

CHAPTER ONE

A DATE WITH DEATH

It was 85 degrees that night in Huntsville, Texas. I sat alone in a booth at the McDonald's, off IH-45, drinking coffee and picking at a plate of greasy French fries, staring at the clock on the wall. The clock ticked too slowly for me, but too quickly for Walter Williams, my 32-year-old client, who also sat alone just a mile away, in his cell on Death Row. We were both waiting for midnight.

Two thousand miles from my home in Connecticut, I felt awkward in this fast-food joint, filled with late-night highway travelers. I took out a yellow pad of paper and wrote 'To Do' on the top. The page remained blank during the next hour and a half as I cried silently, bit my fingernails and quietly asked myself: What was I doing here? There was nothing left for me 'To Do.' I was killing time before it was time to kill.

I had left Walter in the Death House an hour earlier. Walter had been my only client for nine years. I signed onto the case in 1985 shortly after I graduated from Columbia Journalism School and I was looking for a reporting job. I was back in San Antonio when an old law school friend and the newly appointed appellate attorney for Walter Williams pleaded with me to look at the transcript.

'Please, Joan. You worked for the Court of Criminal Appeals a year ago. You know these guys,' Robert Hirschhorn said. 'You know what they are looking for. Please. Just a little look?'

When I graduated from law school, I took a job as briefing attorney for the Texas Court of Criminal Appeals – the first and last stop for death penalty cases in Texas. The TCCA is the equivalent of the state supreme court.

Each of the nine judges on the court have both a briefing attorney and a staff lawyer. A briefing attorney is usually hired by one of the appellate judges for a one-year term and is most often a recent law school graduate. The job involves reviewing motions, appeals, and writs of habeas corpus, spending countless hours in the law library conducting research and writing memos on the legal issues raised in the appeal. The cases are either assigned to the judge by the presiding judge (or Chief Justice), or the judge is allowed to pick which case he wants to review if his briefing attorney or staff lawyer are successful in the traditional ceremonial roll of the dice which occurs in the court's conference room immediately after oral arguments.

After years as a courthouse newspaper reporter, I gravitated towards criminal trials. During law school, I worked part-time law, as a clerk for Roy R. Barrera Jr., a criminal district judge, watching murder trials and writing briefs. The death penalty cases in Judge Barrera's courtroom were mesmerizing. The 28-year-old Republican judge, the youngest jurist in the state when he was appointed in 1980, was media-savvy; he ran on a 'law-and-order' ticket. While on the bench, Barrera took every opportunity to 'run for office' by giving impromptu press conferences during courtroom breaks to the TV and newspaper reporters that hung out in the courtroom during sensational death penalty trials, like that of Jesse De La Rosa, whom Barrera sentenced to death.

On May 15, 1985, two years after I graduated from law school, my former employer witnessed the execution of 24-year-old De La Rosa, then the youngest man in the nation to be executed and the first Hispanic in Texas to face execution, since the death penalty was reinstated in 1976.¹

During the one and a half years as his law clerk, I turned into a death penalty junkie. I think Barrera did, too.

And when Court of Criminal Appeals Presiding Judge John F. Onion offered me a job at the highest criminal court in the state, I didn't take more than 30 seconds to accept.

But when Hirschhorn asked me to look at Walter's transcript, I didn't take any time in turning him down. I said 'No' 10 different

times in 10 different ways. My reasons were good: I wasn't practicing law and had no intention to do so. I went back to my first love – working as a newspaper reporter. And I lived 2,000 miles away.

I ended up telling Hirschhorn I'd take a look. Three hours later I signed on as co-counsel in the case of the *State of Texas v. Walter Key Williams*. It was 1985. I thought this would be an easy appeal – a total slam dunk. The trial lawyers failed to introduce any evidence on Walter's behalf, at either the one-day guilt/innocence or the two-hour punishment stage; it was a clear case of ineffective assistance of counsel and his conviction would be reversed within a year. But that one year turned into nine and there was nothing 'easy' about Walter's appeal.

During those nine years I represented Walter, I read and re-read the transcript of *State v. Williams* many times. The file was thin, very thin. Walter didn't have much in the way of a prior record. There was some juvenile joy riding; pot smoking, possession of a gun (not unusual in Texas), and one other more serious but understandable incident regarding his father – an assault.

After reading the transcript, I was shocked at the speed of his trial on capital murder charges stemming from a botched robbery of a convenience store and the cold-blooded killing of the store's clerk. His trial attorneys failed to object to damaging evidence – one objection, I found out later, would have been an automatic reversal and grounds for a new trial.

Walter's lawyers testified at one of the three evidentiary hearings that it was their strategy not to put on any witnesses and not to introduce any mitigating evidence that might explain what led up to the events of that murderous night.

The lawyers said that they were worried that if they put Walter's mother on the witness stand, they would risk opening the door – and allow the prosecution to bring in damning evidence about the altercation between Walter and his father. They said that if the jurors heard that story they would think that Walter had a propensity for violence and would be incapable, in the eyes of the jury, of rehabilitation. But had those lawyers

questioned Mrs. Williams, Mr. Williams, or even Walter himself about the incident, they would have discovered – weeks before the trial and not years later – that Walter hit his father that night to protect his mother from Lucian’s regular beatings, which were usual after a night of heavy drinking. Those lawyers never asked what triggered the assault and Walter never volunteered any information.

