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DEAD MAN WALKING—AN EYEWITNESS ACCOUNT OF THE DEATH PENALTY IN THE UNITED STATES.

By Sister Helen Prejean, C.S.J.

New York

Random House (1993).

Pp. 278. \$21.00.

Reviewed by Ronald J. Tabak

December of 1994, when I wrote this review of Sister Helen Prejean's fascinating and sobering book, *Dead Man Walking—An Eyewitness Account of the Death Penalty in the United States*,¹ was ten years to the month of the execution of my client, Robert Lee Willie. It was also, not coincidentally, ten years to the month in which I first encountered Sister Helen. I had represented Willie in seeking certiorari from the United States Supreme Court in late 1983 to review his conviction and sentence, which was all I had originally agreed to do on his behalf. But when I learned that if I did not continue to represent him, there would likely be no one to represent him in his first state post-conviction and federal habeas corpus proceedings, I felt I could not walk away. After an incredible week in early 1984, in which I went in and out of the state post-conviction courts and the federal district court with the speed of a locomotive, I managed to slow down the execution train for many months, until the Fifth

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¹ HELEN PREJEAN, C.S.J., *DEAD MAN WALKING—AN EYEWITNESS ACCOUNT OF THE DEATH PENALTY IN THE UNITED STATES* (1993). *Dead Man Walking* is said to be in the tradition of the "famous essay by French Nobel laureate Albert Camus, 'Notes on the Guillotine,' which challenged the state's moral validity to execute anyone." Jason Berry, *In Defense of Life; Louisiana Nun Fuses Biblical Morality with Civil Rights Gospel to Fight Death Penalty*, ATLANTA J. CONST., Aug. 15, 1993, available in WESTLAW, 1993 WL 3379804.

Circuit denied relief and the Supreme Court denied certiorari.² At that point, in November of 1984, I entrusted local counsel with handling the clemency proceeding. I had previously asked legendary capital defense lawyer Millard Farmer³ to look into whether there were any grounds for initiating further litigation, and to find a spiritual advisor for Willie. Mr. Farmer and I concluded that we should not pursue a second round of post-conviction litigation. Meanwhile, Mr. Farmer persuaded Sister Helen to become Willie's spiritual advisor.

I was pleased when Sister Helen agreed to do this, because I had decided not to get personally close to my death row clients. While I had spoken with Willie on the telephone numerous times, I had never met him, except to introduce myself to him briefly at the outset of the federal district court hearing. I felt that I might not be emotionally capable of continuing to represent death row inmates if I became more personally involved with them, but I knew that they needed spiritual support.

A few days before Willie's execution, Sister Helen called me and said that Willie desired to have a polygraph examination—not as the basis for a new legal proceeding, but solely to show that he was telling the truth in asserting that his co-defendant, Joseph Vaccaro, and not he, had actually killed the victim. I told Sister Helen I thought this was a terrible idea because someone that close to being executed could not be calm enough to register as truthful on a lie detector test, and an unfavorable result might upset Willie and be used to discredit opponents of executions. Sister Helen firmly responded that it was Willie, not I, who was entitled to make this judgment, and that because he, after being apprised of the risks, wished to proceed, I should help carry out his wishes. I did so, although the polygraph examiner shared my concerns. Fortunately, although, as we had expected, the test results were inconclusive, the press and public

² *Willie v. Maggio*, 737 F.2d 1372 (5th Cir.), cert. denied, 469 U.S. 1002 (1984).

³ See Victoria Loe, *A Life's Work; Louisiana Nun Fights Death Penalty with Book About Inmates She Counseled*, DALLAS MORNING NEWS, Sept. 6, 1993, at 1A (describing Millard Farmer as "a Georgia lawyer who has devoted much of his life to filing appeals for death row inmates").

never found out (until the publication of Sister Helen's book) that such an examination had taken place.⁴ After learning of the test results, Willie spoke with me on the telephone for the last time. He thanked me profusely for all I had done and said I could not have done a better job on his behalf.

Willie was executed shortly after midnight that night. The next evening, I watched Sister Helen, who had witnessed the execution, and columnist George Will discuss capital punishment on *World News Tonight with Peter Jennings*.⁵ As Sister Helen recounts in *Dead Man Walking*, Mr. Will made no bones about the reason why he favors capital punishment: His support for this penalty comes not out of any belief that it does anything about crime, but rather to effectuate the public's desire for vengeance, which he characterized as a "noble" desire.⁶ Sister Helen effectively countered that assertion on *World News Tonight*.

As is apparent from *Dead Man Walking*, she has a rich perspective on how the capital punishment system in this country actually works. She has also gained intimate insights from various people involved with capital punishment cases, including death row inmates, lawyers, clemency boards, corrections commissioners, prison guards, relatives of death row inmates and, perhaps most notably, survivors of murder victims—including the survivors of the victims whom Sister Helen's death row inmate counsellors have been executed for killing.

Sister Helen provides the readers of *Dead Man Walking* with an extraordinary inside look at the death penalty in the United States. It is not a pretty picture.

I. Death Row Inmates

We learn from *Dead Man Walking* that while death row inmates may have done terrible things, they are, in fact, human beings. The man in charge of Louisiana's death row, Major Kendall Coody, told Sister Helen, "many of them are just little

⁴ PREJEAN, *supra* note 1, at 186, 190-92, 202.

⁵ *See id.* at 213-16.

⁶ *See id.* at 215.

boys inside big men's bodies, little boys who never had much chance to grow up."⁷

Sister Helen's blood chilled when she heard about the murder in which her first death row counsellee, Patrick Sonnier, was involved.⁸ Her preconception was that everyone on death row was similar to her image of Charles Manson.⁹ But after she met Sonnier, she began "to think of him as a fellow human being."¹⁰ The "details of the depravity" stunned her,¹¹ but she was drawn to the "sheer weight of Sonnier's loneliness, [and] his abandonment."¹² Even though he initially exhibited no remorse, Sister Helen found him surprisingly human, "even likable."¹³

Sonnier came to exhibit remorse, although Sister Helen was not convinced at first of how sincere that remorse was.¹⁴ Ultimately, she convinced him to make his final words before being executed words of remorse, not words of hate.¹⁵ Accordingly, Sonnier asked for forgiveness from the father of one of the two victims.¹⁶

My client, Robert Lee Willie, was, at first and later blushes, even less sympathetic than Sonnier. When Sister Helen first heard about Willie's crime, she thought he "might be criminally insane."¹⁷ But when she met him, he was surprisingly small and delicate, particularly for someone "who has left such destruction in his wake."¹⁸ Instead of the "wild-eyed, crazed, paranoid type" she had expected, Willie was "polite, soft-spoken, obviously intelligent."¹⁹

⁷ *Id.* at 180.

⁸ *Id.* at 4.

⁹ PREJEAN, *supra* note 1, at 31.

¹⁰ *Id.* at 13.

¹¹ *Id.* at 17.

¹² *Id.* at 22.

¹³ *Id.* at 31.

¹⁴ PREJEAN, *supra* note 1, at 39.

¹⁵ *Id.* at 84.

¹⁶ *Id.* at 93.

¹⁷ *Id.* at 119.

¹⁸ *Id.* at 126.

¹⁹ PREJEAN, *supra* note 1, at 128.

Yet, because Willie did not exhibit any remorse, and Sister Helen had gotten to know the Harveys, the parents of his victim, Faith Hathaway, Sister Helen began to "recoil at the thought of him."²⁰ However, upon reflection, she astutely perceived that having a death sentence probably made it more difficult for Willie to repent because his effort to stay alive was what focused his attention.²¹

Sister Helen repeatedly challenged Willie to "take responsibility and ask forgiveness of the Harveys."²² Initially, she did not succeed. He continued to blame everything on his co-defendant, Joseph Vaccaro, who had received a life sentence; yet, even under his own version, he had failed to stop Faith Hathaway's murder.²³ Indeed, when she participated in Willie's clemency proceeding, Sister Helen privately agreed with the prosecution's assertion that Willie lacked remorse and tended "to blame everyone but himself."²⁴ Eventually, under Sister Helen's prodding, Willie told her that he felt sorry about what had happened to Faith Hathaway.²⁵ Just before being executed, Willie's last words were that he hoped the Harveys would get some relief from his execution.²⁶

Readers of *Dead Man Walking*, including myself, learn much more about Robert Lee Willie. We learn that he apparently was of service to others in prison;²⁷ that he came to recognize that his outrageous statements to the press, such as that he liked being an outlaw, were stupid;²⁸ that he participated in the Aryan Brotherhood while in federal prison because it was like a family to him;²⁹ that this man of great outward bravado cried upon speaking

²⁰ *Id.* at 144.

²¹ *Id.*

²² *E.g., id.* at 145.

²³ *Id.* at 146.

²⁴ PREJEAN, *supra* note 1, at 167.

²⁵ *Id.* at 179.

²⁶ *Id.* at 210-11.

²⁷ *Id.* at 152.

²⁸ *Id.* at 182-83, 191.

