
The Death of Innocents

An Eyewitness Account of Wrongful Executions

By Sister Helen Prejean



“You’ll never believe it. The pope spoke out for Joe!” It’s Lori Urs on the phone, telling me that Pope John Paul II spoke out against the death penalty and mentioned Joseph O’Dell. “Imagine! The pope saying Joe’s name to the whole world! It gives me goose bumps. I’ve been trying to get powerful people to speak for Joe because that’s the only language the governor and other politicians understand. They have to know that they’re not killing a nobody if they kill Joseph O’Dell. They have to know that very important people care about this man. Who knows? With the pope speaking out, maybe even the courts will take Joe’s case more seriously. Aren’t there some Catholics on the Supreme Court? Like Scalia? Isn’t he Catholic? Isn’t he supposed to listen to the pope? And guess what? I hear that some people have told Mother Teresa of Calcutta about Joe and are asking her to intercede with Governor Alien. Sugar! Can you picture that? Mother Teresa, a living saint, giving a piece of her mind to Governor George Allen? I hear that Mother Teresa doesn’t kowtow to governors or presidents or anybody. Did you hear that when she visited death row at San Quentin, she poked her finger into the chest of a guard and said, ‘Remember, what you do to these men, you do to Christ’? Can you imagine her with Governor Allen?” (Laughter.) “He’ll never know what hit him!”

The call from Lori a week later is not happy.

(Continues on the following pages)

Please, Lori is asking, please, will I come to be with Joe if they kill him, because the date is set for December 22, just a week away, and she's "out-of-her-mind worried" because his case is before the U.S. Supreme Court and "you *know* how fickle they are, you *know* how they let people die if their lawyers file one day late or write one wrong word." But she says that Joe's petition contains a "clear-cut" constitutional issue, which had opened up for Joe because of the Supreme Court's decision in *Simmons v. South Carolina*,²⁶ in which the Court had found that Simmons's constitutional rights had been violated because his jury was not allowed to know about the life-without-parole sentence that he faced for his crime. The Supreme Court had determined that withholding this information from the jury violated Simmons's constitutional right to "due process."

"You can see the Simmons issue clear as day in the transcripts of Joe's trial," she says. "Prosecutors Test and Alberi not only blocked Joe's jury from knowing about Virginia's life-without-parole sentence, they also deliberately misled them into thinking that Joe would be walking the streets again if they didn't vote to kill him."

When I hear this, I'm glad for Joe O'Dell because now his petition can be based on precedent, which greatly increases the likelihood that the Supreme Court will hear it. In the grisly business of warding off state killing, that's how to save a life: If the Court gives O'Dell a hearing, his killing will be delayed, which means at least six more months of life, maybe a year; and if they rule in his favor, his death sentence will be overturned and he'll get a new sentencing trial.

I was appalled when I found out that district attorneys on a regular basis try to keep juries from knowing about life-without-parole sentences. District attorneys know that juries tend to choose life over death if they know the offender will be locked away and not eligible for parole for a long time, if ever. Public safety is, naturally, of great concern, and life-without-parole sentences for felony murder, which most states now have in place,²⁷ save jurors from the terrible task of condemning a fellow human being to death. I have always thought that fairness to jurors demands, at the very least, that they know the truth about the sentence the defendant will receive if they choose not to impose death. I have heard horror stories of juries begging to know if the defendant might be let out on parole and judges refus-

ing to answer their question. For the rest of their lives, such jurors bear the burden of their decision—no small weight for a human soul to carry.

I was just one juror among many. We all decided unanimously that the defendant deserved death. The judge told us to brace up to our hard task for the sake of society. I know what I did was legal. But was it right? Was it right before God?

Prosecutors like Albert Alberi and Stephen Test who seek the death penalty tend to see any lesser sentence as failure, which gives rise to their impassioned closing arguments to jurors in which they portray death as the only reasonable choice for a God-fearing juror who wishes to protect society from dangerous criminals. Several studies show that when jurors know that the defendant will get a true life-without-parole sentence, the number of death sentences drops dramatically.²⁸

Arguing fiercely for the death of a human being hardly brings out in prosecutors the “angels of their better nature.” My friend Denny LeBoeuf told me of once watching an assistant district attorney who had worked assiduously to secure a death sentence crumple at the prosecution’s table and weep when she heard that the jury had not decided on death. “It’s not going to happen for me,” Denny heard her say through her tears.²⁹

“She felt defeated,” Denny said. “When prosecutors go for death, they are so driven to ‘win’ that they forget what ‘winning’ means. They’re so geared for death that even a sentence of life without parole seems unsatisfying. Take this kind of behavior out of the courtroom and it sounds a lot like blood revenge: Only death will do.”

Denny, who has faced such prosecutors in Louisiana courts for thirteen years, adds, “That’s one reason why the death penalty is not good for our society. It tends to corrupt the sensibilities of prosecutors, especially if they feel that getting death sentences enhances their careers.” The decision to go for the death penalty or not, which is at the discretion of district attorneys, also points to an intractable problem. “How can such decisions ever be anything but arbitrary,” Denny asks, “when it’s left to individual district attorneys to decide to go for death or not?” She can tick off on her fingers which prosecutors in Louisiana are enthusiastic proponents of the death penalty: Harry Connick Sr. in New Orleans, Doug Moreau in Baton Rouge,

Paul Connick (nephew of Harry Connick Sr.) in Jefferson Parish, and Jerry Jones in Monroe. Most inmates on death row in Louisiana come from the districts of these prosecutors. But in a neighboring parish (county) where equally terrible murders occur, Denny says, you may have a district attorney who hardly ever goes for the death penalty, maybe because a DA doesn't have the heart for it, or maybe because there's just not enough money in the coffers for a capital trial, which is more costly than a regular trial. "You can see this pattern of unevenness all across the United States," Denny says, and names death pockets across the nation. In North Carolina, there's DA Joe Freeman Britt; in Texas, there's DA Johnny Holmes; in Philadelphia, there's DA Lynne Abraham. And Denny goes on to explain that the application of the federal death penalty is no less hit-or-miss, with a small percentage of the districts accounting for the majority of death sentences.

I know what Denny means about prosecutors losing perspective. I recently saw an article in the *Baton Rouge Advocate* that the local district attorney, Doug Moreau, took the entire prosecution team out for drinks and dinner at an expensive restaurant when they "won" a death sentence. The dinners happened fairly often because Moreau's office is a top contender in Louisiana for most death sentences attained, setting a record of sixteen straight death sentences in a row a couple of years ago. From 1996 to 2000, Louisiana's death row population doubled, owing in no small part to Moreau's string of "victories."³⁰ A journalist for the *Advocate* discovered that taxpayers were footing the bill for Moreau's "celebration" dinners, and when he asked Moreau to justify such expenditures, Moreau explained that capital cases were "stressful" and demanded far more work and longer hours than other cases. The dinners, he said, helped team spirit.

"So if the defendant happens to get a life sentence instead of death," the journalist asked, "hasn't the prosecution team worked just as hard and doesn't that call for a special meal?"

No, not then, said DA Moreau.

On the phone, Lori tells me about Joe's latest devastating blow from the Fourth Circuit Court of Appeals.

"This court always sides with the prosecution," she says. "They not only overturned Joe's new sentencing trial granted by Judge Spencer, but in one fell swoop dismissed the results of the DNA

blood tests and said that Joe's claim of innocence wasn't even 'colorable.' They said that it was *irrelevant* that the blood on Joe's shirt proved not to be Helen Schartner's blood. Can you imagine? Irrelevant! The blood on Joe's clothes was the main physical evidence that the state had used against Joe, and their constant theme all during the trial was that the blood on Joe's clothes was consistent with the victim's blood. And the DNA tests for the first time gave hard scientific evidence to the contrary, especially the shirt results, which clearly proved to be not the victim's blood. For that matter, it proved not to be Joe's blood, either, and so pointed to the presence of a third party, which Joe had claimed all along, saying the blood had come from a fight. To call this scientific evidence irrelevant? It directly contradicted the state's claim, but the Fourth Circuit, voicing the prosecution's argument, claimed that the blood spots for testing had been randomly selected and so were inconsequential.

"But remember how carefully the blood spots for testing had been selected? Remember how Joe's lawyers made sure that only those spots were chosen for testing that the state had already tested so an exact comparison could be made? Far from being irrelevant, the exclusion of the victim's blood on the shirt clearly warranted further testing to see if, perhaps, other spots of blood might also contradict the state's findings.

"And wait until you hear what the Fourth Circuit did with the jacket results; it's even worse than the shirt," Lori says. "The Fourth Circuit said the blood on the jacket matched the victim's blood. Matched? Judge Spencer, after painstakingly listening to the scientific arguments, had declared the bloodstain on the jacket inconclusive, certainly not a match.³¹ The court well knew that by declaring a 'match,' they were shutting down all further discussion of the DNA evidence. And, of course, to declare this 'match' on the jacket, the court had to debunk the authority of the National Research Council, whose critique had led to a different conclusion from theirs. The NRC, after all, is *the* representative body of scientists, and their critique is authoritative in the scientific community."