I never understood why Walter’s lawyers didn’t put his mother on the witness stand. I met Melba Williams in February 1986, during an evidentiary hearing; she was small and frail and deeply concerned about Walter, or ‘Dino’ as she called her only child. ‘Miz Cheevah. I don’t have any money to pay you for you and Mr. Hirschhorn’s time. Maybe I could get a loan,’ Mrs. Williams told me in the hallway of the San Antonio courthouse. ‘They just can’t kill him. You won’t let them, will you?’

Of course not, I assured Walter’s mother, breaking one of the cardinal rules of criminal defense law – never promise something you cannot deliver. I was so sure Walter’s death sentence would be changed to a life term for many reasons, but the primary one was because the state of Texas had offered him a sweetheart plea bargain on the eve of his trial – after good time credits, Walter would be out of prison in nine years. And then there were the number of character witnesses that came to Judge Ted Butler’s courtroom for the evidentiary hearing who finally got a chance to testify as to what they would have testified to five years earlier at Walter’s trial. If they had been asked.

Our witness list included Sister Mary Boniface O’Neill, a highly respected nun who ran the Catholic high school Walter attended and who is an expert in working with troubled kids. ‘As far as I could see and in my association with him, he was absolutely nonviolent,’ Sister Boniface testified. ‘And that’s God as my witness, you know. There are a lot of kids I could not say this for, I can say it for him.’

Father Maurice Abadie, the priest who baptized Walter and taught him how to play basketball, had years of experience working with juvenile delinquents, but said that in his opinion,

Walter was ‘a good kid’ and ‘not violent.’ Walter’s aunt, ‘Honey,’ and uncle, ‘Wax,’ recently retired as a police officer in Brenham, Texas where Walter spent every summer during his youth, said they were surprised at the charges because their nephew was such a quiet, passive but polite young man. There were countless neighbors, family friends, and cousins who told Judge Butler that they were ‘shocked’ to hear of the capital murder charges.

Hirschhorn and I also had reviewed the testimony of six jurors, who, while they were being questioned during jury voir dire, warned Walter’s attorneys that the jurors needed to hear some ‘background information’ about Walter at the punishment phase.

‘What if I told you I was going to sit back for a ride on this one, and not present any evidence?’ Walter’s lawyer told one juror. The juror answered bluntly: ‘I think you’d have a losing case.’

We had more. Hirschhorn and I introduced evidence from three psychologists who said they would have testified that Walter Williams would not pose a continuing threat to society.²

Even the county’s own shrink, Dr. John Sparks, Bexar County’s chief psychiatrist who is often used by the prosecution in death penalty trials but was not called in Walter’s case, said in an affidavit that ‘it (the death sentence) was not appropriate in this particular case.’ Dr. Sparks added: ‘I don’t believe he would be a threat to society if he were required to serve a life sentence in prison.’³

The lack of a prior record was a home run, we thought.

While on Death Row, Walter had converted to Islam and went by the name of ‘Abdalla Hashim.’ I told him that I’d met him as ‘Walter’ and that was the name I would always call him. He returned my admonition with a smile. He spent his years on Death Row praying and reading about his religion; reading about the law and thinking about his adolescence and the crime that landed him on Death Row.

During the nine years that we talked, through letters and face to face, I could see that he was a changed man. Every time we talked, Walter expressed deep remorse for his crime. I wanted him to write the victim’s family and express that sorrow, but I never

told him so. While I knew that a letter to the Liepold family would have been the 'right' and honorable thing to do, it was dumb legal advice and a direct violation of another cardinal rule of criminal law that goes after 'never ask a witness a question unless you know the answer.' The one I was about to break was 'never put something in writing that you might regret later.' If we were able to get his conviction reversed, a letter from Walter expressing remorse and guilt could be introduced against him at a new trial. I knew Hirschhorn was probably relieved that I lived 2,000 miles away and there was a reason I didn't practice criminal law; I probably would have been disbarred for malpractice for giving advice like that.

Walter wrote often during those nine years. We corresponded on a variety of subjects. Never death.

The last night of Walter's life was the first time we talked about death. We spent two and a half hours talking, praying, laughing, and crying. And asking for forgiveness. He, for killing Daniel Liepold, the 18-year-old convenience store clerk he shot in the head. I for not being a better lawyer – for being unable to get him off Death Row.

During the years when I visited, Walter and I talked about much more than his case. We talked about how we both grew up in the same town – San Antonio – just three miles from each other, but worlds apart. Walter was from the city's poor East Side, a neighborhood rife with gangs, drive-by shootings, and drugs. I grew up on the city's wealthy North Side, where the homes were impeccably maintained and the lawns carefully manicured, thanks to the men and women who came from Walter's neighborhood, and worked in our home and our neighbors' as maids and yardmen.

Walter's father was a janitor. Every Saturday morning as a child, Walter accompanied his father to his job at the Menger Hotel. Every Saturday morning, from 1965 through 1969, my sisters and I and our mother went to the Alamo, next door to the Menger, to attend meetings of the Children of the Republic of Texas (descendants of those who fought and died in the Alamo). And very often after the meeting, as a reward for good behavior –

for having suppressed those giggles during our recitation of the Texas Pledge of Allegiance and for nicely belting out the state song, 'Texas, Our Texas' – my mother treated my sisters and me to a Shirley Temple 'cocktail' at the Menger Hotel. Walter was there. And so was I. We must have passed each other in the hallway. We must have looked right at each other.