²⁹ PREJEAN, *supra* note 1, at 188.

to his family for the last time;³⁰ that he was extremely grateful to Sister Helen for teaching him about God without preaching at him;³¹ and, ironically, that he favored the death penalty in some instances, such as for killers of children.³²

II. *Participants in the Process Leading to Executions*

From Sister Helen's descriptions not only of death row inmates, but also of the various other actors in the capital punishment process, one is tempted to add a secondary title to the book: *A Capital Punishment System for Which No One Will Take Responsibility*. Sister Helen recalls that her father had tried to be kind to black people during segregation, but adds that "being kind in an unjust system is not enough."³³ She proceeds to show in sad detail how true this is for those who implement capital punishment.

Much as Sister Helen tried successfully to get Sonnier and Willie to take responsibility for their actions, she also tried—much less successfully—to get others in the process to take responsibility. She started with Governor Edwin Edwards, an opponent of capital punishment. However, she learned that Governor Edwards "subordinates his conscience to 'the will of the people.'"³⁴ Furthermore, he tries to avoid responsibility by disengaging himself from the process,³⁵ such as by having an aide urge the gubernatorially-selected Pardons Board to recommend against clemency for all death row inmates—even those whom members of the Board believe to be innocent.³⁶ The Governor, who had previously been accused of being soft on crime, did not want to give his opponents any basis for further attacks.³⁷

³⁰ *Id.* at 208.

³¹ *Id.* at 210.

³² *Id.* at 147-48.

³³ *Id.* at 7.

³⁴ PREJEAN, *supra* note 1, at 56.

³⁵ *Id.* at 57. ("Edwards tries to put the death process as far from himself as possible.")

³⁶ *Id.* at 57, 170-71.

³⁷ *Id.* at 57-58.

I can verify the extent of the Governor's disengagement at the time of Robert Lee Willie's execution. I had the dubious distinction of being the first lawyer for a Louisiana death row inmate whom Governor Edwards refused to meet prior to the inmate's execution. I was told that if I came to Baton Rouge the only person who would meet me on the Governor's behalf was Judge William Roberts, the Governor's only top aide in favor of the death penalty. I nevertheless went to Baton Rouge, and spent several hours in Judge Roberts' office. During much of this time he was on the telephone with the federal prosecutor's office discussing the criminal investigation which ultimately led to the Governor being indicted on corruption charges.³⁸

The head of the Louisiana Pardons Board, Howard Marsellus, was later convicted of selling pardons.³⁹ After his release from prison, he told Sister Helen that he had betrayed his ideals by trying to be a "team player" and protecting Governor Edwards from making difficult clemency decisions.⁴⁰ Back in 1984, when Sister Helen asked the Pardons Board to grant Robert Lee Willie clemency and challenged its members to take personal responsibility, Marsellus responded that the Board's members could not be held personally responsible for an execution.⁴¹ But in their discussion many years later, Marsellus told her that when driving home after the execution of Tim Baldwin, about whose guilt Marsellus was very uncertain, Marsellus' "hands were shaking and the tears were running down [his] face."⁴²

Yet, out of loyalty to the Governor, Marsellus continued to preside over the denial of clemency recommendations for every death row inmate who appeared before the Board.⁴³ Marsellus thought that one of these men, Earnest Knighton, a black man sentenced to death by an all-white jury for killing a white man, had

³⁸ See John Nordheimer, *Governor of Louisiana is Indicted by Jury Investigating State Graft*, N.Y. TIMES, Mar. 1, 1985, at A1.

³⁹ PREJEAN, *supra* note 1, at 62. However, Marsellus did not sell pardons to death row inmates. *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 167.

⁴² *Id.* at 173.

⁴³ *Id.* at 169-71, 173.

lacked the intent to kill.⁴⁴ Years later, Marsellus bemoaned Knighton's execution, saying, "who was I to sit in judgment? It still bothers me. I'm sorry. I'm really sorry."⁴⁵

Another "good" man who participated in what Justice Blackmun recently called "the machinery of death"⁴⁶ was the Head of Corrections, C. Paul Phelps, who designed Louisiana's execution process.⁴⁷ Phelps deliberately designed the execution procedures with the aim of ensuring that Department of Corrections personnel would not have to take any personal responsibility.⁴⁸ For example, under Phelps' procedure, the executioner was anonymous.⁴⁹ Commissioner Phelps intended executions to be "like a drill, like an exercise,"⁵⁰ and he himself would never attend an execution "in a million years."⁵¹

The prison warden, Frank C. Blackburn, also tried to rationalize his participation in the capital punishment process. He said that he was simply obeying the law, as good Christians do. He told Sister Helen: "We can't let feelings dominate our actions or we couldn't carry out our responsibilities."⁵² Sister Helen

⁴⁴ PREJEAN, *supra* note 1, at 174.

⁴⁵ *Id.*

⁴⁶ *Callins v. Collins*, 114 S. Ct. 1127, 1130 (1994) (Blackmun, J., dissenting). Justice Blackmun wrote: "I feel morally and intellectually obligated simply to concede that the death penalty experiment has failed." *Id.* See Richard C. Reuben, *Justice Defined*, 80 A.B.A. J. 46, 48 (July 1994) (discussing that after 22 years of enforcing the death penalty, Blackmun dissented from the *Callins* decision because "he could no longer condone the death sentence").

⁴⁷ PREJEAN, *supra* note 1, at 101. Sister Helen's description of Phelps is bone-chilling. She describes him as "calm, reasonable, organized, professional" and he was said to be "progressive" and "humane." *Id.* at 79, 101. He told Sister Helen that when called upon to speak about capital punishment in public, he never spoke from his own convictions, and that from a personal standpoint, he had found the task of designing the execution process "very, very bizarre." *Id.* at 103-04. He also said he wanted executions to be carried out "with dignity" and to be as "humane" as possible. *Id.* at 101, 103.

⁴⁸ *Id.* at 103.

⁴⁹ *Id.* at 104.

⁵⁰ *Id.* at 103.

⁵¹ *Id.* at 105.

⁵² PREJEAN, *supra* note 1, at 122.

likens talking to him to speaking to the Wizard of Oz.⁵³ Also, Captain John Rabelais, who was in charge of the "death house" at the prison, told Sister Helen, "I don't particularly want to be here . . . being part of this, but it's part of the job. I got a wife and kids to support."⁵⁴

After reading about these various men, who are discussed at various points in the book, one can understand Sister Helen's thoughts after witnessing Pat Sonnier's execution: "Who killed this man? Nobody. Everybody can argue he or she was just doing a job. . . . Nobody feels personally responsible."⁵⁵ Far too many people had severed their "personal values from their public duties."⁵⁶ Thus, Sister Helen's book shows that the Nuremberg defense has been accepted as a proper mode of behavior by many of those responsible for our criminal justice system.

These accounts particularly resonate with and disturb me. In talking with legislators about habeas corpus and capital punishment over the years, what rings through clearest is their desire to avoid taking responsibility for their actions. Legislator after legislator has told me of realizing that capital punishment accomplishes nothing, and that habeas corpus is vital, but quickly hastens to say that he will not act in accordance with his beliefs. Such legislators' fear of political defeat, which I believe is overblown, causes them to ignore both their intellects and their consciences.

Legislators make many rationalizations in this regard, such as how their other good works are made possible by voting for government killings. It is due to such rationalizations that the recent Democratic-controlled Congress enacted the greatest expansion of the federal death penalty in history,⁵⁷ and that many

⁵³ *Id.* at 122-23.

⁵⁴ *Id.* at 77.

⁵⁵ *Id.* at 102.

⁵⁶ *Id.* at 101, 103.

⁵⁷ See Ronald J. Tabak, *Conference on Capital Punishment*, 23 HOFSTRA L. REV. (forthcoming May 1995); see also John D. Bessler, *Televised Executions and the Constitution: Recognizing a First Amendment Right of Access to State Executions*, 45 FED. COMM. L.J. 355, 435 (Aug. 1993) (discussing that the federal crime bills add 53 death penalty offenses—"the single largest expansion of the Federal death penalty in the history of the Congress").

liberal, anti-death penalty Democratic members of the New York Legislature have voted for capital punishment.⁵⁸ Such members can no longer hide behind Governor Cuomo's vetoes. They have now been party to the reintroduction of the "machinery of death" in the Empire State.⁵⁹

Sister Helen did come across one person who became so deeply disturbed by his participation in the death process that he left his position—Major Kendall Coody, who was in charge of Louisiana's death row, and talked to every death row inmate almost every day.⁶⁰ He was a "troubled man."⁶¹ He could not eat or sleep after serving on the "strap-down team," which accompanied prisoners to the electric chair.⁶² Major Coody sometimes gathered a prisoner's personal belongings from his cell following his execution.⁶³

⁵⁸ Tabak, *supra* note 57.

