

# Foreword

## Breaking the Silence: Legal Scholarship as Social Change

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### I.

Thomas C. O'Bryant is a jailhouse lawyer and pro se litigant with ten years of experience representing himself and other inmates in numerous civil and criminal matters from within prison walls. O'Bryant is part of a generation of "lifers" serving sentences without hope of release,<sup>1</sup> coping with mental illness in prison,<sup>2</sup> teaching themselves the law without access to higher education,<sup>3</sup> and adjusting to newly lowered standards of access to courts and prison law libraries.<sup>4</sup> He is also the author of an article in this Symposium that combines personal experience and original research to demonstrate the profound injustice of a system that strictly limits the time in which an inmate can file a petition for collateral review in federal court, and yet erects insurmountable barriers to effectively filing such petitions.<sup>5</sup> This Foreword commences the Symposium of articles centered around O'Bryant's piece by describing the experience of a group of law student

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<sup>1</sup> The number of individuals serving life sentences in U.S. prisons rose by 83% between 1992 and 2003, and one of every eleven prisoners is serving a life sentence. MARC MAUER ET AL., *THE SENTENCING PROJECT, THE MEANING OF "LIFE": LONG PRISON SENTENCES IN CONTEXT* 3 (2004), available at <http://www.sentencingproject.org/pdfs/lifers.pdf>.

<sup>2</sup> Jamie Fellner, *A Corrections Quandary: Mental Illness and Prison Rules*, 41 HARV. C.R.-C.L. L. REV. 391, 392–94 (2006) (describing an increase in the numbers of mentally ill being sent to U.S. prisons).

<sup>3</sup> The Violent Crime Control and Law Enforcement Act of 1994 amended 20 U.S.C. 1070(b)(8) to deny Pell Grants for higher education to all incarcerated individuals. Pub. L. No. 103-322, § 20411, 108 Stat. 1796 (1994).

<sup>4</sup> See *Lewis v. Casey*, 518 U.S. 343 (1996). In addition, the Prison Litigation Reform Act, passed the same year as AEDPA, substantially limits the ability of prisoners to file civil law suits in federal court. Pub. L. No. 104-134, 110 Stat. 1321–77 (1996) (codified at 18 U.S.C. § 3624 (2000); 28 U.S.C. §§ 1346, 1915, 1915A (2000); 42 U.S.C. §§ 1997–1997h (2000)).

<sup>5</sup> Thomas C. O'Bryant, *The Great Unobtainable Writ: Indigent Pro Se Litigation After the Antiterrorism and Effective Death Penalty Act of 1996*, 41 HARV. C.R.-C.L. L. REV. 299 (2006) [hereinafter O'Bryant, *The Great Unobtainable Writ*].

editors working collaboratively with O'Bryant as an author. My goal is to connect the importance of recognizing and maintaining O'Bryant's voice and expertise during the editing process to a larger phenomenon that implicates us all: the silencing of prisoners and criminal defendants in the United States.

A Florida trial judge sentenced O'Bryant to two concurrent life sentences in January of 1996, just four months before Congress passed the Antiterrorism and Effective Death Penalty Act ("AEDPA").<sup>6</sup> He is therefore also part of the first group of prisoners to confront the barriers to federal review imposed by the statute, including a one-year time limit between a final state conviction and the deadline to file a federal habeas corpus petition.<sup>7</sup> In his article, *The Great Unobtainable Writ: Indigent Pro Se Litigation After the Antiterrorism and Effective Death Penalty Act of 1996*, O'Bryant reveals the tragic confluence of the new procedural rules and policies under which he is incarcerated: "the reality of pro se litigation" in America today, in which pro se collateral challenges to unconstitutional confinement are virtually impossible to win.<sup>8</sup> Originally entitled "The Writ of Habeas Corpus and the Antiterrorism and Effective Death Penalty Act of 1996,"<sup>9</sup> the article has now gone through four hand-written drafts (O'Bryant does not have access to a computer or typewriter) and a year and a half of editing to arrive at the form in which the *Harvard Civil Rights-Civil Liberties Law Review* ("CR-CL") now publishes it.

