Magnifying Dissent: "Illuminating" the Capital Appeals Process through Abolitionist Literacy Narrative

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KEYWORDS

Death row; Dissent; Capital appeals process; Abolitionist narratives; Grammars of law; Illumination

ABSTRACT

In 1994, Joesph Patri Brown was convicted of capital murder in Mississippi, and he has been fighting that conviction from death row ever since. In this article, Brown and co-author Alison Turner frame his experiences of learning and marking the capital appeals process as an abolitionist literacy narrative. They position the capital appeals process as an esoteric genre that consists of both text—volumes and volumes of documents written in legalese—but also, like any genre, context. Joesph shares pieces of his narrative that include his early "illiteracy" in what happens to people on death row; his endurance of that process; his learning of "legalese"; and methods for staying involved in his own case. Alison connects each of these sections to abolitionist writing studies discourse, engaging most closely with scholars Dan Berger, Mariame Kaba, and David Stein, who propose that abolitionist work "reduce[s] the power of an oppressive system while illuminating the system's inability to solve the crises it creates" (n.p.). The article contributes not only a focus on the capital appeals process within the discourse of prison writing and what Joe Lockard calls "death row narratives" (60) but also a specific tool for reading the capital appeals process—"magnifying dissent." Brown and Turner show how "magnifying dissent" is a specific practice of counterstory (Martinez) for abolitionist "illuminating."

Introduction: "Now One of Many"

When I made it to Parchman in March 1994, they had taken my free-world clothes and gave me a one-piece red jumpsuit. I was able to keep my socks and shoes. That was everything I owned and that's all I had when they placed me in a front cell. I thought there was no one else on death row because they put me on the tier with the state inmates, which could only mean the other death row people were all executed. I only had 30 days before my execution, so I thought everyone else must have had only 30 days, too, which meant they were all dead.

That following week, a guard making his rounds for the morning shift change stopped and asked, "You want day room call?" and I said, "Yes." He placed handcuffs on my wrists and the guard in the watchtower pushed a button and the door opened. I stepped out, not sure which way to go. "Follow me," said the guard. Bars, gray floors, and yellow walls were all I was seeing, but as I turned to go up the second flight of stairs, I heard voices. After stepping off the last step onto the tier, a door was a foot to my left. I walked through it and saw all these men in red jumpsuits, and you can't begin to imagine the relief. It wasn't just four or three of them, either. There were about 14 men inside this first room. Men were just walking around; some playing card games, dominoes; Black guys and White guys alike; all in red, just like me. I was left standing. I was dumbstruck that there were that many guys on death row.

Eventually, I ventured out and watched four guys playing spades. I asked them how long I get to stay on rec call, and someone said "one hour." It was my day to be a silly motherfucker, I guess, because then I said, "How come y'all ain't dead?" That was literally dumb, and I began to stumble over my words and tell them that they were going to kill me next month, April, on the 16th. Dudes just started laughing. They called three others over to where we stood and told them what I'd said. I guess this was some running joke they were playing on me. Finally, one of them told me, "Ain't nobody gonna kill ya; they pull that shit on everybody they sentence to death." These guys were three or two years into being on death row, and they didn't seem worried at all.

When the hour was up, I watched these men being led away dressed all in red, these final stop signs of life. The same guard that brought me to rec call came back, handcuffed me, and escorted me to my cell the same way he had brought me. But this time, I was seeing and hearing shit with new ears and eyes. All of these so-called dead men walking, laughing, playing. When the guard un-handcuffed me, I stepped back into the empty walls, cut-out window, concrete bed, stainless steel toilet, and sink. I didn't have any clue how to fight for my life or freedom. But now I knew that I may be alive long enough to fight. I was now one of many living in the land of the dead.[1]

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The kind of misunderstanding that Joesph Patri Brown, co-author of this article, experienced more than 30 years ago could not be more extreme; how is it possible that no lawyer or judge made sure he understood the terms of his capital murder conviction? This is not a problem of any individual's ignorance, since "they pull that shit on everybody they sentence to death." In this article, Joesph and I present Joesph's

experiences of navigating the capital appeals process in Mississippi as an abolitionist literacy narrative that expands Joesph's early realizations that 1) he would not die in 30 days, but rather, he had a long appeals process ahead of him; and 2) he was not alone in this experience. We frame the capital conviction appeals process as an esoteric genre that consists of both text—volumes and volumes of documents written in "legalese"—but also, like any genre, context. Joesph now reads not only the "legalese" making up his appeals process, but also the physical and rhetorical attempts to limit his literacy.[2]

As Joesph continues to challenge his conviction, he writes regularly for several online platforms, publishing creative essays, poetry, fiction, and plays about his experiences and perspective. His continuous efforts to challenge his incarceration and write outwardly during the appeals process align with abolitionist thinkers such as Dylan Rodríguez, Jess A. Goldberg, and Patrisse Cullors, all of whom we reference in this article; primarily, however, this literacy narrative enacts the words of Dan Berger, Mariame Kaba, and David Stein, who propose that abolitionist work "reduce[s] the power of an oppressive system while illuminating the system's inability to solve the crises it creates" (n.p.). For the rest of this article, we borrow the word "illuminate" with this abolitionist glow: Understanding the US carceral system requires collaboration with those who endure, and more specifically, illuminate how that system oppresses. Joesph's determination to become literate in what is among this country's most esoteric genres (capital appeals processes), to stay involved in his casework, and to write beyond the literal and proverbial "razor wire" (see below) is abolitionist in how it insists that it is not *he* who is the crisis, but the system.