Lori is white-hot mad; her words come in a torrent, and I'm thinking of the levels and levels of complexity in this debate. It takes smarts and careful attention to follow the arguments about monomorphic probes and "match windows," so it was easy enough

for the Fourth Circuit to dismiss the authority of the NRC when it disagreed with its conclusions. Who would care enough to follow the intricacies of such arguments? Lori Urs cared, of course, and Joseph O'Dell's appellate lawyers cared enough to file a seven-page rebuttal of the factual errors in the Fourth Circuit's decision.

"The Fourth Circuit plays with scientific evidence like putty," Lori is saying, "and do you know what I have come to realize? They used the exact right word when they said the DNA results on the shirt were 'irrelevant.' That's exactly right, because for them the scientific evidence truly is irrelevant. Only innocent Joe O'Dell, who still believes in the integrity of the system, thought the courts would be fair-minded and really look at the DNA results. Forget it. Joe's innocent, and all this Fourth Circuit has done is rubber-stamp his guilty verdict and push him along to his death. They make me sick."

I feel her frustration. After fourteen years of involvement in these death penalty cases, I should have learned to steel myself not to expect fairness from the Fourth Circuit Court of Appeals or any such court in the southern death penalty belt. I remember Nick Trenticosta, Dobie Williams's attorney, telling me that when he delivers his clients' petitions of appeal to certain judges in Louisiana, he keeps the car running because he knows that a few minutes after delivery the judge's clerk will come running out with the petition stamped "Denied."

"You work for hours and hours on these petitions," Nick says, "and you know the judge could not even have read the petition, much less thought about it."

In Virginia, as well as in other death penalty states, judges are infected with the same pro-death penalty bias that infects legislators, governors, and other political figures, especially now that so many judges are elected to office. Judges are all too aware of what happened to Rose Bird in California and Penny White in Tennessee,³² both voted off the state supreme courts because they were judged too lenient to death row petitioners. I've heard criminal defense attorney Millard Farmer³³ say many times that death penalty cases are 95 percent about politics and 5 percent about criminal justice.

The social pressures that affect judges on death penalty cases are not unlike pressures judges faced in Jim Crow days when African American defendants accused of crimes against white persons were

brought to trial. Both judges and defense attorneys then needed courage and a gritty sense of integrity to assure African American defendants a fair trial.

Lori has a lot more to say about what the Fourth Circuit Court of Appeals did to Joseph O'Dell.

Point by point, she tells me, the Fourth Circuit parroted the commonwealth's arguments. "They said the physical evidence against Joe was 'overwhelming,' that Joe and Helen Schartner were *together* at the lounge, that the wounds on the victim's head matched Joe's gun. Gun? What gun? The stock model the prosecution purchased from Kmart while keeping hidden what may have been the real weapon, Helen Schartner's umbrella with the bent handle? It's as if, verbatim, Alberi and Test wrote this opinion for the Fourth Circuit. The court agrees with them on every single point, even that the semen found inside the victim was found to be 'consistent with' Joe's semen, which meant they bought the cockeyed 'mixture' theory of the state's expert, which even one of the state's own experts had to admit was unscientific."

Lori has told me that she's applying to law school. No doubt she'll be a good lawyer, another Denny LeBoeuf, a strong advocate for poor people. Even as a law student she could probably help teach the criminal law section on capital punishment.

"You should *read* this decision," Lori continues. The Fourth Circuit says that Joe failed to explain why his investigator did not interview the jailhouse informer Steve Watson *before* trial. Interview him? It's clear as day in the trial transcript that Steve Watson was a surprise witness. The Fourth Circuit does not even mention one piece of exculpatory evidence in Joe's case: the sandy soil on his pants and boots that could prove he was not in the muddy field; the footprint that didn't match his; the witness Joseph Moore, who found the body but then disappeared at the time of trial. Why didn't the Fourth Circuit question the fact that the victim's umbrella was missing and the fact that not one fingerprint of the victim could be found in Joe's car? Why doesn't the Fourth Circuit question that not one hair of Joe's, including pubic hair, could be found on the victim's body, though he was supposed to have raped her and struggled with her? Why did they ignore the abundant information about the jailhouse snitch's readiness to "make a deal" with prosecutors and judges? How, Lori asks, can Joe ever get justice when the prosecution has the

highest federal appeals court in its back pocket? And if you check into the track record of the Fourth Circuit on death penalty cases, you'll see that they hold the national record for upholding more death sentences than any other appeals court in the entire country.

"How can we hold this court accountable for their actions?" Lori asks. "I want history to know their names and what they did to Joseph O'Dell.³⁴ You just watch. One day I'll write a book—I hope a book with a happy ending—and I'll expose what these judges did to Joe and to so many others. I'll demonstrate how, plank by plank, they constructed the juridical scaffolding of Joseph O'Dell's gallows. They're like those kangaroo courts in some countries, where the accused walk into court already knowing they're going to be found guilty and killed. I told Joe to stop putting those little stickers on his letters that say 'Thank God for America.' The courts of America are corrupt. The courts are doing their best to get Joe O'Dell killed."

Corrupt is a tough word. For me, judicial corruption has always been associated with bribery. But Denny LeBoeuf told me that prosecutors who withhold exculpatory evidence are also corrupt, because corruption occurs whenever judges or prosecutors or police have an interest in a certain outcome and manipulate the law and evidence at the expense of justice. All the courts so far in O'Dell's case—the trial court, which let him defend himself and allowed the prosecutors to manipulate evidence and witnesses; the Virginia Supreme Court, which summarily refused to hear any of his constitutional issues because of a wrong word on the title page; and the Fourth Circuit Court of Appeals, which without scrutiny endorsed what the lower courts had done and, worse, overturned a federal district judge's decision on the results of DNA testing—each of these courts has denied justice to Joseph O'Dell.

What happened to O'Dell in the Fourth Circuit reminds me of what happened to Dobie Williams in the Fifth Circuit. Dobie had gotten his first glimmer of hope from a federal judge who had mandated a new sentencing trial for him. During the sentencing phase, Dobie's lawyer had been so inept, the federal judge contended, that it was as if Dobie had no lawyer at all. How Dobie's hopes had soared then, and how his mama and family had cheered. But the Fifth Circuit Court of Appeals summarily overturned the federal judge's decision and sent Dobie to his death. The Fifth Circuit ranks right behind the Fourth Circuit in upholding almost every death sentence

it considers. It is rare indeed that they ever uphold that the constitutional rights of death row petitioners have been violated, especially the claim of ineffectiveness of defense counsel—even when defense lawyers have been shown to sleep during trial.³⁵ Explaining why it had ruled that a sleeping defense lawyer should not be considered ineffective, the Fifth Circuit majority argued the point that the court did not know *exactly when during the trial* the defense attorney had fallen asleep; maybe it had been during one of the “non-critical” stretches.³⁶

Lori’s voice catches and she swallows hard and is silent for a little while, but then her voice gets strong again as she talks about how the Simmons issue might get a new sentencing trial for Joe from the U.S. Supreme Court. “If it’s against Simmons’s constitutional rights for the jury not to hear about the life-without-parole sentence, then it’s surely against Joe O’Dell’s constitutional rights.”

I can hear the hope rising in her voice, and I’m hopeful, too. “True, it’s not the totally new trial Joe deserves, which could acquit him once and for all,” she says, “but at least a new sentencing trial could get him out from under the death sentence and keep him alive so we can prove his innocence.”

I’m hopeful, but I buy an airline ticket to Richmond just in case they decide to kill Joe. He had telephoned me a few days ago and asked me to accompany him to the death chamber. In Virginia, he tells me, spiritual advisers are allowed into the chamber itself, and I will be allowed to touch him after he’s strapped to the gurney and can say a final prayer for him. The killing is only a week away.

On December 17, Lori telephones—jubilant.

The U.S. Supreme Court agreed to hear Joe’s petition, the warrant for his death has been lifted, and Joe has been taken out of the death watch cell and returned to his cell on death row.

“Sugar!” she shouts. “I heard that applause broke out in the Italian parliament over the Supreme Court’s decision. And the Vatican expressed ‘satisfaction’ at the news. And—get this—the mayor of Palermo, Italy, has made Joe an honorary citizen.³⁷ Joe O’Dell’s name is getting to be a household word in Italy and in the Vatican—isn’t that unbelievable? Joe told me that with all these Catholics coming to his aid, maybe he ought to think about becoming a Catholic.” And she laughs.

The jubilation fades as Lori tells about Joe's near death experience.

"What this human being is going through," Lori says, and her voice quivers.

Joe had called her in tears: "Lori, I'm next." It unnerved her to hear him crying. He was usually the one to calm her. She appreciated his intelligence and the way he handled himself with dignity through all this terrible, unjust, outrageous . . . and she can't find the words.

"How could he not be upset?" she says. "They'd have to wrap me in one of those white coats and haul me off to the loony bin if they had me sitting in a cell right next to the place where they were about to kill me. Can you believe this is the United States of America?"

She's scared.