A series of companion articles follows O'Bryant's piece. For these, CR-CL asked three distinguished experts—each of whom has had an impact on O'Bryant's article itself<sup>10</sup>—to draw on the themes that his article raises. First, in *Confronting Mass Imprisonment and Restoring Fairness to Collateral Review of Criminal Cases*, Bryan Stevenson links policies of mass incarceration in the United States to the restrictive procedural rules surrounding post-conviction review and access to counsel, arguing that the net result is a criminal justice system that sacrifices fairness in the interest of "finality."<sup>11</sup> Stevenson proposes a set of reforms that addresses the

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<sup>6</sup> Pub. L. No. 104-132, 110 Stat. 1214 (1996) (amending 28 U.S.C. §§ 2244, 2253–2255 (1994) and adding 28 U.S.C. §§ 2261–2266 (2006)).

<sup>7</sup> See 28 U.S.C. § 2244(d)(1) (2006).

<sup>8</sup> See O'Bryant, *The Great Unobtainable Writ*, *supra* note 5, at 309.

<sup>9</sup> Thomas C. O'Bryant, *The Writ of Habeas Corpus and the Antiterrorism and Effective Death Penalty Act of 1996* 14 (Draft of Feb. 10, 2005) (on file with the Harvard Civil Rights-Civil Liberties Law Review) [hereinafter O'Bryant, Draft of Feb. 10, 2005].

<sup>10</sup> O'Bryant read Bryan Stevenson's past articles on habeas corpus review in order to better understand the national impact of the new time limits under AEDPA; he used Jamie Fellner's extensive report, co-authored with Sasha Abramsky, on mental health conditions in U.S. prisons, as background in framing his arguments about mental health; and Jessica Feerman's comments on an early draft helped shape his refinement of the ways in which the Supreme Court limited its decision in *Bounds v. Smith*, 430 U.S. 817 (1977), with its more recent decision in *Lewis v. Casey*, 518 U.S. 343 (1996).

<sup>11</sup> Bryan A. Stevenson, *Confronting Mass Imprisonment and Restoring Fairness to Collateral Review of Criminal Cases*, 41 HARV. C.R.-C.L. L. REV. 339 (2006).

injustices in both post-conviction procedural rules under AEDPA and the provision of counsel for indigent defendants, and underscores the need to recognize the connections between the two.<sup>12</sup>

In “*The Power of the Pen*”: *Jailhouse Lawyers, Literacy and Civic Engagement*, Jessica Feierman echoes O’Bryant’s criticisms of AEDPA and highlights the ways in which low literacy rates of prisoners after the Prison Litigation Reform Act<sup>13</sup> and *Lewis v. Casey*<sup>14</sup> may contribute to an increase in frivolous post-conviction claims.<sup>15</sup> Feierman argues that solving the purported problem of meritless habeas petitions would be better achieved by a focus on increasing prisoners’ access to education and literacy resources.<sup>16</sup> Such an increase, in turn, would promote civic engagement and the ability of prisoners to have their voices heard.<sup>17</sup>

Finally, in *A Corrections Quandary: Mental Illness and Prison Rules*, Jamie Fellner describes the incompatibility between the growing numbers of mentally ill prisoners and the conditions and rules of United States prisons.<sup>18</sup> Fellner demonstrates the human rights concerns raised by the treatment of the mentally ill in prison. She ultimately concludes that prisons, as they currently operate, are no place for those who suffer from mental illness.<sup>19</sup> Read as a group, the articles in this Symposium reveal the power of looking beyond conventional distinctions in criminal law and scholarship—between death row and non-death row inmates, legal scholars and non-experts, guilt and innocence—to consider the implications of a system of criminal justice that achieves finality by blocking access to its ostensible channels of review.

## II.

The remainder of this Foreword tells a related story—that of the process of editing O’Bryant’s article, and attempting to ensure that in his effort to portray “the reality of pro se litigation as I have witnessed and experienced it,”<sup>20</sup> O’Bryant’s ideas and voice remained his own. The process was unlike any experience I or my fellow student editors have had working with an author. To begin with, O’Bryant’s position as an inmate in state prison left us, as law students with more resources and in positions of privilege, with large amounts of power in relation to him—power of which we attempted to remain aware at all times. In addition, much of

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<sup>12</sup> *Id.* at 348–56.

<sup>13</sup> Pub. L. No. 104-134, 110 Stat. 1321 (1996).

<sup>14</sup> 518 U.S. 343 (1996).

<sup>15</sup> Jessica Feierman, “*The Power of the Pen*”: *Jailhouse Lawyers, Literacy, and Civic Engagement*, 41 HARV. C.R.-C.L. L. REV. 369 (2006).