After a review of literature that situates this literacy narrative in the overlapping concerns of the US carceral system, abolition, and literacy studies, we present three themes from Joesph's experiences of navigating more than three decades on death row. These themes are not a beginning, middle, and end of a narrative that starts with illiteracy and ends in literacy; rather, the themes overlap continuously in an increasing illumination that allows others to better understand the carceral system's "inability to solve the crises it creates" (Berger, Kaba, and Stein, n.p.). Each section begins with Joesph's writing and is followed by Alison bridging this writing into abolitionist literacy studies discourse.

In Part 1, "Justice is Not an Event: Living the Appeals Process," Joesph summarizes the process of capital case litigation through his own experiences. Alison engages this summary with abolitionist theory from Goldberg's assertion that "justice is not an event" (7). In Part 2, "Abolitionist Praxis of Creativity: Insisting on Information," Joesph describes the strategies he's used to become literate in capital case litigation from within. Alison suggests that these methods are "tactical" in that they are "made by those without power" (qtd. in Plemons 40) and forms of "creative maladjustment" as a way to "[acknowledge] the necessity" (Middleton 8) of acting against a carceral system whose rules one is forced to oblige. These tactical maladjustments are a form of what Rodríguez calls "abolition as a praxis of creativity" (1580). In Part 3, "Magnifying Dissent," Joesph shares his attempts to access information about his own case—a process called "Discovery"—which has been many times denied. His continuous requests for Discovery resulted in dissent from two judges, which did not stop the majority's ruling; his case proceeded to the next court, and that dissent was lost.

Alison argues that dissent is a form of counterstorytelling, proposed by Aja Martinez as a method of incorporating critical race theory (CRT) into composition studies, and that magnifying dissent illuminates the "system's inability to solve the crises it creates" (Berger, Kaba, and Stein, n.p.). Magnifying dissent contributes a new method for abolitionist reading of the capital appeals process.

We conclude in the yard on death row in Mississippi, where each person with a death sentence reads the text and context of their own appeals process differently; while no one on the row wants to be executed, not everyone agrees on alternatives. These disagreements among people fighting capital convictions are creative rather than destructive, working toward ways of being that imagine beyond hierarchical decision making. Cullors writes that "[a]bolition invites people in. . . . Abolition does not choose sides" (1692). If Joesph's literacy narrative offers magnifying dissent as a reading tool, what other methods might be identified upon closer collaboration between writing studies scholars and others on death row? Each person's literacy narrative might end at a different method for reading and illuminate other paths forward; abolitionist thinking moves toward this polyvocality rather than away.

Death Row, Abolition, and Writing Studies: A Literature Review

As a Black man who grew up poor in Mississippi and was accused of murdering a White woman, Joesph writes from the locus of the entangled biases in the United States carceral system. Jeffery T. Ulmer, Gary Zajac, and Ashley E. Rodriguez suggest that when and where a crime takes place in this country affects a defendant's sentence because of "[c]ourt communities," the "prosecutors, judges, and defense attorneys [who] interpret law in distinctive ways shaped by local contexts," making it possible to "develop their own informal norms, culture, politics, and constraints, producing variation in the application of criminal law and in the severity of legal sanctions" (322–3). Other researchers have articulated racial bias in every stage of the system, from criminal courts (Van Cleve) to the bond process (Davis).[3] These biases help to explain why sociologist Loïc Wacquant prefers the term "hyperincarceration" over the more popular term "mass incarceration" for how the US prison system disproportionately impacts some communities but not others.[4]

These biases persist throughout the extended litigation process for those defending themselves against the death penalty. Carol S. Steiker and Jordan M. Steiker compile multiple sources to demonstrate how racial discrimination "appears to permeate all phases of capital litigation" (307). Michael Cholbi and Alex Madva describe the death penalty as a system of "unjust recklessness that places the lives of black Americans [particularly] at risk" (519).[5] Members of Project Hope to Abolish the Death Penalty, a group of people living on death row in Alabama, along with co-author Katie Owens-Murphy, note that "[t]he Supreme Court has even acknowledged statistical evidence of racial bias in *McCleskey v. Kemp* (1987) but shrugged its shoulders, arguing that '[racial] disparities in sentencing [are] an inevitable part of our justice system'" (127). This "shrug" is perhaps the most insidious action made possible by the status quo.

Despite these known biases, at the time of writing, 2,024 people sit on death row in the United States, and state governments have executed over 1,600 people since 1977—and counting ("Facts About").

Abolition of the death penalty in particular—as independent from abolition of the greater carceral system—is complicated. On one hand, the death penalty symbolizes the US carceral system's most abject manifestations. As Joe Lockard explains,

> [t]he death penalty functions as a crucial symbolic spearhead for political forces that seek to make incarceration more potent, intimidating, and fearsome. The symbolic potency of capital punishment that hangs over prison yards threatens all prisoners and constitutes an apex of lethal institutional power. (60–1)

Abolishing the death penalty, then, would seem to lower the system's "apex." Yet, others argue that focusing on death penalty abolition is misguided due to the relatively small numbers of people directly impacted as compared to the magnitude of the greater carceral system. Wacquant, for example, argues that abolishing the death penalty "would diminish neither the immense scope of the US carceral archipelago nor the tightening material and symbolic hold that the penal apparatus exerts on the societal body" (*Punishing the Poor* 37). Further, scholars studying the death penalty in the United States don't have much hope for grassroots abolition. Steiker and Steiker insist that abolition of the death penalty will "require intervention by the Supreme Court," an intervention that they describe as "unlikely" (310). Austin Sarat et al.'s study[6] of incidents of the death penalty making it onto ballots since the early twentieth century confirms that "the public seems to be more punitive than elites," so that death penalty abolition can only come from legislators and judges—in other words, it is a project of the "elites" (413).