Of course she's scared. I remember the cold fear when I waited with Pat Sonnier, Robert Willie, and Willie Celestine for the "strap down" team to come for them. Normally I am warm and humming inside but in that surreal house of death, I was cold and paralyzed in the presence of such a calculated protocol of death. When the state kills a human being, it is forced to write the truth of its deed on the death certificate. In the space after "Cause of Death," officials must write, "Homicide." The word *execution* is a euphemism. It's a general word that means the carrying out of a plan or order. "Homicide" tells the truth, even though they insert the word *legal* in front of it.

This situation in which human beings are forced to sit in a cage while they wait to be taken to their deaths has a name, even if the courts of the United States refuse to use it. The Supreme Court justices well know the noble words of the Eighth Amendment of the Constitution, which states that our society will not practice cruelty. But—with the exception in recent times of Justices Thurgood Marshall and William Brennan—the Court has ruled that killing human beings for their crimes is not cruelty. It has even gone so far as to state in *Furman v. Georgia* that state killings are "not inconsistent with our respect for the dignity of men." Nor has the Court considered it cruel to kill those who are as young as sixteen years of age at the time of their crime and, until very recently, the mentally handicapped.³⁸ Neither the courts, the prosecutors, nor the legislatures can

bring themselves to call it cruelty. They hide behind euphemisms: carrying out justice, being tough on crime, getting closure for victims' families, practicing "an eye for an eye," which they claim God tells us to do in the Bible.

But the family of Dobie Williams and the nine hundred³⁹ other families whose loved ones have been electrocuted, lethally injected, hung, or gassed to death in the United States during the past twenty-seven years know the real name. The Human Rights Commission of the United Nations calls it by its real name. The countries in the world that now outlaw the death penalty know its name. And Eleanor Roosevelt and the committee that drafted the text of the United Nations Universal Declaration of Human Rights in 1948 also knew its name.

Joseph O'Dell is being tortured.

He is not flogged or stretched on the rack or burned with hot pincers. He will appear to crawl painlessly onto the gurney to be injected with the sodium pentothal that will put him to sleep while the state of Virginia kills him. But for human beings who are mindful and conscious, and who anticipate over and over again the death that is forced on them, what word other than *torture* seems appropriate? The best definition of torture that I know has been given by Amnesty International, which defines it as "an extreme mental or physical assault on someone who has been rendered defenseless."

I think of Dobie Williams brought to the death chamber once, twice, three times; and once, twice getting a reprieve and returning to his cell to wait for death once again; and then, on the third try, finally being killed.

What blinds us to the reality of torture that state killing entails? Is it the same blindness that allowed our forebears to practice slavery without flinching? How else could they walk through the town square and watch as African slaves were auctioned to the highest bidder and not be horrified?

Do you see that mother weeping as her children are taken from her?

Do you see that girl in chains, and do you know what will happen to her when her white master lusts for her?

Do you see?

Yes, but you must understand, they're not human like us. They don't have feelings as we do. Our whole agricultural system would collapse without slavery. And haven't you read in the book of Genesis that it's part of God's

plan for these dark-skinned people to serve us? Is not this their role and destiny in life?

It is usually only in hindsight that societies recognize that they have engaged in torture. Until then, torture is normal and justified and even sanctioned by religious beliefs. I remember reading about a member of the military in Algeria whose task it had been to extract information from the "enemies of the government" and then to "dispose" of them. He told how he would gag and tie these persons hand and foot and fly them over the sea in a helicopter, split open their abdomens with a machete, and push them into the sea. It's what "everybody was doing," he said, and at the end of the day he'd go home to his family and not think any more about it. In the future, when we look back on this practice of the death penalty, won't the "strap down" teams and death row guards and wardens have their own stories to tell about how they participated in the torturous deaths of fellow human beings?

They are already telling the stories.

Recently, Warden Jim Willett, who participated in the execution of eighty-nine prisoners in Texas, spoke at length with a journalist from *The New York Times*, telling of his burdened soul,⁴⁰ and Warden Don Cabana candidly tells of his anguish in officiating at executions at Parchman Penitentiary in Mississippi. The title of his book says it all: *Death at Midnight: The Confession of an Executioner*. He did not pull the switch himself, but he knew he was an active participant in the killings. At the time, he justified his actions, he says, telling himself that he was "just doing my job," but deep in his soul he knew he was doing something terribly wrong. After killing two men, he couldn't do it anymore and quit his job as warden.⁴¹

Lori and I are talking on the phone several times a week, but one day the phone rings and it's Joe O'Dell. "I wrote a letter to the pope," he says, and gives a little laugh. "I asked him to come and see me in Mecklenburg. I know he's real busy and all, but, look, I'm the kind of person he really cares about." And he says that the prison and governor and everybody are "mad as hell" about all the thousands of faxes (ten thousand) the Italians are sending on his behalf. "Those Italians are something else," he says, and he's glad that Lori's hard work is paying off.

Joe's voice is deep and resonant, and his intelligence comes through. He's easy to talk to, and he speaks of Lori with affection. I

can tell by the gentle way he talks about her that his feelings for her go deep. I've noticed how often relationships between women and death row inmates flare into romantic love. In such an intense crucible of life against death, the dross of trivial interactions burns off quickly and passionate love flares. In the exchange of letters between Lori and Joe, I can trace the growth of trust and openness. Lori the legal advocate, at first cautious and wary, demanding answers from O'Dell about his past and his crimes and insisting on the truth and telling him that he'd better not lie, that she'd find out if he tried to hide things, that he must come clean with her. And Joe the prisoner, with his miserable history of crimes and bungled relationships, trying hard to be scrupulously honest. Joseph O'Dell loved women, and on his last night of freedom at the County Line Lounge, he was talking to two women at the bar, and even in Mecklenburg Correctional Center he nurtured relationships with women through letters and phone calls. He had been on death row for seven years when Lori Urs, the new volunteer at Centurion Ministries, arrived unannounced in his life. That was in the fall of 1993, and he could never forget the exact date when she came into his life because she was the first to bring hope that he would be vindicated. She could summon allies he never dreamed of. She sparked life into everybody. His appellate attorneys had kept him alive—no small thing—but Lori had spurred them to new initiatives, such as the press conference in Richmond.

At first in his letters he was careful to answer all her questions truthfully and took polite pains to thank her for the "enormous" amounts of time she devoted to reading his thirty-one volumes of trial transcripts. She had even purchased a dictionary of legal terms so she could look up words she didn't understand. In his early letters to Lori, he calls her "little lady," then "friend," then "best friend," and then he can't tell her enough how much he appreciates her coming into his life and how he could trust her more than anybody else in his whole life, ever. But it took her longer to trust, and it took time for her to confide that she had been recently divorced and then, after many months, to send him her photograph. When I do finally meet Joe, he will tell me that when he first saw Lori's picture, he couldn't believe his good luck, that someone so devoted to saving his life was also so beautiful; from the beginning he could see the little girl in her, naïve about the evil in the world, and he saw himself as her protector. When other inmates tried to get her address, he never

gave it to them. He knew that she admired him for the way he managed to eke out a life of dignity on death row, and he was dumbfounded by her loyalty to him and the energy of her sheer, relentless will. She simply refused to accept that he would be killed by the state of Virginia. "Look, just look at all that has happened because of her," he said to me. "Even the pope is on my side and the Italian parliament, and who next?"

Once during a visit, he showed Lori a certificate of Indian marriage he had designed, which declared them husband and wife. It wasn't a real certificate, but Joe submitted it to the prison officials in hopes that he and Lori, as spouses, would be allowed a contact visit. But the fake certificate introduced great complications. As a paralegal, Lori was allowed to visit Joe frequently and privately, which meant no correctional officer could overhear conversations, and letters stamped "Legal Mail—Confidential" would arrive unopened and uncensored. Privacy in communication was hard to come by in Mecklenburg Correctional Center, and when prison officials got wind of the marriage certificate, they were quick to call into question the legal status of Lori's relationship to Joe. Lori explained to me that from the beginning, her relationship with the officials at Mecklenburg had been strained. "They wanted me out of there as a legal advocate because I was uncovering evidence in Joe's case and raising a lot of questions." The officials used the Indian marriage certificate to claim that Lori Urs and O'Dell were sweethearts and so should be reclassified, which meant the end of private correspondence and visits. "Which was pure disaster for Joe from a legal point of view," Lori says, "because prison guards would be able to hear everything we said and feed to commonwealth prosecutors every piece of evidence we turned up, every strategy we planned." She says that the prison officials knew the certificate was fake but were using it to get rid of her as a legal advocate, so she had to file suit in federal court to safeguard her legal status. It was one more obstacle and complication—"as if we didn't have enough obstacles already"—and she was upset with Joe for showing the certificate to prison officials without consulting her. She won the suit and kept her legal status, but clearly prison officials were now her adversaries. "Of course," she says, "I'm sure they're upset as all get-out with all the international attention we're getting for Joe, and they'll do anything to get rid of me."

She roars with laughter. The power of the state had been so intractable against Joe that the interventions by the pope and the Italian parliament—such a sheer reversal of power—she found to be . . . what?

“Delicious.”

