer 1996): 55–68. On various legal and historical aspects of the death penalty see: "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; "The Most Aggravated and Least Mitigated Murders: Capital Proportionality Review in Florida," *St. Thomas University Law Review* 11 (Spring 1999): 207–88; with Mike Mears, "Georgia Death Penalty Law," *Georgia Survey Issue*, *Mercer Law Review* 52 (Fall 2000): 29–47; and "Regulating the Five Steps of Death: A Study of Death Penalty Direct Appeals in the Florida Supreme Court, 1991–2000," *St. Thomas University Law Review* 14 (Summer 2002): 759–823.

2. For instance, I will go to my grave believing that my client David Wayne Stoker, TDCJ #896, executed on 16 June 1997, did not commit the murder he died for. *Chicago Tribune* investigative reporters came very close to agreeing with me. See Steve Mills, Ken Armstrong, and Douglas Holt, "Flawed trials lead to death chamber," *Chicago Tribune*, 11 June 2000, 1. On direct appeal, see *Stoker v. State*, 788 S.W.2d 1 (Tex.Crip.App. 1989). See also *Texas Death Row* (Atlanta: Longstreet Press, 2000), inmate 129.

3. DeKalb County is a major part of metropolitan Atlanta. It contains about 677,000 people, 54% of whom are African-American, 36% white, and 8% Hispanic. The county seat is at Decatur. Metropolitan Atlanta had 4,112,198 inhabitants according to the 2000 census, a little more than half the population of Georgia.

4. My understanding of clients with these characteristics is very much influenced by the following books: James Garbarino, *Lost Boys: Why Our Sons Turn Violent and How We Can Save Them* (New York: Anchor Books, 1999) and Donald W. Black, *Bad Boys, Bad Men: Confronting Antisocial Personality Disorder* (New York: Oxford University Press, 1999).

5. See Michael Dorris, *The Broken Cord* (New York: Harper & Row, 1989). Note also the Florida Supreme Court opinion on one FAS sufferer who murdered two people at *Dillbeck v. State*, 643 So.2d 1027 (Fla. 1994), cert. denied, 514 U.S. 1022 (1995).

6. The competency issue "is not, whether the defendant can distinguish between right and wrong, but is whether he is capable at the time of the trial of understanding the nature of and object of the proceedings going on against him and rightly comprehends his own condition in reference to such proceedings, and is capable of rendering his attorneys such assistance as a proper defense. . . demands." *Echols v. State*, 149 Ga.App. 620, 620–621, 255 S.E.2d 92 (1979). In practice, it is a very low standard.

7. Harold I. Kaplan and Benjamin J. Sadock, *Synopsis of Psychiatry*, 8th ed. (Baltimore: Williams and Wilkins, 1998), 1138–1139.

8. One description of those with an IQ in this range: "By their late teens, they can acquire academic skills up to approximately the sixth-grade level. During their adult years, they usually achieve social and vocational skills adequate for minimum self-support, but may need supervision, guidance, and assistance, especially when under social and economic stress." See *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (Washington, D.C.: American Psychiatric Association, 2000), 43. Other experts ascribe a mental age range of 8 to 11 in adults with mild mental retardation. See John W. Jacobson and James A. Mulick, *Manual of Diagnosis and Professional Practice in Mental Retardation*, 2nd ed. (Washington, D.C.: American Psychological Association, 1997), 18. Adding to the complexity of this issue is the correlation between poverty and mental retardation. "Low socioeconomic groups seem to be over represented in cases of mild mental retardation, the significance of which is unclear. Current knowledge suggests that genetic, environment, biological, and psychological factors work additively in mental retardation." See Kaplan and Sadock, *Synopsis of Psychiatry*, 1140.

9. *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002). See also Margaret Talbot, "The Executioner's I.Q. Test," *New York Times Magazine*, 29 June 2003, 30.

10. Psychiatrists understand this severe mental illness to be a mixture of schizophrenia and major depression. It will include uninterrupted periods of major depression and/or a manic episode, delusions or hallucinations for at least two weeks, may include disorganized speech, grossly disorganized or catatonic behavior, flat affect, and other symptoms. These conditions must not be the result of drugs or alcohol. *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed., text revised [DSM-IV-TR], at 319–323.

11. The murder victims were Mickey Bell, 56, and his wife Judy Bell, 52, of Ellaville, Georgia. Americus police described my client as a "demented person." Christopher Sheets, "Double-murder stuns community," *Americus Times-Record*, 22 July 1996, 1.

12. Statements from the court-ordered competency evaluation by Dr. Karen Bailey-Smith and Mr. Margaret Fahey, 21 October 1996, presently in the court files.

13. Alia Beard, "Local football hero demands electric chair," *Americus Times-Record*, 11 October 1998, 1-A; Elliott Minor, "Killer threatens jurors in effort to get chair," *Macon Telegraph*, 7 October 1998, 3B.

14. *Colwell v. State*, 273 Ga. 634, 544 S.E.2d 120 (2001). See also Bill Rankin, "Georgia's high court backs death sentence of killer," *Atlanta Journal-Constitution*, 3 March 2001, 114.

15. Bill Rankin, "Football hero turned killer hangs self on death row," *Atlanta Journal-Constitution*, 14 January 2003, D9, and Trisha Renaud, "Man who sought execution sills self," *Fulton County Daily Report*, 4 January 2003, 1. This young man's case was the subject of a 60 Minutes II segment and an A&E *American Justice* program.

16. Adrain Nicole LeBlanc, "Prison Is a Member of Their Family," *New York Times Magazine*, 12 January 2003, 28–30.

17. For insights into the lives of women defendants, I recommend Wally Lamb, ed., *Couldn't Keep It To Myself* (New York: Regan Books, 2003), a collection of biographical essays by women prison inmates.

18. David Simpson, "Prostitute admits to 3 slayings, blames pimp," *Atlanta Journal-Constitution*, 17 January 2004, E1. Note also the sympathetic profiles by Mara Shalhoup in the Atlanta weekly *Creative Loafing*, "Learning to hit a lick," 4–10 March 2004, 34, and "Learning to hit a lick, part II," 11–17 March 2004, 34.

19. Garbarino, *Lost Boys*, 34–35.

20. *Ibid.*, 49.

21. *Ibid.*, 50.

22. Denzel Washington's excellent movie *Antwone Fisher*, based on the autobiography of Antwone Fisher, *Finding Fish* (New York: Harper/Torch, 2001), impressively demonstrates the impact of parental abandonment on the life of a young man.

23. *Gospel Principles* (Salt Lake City: Church of Jesus Christ of Latter-day Saints, 1992), 296.

24. I was interested to read about President James E. Faust observing recently, "The older I get, the less judgmental I become." Quoted in Dallin H. Oaks, "Judge Not and Judging," Brigham Young University fireside, 1 March 1998, <http://speeches.byu.edu/reader/reader.php?id=2548> (accessed 12 September 2006).