

# texas after violence project

April 26, 2022

Dr. Morris Tidball-Binz  
Special Rapporteur on extrajudicial, summary or arbitrary executions  
United Nations Human Rights Council  
Palais Wilson 52, rue des Pâquis, CH-1201  
Geneva, Switzerland

Dear Dr. Tidball-Binz,

The Texas After Violence Project (TAVP; <https://texasafterviolence.org/>) welcomes this opportunity to respond to your “call for input on the imposition of the death penalty and its impact.” TAVP is a U.S. 501(c)(3) nonprofit non-governmental organization located in Austin, Texas, dedicated to the receiving, preserving, and sharing of personal experiences of persons harmed by violence in the Texas criminal justice system. The core of TAVP’s work is an archive of video-based oral history interviews. Some are available at the TAVP website. Many also are archived and made available by our partner, the University of Texas Human Rights Documentation Initiative (<https://hrdi.lib.utexas.edu/hrdi/tavp/>).

The goal of TAVP’s process is to help Texans see the consequences of our state violence on the lives of all who are most directly in touch with it—in other words, not just the prisoners, but also defense lawyers, chaplains, prosecutors, judges, jurors, police, murder victim survivors, prisoners’ family members, guards, executioners—everyone in our “trauma-organized system” of punishment. Our hope is that this process of revealing stories will help foster dialogue between Texans on all sides of the punishment debate about the human needs involved in criminal justice and the actual consequences of our punishment systems to public health.

Two of the authors of this response (Sheffer, Long) participated through the Quaker United Nations Office in the preparatory work for the presentations made to the U.N. Committee for Human Rights on the human rights of children of parents sentenced to the death penalty on September 11, 2013. They also contributed chapters to the extraordinary book, *Death Penalty and The Victims*, published by the Office of the High Commissioner for Human Rights in 2016. <https://www.ohchr.org/sites/default/files/newyork/Documents/Death-Penalty-and-the-Victims-WEB.PDF>

We consider Death Penalty and the Victims an unprecedented resource for the study of all categories of individuals harmed by the death penalty and, along with all of the resources in the book's notes, a substantial response to the questions posed by your instant inquiry.

We now offer some brief answers to some of the questions you have posed, mainly referencing recent developments.

## **1. Individuals sentenced to death.**

The Death Penalty Information Center reports that 18 persons were sentenced to death in the United States in 2021. There were 11 executions in 2021, by the federal government and five states (Texas, Oklahoma, Alabama, Mississippi, Missouri). At the end of 2021, there were 2474 individuals on U.S. death rows awaiting execution.

<https://deathpenaltyinfo.org/facts-and-research/dpic-reports/dpic-year-end-reports/the-death-penalty-in-2021-year-end-report>

The average amount of years spent by individuals on death row in the US has generally trended up each year. For those executed in 2018, average time was 243 months. For those executed in 2019, average time was 264 months. DPIC, Time on Death Row.

<https://deathpenaltyinfo.org/death-row/death-row-time-on-death-row>

## **2. Procedures and conditions of detention.**

The “finality” requirement of US statutes on federal and state levels---that death penalty appellate processes must come to a strict end---conflicts, fatally, with due process and substantive constitutional protections, constantly risking the execution of factually innocent prisoners. A 2021 study has found that, in the modern era of the death penalty in the United States, 228 prisoners have been executed who, if they were to raise their claims today, would be granted relief from execution. Texas alone accounts for nearly half of those cases. The study found that in “Texas, at least 108 people were executed after the Supreme Court had already established the relevant basis for relief. . . . At least when it comes to the death penalty, the lower courts seem especially unwilling to follow Supreme Court doctrine that would save a person from execution. The result is a system that routinely kills people even when they are right.” Joseph Margulies, John Blume, and Sheri Johnson, *Dead Right: A Cautionary Capital Punishment Tale*, *Columbia Human Rights Law Review* 53(1), Fall 2021.

<https://hrlr.law.columbia.edu/hrlr/dead-right-a-cautionary-capital-punishment-tale/>

Perhaps the most important development in 2021 (and 2022) relative to execution conditions is the United States Supreme Court's recognition of the free exercise of religion rights of a Texas prisoner to have a spiritual counselor of his choice in the execution chamber with him who is allowed to touch him and vocalize prayer while guards carry out the lethal injection. *Ramirez v. Texas*, 595 US \_\_ (March 24, 2022).

A 2021 study examined the blog entries of seventeen death row inmates from three states, Texas, Florida, and California, to analyze how “policies and procedures within legal and correctional environments affect the mental health and emotional stability of inmates living on death row.” The study makes significant findings, well-sourced with corroborating studies, about the effects of stays of execution, solitary confinement, the period referred to as “death watch,” and botched executions on the mental health of prisoners. Robert Johnson and Jacqueline Lantsman, *Death Row Narratives: A Qualitative Analysis of Mental Health Issues Found in Death Row Inmate Blog Entries*, *The Prison Journal*, Vol. 101(2), pp. 147-165 (2021).

A slightly older, but important study of conditions on Texas’ death row was conducted by the University of Texas Law School Human Rights Clinic, leading to the 2017 report, *Designed to Break You: Human Rights Violations on Texas’ Death Row*. The report focused on Texas’s use of solitary confinement on death row and concluded, “The right to be free from torture is an absolute human right, and it is submitted that the current conditions of confinement on Texas’ death row, including mandatory indefinite isolation, amount to a severe and relentless act of torture which cannot be permitted in the international community.” (46)

<https://law.utexas.edu/wp-content/uploads/sites/11/2017/04/2017-HRC-DesignedToBreakYou-Report.pdf>

In 2021, commenting on the Texas case of Carl Wayne Buntion, Justice Steven Breyer reiterated his position that prolonged imprisonment on death row awaiting execution should be found to violate the US Constitution. Buntion, the oldest prisoner on Texas’ death row and frail, in failing health, had been on death row for 30 years, 20 of them in solitary confinement. Breyer observed that he continued to believe that “excessive delay undermines the death penalty’s penological rationale” and is “in and of itself . . . especially cruel because it ‘subjects death row inmates to decades of especially severe, dehumanizing conditions of confinement.’” *Buntion v. Lumpkin*, 595 U.S. \_\_\_\_ (Oct. 4, 2021). Texas executed Buntion, aged 78, on April 21, 2022.