December passes by, and I spend most of my days and nights with my sick friend, Ann. On Christmas Day and the last few days of the year, I cleanse and salve her fierce radiation burns. I’m a teacher, not a nurse, but I am learning to move efficiently to help her open the sterile gauze and gently apply the Silvadene on her raw burned chest three, four times a day. I speak quietly to her and sometimes sing to her, and each night we sit side by side on her bed and pray for healing. She’s praying for a miracle, to be cured of this cancer, which began with a cell or two that went astray and incited other cells to mutiny. These enemy cells are silent and can be seen only in the fluid that collects in her lungs and in the lab reports, which she scrutinizes with her practiced doctor’s eye. She knows about electrolytes and red and white blood cell counts and what the numbers mean. And she knows what cancer does to human beings, because during her twelve years as a nurse (before she became a doctor), she helped her patients who were dying of cancer; she knows the importance of controlling the pain, she knows how pain can sap strength and consciousness and poise. She instructs me that at the end the morphine will help her and tells me to work with the hospice nurse who will be there, and she tells me all this as the tears run down my cheeks and I can’t stop them. Ever so gradually, I know but can’t realize that the way things are going, she, my best friend in all the world, is going to die; but when I say *die*, my mind goes blank. Of course, I know that we all must die and I, too, will die one day. I watched my mama die; I was there and watched everything, and I learned from her about dying because she turned herself over to God, and I could tell she was surrendering to the next part of the adventure. But she was eighty-one years old and sick and couldn’t travel or cook up gumbo or shrimp étouffée anymore, and she couldn’t keep a room full of people captivated by her stories and jokes as she once could. And she, too, was a nurse like Ann and knew the medical prognosis long before Mary Ann, Louie, and I, her children, did. Her dying seemed like an unfolding that was natural and had to be. But Ann is not yet sixty years old and wants to live, and I can’t comprehend how the cells got

out of control and can resist her strong will, and the power of her imagination, and the force of her spiritual strength, so that no matter what she thinks or says or does, she can't stop the rampaging cells; and that's how she knows and then I know, too, that her dying must be God's will. Once I know that, I turn the energy of my prayer to align with God's love calling her home, and then all of my prayer is focused on letting her go and helping her to let go gracefully and not to hold back. An oxygen tank has made its way into the house, and friends are stopping by, looking stricken and bringing flowers. But soon she can't bear many visits, and I talk to friends on the phone and tell them to pray for her but not to come over. And when I go with her to the hospital for bone and liver scans and we wait together for the report, I think of Joe O'Dell, who reads his life-or-death scans in Fourth Circuit and Supreme Court verdicts. Only Joe O'Dell is not sick. If he dies, he will not simply die, he will be killed—which is not, I believe, God's will and must be resisted fiercely and actively every step of the way.

In the last days of December, the phone rings.

"Can you come with me to Italy?" It's Lori again, pulsing with energy. "Because Luciano Neri, a member of the Italian parliament, is inviting me to talk in various cities about Joe's case."

Neri, a member of the Italian Human Rights Commission, had read a tiny article in an Italian newspaper about O'Dell, traveled to the United States to gather information about the case, and met Lori Urs; he has been the prime mover in Italy of O'Dell's cause.

Lori says, "These Italians are wonderful. They're paying my way and everything—and guess what? The Italian parliament has issued a formal resolution on behalf of Joe, and Luciano's telling me the European Parliament is also planning to speak out for him to Governor Allen. Helen, the European Parliament! Isn't it amazing that there are all these European leaders who see the injustice Virginia is doing to Joe O'Dell, while here in the United States, politicians and the courts don't blink an eye about killing him? I was a babe in the woods about the criminal justice system until I got involved with Joe's case. Look, Helen, you just have to come with me to Italy! You'd be a good draw card for the press because *Dead Man Walking* was a huge success in Italy, huge! And the members of the Italian parliament are going to arrange for us to visit the Vatican and maybe even have an audience with the pope. Just think! You'll have a chance

to talk to the pope face-to-face about the death penalty. I mean, of course he'll see you, because isn't the pope the number one head honcho Catholic in the world and you're a Catholic nun, and aren't popes and nuns, well, you know, tight?"

I have to laugh.

Lori continues.

"Maybe that's one good thing that can come out of Joe's terrible situation—bringing you and the pope together. Sugar! Imagine after we get to all those cities in Italy to rouse support for Joe's cause. You know, these Italians are strong on human rights. I heard that some priest in Italy got over a million signatures for Paula Cooper, the sixteen-year-old girl in Indiana who got the death penalty for killing her Sunday school teacher.⁴² The Italians got her off death row, isn't that fantastic? So, you just have to come to Italy with me. We'll be an unbeatable team. We'll be Thelma and Louise!"

"I can't go," I say to Lori, and explain how sick Ann is, though I'd jump at the chance to talk to the pope about the death penalty. So she suggests I write a letter to the pope and when she goes to Italy she'll get the letter delivered "right into the pope's lap."

Which is exactly what happens.

I write my letter to the pope on January 1, 1997, and Lori Urs gets it delivered to John Paul II on January 22. Later, a Vatican official who was present told me, "The pope read every word of your letter."

Since I first walked out of Louisiana's execution chamber in 1984, I had been looking for a chance to talk to the pope about Catholic teaching on the death penalty, because everywhere I could see the disastrous results of the Catholic Church's support for capital punishment. Legislators freely used church teaching to legitimate their pro-death penalty stance, as did district attorneys, judges, and professors, and even priests solidly upheld the state's right to kill criminals for "grave" crimes in order to protect society—exactly the argument made by politicians and district attorneys, who claim that the death penalty is "tough on crime."

As I began to give talks around the country to raise consciousness about the death penalty, I came to expect that support for capital punishment from Catholic groups would be every bit as strong as support from those who never set foot in church.

So when Lori Urs gives me an invitation to write to the pope, I

know I have to do it. I knew that to shift the foundational principles of church teaching on the death penalty would take nothing less than a clear mandate from the church's top leader. It takes a big push to bend a river that has been going in a certain direction for 1,600 years. I would have to find the words to persuade the pope to reformulate the criteria that had been used to uphold the death penalty in the church since the fifth century. We needed a paradigm shift.

Many times in his visits around the world, Pope John Paul II had spoken out on behalf of the "inviolable dignity" of human persons made "in God's image" and against the "culture of death" with its penchant for violence. On numerous occasions he had personally intervened with governors, begging to spare the lives of individuals facing death; but he had never uttered one word publicly against the death penalty. In the pope's past four visits to the United States, whenever he spoke of "pro-life issues"—abortion, euthanasia, and physician-assisted suicide—he never included the death penalty. In his 1995 encyclical, *Evangelium Vitae* (*Gospel of Life*), Pope John Paul II had challenged the use of the death penalty more than any other pope, saying that its practice in modern society should be "rare, if not non-existent." And he had spoken eloquently about the "sacred and inviolable character" of all human life and encouraged societies to use incarceration in place of state killing, because such "bloodless means" were more in accord with the dignity of the human person. When I read the words of his encyclical, I felt hope rise in my heart that here, at last, the Catholic Church was going to take a principled stand against state killing. But my hopes crumbled when I saw the words of the pope in paragraph 56, in which he stated that in cases of "absolute necessity" governments were justified in killing their citizens. Such words, I knew, would give death penalty proponents all the support they needed to legitimate their use of the death penalty. *Of course*, they would argue, the death penalty they were seeking for a particularly heinous crime was an "absolute necessity" for the safety of society. Harry Connick Sr., former district attorney in New Orleans and a practicing Catholic who went for the death penalty every chance he got, has said often and publicly that in his opinion, death penalties are all too few and hard to come by, so every death sentence sought is an "absolute necessity."

And Connick has had New Orleans archbishop Philip M. Hannan back up his quest for death sentences. At Connick's invita-

tion, Archbishop Hannan drafted a letter citing traditional church teaching and assuring Catholic jurors that they could vote for a death sentence “in good conscience.” During every capital trial, Connick or one of his assistants would read the archbishop’s letter.

Archbishop Hannan had served as chaplain to paratroopers in World War II, and whenever I discussed the death penalty with him, he would explain to me that our society needed the death penalty to protect ourselves against terrorists. “You’ve never seen war, but I have, and I know how these terrorists think. Death is the only language they understand.”

I had to wonder at this, because terrorists seem perfectly willing to impose the death penalty on themselves. I pointed out to Archbishop Hannan that he would be hard-pressed to find even one terrorist on Louisiana’s death row, but he wouldn’t budge. His moral reasoning, it seems to me, derived more from a military manual than from a book of theology.

So here I was, beginning to make my first public efforts to educate the people of Louisiana about the death penalty, only to square off against my own archbishop as a formidable opponent. For over ten years, Archbishop Hannan’s support for the death penalty blocked other Louisiana bishops from issuing any substantive statement against the death penalty. Their statement, issued in the late 1980s, which accommodated the archbishop’s views, was so weak and riddled with moral loopholes that any pro-death supporter in the Louisiana Legislature could quote it with enthusiasm—and many often did.