<sup>16</sup> *Id.* at 384–88.

<sup>17</sup> *Id.*

<sup>18</sup> Fellner, *supra* note 2.

<sup>19</sup> *Id.* at 411.

<sup>20</sup> O’Bryant, *The Great Unobtainable Writ*, *supra* note 5, at 309.

O'Bryant's article consists of personal narrative,<sup>21</sup> which is rare in the pages of a law review. The power of his narrative voice constrained our editorial power to a significant extent; we were limited in our ability and desire to question his lived experiences. Yet we were the ones to suggest that much of the narrative be included, to encourage O'Bryant to share his personal stories as he made his broader arguments. The interaction of these factors made the editorial process exciting, interesting, and extremely difficult. I am telling the following story with the hope that other student editors—and anyone interested in the potential of legal scholarship to affect change—may take from it both caution and encouragement in attempts to transform the ways in which scholarship empowers and restricts its subjects, authors, and audiences.

O'Bryant's article was already an articulate and compelling piece of writing when it first arrived at Harvard Law School by mail in February 2005. O'Bryant sent the original version of his article on the history of habeas corpus to the *Harvard Law Review*. In it he argued that AEDPA has not served its originally intended purpose, concluding, "Simply put, the Act is a failure, and its effect on the writ of habeas corpus is a travesty."<sup>22</sup> With original arguments and impeccable citations, O'Bryant provided an extended history of the writ of habeas corpus, a discussion of the interaction between state and federal post-conviction time limits, and an analysis of the congressional intent behind AEDPA (a shorter version of which appears as Part III of what became O'Bryant's final version of the piece).<sup>23</sup> O'Bryant went on to describe how the number of executions has not risen to the "effective" rate aspired to by the title of the legislation. Instead, death row and non-death row inmates alike have struggled with limited legal knowledge, training, or resources and found themselves restrained and suppressed by AEDPA's stringent filing deadlines.<sup>24</sup>

While the *Harvard Law Review*—the only journal to which O'Bryant submitted his piece—chose not to publish O'Bryant's article, its vice president and treasurer, Lauren Sudeall, passed it on to *CR-CL* with the author's permission. Our editorial board was moved and impressed. Here was an intelligent legal critic writing with such gravity and intricate reasoning that, were it not for the hand-written copy, one might easily forget that *he was writing from prison* and that the very laws he analyzed were those that kept him confined.<sup>25</sup> While some editors were concerned about the accuracy of a few of his legal and historical arguments, mistakes seemed to come

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<sup>21</sup> Much of this Foreword also contains personal narrative. It is hard to pinpoint in one short footnote what has compelled us to include this story of the editing process, but there was a unanimous feeling among the group of eight students working on O'Bryant's article that the story should be told. I suspect part of this reaction comes from the fact that, collectively, we have been taken under the spell of our author's unique narrative voice.

<sup>22</sup> O'Bryant, Draft of Feb. 10, 2005, *supra* note 9.

<sup>23</sup> *Id.* at 1-14; O'Bryant, *The Great Unobtainable Writ*, *supra* note 5, at 304-07.

<sup>24</sup> O'Bryant, Draft of Feb. 10, 2005, *supra* note 9, at 15-22.

<sup>25</sup> See *infra* text accompanying notes 34-37.

from limited access to materials rather than faulty reasoning. The board was especially intrigued by O'Bryant's cover letter, which hinted at his extensive personal experience with litigation from prison, but provided few concrete examples.<sup>26</sup>

In April 2005, *CR-CL*'s editorial board voted to contact O'Bryant about publishing an article that integrated his personal experiences as a pro se litigant and jailhouse lawyer into his legal arguments about AEDPA. We emphasized that we were interested in a collaborative, relatively long-term editing process. O'Bryant was receptive and wrote back in agreement.

In the spring and early summer of 2005, *CR-CL* kept in touch with O'Bryant by mail. Over the summer two *CR-CL* editors, Daniel Farbman and Scott Levy, drove to Bonifay, Florida, to visit O'Bryant in Holmes Correctional Facility. It was during this visit that O'Bryant first expressed some of the themes that would emerge as cornerstones of the next draft of his article: He described the journey that he has gone through over the last ten years in order to teach himself the law within correctional institutions that make it unbelievably difficult for inmates to gather legal information on their own behalf—and his efforts, in response, to challenge those institutional practices through a series of civil lawsuits.<sup>27</sup> In addition to representing himself, O'Bryant had successfully assisted a number of fellow inmates with their own pro se litigation, and had gathered a wide range of stories regarding the intersection of federal filing deadlines and internal procedural difficulties related to disciplinary codes, access to prison libraries, mental health services, and a host of other complications.<sup>28</sup> He agreed to work on weaving these experiences and insights into his article.