Several years passed and Mrs. Williams enrolled Walter, her only child, in the Catholic school in her neighborhood – St. Gerard's. Mrs. Cheever enrolled her four daughters and two sons in St. Peter's, a Catholic school just three blocks away from home, in the posh North Side.

The two schools were great rivals on the basketball court. My twin sister and I were cheerleaders for the St. Peter's Tigers. At St. Gerard games, Walter sat in the stands, rooting for his team. We must have passed each other at the concession stand or in the hallway of the gymnasium when the Tigers played the Baby Royals of St. Gerard's. We must have looked right at each other.

Like Sally Cheever, Melba Williams sent Walter to St. Gerard's because she wanted him to be under the watchful eyes of the nuns – Sisters from the Order of the Incarnate Word. Unlike the North Side, Mrs. Williams knew the streets of the East Side were deadly. She wouldn't know how deadly until October 5, 1994. Like my mom, Mrs. Williams wanted Walter to learn more than reading, writing, and arithmetic. Both women wanted their children to learn about God and His teachings; about morals and values and the Ten Commandments.

While in law school, I still maintained my junior membership at the San Antonio Country Club, a private and exclusive club, where my sisters, brothers, and I spent many hours in our youth – swimming, sunbathing, playing tennis and golf. I also worked there as a lifeguard and swimming instructor. But in the summers during college, I worked at the *Light* newspaper. And from that summer on, I never felt comfortable at the club.

Perhaps it was because as newspaper reporter – on general assignment, sent to the 'cop shop' or the courthouse – I saw real life outside the vine-covered walls of the clubhouse. I wrote

about burglaries and robberies and the occasional story about some tourist who was stabbed on the Riverwalk. I sat through the seemingly never-ending Thursday 'Citizen' nights at the San Antonio City Council meetings when lines of angry residents would air a myriad of complaints about San Antonio's poor drainage system, or the inadequate transit authority, or the water quality and the hot-button issue of big-name developers versus the destruction of San Antonio's primary water source, the Edwards Aquifer. Those developers were our neighbors. They were club members. Could they really be as sinister as the activists portrayed them to be?

Maybe I was just uneasy because of the blatant discrimination. The SACC was a 'whites-only' club and one that generally excluded Jews. I don't remember San Antonio being like any typical 'Southern' town back in the 1950s and 1960s. The population was predominantly Hispanic, with only a handful of blacks. I don't ever remember seeing 'whites-only' water fountains, restrooms, or lunch counters back then. But we didn't mix once we drove through the club gates. I wasn't comfortable with the country club scene. And neither were my parents. My father grew up on military bases – where men were segregated by the number of stripes on their sleeves or the stars on their hats. A military wife did not initiate a conversation with the wife of a higher-ranking officer; she did not speak until spoken to.

My mother was not a lady who lunches. She didn't play bridge, thought golf was too slow, and picked up a tennis racket occasionally only because it was 'a good cardiovascular exercise.' She'd prefer to spend her time with the Girl Scouts or rummage through someone's 'trash' working on her 'estate' sale business or to spend the lunch hour as a volunteer at St. Peter's where, in an assembly-line fashion, she'd slap a slice of tasteless pizza, that the government supplied free of charge, on the brown plastic cafeteria trays. Mom was paid handsomely for her volunteer lunch work – every Friday she brought home the pizza.

Perhaps we joined the country club because it was the 'correct' business decision; it probably 'wouldn't look good' if my father, a community leader and prominent banker who both loaned and

protected these club members' money, wasn't a member himself. He grew up going to the officers' clubs on several military bases. Weren't all clubs alike?

Like many, this one was steeped in Southern tradition. The men had their own 'grill' room: No ladies allowed. There wasn't a reciprocal deal for women. Female golfers were barred from teeing up on weekend mornings and were allowed to play only under the hot afternoon sun, to give those 'hard-working' club men the first opportunity to play 18 or 36 holes without being unduly delayed by any female foursomes up ahead.

The dress code was strictly enforced. Men and boys had to wear a coat and tie in the main dining room and women were required to wear dresses or skirts.

And, all the waiters were men. Black men. And, as I recall, they were required to wear white gloves with those crisp, starch-filled uniforms that seemed so uncomfortable, especially in the brutal Texas heat.

One of those white-gloved young men who cleared the tables in that stuffy dining room had been that little boy I had seen on Saturday mornings years ago, working at that downtown hotel dutifully helping his father with the push broom. Over the years, that little boy grew up and now he was a young black man, dressed in that scratchy, starched, white uniform. In 1981, Walter Key Williams was a busboy at the San Antonio Country Club and I was a club member.

The next time Walter and I would meet, officially, would be four years later, in 1985. This time we didn't pass each other in the hallway at the Menger Hotel; he with a broom, I with a soda pop. We didn't pass by each other on the basketball court. This time I didn't glance up from the dining room table at the club while my water glass was being poured and quickly look away. This time we looked directly at each other. We stared through the cold, gray prison bars of Death Row, the unit known as Estelle I. This time, for the first time, we spoke.

I was the lawyer and Walter Williams was my client. And we were both scared.

In our last hours together, we talked a lot about Walter's troubled childhood. I had a list of 'What ifs' on my mind.

What if Walter had better lawyers? What if those character witnesses Hirschhorn and I found for his evidentiary hearing had testified at his original sentencing trial?