Beginning in 1974 and then in 1980, the U.S. Conference of Catholic Bishops had begun to express “pastoral concerns” about the death penalty, but in their statements they emphasized the “unfair and discriminatory” way state killing was practiced more than the moral principles that shored it up. In their opening paragraph, they upheld the state’s right to kill—right in line with traditional teaching—even as they lamented that state-sanctioned killing prolonged the “cycle of violence” in society. Of course, as “shepherds and chief teachers” of the Catholic flock, the bishops felt an obligation to uphold traditional Catholic teaching, but they were beginning to raise questions and to express their concerns publicly about the death penalty, which was hopeful. They were not alone. More and more, Catholic bishops in countries around the world were expressing con-

cerns about the death penalty, and some individual bishops in the United States—Walter Sullivan in Virginia, Tom Gumbleton in Michigan, Joseph Fiorenza in Texas—visited death rows, attended anti-death penalty vigils, and spoke up forcefully in opposition to the death penalty as a matter of principle. I welcomed their voices. But in such settings, bishops' voices were few. Most Catholic support for my work came from my fellow nuns and Catholic peace and justice groups such as Pax Christi. At our first death penalty protests in Louisiana, I came to expect, for the most part, not churchgoers, Catholic or otherwise, but members of the American Civil Liberties Union and Amnesty International. My main tutor on the subject of human rights was Magdaleno Rose-Avila, then Amnesty International's southern regional director, who taught me Amnesty's principled opposition to the death penalty and why governments can never be trusted to kill their citizens. I also joined the board of the National Coalition to Abolish the Death Penalty, and there I learned how to hone good, solid arguments for abolition.⁴³

Archbishop Hannan had weighed in so heavily in dissent with the U.S. Conference of Catholic Bishops' 1980 statement on capital punishment that he was featured on national television. But the archbishop's support for the death penalty went far beyond public statements. He sent to the trial of Willie Watson, an indigent black man, two priests to persuade the jury not to listen to Jesuit priests who were urging them to vote for life. The archbishops' priests prevailed. The jury sentenced Willie Watson to die, and he was killed by the state in the electric chair on July 24, 1987. But before he was killed, Willie Watson wrote a letter to Archbishop Hannan saying that he thought it was "wrong" for him to have sent the "two old priests" to argue for his death, and he asked the archbishop to send a letter to the pardons board to urge them to grant clemency, which Archbishop Hannan promptly did. Evidently, despite his strong pro-death penalty rhetoric, the archbishop didn't want *real* people to be killed. After Watson was condemned to death at his trial, his mother, referring to the priests' testimony, told the press: "Ain't nobody who's of God want to see anybody killed."

With the Catholic Church I settle into a long, patient, and unrelenting dialogue to help my church realign its teaching with the non-violent Gospel of Jesus. I recognize that from the roots up, the very principles of church teaching on the death penalty will have to be

changed, so I jump at the chance to have a direct dialogue with the pope.

The long tradition of Catholic support for the death penalty can be traced directly to the fourth century, when Emperor Constantine legitimized Christianity and Christianity all too quickly embraced the “ways of Empire.” Once Christians were no longer the victims of Rome’s death penalty and had assumed imperial power, they wielded the sword against their “enemies” as ferociously as the Romans had ever done. Augustine, bishop of Hippo (354–430), was one of the first church leaders to legitimate the use of violence by declaring that the wicked might be “coerced by the sword.” And as quick as a brushfire, “enemies” who deserved to be “coerced” began to spring up everywhere. The church immediately added to the list of traditional enemies (thieves, marauders, traitors, and murderers) new kinds of enemies: blasphemers, heretics, pagans, infidels, and “witches.” This right and duty to “coerce” by the use of violence soon became normal in the Crusades, the Inquisition, the “conversion to the faith” of indigenous people—and the hanging, gassing, shooting, electrocution, and lethal injection of criminals—a path that led straight to the death row cell of Joseph O’Dell.

The nonviolent Gospel of Jesus, with its emphasis on forgiveness and love of one’s enemies and the “least of these,” barely had a chance to spark and take hold before it was snuffed out by the church’s embrace of the “ways of Empire.” In the United States in the beginning of the twentieth century, only a handful of Quakers and Anabaptists refused to use violence in any form; and in the Catholic Church, only Dorothy Day and a few of her colleagues adhered unconditionally to Jesus’s command never to demean, hurt, or to kill one’s enemy. In Catholic circles, Dorothy Day was almost a solitary voice speaking out against the killing of Sacco and Vanzetti, Julius and Ethel Rosenberg, Richard Bruno Hauptmann, and Nazi war criminals.⁴⁴

Dorothy Day was not a hero of the Catholic Church in the 1950s when I was a student at St. Joseph Academy in Baton Rouge. The traditional Catholic teaching about the death penalty, which I learned, came directly from St. Thomas Aquinas (1225–1274). In *Summa Contra Gentiles*, Aquinas had written: “The civil rulers execute, justly and sinlessly, pestiferous men in order to protect the state.”

I wrote into my notebook and my conscience that the death penalty was not murder because it was a form of self-defense for society, an exception permitted under the Fifth Commandment (Augustinian version: "Thou shalt not kill"), which condoned what it termed "just wars," also considered a form of self-defense. Thomas Aquinas taught that the killing of "evildoers" was lawful when "directed to the welfare of the whole community." He also said that when a lawful authority kills an evil person, Christ's command to love is not broken, because "by sinning man departs from the order of reason, and therefore falls away from human dignity . . . and falls somehow into the slavery of the beasts, so that he may be disposed of according to what is useful to others. . . . Therefore, although it be evil in itself to kill a man who preserves his human dignity, nevertheless to kill a man who is a sinner can be good, just as it can be good to kill a beast."⁴⁵

Belief in eternal life and saving one's soul were paramount in church teaching in those days, and I had written more pages in my religion notebook about what I had to do to "get to heaven" than any other subject. Like every other good Catholic, I well knew the requirements. I knew that one mortal sin could throw me into hell, where I would be barred forever from the beatific vision of God and the wonderful fun and happiness everyone in heaven would be having for all eternity—without me. That was negative motivation, but somehow the positive motivation never seemed quite as strong. "Love your neighbor" was taught as being important, but other than family, church community, and friends, the "neighbor" remained blurry. Certainly "pestiferous" criminals did not qualify as "neighbors."

Augustine had spoken of the death penalty as a form of charity: "Inflicting capital punishment . . . protects those who are undergoing it from the harm they may suffer . . . through increased sinning, which might continue if their life went on."

I never questioned the church's teaching about the death penalty.

Nobody in those days questioned Catholic teaching about *anything*. It was the 1950s, and criminals in Louisiana—mostly African Americans convicted of crimes against white people—were being electrocuted in Louisiana's portable electric chair, which traveled from parish to parish around the state. I don't remember anybody—Mama, Daddy, teachers, priests—ever mentioning these executions.

But then, before Vatican II (1962–1965) opened up the Catholic Church to social issues, no one was discussing issues of social justice—even the Jim Crow segregation laws in place everywhere. The official church never questioned that African Americans were forced to sit in the balconies of theaters (the “crow’s nest”) and the backseats of buses, even the backseats of churches. Blacks, it seemed, sat in the back of *everywhere* whites were present.

Sixteen hundred years is a long, long time for a religious body to uphold state killing, and the principles on which Catholic teaching has endured for so many centuries are clearly enunciated: *For the protection of society, the state has the right to kill those who have committed “grave” crimes.* Catholic teaching always stressed self-defense of society more than revenge or divine retribution as the reason for capital punishment, though in popular piety, God’s “just punishments” was always writ large, with God pictured as Divine Judge so intent on “justice” that “He” (always imaged as male) was willing to accept the death of his own son as atonement for human sinfulness. The theological reasoning went that because a Divine Being had been offended, the offense was infinite, so only a divine being could offer fitting infinite reparation—no mere “creature” sacrifice would do. So surely such an expiation-seeking God would not quibble about throwing a guilty mortal into hell for all eternity—a theme stressed by DA Harry Connick Sr. when he debated me on the issue of the death penalty on a New Orleans television program. He reasoned that if a just God could punish wayward souls by condemning them to an eternity of hellfire, surely as DA he was justified in seeking the death penalty for criminals. He explained that the punishment he sought was a lesser punishment than burning in “unquenchable” fire for all eternity. Besides, Connick reasoned (as judges of the Inquisition once reasoned), imposing the death penalty could have the salutary effect of giving murderers time to repent and save their souls from hell.

When I first heard Connick express this idea, I was so appalled that I hardly knew how to respond. On reflection, however, I have found his argument helpful because it so transparently reveals the image of God that hovers behind many religious believers’ support for the death penalty.

Is God vengeful, demanding a death for a death? Or is God compassionate, luring souls into love so great that no one can be considered “enemy”?