⁵⁹ On March 7, 1995, "Gov. George E. Pataki fulfilled one of his central campaign vows . . . by signing a death penalty bill into law, making New York the 38th state with capital punishment." James Dao, *Death Penalty in New York Reinstated After 18 Years; Pataki Sees Justice Served*, N.Y. TIMES, Mar. 8, 1995, at A1. The bill passed by a 94-52 vote in the Democratic-controlled State Assembly, and a 38-19 vote in the Republican-controlled Senate. *Id.* Governor Pataki's platform was largely based on the reinstatement of the death penalty. See Ellen Warren, *Governor's Mansions to Take on Republican Decoration; Democrats Lose in N.Y., Texas, Pennsylvania*, CHI. TRIB., Nov. 9, 1994, at 23; Anne Buckley, *Fate Worse than Death*, CATHOLIC N.Y., Nov. 17, 1994, at 2 (commenting on Governor Pataki's declared first order of business of signing death penalty legislation); see also Cailin Brown & Harvy Lipman, *Debate Didn't Die With Grasso*, ALBANY TIMES-UNION, Mar. 21, 1995, at A1, A5 (describing the death of Thomas Grasso, who was convicted of murders in Oklahoma and New York, by lethal injection in Oklahoma on March 20, 1995, as "George Pataki's first execution"); Russell Baker, *Observer; Pataki Takes the Hood*, N.Y. TIMES, Jan. 14, 1995, at 23 (discussing Governor Pataki's official action of dispatching Thomas Grasso back to Oklahoma where he would be executed). In a statement issued the day after Grasso's execution, former New York Governor Mario Cuomo said: "The death penalty is wrong, not because life without parole is more effective and cheaper, but for the more basic reason . . . [that t]he death penalty debases us as a people. It drags us down to the level of our most abhorrent offenders, answering brutality with brutality." Brown & Lipman, *supra* at A1.

⁶⁰ PREJEAN, *supra* note 1, at 180.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 179-80.

Major Coody told Sister Helen, "I can't square it with my conscience, putting them to death like that."⁶⁴ So, unlike the Governor, the Corrections Commissioner, the Warden, and most other guards, Major Coody could not "persuade himself that [he was] just doing his job."⁶⁵ A few months after Willie's execution, Major Coody was transferred to another part of the prison. He later asked for early retirement; tragically, however, he then died of a heart attack.⁶⁶ At least, this one participant in the process manifestly did have a heart, and also a conscience.

As Major Coody's example illustrates, capital punishment drives many of the most humane people out of our prison systems, where they are sorely needed.

III. The Survivors of Murder Victims

Initially, Sister Helen did not believe it would be appropriate to contact the survivors of the people for whose murder Pat Sonnier was on death row. She assumed that those families, the LeBlancs and the Bourques, had tried to "put their pain behind them," and would "want nothing to do with someone befriending their children's murderer."⁶⁷ However, she came to believe that her initial standoffishness towards the survivors was a mistake.

At Sonnier's clemency hearing, Sister Helen was shocked to discover that she had added to the survivors' pain, by representing their church in counseling a man they held responsible for their continuing pain, and by not reaching out to them.⁶⁸ Sister Helen, who even before that had felt as though she had murdered someone herself, was stung by the survivors' hurt and anger.⁶⁹ Sister Helen still did not personally reach out to the LeBlancs or the Bourques, but she did persuade Sonnier to ask Lloyd LeBlanc

⁶⁴ *Id.* at 180.

⁶⁵ PREJEAN, *supra* note 1, at 180.

⁶⁶ *Id.* at 180-81.

⁶⁷ *Id.* at 11-12.

⁶⁸ *Id.* at 64.

⁶⁹ *Id.* at 20, 64-65.

for forgiveness.⁷⁰ Sister Helen subsequently learned that, following the execution, Lloyd LeBlanc was so troubled that he went to confession.⁷¹ He went to see Sonnier's mother shortly before her death in 1991, he frequently prayed for the Sonniers, including the executed Pat Sonnier, and he sometimes donated money for Sister Helen's prison ministry.⁷²

At her book's conclusion, Sister Helen says that Lloyd LeBlanc eventually told her that he would have been satisfied with a life sentence for Pat Sonnier.⁷³ Yet, because the prosecution had asked him to do so, he had appeared as spokesman for both victims' families at the clemency hearing, and had opposed clemency. He also told Sister Helen that when he went to Sonnier's execution he had not sought revenge, but had instead hoped for an apology.⁷⁴ When Pat Sonnier did apologize to him, Lloyd LeBlanc had nodded back, in order to express his forgiveness. Nevertheless, years after the execution, Mr. LeBlanc still struggles to overcome his feelings of bitterness and revenge.⁷⁵

Although in the immediate aftermath of Pat Sonnier's execution Sister Helen had not known of Lloyd LeBlanc's inner thoughts, she had decided that she would reach out to the victim's survivors if she ever again counselled a death row inmate.⁷⁶ She had no idea that those survivors would be people who had become well-known for announcing that they wanted to see her next counsellee, Robert Lee Willie, "fry."⁷⁷ These survivors were Vernon and Elizabeth Harvey, the stepfather and the mother of Faith Hathaway, for whose murder Willie was on death row.⁷⁸

I fully appreciate Sister Helen's wariness of approaching the Harveys. I was in their presence on two occasions, once in New Orleans, at the federal district court hearing on Willie's case,

⁷⁰ PREJEAN, *supra* note 1, at 84.

⁷¹ *Id.* at 243.

⁷² *Id.*

⁷³ *Id.* at 244.

⁷⁴ *Id.*

⁷⁵ PREJEAN, *supra* note 1, at 244-45.

⁷⁶ *Id.* at 118.

⁷⁷ *Id.*

⁷⁸ *Id.*

and again at the Fifth Circuit argument in Austin, Texas. I did not approach them on either occasion. While I noticed them speaking to the assembled press after the New Orleans hearing, I rushed away from the courthouse as quickly as possible. I was scared of being the object of their fury. But I was also loath to be perceived as somehow justifying what Willie had allegedly done. Instead, I wanted to merely be an officer of the court raising the various significant legal issues we had developed for Willie.

I have subsequently recognized that personally meeting my death row clients and their families can be helpful to my representation of them, and that I should not be queasy about identifying myself with my clients' humanity, rather than just with their legal issues. Moreover, although I have not thus far reached out to the survivors of any of my clients' alleged victims, I have spoken with lawyers for death row inmates who have done so, and have learned that such meetings can also be very important. Many lawyers have found, as Sister Helen ultimately did with the Harveys, that the survivors of murder victims often have hostile feelings towards the prosecutors and the police, and that they desire empathy from those acting on behalf of the death row inmate.

However, even if I had desired to do so in 1984, I doubt that I could have developed a good relationship with the Harveys. That would have been especially difficult if I had known then what I learned in Sister Helen's book: that Vernon Harvey had almost rammed his car into the vehicle transporting Willie to the federal courthouse in New Orleans for the hearing at which I met Willie for the first, and last, time.⁷⁹

Although it was not easy, Sister Helen eventually achieved a warm relationship with the Harveys. While empathizing strongly with the Harveys' pain Sister Helen hoped they would somehow come to deal with their pain and focus on something more positive than their hatred of their daughter's killers—a hatred reflected by Mr. Harvey's remark that "the electric chair is too good for Robert Willie and [his co-defendant] Joseph Vaccaro [who had received a life sentence]."⁸⁰ Sister Helen wondered whether if Willie had

⁷⁹ *Id.* at 139.

⁸⁰ PREJEAN, *supra* note 1, at 136.

received a life sentence, the Harveys might have unburdened themselves of their grief and gone forward with their lives, instead of being "like two deer paralyzed by headlights in the road."⁸¹ While she could understand why the Harveys wanted Willie to be executed, she felt that that would not fill their "aching void."⁸² As matters turned out, it did not.

Before Willie was executed, his clemency hearing was held. Sister Helen's appearance there on his behalf stunned the Harveys, who thought that by empathizing with them she had become incapable of also valuing Willie's life.⁸³

On the day preceding Willie's execution, Sister Helen prayed not only for him but also for the Harveys.⁸⁴ After the execution, which the Harveys attended, Mr. Harvey smiled, but told the press that Willie had died too quickly, and then he asked the press: "Do you want to dance?"⁸⁵

Thereafter, Sister Helen decided not to see the Harveys again, afraid she might add to their pain. But the Harveys remained so active, such as by attending every subsequent Louisiana execution and attending death penalty-related events, that it was impossible to avoid them. Elizabeth Harvey approached Sister Helen at one such event, and asked, "when are you coming to see us?"⁸⁶ Sister Helen, although stunned, baked an apple pie and went to their home.⁸⁷ During this visit, Mrs. Harvey complained bitterly that the prosecutor and police had pushed her family to the sidelines. She felt they were "too busy prosecuting the criminal to be concerned about the victim's family."⁸⁸

Sister Helen assured them that Robert Lee Willie had been sincere in hoping that his death would relieve the Harveys' suffering. But it became apparent that it had not done so. Vernon Harvey cried, and said that he could not get over his

⁸¹ *Id.* at 137.

⁸² *Id.* at 136-38, 142, 144-45.

⁸³ *Id.* at 140, 175.