It is in the encounter of these limits and concerns where abolitionists intervene. In *Abolition Time: Grammars of Law, Poetics of Justice*, Goldberg frames the US carceral system as part of the "grammars of law" that "seek to set everything and everyone in the world in place to maintain an overarching structure [that is] characterized by hierarchical domination" (3). The grammars of law make it possible for abolishing the death penalty to feel hopeless because it hasn't happened yet; the grammars of law position people with death sentences as among the most abandoned and inaccessible, at risk of physical death, civil death, and what Jill Stauffer calls "ethical loneliness" (1). Ethical loneliness is the "isolation one feels when one, as a violated person or as one member of a persecuted group, has been abandoned by humanity . . . compounded by the experience of not being heard" (1). Though Goldberg does not engage with Stauffer's concept of ethical loneliness, Goldberg's framework invites the possibility that grammars of law work to maintain ethical loneliness. Hierarchical systems of power rely on a status quo that, Goldberg writes, "demarcate[s] possibility itself" (3). The kind of abandonment Stauffer explores is a demarcation attempting to separate those with capital convictions from pretty much everyone else.

If abolishing the death penalty is a logistical issue for the elites to resolve, then it becomes all the more important for those who are not elite to be heard. Joesph contributes to a corpus of writing that Lockard calls "death row narratives," a genre

that is "distinguishable . . . in much the same manner as antislavery literature [that] coalesced before the US civil war" and "plays a crucial political role as witness literature that reveals state violence, its organization, and propagation of public fear" (60). Yet while Joesph is not alone in writing from death row, the majority of people living on death row are not reaching wide audiences.[7] The material, systemic, and rhetorical obstructions to writers behind the razor wire, i.e., in jails and prisons, have been well explored in literacy studies (see Hinshaw; Jacobi; and Kerr). To write through, over, or around these razor wires, incarcerated writers employ rhetorical sovereignty in a culture of rhetorical imperialism (Lyons); write through, despite, or against White supremacist language (Inoue); tell counterstories that fragment the smooth assumptions of stock stories (Martinez); use both Michel de Certeau's "tactics" as applied to literacies inside prisons (Plemons) and "creative maladjustment" (Middleton 8)—a concept emerging from a speech by Martin Luther King, Jr., brought into educational structures by Herbert Kohl, and applied to prison literacies by Logan Middleton—to create from within the system; and cross the limits that the grammars of law use to contain its hierarchies (Goldberg).[8]

In Goldberg's framework, the limits set by the grammars of law are transgressed through a "poetics of justice," or "practices of language, writing, and reading that disrupt, refuse, eschew, or deconstruct the order imposed by law's grammar" (3). Joesph's literacy narrative is a poetics of justice, both via his writing and his navigation of physical and rhetorical barriers to that writing, but his literacy narrative also more expansively illuminates the "cris[i]s" of the death sentence as something that is not about individuals but the system (Berger, Kaba, and Stein, n.p.). This illumination is a praxis of creativity; in the words of Rodríguez, abolition is "not merely a practice of negation—a collective attempt to eliminate institutionalized dominance over targeted peoples and populations—but also a radically imaginative, generative, and socially productive communal (and community-building) practice" (1576). In the literacy narrative presented in this article, becoming literate in the capital appeals process becomes abolitionist when it "illuminates" what the system intends to keep in the dark.

Part 1. Justice Is Not an Event: Living the Appeals Process

In August 1992, I was walking along St. Catherine Street in Natchez, Mississippi, with my then live-in girlfriend. A Natchez police cruiser slowed down and stopped. I was in possession of over an ounce of crack cocaine, so I ran from him. My girlfriend also ran, and eventually we were both found and arrested. I was handcuffed, placed in the squad car, and taken to the Felony Crime Unit. I was placed in an interrogation room where detectives read me my Miranda Rights. I said nothing and signed the form.

I was taken to the Sheriff's Department, where they fingerprinted me and took all of my possessions, jewelry, and money. They questioned me about my whereabouts over the last few days. I asked repeatedly what this was about and stated several times that I did not know anything about anything. It had been a long day and I was worn down, tired physically and mentally. It was like I was sleepwalking by the time they formally arrested me, but I knew I had not robbed or killed anyone like they were

accusing me of doing. I made the one phone call they allowed me, calling my moms to tell her where I was.

In the days following my arrest, I was taken to the municipal court for the initial appearance before a judge, who appointed me an attorney and formally read off my charges. I searched my mind to find how they could think I'd robbed anyone much less killed someone inside some store. I had been inside the store they were talking about countless times as a child, going to and from church and my grandparents' and great grandparents' home. It felt almost like a family store, because we would stop there every time we went past it. This was surreal, you understand, as I sat there listening.