My list of 'what ifs' was endless. What if Walter had never found out, at the difficult age of 14, that he was adopted? That troubling revelation came as the result of a conversation Walter had with his cousins at a family reunion. Walter learned he was the product of an extra-marital affair. His father's wife, Melba, who was unable to have children, showed up at the hospital two days after Walter was born and took him home.

Both Walter's parents were alcoholics; Melba was a battered wife. Upon learning the news of his unique 'adoption,' Walter rebelled against his mother. That is when he started drinking, using drugs, and hanging out with gangs.

I often wondered what would have happened had Walter been surrounded by siblings growing up, like I had been with three sisters and two brothers. He might never have felt alone. He might never have joined a gang for companionship.

There were more what ifs. What if his parents had the kind of money mine did? Walter and his parents, like more than 90 percent of defendants charged with capital crimes, were too poor to hire an experienced criminal defense attorney to represent them. At trial he had to rely on an underpaid court-appointed lawyer. Until recently, defense attorneys in three Southern states, Alabama, Louisiana, and Mississippi, were paid a flat fee of \$1,000 for death penalty cases – which translates into \$5 an hour.⁴

The death penalty punishes the poor. As Justice William O. Douglas wrote in *Furman*: 'One searches our chronicles in vain for the execution of any member of the affluent strata in this society.'

What if Walter had been white? There are 1,411 black men on Death Row – just over 42 percent of the Death Row population, even though black males represent only seven percent of the population in the U.S.⁵

A report by Amnesty International USA in 2004 found that murderers of whites are about six times more likely to be executed than those murderers of blacks, although about equal numbers of blacks and whites are homicide victims. Nationally, the majority of the 4,220 prisoners executed in the U.S. between 1930 and 1996 were black.⁶

Would a 'white' Walter have gotten the death penalty?

But in the hours before he was to be put to death, Walter and I didn't talk about the what ifs. We spent some of the time silently standing side by side, separated by the cold gray steel bars, quiet in our own thoughts.

Walter was a light-skinned black, of slight build, about 5'6". When he first came to Death Row, he sported an Afro haircut. Tonight, his hair was very short, almost like a military cut. He looked the same as he did the day we met. He hardly aged, yet throughout the years I did notice that his skin had changed color. It was almost as gray as the steel bars that caged him. Over the years, the circles under his eyes grew darker. But then here, on Death Row, sleep must have been almost impossible. His skin was in need of sun. Even in the Texas heat, sunlight is a rare commodity here on Death Row. Residents are entitled to only one hour of fresh air and sunshine a week.

Walter's life stood still during those nine years. But not mine. I had a successful career; I got married and had two children. Unlike Walter, I had aged. Flecks of gray now lightened my once dark-brown hair.

Stress was my partner during those years – financial, marital, and child rearing. I had a long commute into the city each day and what seemed like a longer one at night. Writing and editing deadlines were never-ending. And then I lived with the unrelenting pressure of having a client on Death Row. My life was planned around execution dates. In October 1991, I was home on maternity leave, awaiting the birth of my daughter. And while most soon-to-be mothers used the time to decorate the nursery, shop for baby clothes, or finish up writing baby shower thank you notes, I sat hunched in front of my computer for hours on end,

with photocopies of recent court opinions scattered on the floor, dashing off yet another endless brief and motion to delay the execution scheduled in three weeks.

Wednesday nights were especially memorable. I always called Hirschhorn at midnight from the lobby of the Columbia University Law School library on the Upper West Side. I'd go there at 10 p.m., after putting the business section of the *National Law Journal* to bed. On Wednesdays, I stayed in New York City at my sister's apartment because of the late deadline at work and the deadline that was always looming over me with Walter's appeal.

After finding the federal court ruling I just knew would reverse Walter's conviction, I'd wake up my co-counsel. His answer was either: 'Joan, wrong circuit. We're in the Fifth, not the Eleventh,' or 'You've got to distinguish that case from the one they've used,' or 'have you forgotten what state we're in? The Killing Fields of Texas.' He would end the conversation quickly with 'It's late. Call me tomorrow. *In the office.*'

We were able to stop four execution dates and I felt as though I could have lived with that stress of having a client on Death Row forever if it meant I could put off tonight – to postpone forever this appointment in the Death House.

As we stood next to each other, Walter and I watched the hustle and bustle of the prison guards. A card table was set up, just a few feet from Walter's cell, laden with homemade cookies, pies, and cakes. There was an urn for coffee and a pitcher of ice-cold fruit punch.

'Party food,' Walter whispered to me through the bars of the Death House cell. It was a party – to celebrate the state's victory – and we were not invited. No one offered us any food or drink and neither Walter, the evening's 'guest of honor,' nor myself dared ask.

That night, countless numbers of people walked through the first set of steel doors that led from the warden's office to the holding cell. We looked up and both glanced at the second set of doors. Those led to the chamber of death where, we both knew, the inevitable would happen in just a few hours.

Walter would walk through those doors shortly before midnight and the execution team would help him get on the gurney. He would then lay down onto the 'cross-like' table and extend his arms. The team – four guards who had been specially trained for the task – would pick up the wide white leather belts and strap him onto the table. The leather belts would hold his arms, feet, and upper and lower torso in place. He would be unable to move. A medical technician would then insert a needle into a vein in his left arm. The needle would be attached to a tube and the tube would lead to an opening behind a black partition. Soon, the execution would begin.