⁸⁴ *Id.* at 192.

⁸⁵ PREJEAN, *supra* note 1, at 212.

⁸⁶ *Id.* at 224.

⁸⁷ *Id.*

⁸⁸ *Id.* at 223-25.

stepdaughter's death. Sister Helen realized that Mr. Harvey's grief "could never [be] assuaged," and that Willie's execution had deprived him of "an object for his rage."⁸⁹

One outgrowth of this visit was that Sister Helen's anti-death penalty group joined with the Harveys in protesting cuts in funds which helped the survivors of crime victims.⁹⁰ For awhile thereafter, Sister Helen shied away from meeting other "survivors," out of fear of being attacked and rejected, and out of concern that she could do nothing to help them.⁹¹ But she felt that she could not turn down the Harveys when they requested her to attend a meeting of Parents of Murdered Children.⁹² Almost everyone there, including people favoring and people opposing capital punishment, spoke of prosecutorial and police insensitivity, and of abandonment by their relatives and friends.⁹³

Sister Helen subsequently helped organize an assistance program for murder victims' families in New Orleans, called Survive.⁹⁴ Of Survive's forty members, virtually all of whom are African American, only one had any expectation of having their child's murderer brought to trial. In most instances of inner-city crime against African Americans in New Orleans, the perpetrator was either at large or was freed after a brief stay in jail.⁹⁵ In stark contrast to the usual pattern in the eighty-five percent of New Orleans homicide cases in which the victims are black, the New

⁸⁹ *Id.* at 226.

⁹⁰ PREJEAN, *supra* note 1, at 226-27.

⁹¹ *Id.* at 228-29.

⁹² *Id.* Parents of Murdered Children was founded in 1978 by Bob and Charlotte Hunninger in Cincinnati, Ohio, for the purpose of providing support for parents whose children had been killed. See Lynne N. Henderson, *The Wrongs of Victim's Rights*, 37 STAN. L. REV. 937, 1021 (1985).

⁹³ PREJEAN, *supra* note 1, at 231.

⁹⁴ *Id.* at 232, 234; see Loe, *supra* note 3, at 1A (chronicling Sister Helen's work as a spiritual advisor); Gary Massaro, *State's Death Row Condemned; Counselor to Killers [&] Victims' Families Assails Death Penalty*, ROCKY MTN. NEWS, Mar. 12, 1994, at 8A; Mary B. Sammons, *Gift of Mercy: Nun Offers Compassion to Inmates on Death Row*, CHI. TRIB., Sept. 19, 1993, at 3. Survive is a Louisiana-based group comprised mostly of women who have lost family members to murder. See Kim Cobb, *Difficult Mission: Nun Tries to Save the Criminal, While Counseling the Bereaved*, HOUS. CHRON., Sept. 5, 1993, at A1.

⁹⁵ PREJEAN, *supra* note 1, at 239.

Orleans police arrested two suspects within four days of the murder of a white judge's son, despite a lack of eyewitnesses to the crime.⁹⁶

Sister Helen's book constitutes a persuasive answer to those who say, "what about the victims?," in attacking death penalty opponents. The sad fact is that capital punishment does not solve the problems facing grief-stricken survivors⁹⁷—whether the alleged murderers are executed, as Willie was, or whether they are never apprehended or are quickly released, as were the murderers of the relatives of most members of Survive.

Supporters of the death penalty who cite the plight of victims are, cynically or otherwise, using our natural sympathy for victims' survivors as a basis for creating even more survivors—the survivors of those executed—without doing anything to prevent further murders. Such death penalty proponents are frequently as indifferent to the survivors' actual needs as were the prosecutors and police who so greatly added to the Harveys' anguish.

IV. *Families of Death Row Inmates*

Dead Man Walking does not dwell at length on the impact of capital punishment on the families of death row inmates, but enough is said to enable readers to learn of their pain. For example, we learn from Sister Helen's book that Pat Sonnier's mother visited him only once or twice during his years on death row because it made her ill to see him there.⁹⁸ I, too, have spoken to relatives of death row inmates who are so upset by the prospect of further visits that they do not come for years and years. This

⁹⁶ *Id.*

⁹⁷ See, e.g., *id.* at 235-36. In July 1989, four and a half years after Robert Lee Willie's execution, Vernon Harvey said that Willie had gotten off too easily, that his execution had ended too quickly, that he should have been stabbed 17 times (the number of times Faith Hathaway had been stabbed), and that murderers should be "fried" on live television. *Id.*

⁹⁸ *Id.* at 38.

often causes death row inmates to feel abandoned by their families. Fortunately, Pat Sonnier did not feel that way.⁹⁹

However, his brother, Eddie Sonnier, felt extremely guilty over Pat's fate. Eddie had participated in the crime with Pat, and may have been substantially more responsible for what occurred than Pat. Yet, Eddie had ended up giving testimony harmful to Pat at trial, when Pat's lawyer, without ever interviewing Eddie, called Eddie as a witness.¹⁰⁰ Eddie thought that he and Pat had reached an understanding whereby each one would accuse the other, whereas Pat had thought the plan was for each brother to confess. Eddie's testimony was consistent with his understanding, so the jury heard both Pat's confession and Eddie's testimony, *as a defense witness*, that Pat was guilty.¹⁰¹ Eddie received a life sentence, but he felt "pain and bewilderment"¹⁰² at the enormity of his own evil, and he was distraught at his participation in the trial ending in Pat's death sentence.¹⁰³

With regard to Robert Lee Willie's family, Sister Helen presents a strikingly different picture than that which was widely reported at the time of Willie's execution. At that time, the press focused on the fact that Willie's father, who had himself been imprisoned for a long time and had had something to do with the electrocution process, favored Willie's execution.¹⁰⁴ What was not widely reported were the feelings of Willie's other relatives, particularly his mother. Sister Helen recounts that after Willie's clemency hearing, she comforted Willie's mother, who was crying because she had not said more in support of clemency.¹⁰⁵ The visit of Willie's mother and stepbrothers only hours before his execution was "unreal," Sister Helen says.¹⁰⁶ The impact of capital

⁹⁹ *Id.* at 20.

¹⁰⁰ PREJEAN, *supra* note 1, at 16, 53.

¹⁰¹ *Id.* at 39.

¹⁰² *Id.* at 42.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 177; see *Louisiana Killer is Electrocuted*, N.Y. TIMES, Dec. 28, 1984, at A15.

¹⁰⁵ PREJEAN, *supra* note 1, at 165.

¹⁰⁶ *Id.* at 200 ("[E]xcept that Robert will soon be dead, this could be a pleasant family visit.").

punishment on the families of death row inmates is rarely reported. If it were, it would be considerably harder to avoid the reality that human beings are involved on all sides.

V. *The Arbitrariness of Capital Punishment*

A common perception is that capital punishment is reserved for the worst murderers who have committed the worst offenses. However, in reality, factors that have nothing to do with how bad the murderer has acted can make all the difference between life and death. Several examples of this are apparent from Sister Helen's book.

As mentioned above, Pat Sonnier may have been less culpable than his brother Eddie for the killings for which they both were convicted. Yet, Pat was executed whereas Eddie got a life sentence, due to the ineptitude of Pat's lawyer in calling Eddie as a defense witness without knowing that Eddie would implicate Pat, and due to the fact that Pat did not implicate Eddie.¹⁰⁷

Similarly, Robert Lee Willie's co-defendant, Joseph Vaccaro, who was tried separately and received a life sentence, may have been the more culpable of the two, as Willie maintained.¹⁰⁸ However, as I discovered several years after their separate trials—when I read the voir dire of both trials—four of the twelve people who sat on the jury which convicted Willie came to the downstairs courtroom in which Willie was being tried directly from the upstairs courtroom in which Vaccaro was being tried. While upstairs, they learned from Vaccaro's lawyer that Vaccaro's contention was that Willie was totally responsible for Faith Hathaway's killing.¹⁰⁹ Because Willie's lawyers had no idea that these jurors had heard this, they did not propound any voir dire

¹⁰⁷ *Id.* at 39, 42. The New York State Bar Association stated that any death penalty legislation should ensure "competent" legal counsel, which, the Association said, is essential to protecting the rights of defendants. Gary Spencer, *State Bar Speaks Out on Death Penalty Concerns*, N.Y. L.J., Jan. 30, 1995, at 1.

¹⁰⁸ PREJEAN, *supra* note 1, at 145-46.