A few weeks after my initial court appearance, I was taken back into the Municipal Court before a different judge for the preliminary hearing. Somehow, this case made it to a grand jury. Approximately ten months passed as I waited in the county jail, and then the grand jury found that there was sufficient evidence to charge me with armed robbery. Then, in June of 1993, the charges against me were upgraded to capital murder. After the two required phases of a capital murder trial (the first for a jury to determine if I did what I was charged with and the second to decide the penalty), I had rotted in jail for 20 months.[9]

The capital murder trial lasted four days, and in March of 1994, I was convicted and sentenced to death. I was sent to Mississippi's death row at Parchman on the fifth day. I was under the impression that I had only 30 days to live before being murdered by the State of Mississippi. I was not aware that there was an appellant process, an automatic mechanism in all capital cases intended to ensure that there are no legal errors that could lead to an unjust execution. Over the last 33-plus years, the appellant process for me has included the following stages: 1) making a direct appeal to the Mississippi State Supreme court (four years to complete); 2) filing a State Post-Conviction Petition for Relief (12 years to complete); and 3) filing a Federal Writ of Habeas Corpus Petition to the Southern District Court of Mississippi (14 years and counting). What I know about the remaining two appeal stages (the US Court of Appeals for the Fifth Circuit and the US Supreme Court) is that anyone who reaches them is just as good as dead. Our chances for relief are slim-to-none with these courts, and those are betting odds I'm not willing to risk.

I know a bit more about what happens after all of these courts have rejected us, since I've seen it happen to 26 men and have experienced part of it myself (that's another story).[10] The Mississippi State Attorney General will file a request with the Mississippi State Supreme Court to set a date. The Mississippi State Supreme Court will set a date and issue a death warrant to the Department of Corrections (DOC). The superintendent will come to the housing unit of the condemned person and stand before them to read out the death warrant advising them of the nature, date, and time they are to be murdered. Mississippi does its killing on Wednesdays at 6 pm.

In the hours leading up to the execution, the condemned person will be allowed final visits with family, friends, and spiritual advisors. The condemned person is offered a final meal, and, when the appointed hour approaches, escorted into the execution chamber and secured to a gurney where intravenous lines are inserted into their arms by an execution team. I'm not sure it's possible for anyone to imagine what it's like to feel utterly helpless in these Final Days. Final Hours. Final Minutes. Final Seconds.

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Joesph's path through his appeals process is perhaps traceable as a reduced version in Figure 1, a flowchart in a packet of information for victims and their families in capital cases (to our knowledge, no such packet of information is offered to the families of those who are convicted in capital cases). Flowcharts are designed to visually simplify a process, and this chart is no exception. In the graphic below, we annotate this flowchart with Joesph's more nuanced explanations of his time in each court. Notably, the chart offers no time frame for each stage, as it will be different for each person. This is one of the system's double standards: while a defendant is given deadlines to file an appeal, the court's response is under no such time constraint.

1) Trial. Four days.

2) Direct appeal to the Mississippi State Supreme court, 1994–1998: three years and four months of back and forth filing between state prosecutors and me; six months of waiting for the Court's ruling.

3) Application for Post Conviction Relief, 1999–2012: three years of filing between state prosecutors and me; seven months of waiting for the court ruling to remand on a mitigated psychological claim; three years waiting for a hearing on that claim back in circuit court; eight years and eight months of waiting for a court ruling on that claim.

4) Petition for Federal Habeas Corpus, 2012–the present. One year and six months of back and forth filing between state prosecutors and me; six months waiting on a court ruling to stay and abate the habeas petition so that I could return to state court to file a successive state court post-conviction petition; four years between state prosecutors and me to file this petition; two years waiting for a ruling on that successive post-conviction petition; then, returning to district court, four years of filing between state prosecutors and me on the amended petition for habeas corpus; two years of waiting for a ruling, and counting.

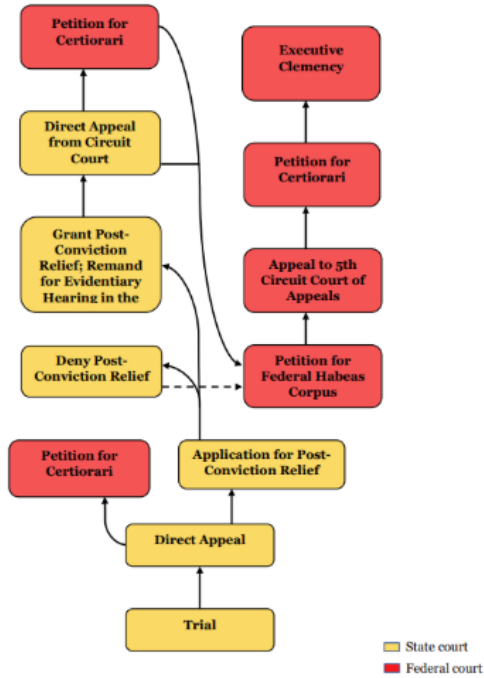


FIGURE 1. Flowchart showing possible steps of a capital appeals process in Mississippi (from the Office of Attorney General Lynn Fitch).

The difference between the simplified flowchart and the annotations of a person enduring those stages serves as a metaphorical visual for the capital appeals process at large: so procedural and (relatively) tidy on paper, but complex, messy, and difficult to follow on the ground. What is particularly striking in Joesph's annotations is the role of time behind these simplifications.[11] One way of understanding grammars of law, Goldberg argues, is that it is an "[imposing] periodization" or an "ordering of time" (2). It is this imposition of time that makes it possible for the grammars of law to frame justice as an "event" with a beginning, middle, and end. Once a sentence is mandated, the grammars of law suggest, justice will proceed through the chart of its stages. However, Goldberg asserts, and Joesph's annotations confirm, that "justice is not an event" (7). Presupposing that a conviction, sentence, ruling, or execution finishes a sense of injustice is an epistemological limit that typically satisfies neither a victim nor their loved ones.[12] It is clear from Joesph's narrative in this section that capital case sentencing is not an "event"—rather, being sentenced to death is the beginning of a long process that travels in and out of county, state, and federal courts, and corresponding legal representation.