The subsequent months involved a series of exchanges between a team of eight law student editors and O'Bryant, often in simultaneous, overlapping dialogues, given the leisurely pace at which mail moves through Florida's prison system. When we felt the need for a more involved discussion, we arranged phone calls with O'Bryant with the help of his parents and the staff of Holmes Correctional Facility. O'Bryant requested many sources, from reports on mental health conditions in prison to treatises on theories of jurisprudence, and we did our best to get them to him. At the same time, he worked on merging his own experiences into his legal arguments. Each

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<sup>26</sup> Thomas C. O'Bryant, Letter to *Harvard Law Review*, Feb. 10, 2005 (on file with the Harvard Civil Rights-Civil Liberties Law Review). O'Bryant explained that he was certified as a law clerk and had received a paralegal certificate via correspondence courses. He also wrote, "Since 1997, I have successfully represented myself in many court proceedings concerning prisoner's rights and conditions of confinement, including oral arguments and trials in the State and Federal Courts." *Id.*

<sup>27</sup> Memorandum from Daniel Farbman to Scott Levy, Audrey Bianco & Jocelyn Simonson (Aug. 4, 2005) (on file with the Harvard Civil Rights-Civil Liberties Law Review). Dan wrote, "According to his own descriptions, [O'Bryant] is not an especially popular inmate within the Florida Department of Corrections." *Id.*

<sup>28</sup> *Id.* See O'Bryant, *The Great Unobtainable Writ*, *supra* note 5, at 307–33.

new draft or set of changes based on our comments contained more of his personal experience and reflection, and, inevitably, more of our influence.

We endeavored to remain conscious of our position of power in relation to that of our author—O’Bryant had never seen a law journal before we gave him a copy of *CR-CL*. There were also frequent group deliberations among the student editors as we tried to remain true to O’Bryant’s writing style. It is difficult not to marvel at the power of his rhetorical techniques. For example, he often uses a deadpan and roundabout narrative to convey the most shocking details of life in prison, as when he writes: “In order for a jailhouse lawyer to ‘assist other inmates in the preparation of legal documents and legal mail,’ the jailhouse lawyer must be able to read the inmate’s legal documents. For the jailhouse lawyer to read these documents, he must possess them; and therein lies the problem.”<sup>29</sup> We edited O’Bryant’s article line by line as we do every article that we publish, but took special care to leave sentences like these in their original form. Overly cautious and afraid of abusing our editorial power, we made fewer changes to sentence structure and word choice than we have with other authors in the past.

At times the editing team had reservations about the implications of O’Bryant’s arguments. One example of this was O’Bryant’s discussion of how prison officials overmedicated him with psychotropic medications without any accompanying counseling during much of the year in which his AEDPA time clock ran.<sup>30</sup> O’Bryant’s discussion of this issue in an early draft aptly questioned his clear overmedication but left us concerned that he was arguing that prisoners should not be medicated at all, which in our minds was a troubling conclusion.<sup>31</sup> We communicated this uneasiness to O’Bryant during a phone conversation and suggested that he clarify what he was trying to say. In the next draft of his piece, O’Bryant wrote, “To be clear, I am *not* asserting that prisoners should not be given psychotropic medications because it may render those prisoners unable to pursue legal claims *pro se*; these medications do have benefits for those who need them.”<sup>32</sup> In this way, O’Bryant was clearly receptive to and understanding of our criticisms. But such instances, while rare,<sup>33</sup> left us with another kind of unease as we struggled to remain self-conscious of our position as edi-

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<sup>29</sup> O’Bryant, *The Great Unobtainable Writ*, *supra* note 5, at 323 (citing FLA. ADMIN. CODE ANN. R. 33-210.102(12) (2005)).

<sup>30</sup> *Id.* at 312–15.

<sup>31</sup> Thomas C. O’Bryant, *The Writ of Habeas Corpus and the Antiterrorism and Effective Death Penalty Act of 1996* (Draft of Nov. 28, 2005) (on file with the Harvard Civil Rights-Civil Liberties Law Review) [hereinafter O’Bryant, Draft of Nov. 28, 2005].