The work of John Bessler on torture and the U.S. death penalty should be noticed. To our knowledge, more than any other legal expert, Prof. Bessler has tied together astute international and constitutional law examinations of torture with the traumatic impact of our practice of the death penalty, its detrimental consequences to prisoners and public health. See: John Bessler, *Taking Psychological Torture Seriously: The Torturous Nature of Credible Death Threats and the Collateral Consequences for Capital Punishment*, 11 *Northeastern University Law Review* 1 (2019); John Bessler, *Torture and Trauma: Why the Death Penalty is Wrong and Should Be Strictly Prohibited by American and International Law*, 58 *Washburn Law Journal* 1 (2019).

### **3. Family Members.**

The Victim Services Division of the Texas Department of Criminal Justice (TDCJ) provides comprehensive assistance, before, during and after executions, to family members of the crime victim. [https://www.tdcj.texas.gov/divisions/vs/viewing\\_executions.html](https://www.tdcj.texas.gov/divisions/vs/viewing_executions.html)

In contrast to the wrap-around care given victim's families, TDCJ provides no accompaniment to prisoners' families and does not officially recognize their needs. From trial to execution, sometimes across decades, family members are denied physical contact with their condemned loved one. On the day of execution, family members are allowed a morning visit with the prisoner, crowded together in a small room separated from the prisoner by a thick glass window. Later in the day, family members again are allowed to view their loved one from a small room while the execution occurs. Family members deemed disruptive during the execution may be arrested. They may finally be reunited with the prisoner's body at the morgue. See: <https://www.chron.com/news/houston-texas/article/70-year-old-Waco-man-convicted-of-killing-in-laws-13651813.php>

In 2019, Texas After Violence Project (TAVP) released a report (accessible here: [https://texasafterviolence.org/wp-content/uploads/2021/02/TAVP\\_Report.pdf](https://texasafterviolence.org/wp-content/uploads/2021/02/TAVP_Report.pdf)) summarizing the attention that the traumatic experience of family members of individuals who have been sentenced to death or executed has received over the years in scholarly and other contexts. The report presented findings from TAVP's interviews with such family members in Texas, with a particular focus on their experience with mental health services and barriers to accessing those services. Following the report's release, TAVP launched an Access to Treatment Initiative to educate and train mental health professionals about the needs of this population. See: <https://texasafterviolence.org/portfolio/access-to-treatment/>

During its pilot year, 2021-2022, the Access to Treatment Initiative designed and provided an introductory presentation and in-depth training series to four groups of mental health professionals in Texas and other retentionist states in the US, and more training series are scheduled for the coming year. As part of this initiative, TAVP collaborated with the US National Child Traumatic Stress Network (NCTSN) to develop and publicize a resource titled "Children Who Are Impacted by a Family Member's Death Sentence or Execution: Information for Mental Health Professionals." See: <https://www.nctsn.org/resources/children-who-are-impacted-by-a-family-members-death-sentence-or-execution-for-mh-professionals>

#### **4. Other Individuals.**

The spate of federal executions in the United States at the end of 2020 and beginning of 2021 shocked federal public defenders and others for their audacity, being carried out in the midst of a pandemic, requiring attorneys to risk their lives and health to defend their clients, and for unprecedented, dismissive treatment given the cases by the U.S. Supreme Court. Steps that already were being taken within the growing federal public defender capital habeas unit system to address the mental health self-care of attorneys have accelerated following the damage done to attorney health and morale by the Trump administration's aggressive killing. As far as we know, the most in depth look into the traumatic effects of death penalty habeas work on U.S. defense attorneys remains *Fighting For Their Lives: Inside the Experience of Capital Defense Attorneys* by Susannah Sheffer, published by Vanderbilt University Press in 2013. The book gave twenty

seasoned attorneys an opportunity to speak openly about their experiences under a guarantee of confidentiality.

<https://www.vanderbiltuniversitypress.com/9780826519115/fighting-for-their-lives/>

A 2021 study explores the trauma suffered by executioners carrying out their work. The study concludes that, despite coping mechanisms set up by the system, officers and others involved in executions are unable “to fully rationalize and diffuse responsibility for their actions, ultimately leading to internal conflict and stress about the death penalty and participation in executions.” Casey Chiappetta and Robert Johnson, “It’s Not Gonna Leave Any Scars”: Trauma and Coping Among Execution Team Members, *The Prison Journal*, Vol. 101(4), pp. 379-397 (2021).

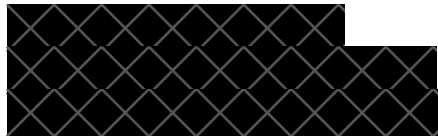
## 8. Additional Input.

An excellent study of the modern history of the Texas death penalty, sensitive to the trauma-informed lens, was published in 2021: *Let the Lord Sort Them: The Rise and Fall of the Death Penalty*, by Maurice Chammah, who reports for the Marshall Project and previously was an interviewer and archivist with TAVP.

<https://www.penguinrandomhouse.com/books/554923/let-the-lord-sort-them-by-maurice-chammah/>

We hope our submission contributes meaningfully to your investigation.

Sincerely,

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