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Criminal Justice Issues and Prisoners' Rights

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UPDATE: Solitary Watch Contributor Thomas Whitaker Spared Execution by Last-Minute Commutation

by [Jean Casella and James Ridgeway](#) | February 22, 2018

UPDATE, FEBRUARY 22: *Thomas Whitaker will serve life in prison without parole rather than facing the death penalty for the 2003 murder-for-hire of his mother and brother, in a rare commutation by Texas Governor Greg Abbott. The decision was communicated to Whitaker, his attorneys, and his father the sole survivor of the 2003 attack, who had forgiven his son and led the fight for mercy less than an hour before Whitaker's scheduled execution at 6 pm tonight, after he had been brought to a holding cell adjacent to the death chamber.*

*The governor's decision followed on a nearly unprecedented unanimous recommendation for clemency on Tuesday by the [Texas Board of Pardons and Paroles](#). According to an announcement made by a spokesperson for the Texas Department of Criminal Justice, Whitaker will be removed from death row and transferred to a facility for assessment to determine where in the prison system he will next be sent. It seems likely that this decade in solitary confinement, described in pieces published on this site and in our book, *Hell Is a Very Small Place*, is also at an end.*

The following is what we wrote more than two weeks ago, when Whitaker's chances of a reprieve seemed remote.

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ORIGINAL POST, FEBRUARY 4: *Thomas Bartlett Whitaker is a tremendously gifted writer. His work has been published on Solitary Watch ([here](#) and [here](#)), and was selected for inclusion in our anthology [Hell Is a Very Small Place](#). It has taken top prizes in the PEN Prison Writing Awards for both [fiction](#) and [essay](#). And some 150 pieces of his writing, including 22 chapters of a novel, have appeared on [Minutes Before Six](#), the website he started with the help of volunteers on the outside. Originally intended as a forum for his own work, it has since expanded to include over 100 other incarcerated contributors, and comprises the single best online collection of current prison writing in the world.*

The name of the site, Minutes Before Six, refers to the time at which executions are carried out in the state of Texas. After more than a decade in solitary confinement on death row, Thomas Whitaker is scheduled to be executed at 6 pm on February 22nd. His death warrant has been signed, his appeals are exhausted, and the Supreme Court has declined to review his case. His last remaining hope lies with the Texas Board of Pardons and Paroles, which has the power to recommend that the governor commute his death sentence to life without parole.

The [clemency petition](#) filed on Thomas Whitaker's behalf is remarkable in that its central appeal for mercy comes from the primary victim of his crime. His father, Kent Whitaker, survived the murder-for-hire ordered by Thomas, in which Thomas's mother and his younger brother were killed. Kent Whitaker has forgiven Thomas, visits him in prison, and is begging the state of Texas to spare the life of his only remaining family member. If his pleas are ignored, it will give lie to the claim that the death penalty is meant to provide justice to victims' families, rather than just satisfy a thirst for blood by politicians and the public.

All executions are travesties. But for us, this one is personal. Thomas Whitaker is a Solitary Watch contributor. We have corresponded with him, receiving the letters he neatly types alone in his cell, each one a gem. We, like thousands of others, know him only through his writing. But we see in that writing more than just brilliance, erudition, and style. We see wisdom, compassion, and humanity. We see a man who is much more than his worst act, and still has much more to give to the world.

If you agree, please consider writing a letter in support of the Clemency Petition of Thomas Whitaker, and sending it to: Texas Board of Pardons and Paroles, Clemency Section, 8610 Shoal Creek Boulevard, Austin, TX 78757.

To provide advice on what to say in your letter as well as more evidence of why this life should be saved, we are publishing here an excerpt from a [recent post on Minutes Before Six](#), written by another fine writer, Steven Bartholemew. Incarcerated in the state of Washington, Bartholemew last month wrote this appeal for a friend he has never met. Time is short; please heed his call. Jean Casella and James Ridgeway

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Thomas has been fighting his case for over a decade, seeking post-conviction relief throughout the entire court system. The appellate process is not unlike a demented elevator with no doors to open. You ascend slowly, glacially, from level to level, trundling yourself upward with each denial and appeal, only to find yourself back in the basement. With each ascension you feel the tug of gravity, which you might mistake for hope. Sometimes your gut tells you just before the floor drops; other times it catches you off balance. Thomass case was recently rejected by the second highest court in the land, the US Court of Appeals, Fifth Circuit. Let me state this clearly: we are at the point where clemency is Thomass only hope of not being killed in the next few months. The Governor has already signed the Death Warrant setting Thomas Whitakers execution date for February 22nd. In the State of Texas, a clemency process was instituted decades ago as an ostensible safety valve for an overburdened criminal justice system.

This is Thomass sole remaining chance to avoid death. The clemency process differs from trials and appeals in several important ways. In clemency proceedings, there is no retrying of the evidence, no arguing over technicalities. Rather, the matters presented are those on which the courts have not already ruled. In Thomass case, the petition being considered is simple and straightforward: to commute his sentence from death to life.