I hadn't planned on being here tonight. But when I visited Walter at the Ellis Unit earlier that day, shortly before he was moved to the Death House, I asked him one question that would change my life forever.

In the visiting room at Ellis, I looked right at him through the screen mesh that separated us and asked what family members would be there with him tonight as he faced the executioner. Both his parents were dead. Aunt Honey had died in 1992; his uncle, 'Wax,' was too ill to travel.

'No one,' he said, trembling, his eyes darting around the small cubicle.

'Do you want me to be there?' I asked, not really sure that I wanted to hear his answer.

'Would you? *Could* you? I didn't want to ask you,' he said, his eyes fixed on mine.

'I will if you want me to.'

'Yes, I do. I'm really scared, Joan. I'd feel a lot better if you were there.'

With that, I raced out of the visiting room to call a lawyer friend who had offered to contact the governor's office. I returned for a note from Walter to the warden asking that I be put on the list of witnesses.

The governor's office had no objection; neither did the Office of the Attorney General, my adversary for nine years. The warden's office was not so generous. Both the wardens at Ellis I and the

warden at the Walls Unit, where the execution would take place, turned down Walter's request. My personal appeal to the head of the entire prison system, Texas Department of Corrections director Wayne Scott, fell on deaf ears.

'Rules are rules, Miss Cheever,' Mr. Scott said. 'You were supposed to be on that list 14 days ago. What if I let everyone, at the last minute, show up for an execution? It'd be absolute bedlam. That's why we have rules. And you and Mr. Williams didn't comply.'

'Yes, I know that. But Walter did not know I would be here. And no one from his family will be there for him tonight. You can't let him die alone, sir. Please.'

I had tried to adhere to the 14-day rule. In early September, I had written Walter a letter about our last appeal to the U.S. Supreme Court, but I received no reply. A week before his execution, I made three telephone calls to him on Death Row, but they went unanswered. Walter told me he had never received those telephone messages until the day before his execution. He also thought we'd deserted him because Hirschhorn and I sent Walter's file and our nine years of work to an out-of-state death penalty resource center for an independent evaluation as to whether we had been ineffective in our representation. In a letter to Walter, Hirschhorn wrote: 'Joan and I are not abandoning you but we feel that another pair of eyes are needed,' to see if we had committed malpractice.

The lack of communication and hurt feelings were the reasons I wasn't on Walter's witness list.

But TDC Director Scott responded to my pleas with a barrage of what, I thought, were terribly inappropriate questions. 'What do you do for a living if you don't practice law? Where is Mr. Hirschhorn, your co-counsel? And why isn't he here? You're from New York City? How do I even know you are a real lawyer?'

His purpose was clear – to get me to surrender. But our 25-minute conversation succeeded only to provoke a silent rage. I was determined that Walter would have one final victory at the end of a 13-year-ordeal marked by five execution dates, but only four successful stays.

Before I called Director Scott, I placed a call to a federal judge in Huntsville and let him know that I might have to knock on his door late tonight with a temporary restraining order in hand, asking to be allowed to witness an execution. I asked if there might not be some way to resolve the issue without litigation.

'I don't know Mr. Scott,' the judge said, never hinting at how he might rule. 'I don't know what to tell you, but I'll be here at home tonight if you decide this is what you want to do.'

I hung up and took a deep breath and called Mr. Scott. I let him know that I was prepared to delay 'his perfectly scheduled execution' – by filing a temporary restraining order with the judge with whom I just spoke.

Scott was livid. 'Wait a minute, Miss Cheever. Are you threatening to sue me? You are *threatening* me?'

'Oh, no, sir. I am *informing* you that I will sue you tonight at 10 p.m. so that my client doesn't have to die alone.'

There was silence on the other line. I knew then that I'd probably pushed too far. But there was no going back.

Finally, he spoke. 'Well, I've decided to give you 90 minutes with your client tonight. I never do that for anyone. Real lawyers compromise, Miss Cheever, and if I were you, I'd take the 90 minutes,' he said. 'I suggest you get over to the prison right now. Your time is running.'

The 90 minutes turned into two and a half hours, simply because no one tapped me on the shoulder and asked me to leave. We spent those hours talking like old friends. We laughed, we cried and at times we just fell silent. Occasionally, we both looked at the door that stood only 10 feet away – the one to the Death House.

And then we talked about a subject that was never taught in law school. Earlier that day in Houston, before my one-hour trek to Death Row, I made a last-minute telephone call to Sister Helen Prejean, the spiritual adviser to inmates on Death Row in Louisiana. She was not at home and her answering machine recorded my frantic plea for help.

'Hi, Sister Helen. My name is Joan Cheever and I have a client on Death Row in Texas. And he's going to be executed tonight.'

And I don't have a clue as to what to say to him. And I was hoping you could help me out. Or give me some advice. I'll be at this number for the next couple of hours.'

I think I knew what to say. At the airport, I walked into the bookstore there looking for a trashy, 'beach' read. Instead, a book with cherubic angels on its gold cover jumped out: Sophy Burnham's *Book of Angels*.⁷

Tonight I was prepared to talk to Walter about life, death and the afterlife. I told him I didn't understand why, but that I knew it had to be part of God's plan. If he asked for forgiveness, he would be forgiven.