¹⁰⁹ *See id.* at 155.

questions concerning Vaccaro's culpability.¹¹⁰ Moreover, since the jurors had no way of knowing at this stage of the proceedings that Willie's defense would be that Vaccaro was totally responsible for Faith Hathaway's killing, they could, and did, honestly say that they would be fair jurors.¹¹¹ However, once Willie's defense was presented, the knowledge that these jurors had of Vaccaro's defense defeated the whole purpose of trying Willie and Vaccaro separately: To prevent the accusations of one defendant from being used against the other defendant where the second defendant had no opportunity to cross-examine the first defendant.¹¹² Unfortunately for Willie, the Fifth Circuit, although obviously troubled by the impact of the "Upstairs, Downstairs" voir dire, ultimately found no constitutional violation.¹¹³

Another issue we raised, which *Dead Man Walking* does not mention, was the egregiously improper closing argument at the sentencing phase of Willie's trial. The prosecutor told the jurors that if they had come upon the scene when Willie and Vaccaro were threatening Faith Hathaway, the jurors would have been justified in using lethal force to kill them both and would have been heroes for doing so and that they should therefore impose the

¹¹⁰ See *Willie v. Maggio*, 737 F.2d 1372, 1378 (5th Cir. 1984), cert. denied, 469 U.S. 1002 (1984). The court stated that:

A reading of that voir dire indicates to us that any venireman who sat through very much of it, as the four jurors at issue here did, would have come away with the understanding that Vaccaro's defense would be that it was Willie, not Vaccaro, who stabbed Faith Hathaway, while Vaccaro sat by, totally surprised by the events that unfolded, perhaps intoxicated or drugged or both.

Id.

¹¹¹ See *id.* The Fifth Circuit, in characterizing the events, wrote:

At the voir dire in Willie's trial, the trial judge individually asked each of the four jurors who had been present at the Vaccaro voir dire whether he or she had read or heard about the case and whether he or she had formed an opinion or notion about Willie's guilt. None of the four jurors stated that he or she formed an opinion as to Willie's guilt, and each juror affirmed that he or she would decide the case solely on the evidence presented.

Id.

¹¹² See Brief for Appellant, *Willie v. Maggio*, 737 F.2d 1372 (5th Cir.), cert. denied, 469 U.S. 1002 (1984); PREJEAN, *supra* note 1, at 154-55.

¹¹³ *Willie*, 737 F.2d at 1377-78, 1395.

death penalty. The Fifth Circuit condemned this argument because it was both inaccurate and improper, in that it was by no means clear that lethal force could justifiably have been used in the hypothesized situation, and, in any event, the death penalty is not justified in all instances where using lethal force would have been justified.¹¹⁴ However, the Fifth Circuit held that the Constitution had not been violated because it could not be shown with reasonable probability that, if the improper argument had not been made, Willie would not have been given the death sentence anyway.¹¹⁵ The Court so held even though I had pointed out that Vaccaro, at whose trial such an improper argument had *not* been made, had received a life sentence, and that there had been many other defendants who had committed crimes at least as heinous as this for whom juries had refused to vote the death penalty.¹¹⁶

Indeed, at the *Willie* oral argument, the prosecution explained that the reason why its closing argument had been formulated as it was was that even where a heinous murder has been committed, it is very difficult to get juries to vote for the death penalty; therefore, the prosecutor must come up with a convincing reason why the jury should do so. Unfortunately, here that convincing reason was egregiously improper.

The Fifth Circuit, one of whose members, Judge Carolyn Dineen Randall, made clear at oral argument that she had been deeply affected by having been reversed recently by the Supreme Court in *Strickland v. Washington*,¹¹⁷ concluded that Willie had to prove that he likely would not have received the death penalty if the prosecution had not acted so improperly.¹¹⁸ The court held that Willie did not meet this impossibly speculative burden of proof.¹¹⁹

Sister Helen describes having been "startled" by several of the claims in our Fifth Circuit brief for Willie. Before reading that brief, she would never have believed that in this day and age, a

¹¹⁴ *Id.* at 1390.

¹¹⁵ *Id.* at 1391.

¹¹⁶ *Id.* at 1389-91.

¹¹⁷ 466 U.S. 668 (1984).

¹¹⁸ *Willie*, 737 F.2d at 1390-91.

¹¹⁹ *Id.*

death sentence would be upheld under such circumstances.¹²⁰ But such miscarriages of justice occur ever more frequently, as the federal courts shut their doors to more and more meritorious claims, often without reaching their merits. Increasingly, the federal courts will refuse to consider claims because of the negligent failure of a lawyer to object at what is deemed to have been the appropriate time.¹²¹ There literally have been cases in which we know that if an objection had been made, the federal court would have granted relief—either because relief was granted to a co-defendant, whose counsel did object¹²² or because a federal appeals court said that relief should be granted—but the Supreme Court reversed solely because of the trial lawyer's failure to object.¹²³

Aubrey Dennis Adams, the only other of my clients to have been executed, is a fatal example of such procedural default. A conservative Eleventh Circuit panel unanimously held that the trial judge's repeated misinstructions of the jury were unconstitutional, and not harmless error.¹²⁴ However, the Supreme Court reversed, five-to-four, not because the Constitution had not been violated and not because the constitutional violation was harmless, but *rather* because this apparently meritorious claim had not been raised by Adams' trial counsel.¹²⁵ Under such precedents, habeas corpus these days is, as Sister Helen learned to her horror, "a system of gates that shut like one-way turnstiles."¹²⁶

¹²⁰ PREJEAN, *supra* note 1, at 154.

¹²¹ *See, e.g.*, Dugger v. Adams, 489 U.S. 401 (1989).

¹²² *Compare, e.g.*, Machetti v. Linahan, 679 F.2d 236 (11th Cir. 1982), *cert. denied*, 459 U.S. 1127 (1983) (granting relief due to unconstitutional discrimination in jury venire composition) *with* Smith v. Kemp, 715 F.2d 1459, 1472 (11th Cir.), *cert. denied*, 464 U.S. 1003 (1983) (holding the same claim, with respect to the same jury pool, procedurally barred; Mr. Smith was executed). *Compare also* Thomas v. Kemp, 800 F.2d 1024, 1026 (11th Cir. 1986) (granting relief) *with* Stanley v. Kemp, 737 F.2d 921, 922 (11th Cir. 1984) (holding the same claim by co-defendant procedurally barred; Mr. Stanley was executed).

¹²³ *See, e.g.*, Dugger v. Adams, 489 U.S. 401 (1989).

¹²⁴ Adams v. Wainwright, 804 F.2d 1526, 1529 (11th Cir. 1986), *modified and reh'g denied sub nom.*, Adams v. Dugger, 816 F.2d 1493 (11th Cir. 1987).

¹²⁵ Dugger, 489 U.S. at 408.

¹²⁶ PREJEAN, *supra* note 1, at 45.

Another aspect of our capital punishment system, which Sister Helen described as being "like a lottery,"¹²⁷ is the tremendous discretion which prosecutors have in deciding whether to seek the death penalty.¹²⁸ She points out that prosecutors may decide to reduce the charges if a high quality defense counsel is representing the defendant, but may insist on capital punishment for a less culpable person whose lawyer is less capable.¹²⁹

Prosecutors are also frequently influenced by the identities of those who have been killed.¹³⁰ Louisiana Corrections Commissioner Phelps made this point to Sister Helen, by citing a case in which a man who shot and killed four people was offered and accepted a plea bargain, under which he got two life sentences.¹³¹ Meanwhile, other people who have not killed *anyone*, but have simply been accomplices, have gotten the death penalty.¹³² In some such cases, the actual killers have made plea

¹²⁷ *Id.* at 50.

¹²⁸ *See, e.g.*, Nicholas Goldberg & Robin Topping, *Doubts on the Death Penalty*, NEWSDAY, Mar. 9, 1995, at A5. Suffolk County District Attorney James M. Catterson, Jr., said he will only seek the death penalty in "certain appropriate cases" such as mass murders, terrorism, and serial murders. *Id.* Meanwhile, Bronx County District Attorney Robert T. Johnson "announced that because of both fairness and costs issues, he intended 'not to utilize' the death penalty." *Id.* The author of this review, who is the President of New York Lawyers Against the Death Penalty, said, "that if it turns out that similar cases are treated differently in different parts of the state, the constitutionality of the entire law could be in question" under the State constitution. *Id.* Moreover, such disparate treatment of similar cases might not survive review under the statute's proportionality provision. *See* N.Y. CRIM. PROC. LAW § 470.30, Sub. 3(b), *as amended by* the New York Death Penalty Statute (enacted Mar. 7, 1995).

¹²⁹ PREJEAN, *supra* note 1, at 50.

¹³⁰ *Id.* at 48-49; *see infra* note 195 and accompanying text.

¹³¹ PREJEAN, *supra* note 1, at 102.