In Texas, a death row prisoners petition for clemency is considered by the Board of Pardons and Paroles. As a rule, members do not meet in person to deliberate. Instead, they each render separately a decision based on their own individual criteriathat their personal touchstones for deciding the fate of a human being which they need not disclose, so they do not. By relying on subjective and secret standards, such an opaque process presents an obvious barrier to success: any strategy is guesswork, no more and no less. In the words of U.S. District Judge Sam Sparks, regarding the arbitrariness of the Boards practices, A flip of the coin would be more merciful than these votes. Now you know what Thomas is up against.

The petition is either granted or denied by a majority vote of the Board, which then informs the governors irrevocable decision either to sign off on commutation or allow the execution to proceed. Make no mistake, petitioning for clemency is a long shot. The statistical probability of being granted clemency in Texas is not high. However, Thomass execution becomes a certainty if we do not try.

Thomas s attorney is presently composing a petition that outlines the reasons the Board ought to commute his death sentence. He will not be making a legal argument but rather presenting Thomas as a living human entity to the Board Members, drawing on his personal life and accomplishments to humanize him instead of citing evidence and conclusions of law to try to acquit him. The Board Members will not recommend his petition unless they find a preponderance of clear and cogent reasons to spare his life. They may define their threshold of persuasion in amorphous terms, such as exceptional circumstances, which means literally whatever they choose to recognize it as. Clemency hearings are outside the procedural methodology of the courtroom. Rules of admissibility do not apply, and no one really knows what sways the Board because there is no clemency precedent from which one could make inductions.

Members of the general public may submit written information for the Boards consideration. Here is where we come in, you and I. Its one thing for Board members to have in front of them clerical evidence of Thomas s accomplishmentscopies of his degree, literary awards, and so forth. Its another matter entirely for them to read firsthand accounts of Thomass effect on free-world citizens. Mind you, no one is asking that Thomas Whitaker be released but rather that he simply be allowed to continue breathing.

The District Attorney will be the one and only advocate for the death of Thomas. Throughout his case, the Stateand no one elsehas maintained that justice can only be served by the loss of more life.

The Clemency Board will also consider public sentiment. The Boards only way to gauge the wishes and attitudes of the community is through letters of support written by anyone whose life Thomas has impactedpeople like you, for example, whose knowledge and perception of prison have been vastly enriched by this man. They need to hear from folks like yourself: intelligent, free people who have lived vicariously through Thomass stories, literate citizens who have trusted him for a decade as a patient and honest guide through the experience of death row. You, dear readers, are his community. You may be thinking that you wouldnt know what to say. However, I can assure you that how you express yourself means less than the fact that you are willing to write at all.

To that end, I would present a few suggestions as possible starting points. One of the things I always ask of free people after weve conversed for a time is whether their preconceptions about prison have changed. I cant imagine anyone reading the works of Thomas and not fundamentally altering his or her notions of what prison and prisoners are made of, how death row feels, or what the purpose of the death penalty even isand what that means. Some of you have felt compelled to become involved with social justice after reading his work. Some of you have found here a much-needed comprehension of what your own incarcerated loved ones have endured in silence. Others have become able to view us not as the bogeyman in the cage but rather as human beings who are willing to unpack our own flaws and mistakes, our authentic selves, for you. Some of you have come here as surviving victims, intending to face down the surrogate objects of your fear or loathing, and have instead walked away with the clarity and closure born of understanding. Some of you have been entertained and educated by stories you could not possibly find anywhere else. These things are worth mentioning to the Board. It would be impossible to quantify the value of the work Thomas has tirelessly offered you, holding the fiercest light to the most obscured microcosm of human infliction and deprivation. But a support letter would go a long way towards representing what the experience of [Thomass writing] has meant to you.

After nearly 15 years in prison, my faith in humanity isnt what it once was. But I believe wholeheartedly that you would be willing to take ten minutes out of your cluttered day to write a letter that will increase the likelihood of Thomass life being spared.

I have to believe that you, of all people, realize the import and worth of this particular lifethe effect his writing has had on your understandings of this world and the human condition in general, his potential for a long and productive literary future. I refuse to entertain the notion of an apathetic reader or one too preoccupied to respondnot here, and for mercys sake, not now. Our window of time is too small to admit complacency, procrastination, or inaction.

I imagine that you, our readers, are aligned with the rest of the civilized world outside America in believing the idea of judicial killing is morally bankrupt. I have faith in your moral compass, so I will not preach, dear choir.

Our sensibilities about the ethical status of the death penalty arise from the same aversion to physical violence en masse we feel when considering war. Our state governments have executed one thousand, four hundred, and forty-eight men and women since the resurrection of the death penalty in 1977 a grim doctrine, one carrying the stench of fossilized worldviews derived from pre-civilized mythos. Such barbarism under color of law suffuses most of us with societal shame But we are no more capable of properly thinking about the legally orchestrated killing of one thousand, four hundred, and forty-eight human beings than we are able to say what it feels like to witness three thousand people being crushed and burned alive. We all watched that happen on 9/11, but unless we personally knew someone in one of the World Trade Center towers, what we felt was an abstract sort of dread, something akin to disbelief. To acknowledge this emotional shortcoming is merely to recognize the limits of what the human mind can construct from sensory input The pitiful truth is that we might be incapable of feeling what we must in order to change our own world.