<sup>32</sup> O’Bryant, *The Great Unobtainable Writ*, *supra* note 5, at 315.

<sup>33</sup> In addition, O’Bryant did not always follow our suggestions for change. For example, when it came to his discussion of the mentally ill in prison, we also expressed our discomfort with his argument that inmates with psychiatric problems should not be trained as inmate law clerks. This argument remains in the final version of the article. See O’Bryant, *The Great Unobtainable Writ*, *supra* note 5, at 320–21.

tors and identify where we should silence our criticisms in the interest of preserving our author's voice.

### III.

Indeed, no matter how conscious we may be of our position in policing the borders of legal academic discourse, we remain blind to many of the ways in which the conventional structures of legal scholarship in turn restrict us as both thinkers and editors. And despite our attempts at self-awareness and discussion, this dynamic can enable student editors to fall back upon familiar assumptions regarding both our authors and our audiences.

The force of this reality did not truly hit us until we received a draft of O'Bryant's article in late November 2005.<sup>34</sup> Before that time O'Bryant's article had described a number of his own experiences in prison but had not discussed the circumstances that placed him behind bars. In the new version of the article, O'Bryant added a conclusion in which he described his own experience pleading guilty in court to the charges against him. He wrote:

Imagine . . . a person accepting a plea based on their attorney's explicit information that he/she would be released from prison after serving a certain number of years, only to learn that under the plea they would *never* be eligible for released [sic] from prison. What about a person being told to take a plea by their attorney because, according to the attorney, the defense the person wished to pursue was not allowed under state law, when in fact, it was an allowable defense and was supported by competent medical evidence?<sup>35</sup>

O'Bryant then went on to cite convincing evidence that both of these situations occurred in his case<sup>36</sup>—and we now have on file at *CR-CL* a corroborating affidavit from his trial lawyer to that effect.<sup>37</sup> In other words, it was more than six months after *CR-CL*'s initial correspondence with O'Bryant that we learned that, in addition to his original analysis of the injustices wrought by AEDPA and his years of helping other prisoners file petitions pro se, O'Bryant himself has colorable Sixth Amendment claims—claims

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<sup>34</sup> O'Bryant, Draft of Nov. 28, 2005, *supra* note 31.

<sup>35</sup> *Id.* at 55.

<sup>36</sup> See O'Bryant, *The Great Unobtainable Writ*, *supra* note 5, at 333–36 (describing the failure of O'Bryant's trial attorney to advise him of a viable defense (a lack of "specific intent") if he went to trial or to tell him the correct sentence that he would be serving if he plead guilty).

<sup>37</sup> Affidavit of Donald K. Rudser (Oct. 15, 1997), Florida v. O'Bryant, No. 95-92 (Fla. 3d Cir. Ct. May 5, 1998) (document on file with the Harvard Civil Rights-Civil Liberties Law Review).

that a federal court could have considered were it not for the one-year filing deadline imposed by AEDPA.

It is difficult to do justice to the emotional impact of this discovery for me. I am speaking not only of the revelation that O'Bryant was wrongfully incarcerated, but also of learning that O'Bryant's experience of wrongful incarceration had not been a part of the story that he was telling in his article or in his correspondence with us until that point. I had not anticipated this aspect of his story; instead, I felt immediate surprise, and guilt at that surprise. With echoes of what Anthony Alfieri has described in the attorney-client context as "the deception of preunderstanding,"<sup>38</sup> I had assumed without adequate consideration that I knew the situation behind O'Bryant's guilty plea: an unfair situation given contemporary policies of mass incarceration and the consistently low quality of indigent defense in America, but not one that flagrantly violated the Constitution on multiple levels.