¹³² *See Repentant Inmate Saved from Electric Chair*, CHI. TRIB., Aug. 22, 1990, at 5; Nick King, *Massachusetts an Uncertain Future for Death Penalty; King Administration Legacy Sure to be Challenged*, Jan. 9, 1983, at 12. *See generally* Cabana v. Bullock, 474 U.S. 376 (1986) (holding that an accomplice's intent to kill may be determined by a trial judge or appellate court, instead of a jury, in cases involving the felony murder rule); Philip Hager, *High Court Ruling Eases Death Penalty Restrictions*, L.A. TIMES, Jan. 23, 1986, at 12 (discussing *Cabana*).

bargain deals or have, for other reasons, received life sentences.¹³³ Moreover, prosecutors may change their approaches to capital cases for political reasons. As Sister Helen notes, District Attorney Marion Farmer sought the death penalty for Willie and Vaccaro after having been opposed for re-election because he had plea-bargained another case rather than seeking the death penalty.¹³⁴

..... Counsel for indigent defendants are the other major contributors to the death penalty system's being like a lottery. It is now clear beyond doubt that many people end up on death row more because of how bad their lawyers were than because of what they did.¹³⁵ Sister Helen first learned this when reviewing the transcripts in Pat Sonnier's case. She poignantly writes:

I honestly thought that when a person faced death, he or she would at least be given adequate legal defense. I thought the Constitution promised that. It took me longer than it should have to realize the shamefully inadequate legal counsel that Pat Sonnier and others like him get. By the time I sought remedial legal help for him it was too late. If I had acted sooner, I believe he would be alive today—imprisoned at Angola where he should be, but alive.¹³⁶

The same could be said of many other executed defendants, including Gregory Resnover, who was put to death on December 8, 1994.¹³⁷ Although the Associated Press report on his execution does not say so,¹³⁸ Resnover had a trial lawyer who did *no*

¹³³ See Ronald J. Tabak & J. Mark Lane, *The Execution of Injustice: A Cost and Lack-of-Benefit Analysis of the Death Penalty*, 23 LOY. L.A. L. REV. 59, 97 (1989).

¹³⁴ PREJEAN, *supra* note 1, at 158-59.

¹³⁵ See *World News Tonight with Peter Jennings: Attorneys for Death Row Inmates*, (ABC Television Broadcast, Nov. 21, 1994) (referring to Tim O'Brien's comments); *supra* note 107 and accompanying text.

¹³⁶ PREJEAN, *supra* note 1, at 32.

¹³⁷ *Indiana Executes a Killer of 2*, N.Y. TIMES, Dec. 9, 1994, at A18.

¹³⁸ *Id.*

preparation whatsoever for the sentencing phase of his trial and an appeal lawyer so "asleep at the wheel" that he never advised the Indiana Supreme Court that the prosecution was egregiously misrepresenting the facts of the case. The lawyers who handled the state post-conviction and federal habeas proceedings failed to notice these major problems. It was only when experienced capital defense attorneys prepared Resnover's certiorari petition following the denial of federal habeas relief that these matters were brought to light.¹³⁹ Unfortunately, by that point the various procedural bars to raising claims were invoked, and Resnover was denied relief and executed.¹⁴⁰ So, while many people still believe, as Sister Helen always had, that "the lengthy appeals process virtually assures fair review,"¹⁴¹ fair review is increasingly the exception, not the rule.

Mr. Resnover might have been denied relief anyway, because, as Sister Helen notes, courts rarely find counsel to have been ineffective, even when they have been drunk or woefully ill-prepared.¹⁴² Under *Strickland v. Washington*,¹⁴³ the case in which the Fifth Circuit used by analogy to reject Willie's prosecutorial misconduct claim,¹⁴⁴ if a defendant is to prevail on an ineffectiveness claim he must show not only that his counsel was ineffectual but also that the verdict would likely have been different if counsel had been effective.¹⁴⁵ The courts rarely find this "prejudice" prong of *Strickland* to have been satisfied.¹⁴⁶

Sister Helen also learned that states like Louisiana often pay extremely little to capital defense attorneys. Louisiana then

¹³⁹ Telephone Conversation with George H. Kendall, Esq., NAACP Legal Defense Fund (Dec. 8 & 9, 1994).

¹⁴⁰ *Id.*

¹⁴¹ PREJEAN, *supra* note 1, at 47.

¹⁴² *Id.*

¹⁴³ 466 U.S. 668 (1984)

¹⁴⁴ *Willie*, 737 F.2d at 1390-92.

¹⁴⁵ *Strickland*, 466 U.S. at 687.

¹⁴⁶ See *The Death of Fairness? Counsel Competency and Due Process in Death Penalty Cases*, 31 HOUS. L. REV. 1105, 1182-83 (1994) [hereinafter *The Death of Fairness?*].

had a \$1,000 limit on reimbursements for expenses.¹⁴⁷ Moreover, it had no requirement of extensive criminal law experience.¹⁴⁸ All the law required, she reports, was five years of practice of *any* kind of law.¹⁴⁹

VI. *The Death Penalty's Lack of Deterrent Effect*

Sister Helen briefly discusses capital punishment's lack of deterrent effect.¹⁵⁰ She points out that, far from there being conclusive evidence that the death penalty deters murder, there is ample reason to believe the contrary. For example, Canada's murder rate dropped for ten years after it abolished capital punishment.¹⁵¹

Some studies have indicated an increase in homicides after well-publicized executions. Indeed, after an eight and a half week period in the autumn of 1987 in which Louisiana executed eight people, there was an increase in the murder rate in New Orleans.¹⁵² Moreover, just two weeks after Pat Sonnier's well-publicized execution, a crime very similar to the one for which he was executed was committed in Louisiana.¹⁵³

¹⁴⁷ PREJEAN, *supra* note 1, at 49; see *The Death of Fairness?*, *supra* note 146, at 1174-77 (Clive A. Stafford Smith, director of the Louisiana Crisis Assistance Center in New Orleans, discussing compensation of attorneys in Louisiana capital cases and the problems which arose when Louisiana's Supreme Court tried to improve the situation); see also Stephen B. Bright, *Counsel for the Poor: The Death Sentence Not for the Worst Crime but for the Worst Lawyer*, 103 YALE L.J. 1835, 1853-55 (1994) (discussing death row attorney compensation).

¹⁴⁸ PREJEAN, *supra* note 1, at 49.

¹⁴⁹ *Id.*

¹⁵⁰ See *id.* at 109-10.

¹⁵¹ See *id.*

¹⁵² *Id.* at 110.

¹⁵³ PREJEAN, *supra* note 1, at 109-10 (discussing an article published in the *Times-Picayune* less than a month after Sonnier's execution, which describes the abduction, robbery, and murder of a teenage couple near Hammond, Louisiana).

VII. *The Real Alternatives*

Sister Helen intersperses at several points in the book discussions of life without parole as an alternative to capital punishment. She points out that in most states, a life sentence for capital murder *really means* life in prison.¹⁵⁴ However, the public has largely not been informed of that fact.¹⁵⁵ If the public were informed and believed the information, support for capital punishment would drop substantially. Sister Helen cites polls indicating that support for the death penalty drops below fifty percent when people are provided with the alternative of life without parole for twenty-five years, plus restitution to the victim's survivors.¹⁵⁶

However, just as the public does not know that the life without parole alternative exists in most places, the public also does not know the truth about how the capital punishment system really works. Sister Helen cites a 1975 study which found that people are less likely to favor the death penalty when they get even minimal information about it.¹⁵⁷

Sister Helen astutely recognizes that the public's ignorance is "no accident."¹⁵⁸ Executions are generally carried out in the middle of the night, with a minimum of fanfare, in order to keep things orderly.¹⁵⁹ This hides from most of the public the real brutality which is being carried out in its name.¹⁶⁰

¹⁵⁴ *Id.* at 143. In a statement, which was released after Thomas Grasso's execution, Grasso wrote: "'Let there be no mistake. Mario Cuomo is wright [sic]. Life without parole is much worse than the death penalty. All jurors should remember this. Attica & Oklahoma State Penetentiary [sic] are living hells . . .'" Brown & Lipman, *supra* note 59, at A5.

¹⁵⁵ See PREJEAN, *supra* note 1, at 197.

¹⁵⁶ *Id.* at 144.

¹⁵⁷ *Id.* at 117 (citing Austin Sarat & Neil Vidmar, *Public Opinion, the Death Penalty, & the Eighth Amendment: Testing the Marshall Hypothesis*, 1976 WIS. L. REV. 171, 171-97 (1976) (after subjects were presented with pamphlets on the deterrent effects of capital punishment, support of the death penalty declined from 51% to 38%)).

¹⁵⁸ *Id.* at 197.

¹⁵⁹ See *id.*

¹⁶⁰ PREJEAN, *supra* note 1, at 197.

The public may actually prefer to be kept in ignorance. Dealing with death is never easy, and dealing with killings carried out deliberately and with premeditation by your government can be particularly difficult. Indeed, Sister Helen found dealing with Pat Sonnier's execution so difficult that she closed her eyes to avoid viewing it.¹⁶¹ However, by the time of Robert Lee Willie's execution some months later, she decided that this time she would not close her eyes. This time, she "watch[ed] everything."¹⁶²

After Willie's execution, Louisiana changed its method of execution to lethal injection.¹⁶³ Sister Helen terms lethal injection "an elaborate ruse . . . , a pitiful disguise. Killing is camouflaged as a medicinal act."¹⁶⁴

VIII. Religion and Vengeance

Sister Helen states that she does not "believe that God invests human representatives with such power to torture and

¹⁶¹ *Id.* at 93-94.