Since I had discovered that the Gospel of Jesus inaugurated a radically new community that included everybody and where no person was considered to be “outside the pale” of humanness, my soul expanded and I felt more compassion toward all sorts of people, even criminals, and even toward the ravaged earth itself and species threatened daily with extinction.⁴⁶ With such compassion growing in me, how could I worship a God less compassionate than I? This compassion had lured me in 1981 into the lives of indigent, struggling African Americans in a housing project in New Orleans and from there onto death row, a journey I recounted in *Dead Man Walking* and a journey I continue today. On this path I have learned that love, far from being passive in the face of injustice, is a vibrant force that resists and takes bold action to “build a new society within the shell of the old,” as Dorothy Day used to say.

The Catholic Church has not been the only Christian denomination to teach support for the death penalty. Until the last quarter of the twentieth century, most mainstream Christian denominations in the United States blessed the state’s right to kill criminals.

For Catholics, a wave of new consciousness about the death penalty began to build in the 1960s. At first, the wave was a mere trickle of insight, but it ran clear and pure and gathered force until it led to principled opposition to the death penalty. The clear stream of insight was this: Human persons have “inviolable” dignity and human rights simply because they are persons—no matter what acts they commit. This fundamental principle had first been spelled out in 1948 in the United Nations Universal Declaration of Human Rights, and Pope John XXIII was the first pope to grasp its importance. In his 1963 encyclical, *Pacem in Terris*, he wrote: “Any human society . . . must lay down as a foundation this principle: every human being is a person . . . and has rights . . . which are universal, inviolable, and inalienable. . . .”

But the problem I kept encountering among Catholics was the thinking that “inviolable” dignity and human rights belonged rightly to the innocent, but not to the guilty. Murderers had certainly not respected the human rights of their victims, the thinking went; so why should society respect their rights?

But Pope John XXIII made no such distinction between rights of the innocent and rights of the guilty. In *Pacem in Terris*, he stated that human persons, simply because they are human beings, have

rights that can never be wrested from them, and he looked to the United Nations Universal Declaration of Human Rights to spell out those rights:

Article 3: Everyone has the right to life . . .

Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Pope John XXIII called the Universal Declaration of Human Rights “one of the most important acts accomplished by the United Nations Organization.”

It was to be expected when Article 3 of the Universal Declaration was debated back in the 1940s that such a declaration, which granted *everyone* the right to life without qualification, would provoke debate, and one of the first proposed amendments was that an exception ought to be made in the case of criminals lawfully sentenced to death. Eleanor Roosevelt urged the committee to resist this amendment, arguing that their task was to draw up a truly universal charter of human rights toward which societies could strive. She foresaw a day when no government would kill its citizens for any reason. The UN in its founding charter had proclaimed its “faith in . . . the dignity and worth of the human person,” the foundational belief that made all the other rights possible. The rights were articulated under the guidance of French lawyer René Cassin, who insisted that the inalienable human rights that all persons have must be *protected from governments*, which are all too prone for various political reasons to punish citizens with death. By stating that the right to life is inalienable, the UN Declaration said, in effect, that there are some rights, such as the right to life, that are so intrinsic to human beings that state governments do not have the right to *alienate* or pry away those rights for certain kinds of behavior. No society, therefore, has power or jurisdiction either to *invest* citizens with these rights for good behavior or to *take away* these rights for bad behavior.

Thus far, this has certainly not been the position of the Catholic Church, which has begun every doctrinal pronouncement about the death penalty by asserting that the “state has the right to take life” for crimes it deems “grave” or “grievous.” Until Pope John XXIII and the Second Vatican Council ushered in new consciousness, the Catholic Church had a history of making short shrift of human rights

and did not recognize people's right to religious freedom until the last half of the twentieth century. In 1791, Pope Pius VI condemned the French declaration of human rights, in part because it advocated religious freedom; and in the nineteenth century, Pope Gregory XVI rejected freedom of conscience as a "mad" idea. Like human rights, the idea of democracy did not gain legitimacy in the Catholic Church until very modern times. In 1864, Pius IX had drawn up a *Syllabus of Errors*, which listed "democracy" as one of the "principal errors" of the time.

But Vatican II cut across such retrograde thinking and plunged the church as an active participant into global efforts for social justice and peace. In such an atmosphere, where questions about human rights were always at the fore, the church could not help but be affected by dramatically changing attitudes about the death penalty. Over the past sixty years, the number of countries that have abolished the death penalty in law or in practice has risen exponentially. In 1957, about a decade after the Universal Declaration of Human Rights was given to the world, only six countries in the world did not impose the death penalty, but by the year 2000 the number of abolitionist countries had risen to seventy-two; now, in 2004, that number is eighty.⁴⁷ Leadership in the abolition movement has come from Europe, which in 1950 gave birth to the European Convention on Human Rights, which prohibited not only the practice of the death penalty, but also the extradition of prisoners to countries where they faced death as a punishment.⁴⁸ In 1997, the Council of Europe made abolition of the death penalty a requirement of membership, and this sparked a dramatic shutting down of death chambers among former members of the Soviet Union.⁴⁹ Russia, when it applied for membership in the Council of Europe in 1996, immediately put in place a moratorium on all executions; and in 1999, President Boris Yeltsin commuted the death sentences of over seven hundred death row prisoners.

Such dramatic evolution in global attitudes toward the death penalty has, of course, impacted the consciousness of the Catholic Church, and in his encyclical *Evangelium Vitae* Pope John Paul II signaled the increase of worldwide opposition to the death penalty as a "sign of hope."

On January 1, 1997, I wrote the following letter to Pope John Paul II:

Dear Holy Father,

The very first words I write in this new year are to you. May the Spirit of Christ continue to strengthen you and give you joy in your awesome vocation and responsibilities.

Thank you for raising your voice on behalf of Virginia death row inmate, Joseph O'Dell. Though it is hard to point to exact causality, there is no doubt in my mind that your intervention helped to save his life. He was not executed on December 22. On December 17 the U.S. Supreme Court, which as a matter of course these days refuses to hear death penalty cases, unanimously granted a stay of execution and voted 8 to 1 to review Mr. O'Dell's case. Joseph O'Dell is alive, though still in grievous trauma from his ordeal. He cannot control his tears. "They tried to kill me," he keeps saying. While awaiting his turn to die, he watched two others, one a close friend, be taken to their deaths. Just across from his cell was the shower stall, and he watched in mute horror as his fellow inmates were forced to shower and put on "execution clothes" shortly before being led to their deaths. Joseph had asked me as spiritual advisor to accompany him to his death, and I kept looking at my airline ticket to Richmond as the days and hours ticked by bringing him to the brink of death. Thank God I did not have to use that ticket. I have already accompanied three men to their deaths in Louisiana's electric chair, and I have "seen with my eyes and touched with my hands" the suffering face of Christ in the "least of these" as they went to their deaths. I have seen the practice of the death penalty close up and have no doubt that it is the practice of torture. What all of the men I have accompanied have said when at last they died was, "I am so tired." Conscious human beings anticipate death and die a thousand times before they die, no matter what the "humane" method of death may be, even lethal injection, which is supposed to just "put you to sleep."

Interestingly, the lone dissent in the Supreme Court decision to hear the O'Dell case came from Catholic Justice Antonin Scalia, who is relentless in his pursuit of legalizing executions, even of juveniles and the mentally retarded, and who expedites the death process in the courts in every way he can. He seems to have no trouble squaring executions with his Catholic faith, and in this he is no exception. For 14 years I have been speaking to groups all across the United States about the death penalty, and, for the most part, find Catholics, including many priests, religious educators, and teachers supportive of government-sanctioned executions. Rarely is the death penalty questioned from pulpits at Mass, and "pro life," as it turns out, most often means pro innocent life, not guilty life. The death penalty is very much a poor person's issue (99% of the 3,100 souls on death row in the U.S. are poor), and I have found that as a general rule those involved with justice for poor people readily oppose the death penalty, whereas those separated from poor people and their struggles readily support it. They are more prone to see poor people as the "enemy" and to be willing to inflict harsh punishments to "control" them.

Your words on the death penalty in *Evangelium Vitae* have come as a fresh breeze. Your strong words on behalf of life even of violent offenders encourage church leaders to be more courageous in voicing gospel values in opposition to the death penalty and hopefully these words will make their way into classrooms and pulpits. Especially welcome were your words upholding the dignity of human life, the "sacred and inviolable character" that each human life possesses. In contrast, the U.S. Supreme Court in *Furman v. Georgia* upheld that retribution, even in its most extreme form, execution, is not "inconsistent with our respect for the dignity of men." How can one possibly subject human beings to torture and to death and yet respect their dignity?