Anyone who is not a lawyer or not directly impacted by this system is unlikely to study the capital appeals process—and studying it does not necessarily mean understanding it. This puts Joesph and so many others in a particularly challenging position when trying to explain their situation to loved ones or supporters. Highlighting the lived experience of these stages "illuminates" the temporal dominance in this system, returning to Berger, Kaba, and Stein's call for abolitionist work that "reduce[s] the power of an oppressive system while illuminating the system's inability to solve the crises it creates" (n.p.). Literacy in this process could be a passive one; these stages will happen, through some direction of the flowchart or another, without interaction from the person whose life they most directly impact (see the next section for some examples of this from Joesph). Yet staying involved and active in one's own case —and teaching it to the illiterate, in this case, those who are unfamiliar with the above flowchart, its idiosyncrasies, and what it takes to move from one stage to the next—opens up the possibility of abolitionist illumination. The patience required to educate those who can live their entire lives without considering this process is an abolitionist praxis of illumination.

Part 2. Abolitionist "Praxis of Creativity": Insisting on Information

Maybe you have heard that "the law is fluid." What that means is that American laws are continually in motion and changing each day. To keep up, it is essential that I have access to a legal library where I can study and do research to be current in the development of my appeals process. In 1996, the Antiterrorism and Effective Death Penalty Act (AEDPA) was enacted during the Clinton administration. The State of Mississippi (and other execution states) were effectively given permission to downsize and eliminate access to prison legal libraries, preventing us from physically going inside the library and studying law books that were instrumental to us (me) in challenging state prosecutors' legal motions. We were given access only to legal material we could cite exactly by name and case number. I was expected to find the necessary cases from within my caged cell in solitary confinement 23 out of 24 hours a day, seven days a week, without internet access, with only six inches of permitted legal documents, and no idea about the sequence of letters and numbers needed for relevant cases. If I was unable to provide this exact information, the people operating the library were not obligated to help me. They could simply ignore my request form.

Things have changed some over the past two years, as the Mississippi Department of Corrections has authorized the use of tablets.[13] For a while there, we could access legal information on current rulings from every court in every state in the country—a very useful tool. However, tablets are not connected to the internet, and we are only allowed one free hour a day. So, say there were 400 ruling opinions in the year 2024, and I didn't know if the case I wanted was #5 or #15 or #300. I would have to start with the very first case and continue scrolling from #1 to #300. If I didn't find it, then I kept scrolling until I reached #400. If, between my scrolling, someone used the microwave or the power went out, then I'd lose the connection and have to start the process all over again. During all this time, 20 minutes might pass. I'd still need to read and study and take notes on this case. That one hour would go by fast. As of only a few weeks ago,

we don't have access to that app anymore anyway: first, federal cases were blocked from opening, then, a few weeks later and after informing DOC officials that we had partial access, access to the entire app was blocked. So, it's back to square one.

This is a part of why many people in my situation don't even take pen and paper to their lawyer visits; they don't bother taking notes. The vast majority accept that our attorneys, who have years upon years of education and experience, are better suited to chart the course. There was a man executed about a decade ago who didn't know the race of his lawyer until the day of his execution. However, there are a few death row prisoners, of which I am one, who prefer, and oftentimes demand, that our attorneys try different approaches. In 2014, having been on death row for 20 years, I had the mental awakening that I was going to be active and involved with the full workings of my case's appeals processes. I decided to have a sit-down, no-sugarcoating discussion with my then-attorneys. I told them that they should use their learning to figure out which procedural rules and case laws were needed to match the arguments I wanted to make. For example, my case includes a forged letter that played a major role in my conviction; prosecutors distracted the case from the fact that the letter was forged, focusing instead on the chain of people through which the letter became available to prosecutors. I insisted to my lawyer at the time that we include this letter in my petition filing; he resisted because the lower court had ruled it as a chain of custody issue. After I insisted, and it was noted into record, the forged letter became one of the major claims in my successive petition filing.

We don't know what we don't know, and if we don't try something new, then we don't know what will work in our favor when it comes to a capital case. We are the constant inside of these appeal processes, while attorneys come and go. So, if we are not taking control of the narrative being told in our filings, then we leave our fate entirely in the hands of people who don't know us. If we want anything to change, we need to be actively involved in our own cases; without challenging approaches as usual, the status quo remains firmly rooted.

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The restricted access to legal libraries and digital information that Joesph describes above is an act of what Scott Richard Lyons might call "rhetorical imperialism," which is "the ability of dominant powers to assert control of others by setting the terms of debate" (452). Such control is necessarily connected to histories of oppression via information (e.g., prohibiting literacy among enslaved people). These barriers come in endless other forms for incarcerated people. For example, Angel E. Sanchez describes one of his own encounters with barriers when trying to study while incarcerated: "Every time I was sent to confinement, transferred, or subjected to search-downs I was at risk of losing my textbooks. Sometimes they would be carelessly misplaced by the guards, and at other times they would be intentionally thrown away" (1671). It is experiences like these, and so many others, that convinced Sanchez that his path to becoming a lawyer after his incarceration "make[s] clear that my education was not because of prison, but in spite of it" (1672). The policies changing from on high over time, as well as the daily

operations inside, show the grammars of law flexing into the daily lives of people on death row.