But we are able to meaningfully think about what it means for the State of Texas to snuff out the life of one man: a vibrant person whom we've come to know and esteem highly through his words. Thomas has invited his fellow prisoners onto his site so that we, through our writing, might stand alongside him. He has invited you and me, his fellow human beings, into his inner world so that we might try to think alongside him. I have to believe that we, his community, are capable of feeling what we must in order to change the outcome of the one hearing that could allow Thomas to keep on living, breathing, and writing for us. I can only believe that we are capable of mustering what it takes to extricate ourselves from our daily frittering long enough to act. It isn't too often we are faced with the opportunity to help avert the death of someone who matters to us with our actions. This is our chance to do so.

When I contemplate the reality of Thomas's sentence, how the State of Texas will decide the exact time of his last heartbeat, I feel no small amount of compassion for him as a fellow human being. I feel sadness at the thought of the senseless loss of such a prominent intellect, someone I have grown fond of, and a familiar voice who often says things the way I wish I would have. I feel outrage that the most prosperous and diverse nation on the planet could still be so shamefully backward. I have to admit some selfish interest in this, as well. If there is one thing we all know about Thomas Whitaker, it's that he has more to accomplish, more to teach us, and much more to say. I, for one, really want to know what that is. Don't you?

Please send letters in support of the Clemency Petition of Thomas Whitaker to: Texas Board of Pardons and Paroles, Clemency Section, 8610 Shoal Creek Boulevard, Austin, TX 78757.

James Ridgeway (1936-2021) was the founder and co-director of Solitary Watch. An investigative journalist for over 60 years, he served as Washington Correspondent for the Village Voice and Mother Jones, reporting domestically on subjects ranging from electoral politics to corporate malfeasance to the rise of the racist far-right, and abroad from Central America, Northern Ireland, Eastern Europe, Haiti, and the former Yugoslavia. Earlier, he wrote for The New Republic and Ramparts, and his work appeared in dozens of other publications. He was the co-director of two films and author of 20 books, including a forthcoming posthumous edition of his groundbreaking 1991 work on the far right, *Blood in the Face*. Jean Casella is the director of Solitary Watch. She has also published work in The Guardian, The Nation, and Mother Jones, and is co-editor of the book *Hell Is a Very Small Place: Voices from Solitary Confinement*. She has received a Soros Justice Media Fellowship and an Alicia Patterson Fellowship. She tweets @solitarywatch.

Accurate information and authentic storytelling can serve as powerful antidotes to ignorance and injustice. We have helped generate public awareness, mainstream media attention, and informed policymaking on what was once an invisible domestic human rights crisis.

Only with your support can we continue this groundbreaking work, shining light into the darkest corners of the U.S. criminal punishment system.

by [Voices from Solitary](#)

September 30, 2022

by [Voices from Solitary](#)

September 19, 2022

by [Voices from Solitary](#)

September 6, 2022

Solitary Watch encourages comments and welcomes a range of ideas, opinions, debates, and respectful disagreement. We do not allow name-calling, bullying, cursing, or personal attacks of any kind. Any embedded links should be to information relevant to the conversation. Comments that violate these guidelines will be removed, and repeat offenders will be blocked. Thank you for your cooperation.

To Bridge on Feb.5

I think this is written by Mr. Steve Bartholomew in WA.

(please delete this if this comment does harm for Mr. Steve Bartholomew)

Thanks for the great writing, Thomas Whitaker. I'll be glad to see more of it! Thanks SW for this news.

The photo of moon looks very different to me before and after Feb.22. It's so beautiful now.

Thank goodness for a little mercy coming out of Texas.

Our civilization does not allow for true justice that much is true because you don't have a civilisation if you allow judicial homicide aka capital punishment. That's why only the backward ex slave states tend to practice it and the rest of the world won't give you execution drugs.

We kill people to show that killing is wrong. You show no such thing, only that your hypocrisy is immense.

The only one he cares about is himself surely not the people who cared for him.

Tremendously talented writer and cold blooded multiple murderer. You forgot about the murderer part in your intro. Its past time to dispose the trash. Execute this piece of human garbage before he enjoys one more second of what he took from others. The world goes on without his victims surely it will go on without their vile murderer. That fact that Daddy wants him spared is just one more disgusting consequence of this killers selfish crime. I for one cannot accept that murder ends up as a vehicle for personal growth. Our civilization does not allow for true justice to be done but at least we can dispose of the trash and bury it.

I hope this guy rots in hell

Execute the guy

An eye for an eye

I strongly agree that Thomas should be spared. He could do a lot of good within General Population. Also, why inflict more pain on his father?? However it is too late to write to the Board. The letter needs to be received by them at least 21 days before the execution. Also who is the inmate who wrote this? He writes very well but I fear this is the end for Thomas. Mercy is in very short supply in Texas, sadly.

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