Unfortunately, however, when in *Evangelium Vitae*, paragraph 56, you uphold the state's right to execute in cases of "absolute necessity," some pro-death penalty advocates such as Catholic District Attorney of New Orleans, Harry Connick, Sr., use those words to justify their vigorous pursuit of the death penalty. As the death penalty is practiced now, Mr. Connick has stated, the death penalty is "all too rare," so he feels that every death penalty that he succeeds in getting is an "absolute necessity." As Amnesty International has amply documented, whenever governments around the world punish criminals by killing them, they claim to act out of "absolute necessity." By way of contrast, one of the first acts of the Constitutional Court of South Africa was to unconditionally forbid state executions. The leaders of South Africa understand all too well that when governments are given the right to execute their citizens, invariably the deepest prejudices of the society exert full sway in the punishment of those considered the "dangerous criminal element." The United Nations Universal Declaration of Human Rights states in clear, unequivocal terms every human being's inalienable right not to be killed (Article 3) nor "subjected to torture" (Article 5). From the time of St. Augustine of Hippo, one of the first to argue that the "wicked" might be "coerced with the sword," we Catholics have upheld the right of governments to take life in defense of the common good. But, as you point out in *Evangelium Vitae*, the development in societies of penal institutions now offers a way for societies to protect themselves from violent offenders without imitating the very violence they claim to abhor. How can any government, vulnerable to undue influence of the rich and powerful and subject to every kind of prejudice, have the purity and integrity to select certain of its citizens for punishment by death? Even in a so-called developed country such as the U.S., for example, we are

discovering how much the status of the victim plays a part in the decision to seek death as a punishment. The vast majority of people on death row in the U.S.—85%—are chosen for death because they killed white people; whereas, when people of color are killed (fully 50% of all homicides) not only is the death penalty seldom sought, but often there is not even vigorous prosecution of such cases. A society and its government would have to care equally about the life of all of its members to be entrusted with the death penalty, and we know that on this earth no society can make that claim.

I pray for the day when Catholic opposition to government executions will be unequivocal. I say this because I know that words of the law and words in church teachings can be used to justify and pursue the death penalty, and I have watched as these words become flesh in front of my eyes as I have watched human beings die at the hands of the state. "I just pray that God holds up my legs," each of the condemned said to me as they were about to walk to their deaths, and from the depths of my soul, from Christ burning within me, I found myself saying to them, "Look at me. Look at my face. I will be the face of Christ for you." In such an instance the gospel of Jesus is very distilled: life, not death; mercy and compassion, not vengeance. Surely, Holy Father, it is not the will of Christ for us to ever sanction governments to torture and kill in such fashion, even those guilty of terrible crimes. . . .

In the United States there is presently an initiative to gather and motivate Christian communities, Catholic and Protestant, across the country to become active in abolition of the death penalty. In the first Abolition Movement to abolish slavery in the U.S., Christian churches played a key role. Now the time has come to summon Christian churches to participate in the Second Abolitionist Movement to abolish state-sanctioned death. As I mentioned earlier

about widespread Catholic support for the death penalty, surely there is much work to be done to enlighten hearts and awaken consciences. But I am full of hope. Over these past fourteen years of talking to groups I have found that when people are brought to a deeper level of reflection on the gospel of Jesus and can get real information about the death penalty, not just rhetoric from politicians or sound bites from media, overwhelmingly they reject the death penalty and choose life. A steering committee, of which I am a part, is planning national conference[s] for Christian churches. It would be wonderful if we could get vigorous and wholehearted participation of the Catholic community in this effort. Whatever you can do to encourage the Catholic Bishops to participate in this new initiative will be warmly welcomed. . . .

In closing, Holy Father, again, thank you for helping to save the life of Joseph O'Dell. I so appreciate your willingness to stand with the "least of these" as Jesus did. I so appreciate your close identification with the poor and struggling ones of earth. What a large heart and what strong faith in Christ you must have not to be overwhelmed by the sufferings of so many that you constantly encounter. May Mary, who brought Jesus to the world, comfort and sustain you as you continue her holy birthing task, bringing Jesus to our hungry, suffering world. My earnest prayers are with you.

In Christ,

Lori delivered my letter to the pope on January 22, 1997. Luciano Neri and other members of the Italian parliament had evidently been talking about my forthcoming letter and the press had mentioned it, so by the time Lori walked into the secretary of state's office in the Vatican, Monsignor Gabriele Caccia met her, saying, "I understand that you have a letter," which she promptly handed him. Later, Monsignor Caccia told me, "The Holy Father read your letter. He read every word."

At last.

One week after my letter was delivered, I wrote in my journal: “Big news. On Jan. 29 Cardinal Joseph Ratzinger, Prefect of the Congregation of the Doctrine of the Faith, announced that a change would be made in the Catechism to reflect recent ‘progress in doctrine’ about the death penalty.”

The pope received my letter on January 22. Cardinal Ratzinger’s announcement came on January 29. The change in the Catechism was officially promulgated September 8, 1997, on the occasion of the Latin edition. By this change in official teaching, bolstered by strong, unequivocal pronouncements against the death penalty by the pope, the Catholic Church at last takes its place among the many institutions and nations that stand in principled opposition to the death penalty and work to bring about its abolition.

My letter to the pope was only one small part of the dialogue about the death penalty taking place across the church. Increasingly, bishops’ conferences across the world voiced concerns about government killings. From 1972 to 1998, the U.S. Catholic bishops, either individually or in conferences, issued over 130 statements against the death penalty. Other national Catholic conferences—Canadian, Irish, Filipino, and others—have gone on record in opposition. Perhaps my unique contribution to the dialogue was fourteen years of personal experience with perpetrators and victims’ families, which enabled me to bring the pope close to the suffering and the contradictions inherent in the death penalty. I laid this suffering in the pope’s lap, and his compassionate heart responded. Personal experience has a way of turning absolute-sounding moral formulas on their heads.

The change in the Catholic Catechism was effected by removing just a few words from the 1992 version—but the deletion of these words created the most substantive change in church teaching about the death penalty in 1,600 years. Following traditional teaching, the 1992 version of the Catechism had reiterated Thomas Aquinas’s defense-of-society argument: “Preserving the common good of society requires rendering the aggressor unable to inflict harm. For this reason the traditional teaching of the Church has acknowledged as well-founded the right and duty of legitimate public authority to punish malefactors by means of penalties commensurate with the gravity of the crime, **not excluding, in cases of extreme gravity,**

the death penalty." Section 2266 of the revised Catechism now reads: "Legitimate public authority has the right and the duty to inflict punishment proportionate to the gravity of the offense." The words in bold print have been removed.

The omission changes everything, because Catholic teaching now says that no matter how grave (terrible, outrageous, heinous, cruel) the crime, the death penalty is not to be imposed. With that qualifying criterion taken away, whom then might governments kill? Killers of police officers? Or of children? Or of a room full of people? Or of a building full of people? Or . . . terrorists such as Osama bin Laden?

No one. Because in the church's view, the "extreme gravity" of the crime no longer serves as a qualifying criterion for governments to invoke when they wish to execute their citizens. The removal of this criterion represents a huge shift of moral perspective. It cuts the moral ground out from under Catholic politicians who advocate "restricted" use of the death penalty. It also undercuts the U.S. Supreme Court's claim that some crimes are so morally abhorrent, only the death of the perpetrator will satisfy society's need for retributive justice. Retributive justice, as the Catholic Church has always taught, has as its core purpose the restoration of moral order, but now the church envisions the restoration of social order in a holistic, life-giving way that eschews violence.

As Pope John Paul II pointed out in *Evangelium Vitae*, governments of modern societies must refrain from killing criminals because incarceration gives them a way to incapacitate violent offenders. The heart of Catholic teaching about capital punishment has always been about self-defense.

And its traditional teaching about self-defense has been governed by the moral principle of double effect, which states that the killing of another is justified only when violent force is the only way to prevent an immediate violent assault on others. If such preventive action brings about the death of the assailant, the killing is seen as a secondary effect, not the primary intent. The entire argument for self-defense changes, however, when violent offenders are incarcerated and thereby rendered defenseless. Where, then, is the threat of an immediate violent assault on citizens? Absent that threat, the act of deliberately killing a prisoner who has been rendered defenseless seems unnecessary and cruel. And I think this recognition of the true

nature of government killing has been the catalyst that has led the church to its stance of principled opposition to capital punishment.

When my eyes first see the words of the revised text of the Catechism, my heart leaps. At last the river bends. With this seismic change, church teaching on the death penalty forever flows in another direction. At the end of the twentieth century, the official Catholic teaching about the death penalty has become aligned with the core value of the "inviolable dignity of the human person" that Pope John XXIII first illumined in *Pacem in Terris* forty years ago. At last my church upholds a moral position on the death penalty I can embrace. As stated in the 1997 Catechism:

LIMITS AND AIMS OF PUNISHMENT

- 2266 The efforts of the state to curb the spread of behavior harmful to people's rights and to the basic rules of civil society correspond to the requirement of safeguarding the common good. Legitimate public authority has the right and the duty to inflict punishment proportionate to the gravity of the offense. Punishment has the primary aim of redressing the disorder introduced by the offense. When it is willingly accepted by the guilty party, it assumes the value of expiation. Punishment then, in addition to defending public order and protecting people's safety, has a medicinal purpose: as far as possible, it must contribute to the correction of the guilty party.*
- 1897-1898
- 2308

DEATH PENALTY

- 2267 Assuming that the guilty party's identity and responsibility have been fully determined, the traditional teaching of the Church does not exclude recourse to the death penalty, if this is the only possible way of effectively defending human lives against the unjust aggressor.
- 2306

If, however, non-lethal means are sufficient to defend and protect people's safety from the aggressor,

authority will limit itself to such means, as these are more in keeping with the concrete conditions of the common good and more in conformity with the dignity of the human person.

