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## REFLECTION ON ANDRUS V. TEXAS

*Terence Andrus\**

The process of appealing my case to the Supreme Court was, for me, part of a “phylogenic” journey. (I like learning new, fancy words.) The evolution is mostly my own. I, Terence Tremaine Andrus, am still here — living, breathing, becoming — in spite of . . . But I am also seeing that American Justice is evolving too.

After yet another denial in state court, the drafting of a cert petition to America’s highest court was not something I felt optimistic about. I was so disheartened about my chances of getting “due process of law.” Even so, as I consulted with my attorney, I maintained a tinge of hope. I had an attorney who saw me, my life’s story, and the legal ramifications of how I had been treated in the trial court as something well worth fighting for. My attorney was really my appendage, who felt for me and how I had been failed by the system. This was a new phenomenon for me.

Since I knew some about the Supreme Court’s process and the odds of having a cert petition granted, my hope began to grow when the case kept getting “relisted” for conferences. Existing in the bowels of death row knowing that the highest court in the land was possibly considering my cause left me pacing miles in my 9’ x 12’ cell, anxiously awaiting a decision. Meanwhile, my neighbors were rooting for me and for what seemed like unprecedented traction — even though many of them had been through disappointing denials from the same court.

After almost a year, finally, I learned that the Supreme Court had breathed life back into my case and my hopes of being understood. I learned the big news from a rapid report on NPR on June 15, 2020, at 2:00 p.m. (I listen to NPR religiously since it is the only news option on my antique AM/FM radio. There are no smartphones, touch tablets, smart speakers, or Alexas on death row — just smartly tuned radios . . .) This news was a welcome break from all the crippling pandemic news. Worry weighs me down a lot because my psyche indulges “what-ifs” thinking about who I know and love that might be getting sick. Even being in a concrete petri dish in the Polunsky Unit, I can’t seem to turn away from the torture of listening to all of the COVID-19 news. But all of a sudden, I perked up. I heard some reporter mention

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\* Terence Andrus grew up in Houston’s Third Ward and Mission Bend neighborhoods and is currently incarcerated on Texas’s death row in the Allan B. Polunsky Unit. He shared this reflection through his attorney, Gretchen Sween, who compiled his written answers to questions from *Harvard Law Review* editors and supplemented them with follow-up discussions between her and Mr. Andrus. The piece has been lightly edited. All alterations were approved by Mr. Andrus before publication. He would like to dedicate the essay to Gretchen Sween because “you don’t know your potential until you have eyes to see it through.”

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the Supreme Court and a death row inmate. I sensed this might be about me because the Court was coming up to its summer recess, and we had not yet heard anything after the storied number of “relists.”

I heard my name in the same sentence with “cert petition granted.” I can’t recall the rest of the report, which may mean I did not hear it over the celebratory yell of “Hello, World!” When I got my bearings enough to actually listen, the reporter had moved on to discussing another case about extending workplace protections to an estimated 1.2 million LGBT Texans.<sup>1</sup> My neighbors were hollering in other cells on my section and even a section over: “T.A., did you hear that?” I felt small, wedged between the COVID report and the ruling on LGBT protections. But I also felt connected to the changes associated with that other case that came out the same day.

Even though I was excited about what had happened to me, I did not consider it a “win.” I feel that word is a misnomer in a court of law. It implies competition, sports, the desire to tally something in a “win” column. I wasn’t left to wonder about the full scope of the decision for long, though. Two guards showed up at my cell and told me that I had an attorney phone call.

With the coronavirus affecting in-person visits (even though we only get to visit behind plexiglass in normal times), I had to march to a cage in the visitation area to use an old rotary-type phone as other handcuffed brothers on the row came and went. On the other end of the phone was my very bubbly attorney. I gave a measured apology that the NPR reporter had spoiled the surprise and gotten the news to me first. She then gave me the full scoop, the potential “next steps,” and a quick rundown of the 6–3 per curiam decision<sup>2</sup> and the dissent from Justice Alito<sup>3</sup> that were in the mail to me already. After the call, I went back to basking in the decision that I hadn’t even read yet and what it might mean for my fellow brothers in the struggle.

It is a coping mechanism with me to “hope for the best, but expect the worst.” I didn’t know what to expect from the Supreme Court, but this result had not been on my mind. I was hoping for a dissent from denial of cert at most. When I intently read the decision a few days later, what stood out was the care taken to map out parts of my life to show the mitigating circumstances that my jury could and should have heard. Until after I was convicted, no attorney was trying to tell or even learn my story. Now that the highest court had paid attention, I went from having no faith in the system to feeling humbled and grateful.

