



Human Side of Death Penalty Defense



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“Doesn't she realize that he's a monster?” That was the question that one of the officers at Holman Prison in Atmore, Alabama struggled with each time he observed me visiting with my death-sentenced clients. As he saw me walking to my car at the conclusion of my visit, he took the opportunity to ask me about it.

As it usually is when I visit my clients on death row in Alabama, it had been a long day. I was on the road at 6:00 a.m., driving four hours from Atlanta to Atmore. I had visited with my clients for five hours, and I was headed to my car getting ready to make the long trip back to Atlanta when I was approached by an officer who asked if he could ask me a question. He was driving around in a pick-up owned, I assumed, by the prison. As I placed my notepad and pen in the trunk and retrieved my purse, he pulled the truck up a few feet away from my car. He never got out of the truck, and he never turned off the motor.

“Do you believe in the death penalty?” he asked. “No,” I replied. Then he asked the logical follow-up question, “Why not?” For years, I have been visiting clients charged with capital murder or sentenced to death, and no prison or jail officer had ever asked me about my

opinions on the death penalty, up until that point. I have been questioned about my age, how long I have been practicing, and even my relationship status on numerous occasions. I had never been asked how I could represent the clients that I choose to represent. I thought to myself, “I don't have time to get into this. I need to get on the road.” I quickly rattled off something about my religious beliefs, hoping that would be enough to satisfy him. It was not.

He explained that he had been thinking about the death penalty. He had asked the warden and others about their opinions about the death penalty, in an attempt to reconcile his own beliefs. He said he supported the death penalty, and he was hoping that I could provide the silver bullet that would change his mind. I suddenly felt unprepared. I did not have a silver bullet. I purposely do not get into arguments with people who adamantly support the death penalty. I simply listen to their opinions, provide the facts, tell the stories, and expect that they will consider those facts as they struggle with the issue. I never imagined that I would be expected to say one thing, or a series of things, that could immediately convince a person who supports the death penalty that they no longer should. Even in litigating my cases, I do not attempt to convince fact-finders that the death penalty should be abolished; rather I try to convince them that the death penalty is inappropriate for my particular client. I was under pressure. How could I convince this guy that the death penalty is wrong in the time I had standing outside my car at the prison? I decided that it could not be done, and I told him so.

He explained that he sometimes observed me visiting with my clients, talking and sometimes laughing with them, and he often thought to himself, “Doesn't she know that he's a monster?” Wow. A monster? I was shocked by the sheer honesty of the statement. “No, sir,” I told him, “I don't think my clients are monsters.” He, although being an officer at the prison, apparently was like most people: he only knew my clients by the crimes for which they had been convicted. If I had been thinking, I would have spent some time exploring that fact. Instead, I rambled on about each person having their own journey that leads them to the answer to that question. I explained that there was no way that I could, in the limited time that both of us had, tell him everything he needed to know about what is wrong with the death penalty in order for him to make a more informed decision about his support

for the death penalty. I thanked him for at least struggling with the issue and asking these important questions, and I expressed my wish that I had more time to talk with him about it. I then got in my car and headed home.

I felt like dirt the entire ride home. I kept thinking that I had let my clients down. I had let myself down. I had the opportunity to convince one more person that the death penalty, at least as currently administered, is wrong, and I failed. It was a really long drive back home that day.

If I had it to do over again, I probably would not even attempt to answer the question right then and there. I would suggest that we make an appointment to discuss the issue further over coffee or at his church or some other place where he could ask me all the questions that were on his mind and we could really talk about the issue without me feeling forced to give my answer in sound bites or clichés. I hopefully would detail in a clear manner some of the inherent problems with our current system of capital punishment, such as its disproportionate affect on racial minorities and the poor, the woeful lack of adequate funding for capital defense attorneys, the shocking number of persons who have been wrongfully convicted of capital crimes, the lack of adequate training for some capital defense attorneys, the emotional toll a death penalty trial takes on all parties involved, the enormous financial costs to taxpayers who could better use the money to pay for more school buses, fire fighters, and other needs of their communities, and so on. But more than that, I would try to convey the following two things:

1) Death Sentenced Inmates and Capital Murder Defendants are Human Beings.

They are not monsters, or animals, or any of the other non-human terms often used to describe them. I know that is hard to believe for those who have only read the horrifying details of some of the crimes committed. Sometimes, even I think to myself, “Oh my God, why?” or “How could someone do that?” On some occasions, I have been moved to tears at the nature of the crimes committed. That anger, disgust, and sadness are natural reactions to a very unnatural occurrence. It is the answers to the questions of “Why?” and “How?”, however, that move people from that awful space to a place where mercy can be considered and where justice has a chance.

Because jurors and judges who

are charged with the decision of whether someone should live or die for the crimes they committed need to know about the person whose life is in their hands and how he or she came to be at a place where others sit in judgment of the worthiness of their life, justice requires that I investigate my clients' entire lives, even generations before they were born, and compellingly present my clients' humanity. In trying to figure out the “hows” and the “whys,” I come to know the complete human beings, not just the worst things they have ever done in their lives. That, more than anything else, is what motivates me to keep doing this work.

2) Representing Death Sentenced Inmates Does Not Blind Me to the Concerns of Victims.

I believe in what I do, but I am not a robot, and I do not need to be a robot to be an effective advocate for my clients. I understand that no one deserves to be murdered, that the victims whose lives were taken prematurely deserved better, that their lives were important, and that they were loved. Those facts do not escape me, because I know that tragedy can happen to anyone, and no one ever deserves it.

I have been working in some

capacity with death penalty defense for my entire legal career. I came to this work through a discovery process after my visit to the Cook County Jail as a college student forced me to evaluate for the first time my feelings about the criminal justice system. I recall being on a tour of the jail with law students who were interning at firms in Chicago that summer. When one of the law students asked the officer to stage a fight among the inmates for our entertainment, something went off inside of me. Growing up in rural Mississippi, where for years gun safety was taught in middle school, I was certainly not someone who had much sympathy for criminals. In fact, in considering law school, I just knew that I would never do criminal defense work, because I didn't want to work with “crazy” people. But that day, I was shocked and appalled. I thought to myself, “This is a jail, so some of these people haven't even been convicted of anything, and here are future leaders of our country who have such low sense of human decency that they would request a staged brawl for their own entertainment. What is our world coming to?” The other thing that struck me as I walked through the jail looking at the inmates like we were in a zoo was that the vast majority of the inmates we encountered

looked like me - they were African-American. I thought, “Something's wrong with this picture.”

As a law student I volunteered on a post-conviction case, and I was hooked. I started learning more about the death penalty, and the more I learned, the angrier I became about the injustice of the entire system. The one particular aspect of the death penalty that led me to this work was the inherent racism and classism of the entire process, but that is not what keeps me in the work.

I was attracted to death penalty defense because I was appalled at the racial disparities in the system. I continue to practice death penalty defense because I'm committed to my clients and I care. After visiting with one of the clients for whom he had conducted legal research on his case, one of our interns remarked, “That's not what I expected.” The client was articulate, smart, well-versed in national and international affairs, and funny. “I know,” I replied. “It's not what anyone expects.” My clients hurt, laugh, cry, and love like the rest of us. I would not have known that from reading the newspaper articles about the crimes or watching the news reports on television. I found that out by getting to know them. ■

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