¹⁶² *Id.* at 210-11. Anthony Thornton, a reporter for the *Daily Oklahoman*, after witnessing Thomas Grasso's execution in March 1995, said, "It made me wonder how somebody could watch somebody die, even a person like him, and still kind of be a little detached. I don't think anybody felt anything, we were so busy trying to get the little details . . . I don't have any desire to do it again." Brown & Lipman, *supra* note 59, at A5.

¹⁶³ See *Louisiana Schedules First Execution by Injection*, UPI, Nov. 14, 1991, available in LEXIS, News Library, UPI File; see also Wendell Smith, *Cruel and Unusual? Prison Editors Help Pull the Plug on an Electric Chair*, COLUM. JOURNALISM REV., Sept.-Oct. 1991, at 13 (stating that Louisiana stopped using electrocution as a method of execution as of September 15, 1991).

¹⁶⁴ PREJEAN, *supra* note 1, at 217; see Jim Dwyer, *A Killer's Last Gasp—Eyewitness to a Texas Execution*, Feb. 22, 1995, at A3, A49.

The killer cocktail . . . is \$27.90 worth of sodium thiopental, a killing dose of anesthetic; next is \$2.10 in potassium chloride, which stops the heart; finally, \$41.60 worth of pancurium bromide, a muscle relaxant that knocks out the diaphragm. The total is \$71.50, which generally comes after \$3 million in litigation costs.

Id.

kill."¹⁶⁵ Her views in this regard are in accordance with the position of the United States Catholic bishops.¹⁶⁶

Unfortunately, not all members of the Catholic Church's hierarchy share this position or act in accordance with it. For example, the New Orleans archdiocese disowned the bishops' position, and the Archbishop went so far as to send the New Orleans District Attorney a letter, which the District Attorney used at capital trials, assuring Catholics that they "can in good conscience endorse capital punishment."¹⁶⁷ The Archbishop also ordered representatives of the Church to testify in the State's support at a capital sentencing hearing.¹⁶⁸ In another situation, Sister Helen was able to persuade the Archbishop to support clemency in a death penalty case.¹⁶⁹ But, as in every other Louisiana case involving a death row inmate during this time frame, clemency was denied.¹⁷⁰ Sister Helen candidly criticizes Christian leaders for generally being passive in the face of so many killings by the government.¹⁷¹ One very recent hopeful development which suggests that Christian leaders may now become more active in opposing the death penalty is the encyclical letter issued on March 30, 1995, by Pope John Paul II, which states:

[T]he nature and extent of the punishment must be carefully evaluated and decided upon and ought not to go to the extreme of executing the offender except in cases of absolute necessity: in other

¹⁶⁵ PREJEAN, *supra* note 1, at 21.

¹⁶⁶ See David Gonzalez, *Bishops Take on a "Culture of Violence"*, N.Y. TIMES, Nov. 26, 1994, at A11; John Burger, *Is Death the Answer?*, CATHOLIC N.Y., Nov. 17, 1994, at 25 (stating that "[t]he bishops of the United States and of New York state [sic] have been opposed to the imposition of the death penalty"); John Cardinal O'Connor, Speech at an Association of the Bar of the City of New York program entitled: *Are Executions in New York Inevitable?* (Feb. 4, 1995) (transcript forthcoming in 22 FORDHAM URB. L.J. (1995)).

¹⁶⁷ PREJEAN, *supra* note 1, at 54.

¹⁶⁸ *Id.* at 54-55.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 169.

¹⁷¹ *Id.* at 123-24.

words, when it would not be possible otherwise to defend society. Today, however, as a result of steady improvements in the organization of the penal system, such cases are very rare, if not practically nonexistent. . . .¹⁷²

Sister Helen discusses the theological arguments that have been made in support of capital punishment.¹⁷³ She points out that the oft-cited "eye for an eye" concept was, in context, clearly meant to *limit* the tendency for revenge.¹⁷⁴ It would have been helpful if Sister Helen had discussed the Jewish law on capital punishment further, particularly the fact that under Talmudic practice, procedures were created that deliberately made it virtually impossible to impose the death penalty.¹⁷⁵ Sister Helen does explain how Christianity veered away from Jesus' own views once the Church became allied with the Roman empire.¹⁷⁶ Thereafter, Christianity "bore no resemblance to the purely moral persuasion that Jesus had taught,"¹⁷⁷ and numerous killings were carried out, ostensibly in Jesus' name.¹⁷⁸

After describing many of the arbitrary and capricious aspects of our capital punishment system, Sister Helen says that

¹⁷² See Pope's Letter: *A 'Sinister' World Has Led to 'Crimes Against Life,'* N.Y. TIMES, Mar. 31, 1995, at A12 (excerpts from Pope John Paul II's encyclical letter *Evangelium Vitae* ("Gospel of Life") issued on March 30, 1995). See also Celestine Bohlen, *Pope Offers 'Gospel of Life' vs. 'Culture of Death,'* N.Y. TIMES, Mar. 31, 1995, at A1, A13. According to this report:

The only notable shift in Catholic doctrine to emerge [in this encyclical] is a move toward a ban against the death penalty, which the church has until now held was sometimes permissible as a means of protecting society.

"On the death penalty, the encyclical marks an important doctrinal advance," Cardinal Ratzinger said.

Id. at A13.

¹⁷³ PREJEAN, *supra* note 1, at 193-96.

¹⁷⁴ *Id.*

¹⁷⁵ See Tabak & Lane, *supra* note 133, at 142-43.

¹⁷⁶ PREJEAN, *supra* note 1, at 196.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

"[v]ery human beings"¹⁷⁹ are purporting to carry out divine vengeance.¹⁸⁰ Sister Helen "can't accept that any group of human beings is trustworthy enough to mete out so ultimate and irreversible a punishment as death."¹⁸¹ I doubt that many other people would accept the traditional view either, if they knew as much as this book reveals about how capital punishment is actually being implemented in this country.

As noted earlier, during his televised exchange with Sister Helen on the night after Robert Lee Willie's execution, commentator George Will said that vengeance can be "noble."¹⁸² On the same broadcast, he opposed televising executions, because that might have a "coarsening" impact.¹⁸³ Sister Helen continued to be troubled by this after the broadcast, and asks in the book, "does a noble act coarsen society?"¹⁸⁴ She effectively answers this question by citing these coarsening effects:

Some of us openly acknowledge that even though the death penalty is racially biased and unfairly imposed upon the poor we nevertheless approve its practice. Some of us say that even if *innocent* people are sometimes executed along with the guilty, we support the death penalty anyway.¹⁸⁵

There is nothing noble about such sentiments.

Indeed, many of the participants in the execution process instinctively recognize this. This sentiment may be why when Warden Maggio's eyes met Sister Helen's after the Warden announced Pat Sonnier's execution, Warden Maggio lowered his eyes. He had just participated in "the premeditated killing of a human being,"¹⁸⁶ an ugly experience.

¹⁷⁹ *Id.* at 123.

¹⁸⁰ *Id.*

¹⁸¹ PREJEAN, *supra* note 1, at 123.

¹⁸² *See id.*

¹⁸³ *See id.*

¹⁸⁴ *Id.* (emphasis omitted).

¹⁸⁵ *Id.* at 218.

¹⁸⁶ PREJEAN, *supra* note 1, at 216.

IX. *Capital Punishment of the Innocent*

Although recent examples of innocent people who have been sentenced to death but were "lucky" enough to have had their innocence uncovered before being executed are discussed in the book,¹⁸⁷ Sister Helen also points out that other possibly innocent death row inmates, such as James Adams, have not been as fortunate.¹⁸⁸

It is crucial to recognize that the innocent who have been saved from execution are the "exceptions that prove the rule."¹⁸⁹ In most such instances, the innocent death row inmates were still alive for reasons having nothing to do with their innocence when the facts emerged to exonerate them. Others were lucky to happen to get volunteer lawyers with the talent and resources to uncover their innocence. There is every reason to believe, in light of the fortuitous nature of these exonerations, that other people who have been executed in recent years were also innocent.¹⁹⁰ Indeed, facts developed by the lawyer for Jesse Tafero's co-defendant in the years following his execution have led to the conclusion that Tafero was probably innocent.¹⁹¹ Yet, most of the public

¹⁸⁷ *Id.* at 218-20.

¹⁸⁸ See Hugo A. Bedau & Michael L. Radelet, *Miscarriages of Justice in Potentially Capital Cases*, 40 STAN. L. REV. 21, 90 (1987). James Adams was convicted of first-degree murder of a white rancher, sentenced to death, and executed in 1984. *Id.*; PREJEAN, *supra* note 1, at 220.

¹⁸⁹ See, e.g., Brent Kallestad, *Southerners Love Their Death Penalty*, MIAMI HERALD, May 17, 1992, at 7B; Al Kamen, *Innocent Executed, ACLU Claims 25 Said to Have Died Since 1900 for Crimes They Did Not Commit*, WASH. POST, Nov. 14, 1985, at A14.

¹⁹⁰ See Tabak & Lane, *supra* note 133, at 99-107. The New York State Bar Association "identified the 'most pressing concern' [in the death penalty debate] as avoiding the execution of the innocent." Spencer, *supra* note 107, at 9.