Today, in fact, as a consequence of the possibilities which the state has for effectively preventing crime, by rendering one who has committed an offense incapable of doing harm—without definitively taking away from him the possibility of redeeming himself—the cases in which the execution of the offender is an absolute necessity “are very rare, if not practically nonexistent.”*

Some theologians, in an effort to assure Catholics that traditional teaching on the death penalty remains unchanged, go to great lengths to explain that the Catechism revision has not changed the church’s “core doctrine” on the death penalty, only its practical or “prudential” application. In other words, they argue that the church now teaches that the death penalty, while still justifiable in principle, is inappropriate in practice—most of the time. Nothing’s really changed in church teaching, they argue; there may still be circumstances, albeit rarely, when state-approved capital punishment is acceptable. And if reading that kind of split-level thinking makes your soul weary, it’s because it’s confusing, and it arises from a desire to hold on, no matter what, to Catholic traditional teaching on the death penalty. But if in principle the church still holds that in some instances governments are allowed to execute their citizens, we can be sure that government officials will be quick to summon that principle to justify seeking the death penalty for crimes they consider particularly heinous. But you won’t catch Pope John Paul II using such obfuscating language. Every chance the pope gets, he comes out foursquare against the death penalty and asks Catholics to work toward its abolition—such as when he came to St. Louis in 1999.

The pope had visited the United States four other times, yet never once did he mention the death penalty. But that was before 1997, when the quantum change in the Catechism took place, a change I believe the pope initiated personally. In his bold declaration in St. Louis, Pope John Paul’s opposition to government executions

*John Paul II, *Evangelium vitae*, 56.

could not have been more uncompromising: "A sign of hope is the increasing recognition that the dignity of human life must never be taken away, even in the case of someone who has done great evil. Modern society has the means of protecting itself without definitively denying criminals the chance to reform. I renew the appeal I made most recently at Christmas for a consensus to end the death penalty, which is both cruel and unnecessary."⁵⁰ I see a wave of fresh moral energy pulsing through the Catholic Church.

Of course, I know that simply quoting church authority does not change hearts and minds. The message of liberation and compassion of the Gospel of Jesus sprouts and grows only through moral persuasion and good example; and persuasion includes presentation of facts and information, reasoned arguments, solid theology, and compelling stories, especially about murder victims' families who find a way to transcend vengeance as they search for reconciliation and peace.

In the highest echelons of the Catholic hierarchy, the effects of the change in the Catechism have been instantaneous. On June 18, 2001, Pope John Paul II publicly congratulated the government of Chile, the latest nation at that time to abolish capital punishment: "I am pleased at the recent decision taken by the government and the legislative authorities—with the faithful collaboration of the Church—which abolished the death penalty, and it is to be hoped that this move will continue to promote a most zealous and unyielding respect for the life of every human being from conception to natural end."

Cardinals and bishops, once conspicuously absent from public debate on the death penalty, now appear regularly at press conferences and state legislative hearings to present moral arguments against the death penalty. And as these members of the hierarchy bring new energy and resolve to the issue, they also bring resources: lobbyists, pollsters, public relations experts, editors—enlisted to assist them in becoming persuasive voices in the death penalty debate. Diocesan Catholic newspapers, under close supervision of local bishops, now regularly run editorials and articles to inform Catholic readers about the development in church teaching on the death penalty; and some Catholic organizations, once staunch supporters of the death penalty, have begun to issue formal resolutions in opposition to the death penalty "in accordance with the teachings of the Church and in obedience to the Holy Father." The doctrinal change has also made an

impact on the church's educational institutions from elementary schools up through colleges and universities.

On the international scene, the repercussions of the September 8 revision of the Catechism have made a noticeable impact. At the First World Congress on the Death Penalty in Strasbourg, France, June 2001, the Vatican delegation, headed by Monsignor Paul Gallagher, issued a no-holds-barred call for abolition of the death penalty: "The universal abolition of the death penalty would be a courageous reaffirmation of the belief that humankind can be successful in dealing with criminality and of our refusal to succumb to despair before such forces, and as such it would regenerate new hope in our very humanity."

Before the change in the Catechism, statements by church officials usually emphasized that the deliberate taking of *innocent* life was forbidden, but not the killing of the *guilty*. Happily, that has changed, and the long, hard work of changing hearts and minds of "people in the pews" can now be undertaken.

At last.

It makes me wonder what the impact might have been if current Catholic Supreme Court justices had been educated in the church's evolved understanding of the death penalty instead of their schooling in the traditional pro-death penalty teaching.

A troublesome question arises: What if the Catholic Church opposes the death penalty on moral grounds? What's that got to do with the juridical role of a Supreme Court justice who happens to be Catholic? Isn't it the role of the Court to decide death penalty cases—or any case—not according to the religious beliefs of the justices, but according to their interpretation of the Constitution? Justices, after all, are supposed to make *legal* judgments, not *religious* pronouncements. And the question of juridical propriety becomes even more complicated if authorities in a religious body try to pressure judges to follow certain moral doctrines. *Mr. Catholic Supreme Court Justice, the pope opposes the death penalty and so must you.*

In jurisprudence, this is a nightmare. It would make us into a theocracy, not a democracy.

But is there no interplay between judges' moral values, nurtured by the religious community to which they belong, and the moral perspective they bring to their interpretation of the Constitution? Is it possible to hermetically seal off jurisprudence from religious

morals? If Supreme Court justices are practicing members of a religious community—currently several members are practicing Catholics—is it at all surprising that their moral views on any issue might be challenged and deepened when they participate in worship? Every Sunday at Mass, Catholics hear a reading of the sacred scriptures, which include some very challenging teachings of Jesus, such as “You have heard it said ‘an eye for an eye,’ but I say to you . . . forgive your enemies, pray for your persecutors. . . .” And on a regular basis at Mass, pastors give homilies or sermons the intent of which is to make connections between faith and life situations, and this sometimes means calling into question cultural values. Not infrequently during Sunday homilies, pastors read letters from the local hierarchy or quote statements of the pope, such as “My dear people, the Holy Father has once again spoken out against the death penalty, and I want to ask you to consider. . . .” Who would say that exposure to such moral considerations week after week has no influence whatsoever on the conscience of a jurist? Aren’t legal decisions influenced by moral considerations?

One such moral consideration embedded in the Constitution is its prohibition against cruel and unusual punishment. The Supreme Court has said that what makes a punishment “cruel and unusual” is determined by an “evolving standard of decency.” “Evolving” standard means that what may be considered cruel is *not fixed in standards that existed two hundred years ago*. Ideas about cruelty change as a society matures. And what better way for Supreme Court justices to encounter “evolving standards of decency” than to witness this evolution happening in the teachings of their own church?

The Catholic Church has evolved to a position of principled opposition to the death penalty in no small part because the church is a worldwide body whose members are influenced by changing currents of consciousness across the globe, especially once Pope John XXIII freed the church to see “signs of the times” in a positive way. In the 1960s, this new position opened the Latin American bishops to the devastating suffering of peasants in Latin America, victims of “structural injustice.” So moved were the bishops by the suffering poor that they drew up the Medellín Document, in which they declared that the church’s rightful place should be “on the side of the poor.” Afterward, this newly recovered Jesus ideal of identifying with the marginalized and oppressed began to be voiced in classrooms and

church pulpits. Twelve years after its first utterance, it made its way into my life through Sister Marie Augusta Neal, whose talk to my religious community in 1980 changed forever the spiritual trajectory of my life. I found my way to poor and struggling African Americans in New Orleans and from there to the poorest and most despised community of all—death row prisoners.

In the 1980s, a dramatic shift in world consciousness occurred around the concept of human rights, which as we have seen again through the impetus of Pope John XXIII had a resounding impact on Catholic teaching about the death penalty. Perhaps the clearest embodiment of the world's "evolving standards of human decency" is evidenced in the decision of the International Criminal Court to outlaw the use of the death penalty even for "war crimes," genocide, and "crimes against humanity."

Shaped by such consciousness, Russian president Vladimir Putin, when responding to the bombing of an apartment building in 1999 by "international terrorists" that killed three hundred Russians, did not call for a reinstatement of the death penalty in Russia.⁵¹ On national television, Putin said, "Sometimes it seems I would have strangled them [the terrorists] with my own hands. But these are only emotions. As a man with a basic legal education, I am well aware that the toughening of punishment does not reduce crime. . . . Only the Almighty has the right to take life."

III

On March 22, 1997, my friend Ann died. All the pieces of color in the kaleidoscope of my life shifted, but now with a jagged empty space in the center. During the last year, I curtailed my activities so I could hover close to her, and now a lonely new freedom opened up. Several months after Ann's death, when Lori Urs called to talk, I was able to give her all the time she needed. She had bad news: The U.S. Supreme Court had ruled against O'Dell on the *Simmons* issue.⁵²

Why? I ask. Hadn't the prosecutors blocked Joe's jury from knowing that he would get a life-without-parole sentence? Hadn't the Supreme Court ruled in *Simmons* that withholding that kind of information is against a person's constitutional right of "due process"?