O'Bryant's article remains as much about rigorous legislative analysis as it does about one man's personal entanglements with a particular piece of legislation from within prison walls. What I learned from my reaction to the final section of O'Bryant's article is not so much the capacity of personal narrative to persuade (I was already persuaded), but rather the ease with which individuals such as myself and my fellow editors, deliberately and self-reflectively attempting to promote social change through a publication, nevertheless operate within narrow institutional frames. In the final version of O'Bryant's article, his account of the constitutional claims he would have raised in a habeas petition does not emerge until the final pages. This conclusion stands in contrast to the traditional concluding section of most law review articles, and serves as a striking reminder of what O'Bryant means when he refers to "the *reality* of pro se litigation."<sup>39</sup>

It was also O'Bryant's decision to expand his potential audience beyond that of a traditional law review article by defining standard legal terms in footnotes throughout the piece. As he explains at the outset, "In this Article I use some footnotes to define terms that are unnecessary for the legal community. These footnotes are included for the benefit of fellow inmates and pro se litigants."<sup>40</sup> In this manner, and without any cues from his editors, O'Bryant found a way to increase the accessibility of his scholarly piece without diluting its power for those readers already familiar with legal jargon. In turn, *CR-CL* will do its best to circulate as many copies of his article as possible to prisons. Actively shaping and expanding our audience is something that, in the journal's forty-one-year history

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<sup>38</sup> Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107, 2125 (1991); see also Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990).

<sup>39</sup> See O'Bryant, *The Great Unobtainable Writ*, *supra* note 5, at 309 (emphasis added).

<sup>40</sup> *Id.* at 299 n.\* (introductory footnote).

of publishing articles that further progressive legal change, we have never done before. In showing us how to break with convention, O'Bryant helped us move this Symposium, and our conception of our journal, beyond what we could imagine on our own.

#### IV.

Even as legal scholars increasingly aim their critiques, often explicitly, at the silencing of criminal defendants,<sup>41</sup> such academic discussions rarely incorporate the voices of those lost behind prison walls. If we hope to change this, we must endeavor not only to create space for these voices, but also to remain cognizant of our own limitations in doing so.

*CR-CL*'s editors are not the first to recognize the profound power of writing that comes from behind bars, and this is not the first time that a law review has published an article written by an inmate. For example, in 1991, the *Yale Law Review* published two essays written by well-known death row prisoners Mumia Abu-Jamal and Joseph Giarratano.<sup>42</sup> Giarratano wrote ominously and eloquently in his essay at that time:

In [America's] passion for the death penalty, we are losing our respect for the appellate process as a safeguard against miscarriages of justice. Lost in a wave of heated rhetoric and emotionalism . . . [t]he right to appeal or not appears merely to be the right to erect unnecessary obstacles to justice. Fundamental fairness is no longer anywhere near the top of our list of concerns. We bear down on the offender to the exclusion of all else; the only demand that seems worthy of respect and attention is our frustrated call for finality.<sup>43</sup>

But no one listened. The "heated rhetoric and emotionalism" that Giarratano described has only grown in force over time, and it does not affect only prisoners on death row—within five years of the publication of Giarratano's essay, Congress passed AEDPA. Indeed, the vast majority of the laws and policies restricting the ability of prisoners to represent themselves from prison discussed in this Symposium were passed since Giarratano wrote the words above.

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<sup>41</sup> For two recent examples of scholarship that connects "voice" literature to the silencing of criminal defendants, see Jessica Feierman, *Creative Prison Lawyering: From Silence to Democracy*, 11 *GEO. J. ON POVERTY L. & POL'Y* 249, 252–57 (2004); Alexandra Natapoff, *Speechless: The Silencing of Criminal Defendants*, 80 *N.Y.U. L. REV.* 1449 (2005) (cataloguing the ways in which the adjudicatory process silences criminal defendants).

<sup>42</sup> Mumia Abu-Jamal, *Teetering on the Brink: Between Death and Life*, 100 *YALE L.J.* 995 (1991); Joseph M. Giarratano, "To the Best of Our Knowledge, We Have Never Been Wrong": *Fallibility vs. Finality in Capital Punishment*, 100 *YALE L.J.* 1005 (1991).

<sup>43</sup> Giarratano, *supra* note 42, at 1006. Giarratano went on to argue in his essay that a number of individuals on death row are most likely innocent. *Id.* at 1007–11.

Marking the tenth anniversary of the passage of AEDPA, the articles in this Symposium demand a renewed sense of urgency. In the face of increasing evidence of innumerable wrongful convictions and systemic injustices across the country, we nevertheless hear heightened calls for “finality” in the process of reviewing criminal convictions. Thomas O’Bryant, Bryan Stevenson, Jessica Feerman, and Jamie Fellner each suggest innovative, wide-ranging, and feasible solutions to these problems. Ultimately, however, the responsibility to change the injustices of our criminal justice system lies not only with prisoner administrators and legislators, but also with those of us with the ability to tell stories and to create the space in which others can tell theirs as well.