We both began to cry. I reached into the cell and held his hands. And then we both prayed. I hoped that I would find the strength to get through tonight.

That afternoon, as I tried to prepare myself for the impending execution, I remembered feeling how this execution could have been avoided – if someone had just knocked some sense into the then-cocky 19-year-old who was strung out on drugs and alcohol.

His co-defendant, Theodore Edwards, who the evidence showed was the mastermind behind the murder, took the plea bargain. He was released after nine years.

But Walter didn't.

Even the prosecutors didn't think the evidence justified a death sentence in this case. That's why they were pushing so hard for Walter to take the plea. Despite the fact that he confessed to the murder on three separate occasions, and all three confessions were going to be admitted at his trial, the just turned 19-year-old heard what he wanted to hear. His lawyer told Walter he could 'beat it.' So, why not go for it?

It was a suicidal move. Walter didn't take the plea and now they were going to take his life.

If Walter had played the system, he would have been a free man tonight, he would have been outside of prison, on parole, and free – probably eating dinner with friends at a fast-food restaurant like McDonald's, but far away from Texas' Death

Row. Instead, his last meal ordered by the warden, a double cheeseburger with fries, sat untouched on the aluminum tray outside his cell at the Death House while prison officials were in the next room preparing the vials of poison that would kill him.

My time was up. As I left the Death House, the warden at the Walls Unit stopped me to say that Mr. Scott had reconsidered. I would be allowed in.

I asked him if Walter had been told. He said he was on his way to break the news, but that I needed to sign some papers in his office. I didn't feel triumphant. Now I was scared silly. I knew that this was real. Walter's execution was proceeding exactly on schedule.

As we walked back to his office, the warden told me the rules: be back and standing outside the Walls Unit, also known as the Death House, at 11:45 p.m., carrying nothing but a driver's license and my Texas Bar card.

He kept talking as we walked into his office. Nervous chatter. I don't even remember much of what he said. I was struck by the table in his office that was crammed with pastries, cookies, coffee thermoses, and a bowl filled with punch. He then asked me to fill out some paperwork in order to take custody of Walter's personal belongings once the execution was over. I tried to concentrate on the task at hand – reading what I was about to sign when I was interrupted. In a patronizing tone, this middle-aged corrections official told me that he'd never, ever allow his wife or daughter to witness an execution, a not so subtle insinuation that I was either fatherless or husbandless, or that both men had beans for brains.

Quietly seething, I politely thanked him for his 'concern,' emphasizing the word 'concern,' and told him I'd be back at the appointed hour. Shortly before midnight, I returned to his office. This time I was in the front of the line, leading a group of my colleagues, journalists who had the misfortune of getting this grim assignment. Only this time, I didn't have a reporter's notebook in my hand. I was carrying my identification, stuffed in a packet of Kleenex.

My thoughts turned to a conversation I had with my mother on the pay phone outside McDonald's, only an hour earlier.

In the first 30 seconds of the call, my mother proceeded to tell me that she knew tonight was 'the night' because she had heard the news about Walter's execution broadcast all day long on her 'Number One' radio station – the same one that hosts two of her favorite conservative radio personalities, Paul Harvey and Rush Limbaugh. After the first broadcast, my mother decided to go to two Masses that day, instead of her usual one, the 8 a.m. at St. Peter's. She wanted to pray for Walter. And for me.

She kept talking and talking. I still hadn't gotten a word in edgewise. She asked about the health of my two-year-old daughter and my newborn son. A week earlier in Connecticut, I had rushed my daughter to the emergency room in the middle of the night because she had difficulty breathing – an undiagnosed case of asthma. I was scared but I felt safe. After all, I was in a hospital, surrounded by medical professionals whose job it was to help my daughter breathe. Never did I anticipate that in a few short minutes, I would, once again, be watching someone else's child struggle to breathe. He, too, would be surrounded by medical professionals. But their job was different. They were not paid to heal, but to kill. Soon, Walter's struggle for air would be over, forever, within minutes.

'The kids are fine, Mom. I haven't seen them in a couple of days though. They're at home. I'm down here.'

'What do you mean, *here*? Where in the Sam Hill are you at this hour, for Lordy's sake?' she barked into the phone.

'Where else? Huntsville. Don't give me a lecture. Please. He asked me to be here. He doesn't want to die alone,' I whispered into the pay phone, as travelers passed me, carrying bags stuffed with quarter-pounders and fries. Again, I started to cry.

'Oh, good God. I really wish you weren't there. Damnit to hell. Okay. I'll just stay up and say some more rosaries for the both of you. Listen, sister,' she said, emphasizing the sister, 'just get home.' And then she hung up.

For nine years, across the dining room table, when the dinner conversation turned to the issue of crime in America, invariably

the ‘great death penalty debate’ began. Despite her deep and devout religious conviction, this mother of six, who grew up on a ranch in West Texas and proudly displays on her refrigerator door a photo of herself with President George Bush Sr., is a staunch supporter of capital punishment.

And like most Texans, Sally Cheever is a talker. And a good debater. During our arguments, Mom would always quote the Bible – the Old Testament.

Like many Catholics my age, I didn’t grow up reading the Bible. We had the Baltimore Catechism and that was it. But I’d memorized the Ten Commandments and reminded her of Number Five – ‘Thou Shalt Not Kill.’ I also pointed out to her that she was quoting the Old Testament, not the New, and that she needed to ‘get with the Pope’s program’ of abolition.