¹⁹¹ See *20/20: Crossing Paths Again* (ABC News television broadcast, Mar. 27, 1992, available in LEXIS, News Library, Script File) [hereinafter *20/20*]. Jesse Tafero was convicted of first-degree murder of a Florida State trooper and the trooper's friend, a visiting Canadian officer. *Id.* at *9-10. The conviction of Tafero's co-defendant, Sonia Jacobs (who was also his wife), was ultimately overturned, *Jacobs v. Singletary*, 952 F.2d 1282 (11th Cir. 1992), and, after she agreed to plead guilty as a condition to release while being allowed to continue to assert her innocence, she was released on October 9, 1992. See Peter Marks, *'I'm Free, I'm Free, I'm Free!; Serving Life in Murders, She's Released—With Friend's*

remembers Tafero, if at all, because the execution equipment malfunctioned and he had to suffer through several unsuccessful efforts to electrocute him until the machinery of death worked.¹⁹²

Moreover, it is crucial to recognize that an inevitable consequence of "streamlining" the capital punishment system by eviscerating federal habeas corpus, and by adopting measures that otherwise speed up the time between convictions and executions, would be an increase in the number of innocent people being executed. In most of the cases in which innocent death row inmates have been exonerated, a great many years elapsed before the truth of innocence emerged.¹⁹³ If capital litigation is accelerated, far fewer of the innocent on death row will ever get decent counsel who can uncover proof of their innocence.

X. *Racial Discrimination in Capital Punishment*

Sister Helen focuses attention on racial discrimination in our capital punishment system. She describes the disparity between how murder cases with black victims and murder cases with white victims are treated by New Orleans' press and prosecutors.¹⁹⁴ She also discusses a report on racial discrimination in Chattahoochee County, Georgia, whose district attorney has generally not exhibited concern over murders of black people but has been solicitous when prominent white people have been

Aid, NEWSDAY, Oct. 13, 1992, at 5; see also Sonia Jacobs, *A Survivor's Tale*, in *THE MACHINERY OF DEATH* 152-55 (Amnesty Int'l eds., 1995) (chronicling the events surrounding the deaths of the two officers and her husband's execution).

¹⁹² *Killer of 2 Police Officers Executed in Florida*, N.Y. TIMES, May 5, 1990, at 26; see *Electric-Chair Dispute Brings Another Story*, N.Y. TIMES, June 24, 1990, at 19. After the executioner threw the switch, flames and smoke shot out of Jesse Tafero's head, his body lurched forward, and then he slammed back in his seat; this same horrifying scenario occurred the second time the switch was thrown. See 20/20, *supra* note 191, at *12.

¹⁹³ See Tabak & Lane, *supra* note 133, at 99-107.

¹⁹⁴ PREJEAN, *supra* note 1, at 9, 48-49.

killed—particularly if a survivor is a potential campaign contributor.¹⁹⁵

Numerous studies, whose validity have been confirmed by the respected, non-partisan General Accounting Office, have found a general pattern of racial discrimination in capital punishment based on the race of the victim.¹⁹⁶ Yet, Congress has refused to enact the Racial Justice Act,¹⁹⁷ which would have legislatively permitted such studies to form the basis for legal claims¹⁹⁸—something which the Supreme Court invited legislative bodies to do in *McCleskey v. Kemp*.¹⁹⁹ In *McCleskey*, the Court, by a five-to-four vote, declined to hold that the Constitution was violated by such discrimination.²⁰⁰ The author of that decision, Justice Powell, now reportedly regrets the *McCleskey* holding more than anything else in his judicial tenure and would, if he were still on the Court, hold all death sentences unconstitutional.²⁰¹

¹⁹⁵ *Id.* at 239-41. "The Chattahoochee Report" reports that while blacks account for 65% of local homicide victims, the district attorney seeks the death penalty almost exclusively in cases involving white victims. DEATH PENALTY INFO. CTR., CHATTAHOOCHEE JUD. DIST.: BUCKLE OF THE DEATH BELT i (1991). The report further states that 85% of capital trials there involve white victims. *Id.* at 3.

¹⁹⁶ See Ronald J. Tabak, *Is Racism Irrelevant? Or Should the Fairness in Death Sentencing Act be Enacted to Substantially Diminish Racial Discrimination in Capital Sentencing?*, 28 N.Y.U. REV. L. & SOC. CHANGE 777, 780-83 (1990-91) (citing U.S. General Accounting Office, *Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities* (Feb. 1990), reprinted in 136 CONG. REC. S6889-90 (daily ed. May 24, 1990)); see also Spencer, *supra* note 107, at 9 (stating that the "[e]xperience across America indicates that the race of the victim is perhaps the dominant factor in deciding 'who shall be sentenced to death' and that it falls most heavily on minority defendants").

¹⁹⁷ H.R. REP. NO. 5269, 101st Cong., 2d Sess. (1990).

¹⁹⁸ See William Murchison, *Looking at Crime Through a Racial Prism*, TEX. LAW., Aug. 1, 1994, at 25.

¹⁹⁹ 481 U.S. 279, 319 (1987).

²⁰⁰ *Id.* at 319.

²⁰¹ See John C. Jeffries, *A Change of Mind that Came Too Late*, N.Y. TIMES, June 23, 1994, at A23.

XI. International Opposition to Capital Punishment

Sister Helen shows that in most industrialized democracies, the death penalty has been effectively abolished.²⁰² Where it still exists, it is, as in the United States, applied disproportionately to "the poor, the powerless, the marginalized or those whom repressive governments deem it expedient to eliminate."²⁰³

XII. The Monetary and Moral Costs of the Death Penalty

Sister Helen states that the death penalty has been estimated to cost \$3,180,000 for each case in Florida, as compared with \$516,000 per case for life imprisonment.²⁰⁴ She also notes that Texas spends an estimated \$2,300,000 per capital case.²⁰⁵

The impact of the death penalty is not merely monetary. The court system generally is disrupted, as the courts find it ever more difficult to deal with non-capital criminal cases or with civil cases, due to the burdens imposed by death penalty litigation.²⁰⁶ Indeed, Louisiana's Chief Justice Dixon stated in 1989 that "[c]apital punishment is destroying the system."²⁰⁷

The more profound cost of the death penalty is moral. After noting that Martin Luther King and Mahatma Gandhi succeeded because "they made the price of maintaining control too

²⁰² PREJEAN, *supra* note 1, at 113-14.

²⁰³ *Id.* at 113 (quoting AMNESTY INT'L, *WHEN THE STATE KILLS . . . THE DEATH PENALTY: A HUMAN RIGHTS ISSUE* 7 (1989)).

²⁰⁴ *Id.* at 129-30 (citing David von Drehle, *Capital Punishment in Paralysis*, *MIAMI HERALD*, July 10, 1988, at 1).

²⁰⁵ *Id.* at 233 (citing DEATH PENALTY INFO. CTR., *MILLIONS MISSPENT: WHAT POLITICIANS DON'T SAY ABOUT THE HIGH COSTS OF THE DEATH PENALTY* 3-9 (Oct. 1992)).

²⁰⁶ *See id.* at 129-30.

²⁰⁷ *See* David A. Kaplan, *Death Mill, USA*, *NAT'L L.J.*, May 8, 1989, at 38; *see also* Margaret Leonard, *Death Cases are a Big Pain and No Deterrent*, *Chief Justice Says*, *TALLAHASSEE DEMOCRAT*, Feb. 27, 1986, at 1B (discussing the impact of the death penalty on the Florida courts).

high for their opponents,"²⁰⁸ Sister Helen says the following, which is a good summary of her entire book:

[G]overnment killings are too costly for us, not only financially, but—more important—morally.

The death penalty *costs* too much. Allowing our government to kill citizens compromises the deepest moral values upon which this country was conceived: the inviolable dignity of human persons.

I have no doubt that we will one day abolish the death penalty in America. It will come sooner if people like me who know the truth about executions do our work well and educate the public. It will come slowly if we do not. Because, finally, I know that it is not a question of malice or ill will or meanness of spirit that prompts our citizens to support executions. It is, quite simply, that people don't know the truth of what is going on.²⁰⁹

XIII. Conclusion

Dead Man Walking makes a profound impact on its readers. It educates without insulting readers' intelligence, and without hitting them over the head. It instructs by first acknowledging that many death row inmates are far from saintly, and then by showing that putting them to death does nothing for our society—including the survivors of their victims. Concern for the humanity of every person one encounters and the importance of taking personal responsibility for one's actions are the central themes of *Dead Man Walking*. If more of us exhibited concern for people's humanity and took responsibility for our actions, our crime problem would be diminished and our disgraceful death penalty system would be abolished. When this country *does* join

²⁰⁸ PREJEAN, *supra* note 1, at 197 (quoting SUSAN JACOBY, *WILD JUSTICE: THE EVOLUTION OF REVENGE* 336-37 (1983)).

²⁰⁹ *Id.* at 197.

most other developed countries in abolishing capital punishment and there are no more dead men walking on death row, Sister Helen's book will deserve much of the credit.