

# Perspectives

## Simple Decency

Robert Perske

There is something gentle but powerful about the word *decency*. When it is used at certain crucial times, it has warmed hearts and changed minds. I know of two times in the history of the United States government that it did just that.

The first happened on June 9, 1954. Senator Joseph McCarthy, chairman of the Senate Permanent Subcommittee on Investigations reached his scathing best at naming persons he claimed to be despicable, un-American communists. In doing so, he destroyed the professional lives of hundreds of persons in industry, entertainment, and government. Because he struck such fear in the hearts of others, no one felt safe enough to disagree with him in public. On this particular day, McCarthy and his staff members focused on the United States Army. During the hearing, he claimed to possess files on 130 “dangerous” persons. Hearing that, an attorney for the Army, Joseph Welch, told the senator he should give the names to the FBI “before the sun goes down.” This suggestion caught McCarthy off guard. He rather childishly fired back by suddenly claiming to have a file on a young lawyer working in Welch’s law firm. Welch defended his young colleague admirably, but McCarthy did not let up. Finally, Welch said, “Let us not assassinate this lad further, Senator. You have done enough. Have you no sense of decency, sir, at long last? Have you left no sense of decency?” The audience burst into applause. When McCarthy heard it, he was visibly shaken. He turned to his counsel, Roy Cohn, and said, “What happened?” At that point, McCarthy’s powerful grip on others began to melt like butter on a hot summer day.

The second happened on June 20, 2002. On that day, the United States Supreme Court ruled in *Atkins v. Virginia* that the execution of persons with mental retardation be banned. Justice John Paul Stevens, speaking for the High Court, gave the following reasons.

- Such executions violate the Eighth Amendment of the Constitution forbidding “cruel and unusual punishment.”
- Disabilities in reasoning, judgment, and control of impulses can keep these persons from being as morally culpable as others who commit capital crimes.
- The ruling contained a list of “diminished capacities.” Anyone acquiring a certain number of them before age 18 could hardly be listed among the “worst of the worst” for whom execution was reserved.
- These persons with disabilities may have deserved punishment all right, but executing them would be excessive and unfair.
- Stevens recognized a “consistency of the direction of change” in the legislatures of death penalty states that called for such a ban. For example, from 1988 to 2001, 18 death penalty states voted for such a ban. Other state legislatures were considering such moves while *Atkins v. Virginia* was being heard by the Court.
- Stevens claimed that killing these persons “will not measurably advance the deterrent or the retributive purpose of the death penalty.”
- He also recognized how these persons have often been coerced into confessing to serious felonies they did not commit.

Even so, it was Justice Stevens’ bottom-line affirmation that packed the greatest wallop:

*The basic concept of the Eighth Amendment is nothing less than the dignity of man. . . . The amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.*

That phrase about evolving standards of decency touched off a carnival inside of me, with Roman candles and confetti and waving flags and music of a calliope and the smell of cotton candy and wanting to laugh and cheer with all my heart. The Court touched and illuminated a line that stretches

through all of American society. On one side of the line is simple decency. On the other side, one finds a devaluing indecency.

Senator McCarthy crossed over into the dark side and had a heyday labeling and demeaning hundreds of Americans. Justice Stevens claimed that a maturing society crossed into a better lit area where a tiny new bit of fresh understanding and fairness may blossom for thousands of citizens in the years to come.

Why do I think that line is now so powerful? It is because the United States Supreme Court ruled it so. I think it would take thousands of citizens marching with placards around state capitols to even approximate the impact this evolving standard-of-decency phrase may ultimately have on the citizens of our nation.

Of course, the Court only focused on persons with mental retardation on death row. Even so, I believe this phrase will put a strong foot in a door that can be opened a bit further to include many other persons with intellectual, cognitive, and developmental disabilities.

For example, as a young man working in an institution in the early 1960s, I was bewildered by the number of times our residents were diagnosed as “mentally retarded, etiology unknown.” Today, they are known as persons with *autism*, *cerebral palsy*, *learning disabilities*, *fetal alcohol syndrome*, *fetal alcohol effect*, *brain damage*, *Asperger syndrome*, *Down syndrome*, *Williams syndrome*, or *Dandy-Walker syndrome*—and hundreds of other disabilities now being named after outstanding deceased doctors. Please notice, I placed these diagnostic terms in because today’s professionals are constantly coming up with new labels to replace old ones.

Some police officers, lawyers, judges, and juries

will embrace such a respectful attitude. Others will not. For years to come, attorneys will argue with one another over what the Court really meant by the terms *evolving standards of decency* and *progress of a maturing society*. That is fine. Our legal system is based on hearing coherent arguments from both sides of an issue. They will do it before judges and juries who must decide on the finer technical points emerging from the arguments. Even the justices of the Supreme Court will argue it among themselves. After all, their present ruling came after a vote of 6 to 3.

I, however, am not a legal technician. I am a citizen of the free world who chooses to follow, befriend, and write about all kinds of persons with disabilities. For the past 26 years, I have focused tightly on two groups of persons with intellectual disabilities: those who confessed to serious crimes they did not commit as well as those who were sentenced to death.

The concept of simple decency toward the persons we in the field work with and care about did not just happen. I think it is the result of a cluster bomb of healthy scientific and social explosions that have emerged in the past 55 years. I think that what Justice Stevens did was to somehow sense the impact of these breakthroughs, and he put the High Court’s stamp of approval on all of them.

I hope I am right.

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## Reference

*Atkins v. Virginia* (2002). 00–8452. 536 U.S. 304.

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