But before the discussion ever escalated into a war of words my father, the negotiator and peacemaker, surfaced. He’d jump up at the dinner table or run into the kitchen when he heard the abolitionist battle cry: ‘But, Mom. Killing is wrong. All kinds of killing are just plain wrong.’

My military-trained father issued an order – an immediate cease and desist in the discussion; a white-flag surrender from both sides. There was not going to be a free-spirited debate because he knew we were both passionate on the issue of the death penalty and we would never agree. And on that warm October night in 1994 we were still on opposing sides, but that night we kept our thoughts to ourselves.

When I replayed our conversation earlier that evening, I also thought about another mother, Lila Mae Liepold, whose son’s life had been ended so abruptly and brutally by the man I had represented, counseled, and befriended for the past nine years.

Her son had two days left before leaving his job at the convenience store where he worked as a clerk on the late shift. When Walter and Ted Edwards walked into the Circle K that night and demanded money, Daniel Liepold complied. Walter and Ted killed Daniel before he ever had a chance to open the cash register.

Daniel knew Walter as a friend; he had installed a radio in Walter's car a few months earlier and had sent him a birthday card a few weeks before.

It didn't make any sense.

I've often wondered if Mrs. Liepold was awake that night, waiting for the midnight hour when her son's killer would himself be killed. For her, it had been a 13-year appellate nightmare. I wondered during those years if Mrs. Liepold had ever circled her calendar – marking the five times the state of Texas had scheduled the killer's death – and how she felt when four of those executions were postponed. I had many questions for Mrs. Liepold.

During most of those nine years with Walter, I had been only a journalist and a lawyer. Tonight I had another role, one that was relatively new. I was a mother. And as a mother, for the first time I realized that the large hole in Mrs. Liepold's heart would never, ever heal regardless of what happened in the room where Walter would be strapped down on the gurney. I knew Lila Mae Liepold would carry that searing pain with her for the rest of her life. A day would not go by when she wouldn't think about Daniel, her child, who was brutally murdered by the hands of the man I had been holding tonight as we both prayed to God – he for forgiveness and I for not being able to legally postpone this evening, forever.

My heart was heavy as I left Walter in the cell, next door to the death chamber. I was escorted out by a female guard, about my age. As the guard and I – both mothers, one black, the other white – sat on the bench outside the office waiting to meet with the warden, she asked me about Walter's childhood and his family. She wanted to know where his mother was. I told her that Melba had died several years ago.

She told me she'd be with Walter tonight, standing guard, while he waited for midnight. She was a member of the execution team. She had a job to do, one that she admitted was painful. She said that she'd try to make it as easy as she could for him.

I saw that guard again, shortly before I walked back into the Death House. The newspaper, radio, and television reporters

walked in behind me. That same guard was now assigned to me – for a search. She led me to a small bathroom in the waiting area for a pat-down. She did not speak but her eyes did. This was painful for both of us.

She then introduced me to David, a burly assistant warden who looked like he'd been a linebacker 20 years ago for the Huntsville Hornets, the local high school football team. I was David's charge. He read the list of instructions. He told me what I would see. He forgot to tell me how I would feel.

It won't be bad, he said. It looks like a hospital. Pea-green walls. Very antiseptic-looking.

I had about 30 seconds to talk to Walter and say goodbye, David said. There would be a microphone hanging above my head and one dangling above the gurney where Walter would be lying. And then the press would come in followed by the visiting dignitaries – lawyers from offices of the Governor and Attorney General. Walter would make his last statement. And then 'the procedure,' David said. You mean 'poison?' I interrupted.

'Look, little lady. If you're feeling faint, just fall back and I'll catch ya,' David said. 'Or hold onto that rail in front of the window. It'll be over soon.'

But not soon enough. As I walked through the long corridor, past the holding cell where I'd spent the last hours with Walter, through two steel doors and then outside, I looked down to see a ceramic pot filled with white chrysanthemums. It looked like it was planted just for the festivities.

Another assistant warden joined me in my somber walk to the Death House. 'Whereabouts are ya from?'

I didn't know if he meant where I lived, where I worked or where I was born. Native Texans usually call Texas home even if we haven't lived in the Lone Star State for 20 years. Tonight I hated everything about my home state.

So my reply was quick. 'New York City.'

'Oh, heck. We just had a New Yorker here last month. Fella named Ron Kuby. Snappy dresser, that guy.'

I know that Ron Kuby, a criminal defense attorney who practiced law with the infamous civil rights lawyer William Kunstler, wouldn't want to be known for the Armani suit he may have worn on August 2, 1994, the night he witnessed the execution of his client, Robert Drew.

I looked down at my own outfit. A wrinkled sleeveless white linen shirt and black skirt, both sale items from Ann Taylor. I wondered what they'd say about me next month.

When I walked into the Death House, I was struck by the starkness of the room. There was the gurney and there was Walter, already lying on top of it, bound by those six thick white leather straps. We were separated by only five feet. His head immediately turned to the glass window. He seemed to have been waiting for me. I looked up and the microphone, as promised, was directly above. It seemed to be dangling in mid-air. It was time to say goodbye.

'God bless and Godspeed, Walter. You're almost home,' I said, choking back the tears.

'Thank you, Joan.'