Joesph's ongoing attempts to access information and be involved in his case undermine what the grammars of law intend. His acts are abolitionist, in-prison iterations of what Anna Plemons calls a "tactic," as coming from de Certeau, and what Middleton calls creative maladjustment, per King Jr. and Kohl. Both Plemons and Middleton explore the small and mighty ways in which instructors inside (those who are permitted to leave, versus those who are incarcerated) negotiate how to encourage critical thinking and creative expression in a structure designed to discourage precisely those practices. Building a critical framework from her teaching inside a maximum-security prison in California, Plemons argues that "[t]he rules of the [prison industrial complex] may, over time, be negotiated, but they cannot be ignored, because when they are, the punishment comes back—every time—on the incarcerated men and women who choose to risk community partnership" (45). Similarly, Middleton explores how "maladjustment"—not in the sense of adjusting badly but rather adjusting to what is bad—allows educators inside prisons to fully do their job. For example, educators going inside might need to "[circumvent] state policy to bring in educational materials as a normalized, complex, and situated literacy practice" (13). Joesph's efforts to learn the grammars of law and give them new syntax (e.g., insisting on approaches his lawyers may have left behind) are tactics and maladjustments that create new possibilities as he navigates and overcomes barriers to information.

As explained above, we suggest that the tactics and maladjustments that Joesph enacts over decades are an abolitionist praxis of creativity. This kind of practice, Rodríguez emphasizes, is "not merely a practice of negation—a collective attempt to eliminate institutionalized dominance over targeted peoples and populations—but also a radically imaginative, generative, and socially productive communal (and community-building) practice" (1576). Joesph's relentlessness in reading, understanding, and participating in his appeals process works to "eliminate institution[al] dominance;" his writing to an audience beyond death row insists that this eliminating needs to be "communal." As Joesph shows above, this is not only about the law; it's also about narrative and the human experience of this process. Joesph writes: "if we are not taking control of the narrative being told in our filings, then we leave our fate entirely in the hands of people who don't know us." To do this work requires moving capital appeals process literacy from behind razor wires to beyond razor wires. It also requires people on either side of the razor wire to "know" one another.

Part 3. Magnifying Dissent

My conviction and sentencing in March 1994 were based on what I (and my lawyers and advocates) believe includes police corruption and concerted decisions to pursue the path of least resistance to find someone to arrest for the murder of a White woman (and what could be easier than blaming a poor Black man?). My legal team and I needed to see every detail that went into the investigative processes of the case, requesting access to, among other documents, the following: my trial counsel files, files from the relevant law enforcement entities, copies of undeveloped audiotapes and videotapes taken

during the investigation, and information about whether Black jurors were restricted from the jury on the basis of race. I have been denied formal requests for Discovery multiple times. This has been across circuit and state courts, spanning more than 30 years. When the courts restrict my access to these files, they deny me crucial and critical information that keeps the truth about my case in darkness.

However, not every judge agrees that I don't deserve Discovery. I'd like to use names to distinguish these judges from the majority, but I am advised right and left that I shouldn't (this advice honestly pisses me off from time to time, but I'm trying to work *with* the people trying to help me). In the case of these two judges, I will call them Judge M and Judge N. When the Mississippi State Supreme Court denied me Discovery back in 2012, Judge M and Judge N dissented from the majority. Judge N said: "I am unable to agree with the majority's findings. . . . Brown did not have access to essential material with which to assert his claim of ineffective assistance of counsel. . . . Because Discovery was withheld from Brown, I cannot agree with the majority." Me neither, Judge N.

Judge M's dissent takes a different approach. His dissent comes from within Mississippi's laws, suggesting that the other judges ("the majority") misinterpreted those laws. First, he says, "[u]nder MS Rule of Appellate Procedure 22 . . . Brown was 'unquestioningly entitled to the files.'" He goes on to say, "[t]his court's Rule 22 provides for the pre-petition discovery in order for a petitioner to file a meaningful petition. Yet, the majority mocks Brown's request by referring to it as his request for 'so-called pre-petition discovery.'" Thank you for pointing out this mockery, Judge M! Then, he considers how Rule 22 requires the petitioner to demonstrate that the request "is not frivolous and is likely to be helpful in the investigation, preparation of presentation of specific issues which the petitioner in good faith believes to be in question and proper for a post-conviction release." I assure you that there is nothing "frivolous" about me wanting to see the information that has been kept hidden from me for more than 30 years, forcing me to live in a cage, trying to piece all of this together and figure out how and why these State actors believe so strongly that the State of Mississippi should kill me.

I want to share with you one more dissent from Judge M's opinion, and I really do love the way he explains this thing. He says:

> The majority, displeased with this troublesome rule, drags in a statute that the majority says "clarifies" the rules. . . . I dissent because our rules, as they currently exist, allow [Brown] to obtain the discovery he seeks, and I cannot join the majority's acrobats in finding a way to deny him what our rules allow him to have. If the justices in the majority think our rules are too lax, then they should change the rules, and not take refuge behind a procedural statute.

Wow! All of that is pretty important, and should not get lost as my case moves from one court to another court. Just because the majority has more votes does not mean that what is happening is justice. Or true. Judge M makes it clear that how other judges deny me information (maintaining the grammars of law) and circumvent that information (by turning cartwheels and backflips to take refuge behind legislative statutes) puts me and other people on death row starting at the bottom of a very steep hill. It is these

minority voices of dissent that should take priority, rather than getting lost in the annals of justice, because the weighing of opinions on dissent is much stronger when considering the tone as well as the language used to describe the majority's actions and motives. When judges like M and N dissent so strongly from their colleagues, shouldn't that dissent echo just as strongly throughout the appeals process to the ears of the people who decide whether or not to have me murdered?