As people learn about my case, I hope they recognize that I am not unique. When I hold up a mirror and reflect on my story, I see so many

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<sup>1</sup> *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020).

<sup>2</sup> *Andrus v. Texas*, 140 S. Ct. 1875 (2020) (per curiam).

<sup>3</sup> *Id.* at 1887 (Alito, J., dissenting).

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eyes looking back at me. I would like people to understand and empathize with the lives that have been shaped by America's history. My life is not only a single instant when two innocent people ended up deceased because I stumbled across their path. My life up to that time, because of the circumstances I'd been dealt, reflected no real guidance.

This lack of guidance continued with my encounters with courts of law imposing Justice for what my life had sown. I was arrested for capital murder and did not even meet an attorney for eight months. Then, when I finally met him, he came to tell me I was going to be "deposed" in a civil lawsuit. He told me to plead the Fifth. Then he informed me that he had recently bought a new red Mustang. Even though I had no idea what to expect, this first meet-and-greet left me feeling incredulous — and hopeless. I did not even know what a civil lawsuit or a deposition was. I did not know why this man had been appointed to my case, but this was not a great beginning. And it only went downhill from there.

When a lawyer appointed in a death penalty case can go for years — all the way to trial — doing absolutely no investigation, no interviews with witnesses, no meaningful interviews with his own client, and get away with it, that is not solely on that one lawyer. That is on the system. Defending people in death penalty cases cannot be just about getting a paycheck. Compassion, mercy, and love for a fellow human being — no matter their mistakes and flaws — has to be part of the lawyers' code of ethics. Empathy requires standing in the soles after a hard walk. Lawyers should honor the law but also trust their humanity.

Slowly, the past that created death row is changing. Death row, a fruit of that old tree, needs to die off too. The death penalty reflects America's history, including the use of chattel slavery. If we reflect honestly on that history, we will comprehend how we are not being proactive about crime and punishment. We are being *reactive*.

The death penalty is still arbitrary and capricious. One of my brothers on the row said as his last words: "Capital punishment is for those without the capital."<sup>4</sup> Those may have been the truest words he ever spoke. Also, the questions jurors are supposed to answer in death penalty cases are flawed. There are too many emotions stirred up in a capital case. There is no way to make "rational" judgments. But jurors in Texas are asked to predict the future and decide whether someone will be a "future danger," and they make that prediction without even consulting a crystal ball. Additionally, the death penalty does not deter. I knew nothing about the death penalty when I was young and stumbling

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<sup>4</sup> A number of opponents of the death penalty have invoked variations of this quote. See David Von Drehle, *The Death of the Death Penalty*, TIME (June 8, 2015), <https://time.com/deathpenalty> [<https://perma.cc/TRU8-YZFL>].

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around. How is something supposed to deter a person who knows nothing about it and is just living hand-to-mouth, reacting from one instant to the next?

I grew up in a household where it was commonplace to accompany my mother to various jails and prison complexes. Every black man that I knew from my neighborhood (except my grandfather) spent some time being incarcerated. From what I could see, all the people who looked like me were the ones who got incarcerated. And as a kid, I just expected that would happen to me one day. I had no classmates who were saying, “I want to be a judge or a lawyer someday.” And if they wanted to join the police, they kept that to themselves. I remember a fourth-grade teacher asking us what we wanted to be when we got older. I said, “A street pharmacist.” She asked what that was. I said, “Someone who sells drugs on the streets.” But I thought this was a legitimate job because when I had asked my mama what she and her boyfriend did for a living, she had told me, “I am a street pharmacist” — and that was why she went from getting prescriptions filled at the pharmacy from the man in a white coat to selling drugs in the street. So, in my fourth-grade mind, I wanted to be like her but wear one of those white coats out in the street.

In my experience, everyone was hustling to survive — and just hoping not to get caught. There were no judges or lawyers in the schools my family members went to. Maybe if there had been, that would have made a difference, inspired me to be something more than a “street pharmacist.” Now I hope to be a living testimony *against* the death penalty.

If I could say anything to the Justices who decided my case, it would first be “thank you.” My petition was one grain of sand on the beach, but six out of nine noticed it. Although these Justices have lifetime appointments, they do not have a lifetime to get it right. They wield the power to make Justice that rises above color, creed, ethnicity, or religion. I would beg them to keep politics out of our courts. I would ask them to interpret the law for righteousness because lives depend on it, and the soul of America depends on it.