And then the warden asked if Walter had any last words. Dressed in blue pants, a short-sleeved prison shirt, wearing a prayer cap and the new hi-top basketball shoes he had recently purchased at the prison commissary, Walter looked up at the microphone and said he was grateful that he had converted to Islam. And then he asked the family of Daniel Liepold for forgiveness. He closed his eyes and a tear rolled down his right cheek.

There was nothing I could do to stop the machinery of death. I asked God to forgive the executioner and the State of Texas. I prayed that Walter's angels would take him and take him quickly. The room was silent. The only sound was that of the scratching of pens of my fellow journalists as they scribbled in their notebooks.

In the reflection in the glass that separated Walter and me, I watched myself watch the murder. It was eerie. The scene was surreal. I felt as though I was an actor in a bad B-movie.

I was filled with hope that he would go quickly and this nightmare would end.

Silently, I was seething. I saw the murder unfold before my eyes and I felt angry at my own helplessness. I stood on the front row and steadied myself by hanging onto the metal railing in front. As I watched, I wanted to scream, to slam my hands on the Plexiglas that separated us. To do anything I could to stop what was happening. But I knew that I couldn't. Instead, I just kept my eyes on Walter, never imagining that those few minutes would burn in my memory for a lifetime. At that moment, I knew that I would never be the same.

I watched as Walter, struggling to breathe, took one last gasp of air. Then his eyes opened. At 12:21 a.m., six minutes after the poison began to flow, Walter was dead.

David, my escort, put his hand on the small of my back and gently pushed me to the exit. But I wouldn't move. I turned around and held onto the rail with one hand and pointed my finger at David with the other. 'I want his eyes closed. Make sure they close his eyes. Get Chaplain Pickett to do it. But please do it. Please close them.'

David assured me it would be 'taken care of.'

I wanted Walter to be remembered by his few relatives and friends, who would bury him in two days, as dying peacefully in his sleep. It was certainly less bloody than the murder of Daniel Liepold, who was shot in the back of the head and died instantly. But Walter's death was painful, both physically and mentally. As the poison ran through his veins, I watched him suffocate; I saw as he tried, desperately, to hold onto one last breath. And then it was over. He just stopped breathing. The mental pain must have been almost unbearable for Walter as he sat on Death Row for 13 years, with five execution dates, waiting to die.

Nine minutes after I walked out of the Death House on that warm still morning, the belongings Walter had accumulated during his years on Death Row were out on the sidewalk, packed in orange nylon-mesh duffel bags. The guards, who moments earlier stood behind me, carefully watching my movements,

helped lift the six heavy bags of Walter's books, letters, and photographs into my rental car. His body was sent to a funeral home in nearby Brenham for burial in a family plot.

It was 1:45 a.m. by the time I got back to Houston. Two attorneys from the Texas Resource Center drove me to my 'hotel' – not the small room at the La Quinta motel where I'd spent two previous, sleepless nights, but at the home of Virginia and Lee, a childhood friend. Another lawyer drove my car back to his office.

I left my luggage and Walter's bags in my trunk with some hesitation. I had hoped it wouldn't be vandalized. But I didn't think it was proper etiquette, especially at 2 a.m., to lug Walter's personal belongings, stuffed in those six Day-Glo orange bags clearly stamped: 'Texas Department of Corrections,' into the posh River Oaks home where I was staying. My host had two small children, the same age as mine.

River Oaks is a neighborhood filled with wealthy businessmen – oil tycoons, investment bankers, doctors, and lawyers – whose wives, usually 'stay at home' moms, fill their day with volunteer work. The price for homes here in this rich, upscale neighborhood start in the high six digits, and property taxes are hefty. The residents of River Oaks pay plenty for extra police protection.

When the sun rose, my friend, Lee, headed downtown to make some more investment deals; I drove an hour to visit 'Reverend Sarah,' a United Methodist Church minister and Walter's spiritual advisor, to drop off his personal belongings. On the way back from her house, I stopped at a pay phone outside a convenience store and ordered flowers for Walter's casket. The funeral was scheduled for the next afternoon. My flight was leaving tonight. And my five-year wedding anniversary was tomorrow.

I was on my way home and Walter was, too. His remains were in a body bag. By now he would have already arrived at the funeral home in Brenham, the small East Texas town famous for its 'Blue Bell' ice cream, where Walter spent his summers.

On October 5, 1994, Walter Williams, aged 32, was the 11th inmate that year to be put to death in Texas – a state that

executes about one man a month. In the next two and a half months, there would be three more executions in Texas. And the numbers have increased dramatically.

Nationally, Walter was the 82nd to be put to death since 1982, when the Lone Star state resumed executions. Since 1976, when states began executing inmates once again, there have been more than 1,000 executions in the United States; 359 from Texas alone.⁸

I often wondered, during those nine years as Walter's lawyer and friend, what he would do when he was let out. If he was given a second chance at life, how would he spend it?

I asked him that question the night he died. He told me that if he had been paroled, he would've liked to work with inner-city kids like himself. He would've warned them of the dangers of the street and tried to help them stay off of drugs, away from alcohol and to steer clear of gangs.

Of course, Walter never had that second chance.

But there were 587 men and 2 women who did when the U.S. Supreme Court abolished the death penalty in 1972, changing all death sentences to life terms. If I found this group of former Death Row inmates, I knew they would be able to answer the question that has haunted me: What do convicted killers do with their second chance at life? Do they kill again?

In the early morning hours on October 5, 1994, my search began.