*

The Cornell Law School Legal Information Institute defines legal "dissent" as the following:

> A dissent refers to at least one party's disagreement with the majority opinion. An appellate judge or Supreme Court Justice who writes an opinion opposing the holding is said to write a dissenting opinion. Unlike majority opinions and similar to concurring opinions, dissenting opinions are not binding law and, therefore, future cases are not obliged to follow them. Nonetheless, dissenting opinions preserve minority viewpoints on contested legal issues and contribute to the public debate of these issues. (Cornell Law School)

While these dissenting opinions allegedly "preserve minority viewpoints" and add to "public debate of these issues," Joesph's anecdotal experience suggests that, to the contrary, dissent is more likely to be left behind. This process of majority ruling in capital litigation offers a particularly insidious example of a "stock story," discourse that Martinez identifies as the version of events that creates "'master narratives' based on ignorance and on assumptions about minoritized peoples" (65). If the narrative about a case proceeds without what Joesph calls the "echoes" of dissent, the case becomes its own stock story. In other words, if Goldberg insists that "justice is not an event" (7), neither, we argue, is dissent.

Dissent is not an event. Magnifying dissent in a ruling throughout the appeals process and beyond challenges stock stories that structure the grammars of law. Dissent is a form of what Martinez calls "counterstories;" magnifying that dissent in a person's legal work and daily experience can alter the texture and shape of the case. Magnifying dissent makes it possible to view discourse around a capital conviction case as something other than the majority view, exposing the "crises" of the US carceral system and "reduc[ing] [its] power" (Berger, Kaba, and Stein, n.p.).

Conclusion: Dissent Is Not an Event

Some of the guys have agreed to meet every Thursday in the morning. We meet on the yard to discuss how we might advocate for ourselves from death row. We sit in our required red uniforms at this black-painted steel bench/table if it's not covered in bird shit. There is constant loud back and forth talking from state prisoners in black and white stripes or green and white stripes playing basketball or pushing breakfast food

carts or equipment carts for fixing the lights and toilets. There are correctional officers and unit administrators moving about from one building to the next escorting inmates to the unit clinic for medical care. They're all moving around us, walking to and from different buildings, so there's a constant din of noise and movement, which distracts our attention away from the topic at hand. But, when opportunities arise, I try to be present.[14]

Up until three years ago, all of us were on 23 out of 24 hours per day of solitary lockdown, without opportunities to be in community (with the exception of religious gatherings—after all, this is Mississippi). After a change of administration and new policies, we are now allowed approximately 11 hours of being around each other for social gatherings and educational opportunities. This has allowed some of us to have serious conversations concerning the betterment of our quality and quantity of life. There is no dissent among us in that goal, or in knowing that we have to join as a collective and dedicate ourselves to working together over time if we hope to achieve this goal.

However, during these discussions it has become clear that each of us has our own take on what should be done about the death penalty. Some people here, for reasons I don't entirely understand, want their death sentence commuted to life with parole. They believe reform is the most likely pathway for surviving this, and that it would give them an opportunity to be released from prison one day. Others argue for total abolishment, hoping to convince the public that executions are morally indefensible in the Bible. When I sit and consider the death penalty as it relates to *me*, then I do not hope for abolishment. If the death penalty were to end today, my sentence would become life without parole without court-mandated legal representation, and I would have to file everything *pro se*. I am a poor person who would not be able to afford an attorney. There are way too many obstacles for me and a million errors I could make, which would mean losing my appeal, and there would be no recovery. I would be trapped within prison walls with a life without parole sentence. The state has handcuffed, shackled, and caged me since the day of my arrest, and I will not knowingly do anything that prolongs my suffering.

All of us feel these different ways because we have watched Mississippi murder a lot of men, and we do not wish to be killed. We fear what is going to happen to us. We all might disagree on what to do about the death penalty, but none of us wants to be executed. We're all standing on the same ledge, and there are no easy answers. The simple act of each of us taking a breath defies the majority in this state who would have us killed.

*

People living with death sentences convening in the yard to disagree about what to do about the death penalty is an abolitionist praxis of creativity. Rodríguez writes, "abolition is not merely a practice of negation—a collective attempt to eliminate institutionalized dominance over targeted peoples and populations—but also a radically imaginative, generative, and socially productive communal (and community-building) practice" (1576). Gathering, talking, and disagreeing is most of all living, and

it is also creating beyond the limits that attempt to tell these men that they are dead. To return to Cullors's statement: "Abolition means community. Abolition does not isolate individuals. Abolition invites people in. . . . Abolition does not choose sides" (1692). Part of abolitionist praxis is co-existing—or, in this case, co-surviving—with different viewpoints.

In other words, the several dozen people whom Joesph lives next to share the capital appeals process as posted in the flowchart in Figure 1, but each has their own literacy narrative in navigating that process. No matter how un/involved each of these people is in their appeals processes, they have a level of literacy that is unattainable theoretically and removed from public discourse. Like with any genre, to more fully understand how it works and affects reading, writing, and literacy, we need to read, write, and value as many of these literacy narratives as we can. Stauffer writes, "A world, a cooperatively authored thing, can't be rebuilt by a person acting alone, especially not one with a destroyed self. It is the job of the wider world to help with the rebuilding" (80). Teaching others literacy in the capital appeals process is thus building an alternative world in which those who endure a death sentence do not experience that process alone.

The literacy narrative that we articulate in this article takes several arcs. One arc shows how a young man is sentenced to death in a grammar so obscure that it tells him he has only 30 days left to live, but this man works his butt off and learns the layers behind the language and, more than 30 years later, writes volumes about how he is very much alive. Another arc starts with a man who felt he needed to stay silent throughout his trial so that the lawyers could do their job, but who now knows that even lawyers "don't know what they don't know." A third arc might show how a man has been shuffled from court to court and denied information that would make him fully literate in his case, yet he identifies new ways for reading rulings that magnify the importance of dissent as not only disagreement, but as a flashing light to others—an illumination —that something is not what it pretends to be. Speaking beyond the capital appeals genre insists that this material is not only for those who endure a death sentence; like all literacy narratives, this literacy narrative is from and for all of us who endure a society that permits capital punishment as a practice of justice.

Notes

[1] This is an excerpt from "There Are More," a chapter in Joesph's memoir, *The Image They Had Painted* (Publication Studies, 2026).

[2] Our working relationship has been an ongoing process that began with Joesph writing and publishing 70+ creative stories and poems with Alison as his reader/advisor/editor. While working on these creative pieces, our conversations covered topics that seemed to need a different genre. Joesph's experiences with incarceration, the death penalty appeals process, and communicating with lawyers and advocates, combined with Alison's scholarly interests in writing, composition, and archives helped us both ask new questions without simple answers. It has taken years of collaboration for us to reach the point where we were able to coauthor this academic piece, which includes only a fraction of the topics that we discussed and want to keep exploring through writing. This work happens through an accumulation of drafts sent back and forth through snail mail, hours on the phone to discuss suggestions on each other's sections, and a shared belief that none of this time is wasted.

[3] Nicole Gonzalez Van Cleve argues that criminal courts create a "public theater for racial degradation" (136). In *An Autobiography*, Angela Davis's own experiences in jail showed her that "the bail system is inherently biased in the favor of the relatively well-off" and that the release system is "heavily tainted with racism" (61).

[4] Wacquant writes: "*Mass* incarceration suggests that confinement concerns large swaths of the citizenry (as with the mass media, mass culture, and mass unemployment), implying that the penal net has been flung far and wide across social and physical space. [Yet] . . . the prevalence of penal confinement in the United States, while extreme by international standards, can hardly be said to concern the masses" ("Class" 78). Rodríguez agrees that the "actual historical technologies of incarceration have never targeted an undifferentiated 'mass,' but have consistently pivoted on the gendered racial profiling and criminalization of Black, Brown, Indigenous, queer, poor, and colonized (or colonially displaced) Peoples" (1583).

[5] This "recklessness," Cholbi and Madva explain, is the continued practice of a system that, research shows, renders "black capital defendants . . . more likely to be subject to execution than defendants of other races and . . . those who murder blacks . . . [and] . . . less likely to be subject to execution than are those who murder members of other races" (517).

[6] It is *LiCS*'s policy to name all authors in full while balancing needs for readability. The full author list is as follows: Austin Sarat, John Malague, Lakeisha Arias de los Santos, Katherine Pedersen, Noor Qasim, Logan Seymour, and Sarah Wishloff.

[7] See Joe Lockard's "US Death Row Literature and Public Mobilization Against Capital Punishment" for an introductory bibliography of "memoirs and personal accounts" (60) from people living on death row.

[8] The co-authorship of this article is marked by these challenges. Most communication systems available to people incarcerated in the Department of Corrections systems, including in Mississippi, seem to discourage critical thinking, scholarly study, and in-depth collaboration. Phone calls are permitted in 20-minute segments, so that momentum of ideas is frequently interrupted. Mailed drafts of this article occasionally

never reached Joesph, without explanation, or sometimes only one side of the pages were scanned, so that he had only half of the draft to consider. This kind of long-form collaboration requires hours and hours on the phone beyond a more conventional co-authored article, and we believe that this extra work resists the system that prefers those inside keep their thoughts and ideas inside, too.

[9] Well, mostly in jail. I did escape for a few days, which you can read about in "On the Lam," a story in *The Image They Had Painted*. In this story, I explain why escaping does not necessarily mean someone is guilty.

[10] For now, I can tell you that after four years of being on death row, I thought I was even closer to death than I did on that very first day. When the court denied my Direct Appeal Petition, I had an execution date, and I spent three days thinking I was going to be executed. I was placed in the last cell next to the death chamber and heard the designated execution team carry out mock execution drills on live animals. I heard those animals take their last breath as the execution team joked and laughed then repeated the process on some other poor creature. At the end of those three days, I received a stay of execution from the US Supreme Court and was transported back to the death row unit.

[11] See "Waiting," a story published online by Joesph that more directly considers the toll that waiting takes on people inside.

[12] See Danielle Sered's *Until We Reckon: Violence, Mass Incarceration, and a Road to Repair* for data showing that victims rarely feel safer or healed with people behind bars.

[13] Joesph had access to tablets when writing this article. However, in August 2026, tablets were suddenly removed from death row in Mississippi without explanation, and the men living there no longer have access to this education and communication device.

[14] Since writing this, we on death row have moved to Unit 17, which is where people are executed. We are now able to move around more "freely" than we were in the scene I write here, but we pay the price by living closer to death than we ever have.

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