

Is Capital Punishment Morally Defensible?

Jessica Blank and Erik

Jensen Jessica Blank and Erik Jensen are actors, writers, and collaborators, married since 2002 and known for their shared interest in social justice issues. Born in New Haven, Connecticut, in 1975, Blank grew up there and in Washington, DC, attended Macalester College in St. Paul for two years, and graduated from the University of Minnesota. She debuted as an actress with *One Life to Live* (2004) and has since appeared on several other programs. She regularly writes for and occasionally produces television and film projects, freelances as a writing coach, and has published three novels: *Almost Home* (2007), *Karma for Beginners* (2009), and *Legacy* (2018). Jensen, by contrast, is a Minnesota native, born in 1970 and educated at Carnegie Mellon University in Pittsburgh, Pennsylvania. An author and cocreator of the graphic novel *The Reconcilers* (2010), he is best known as an actor and has performed in more than a hundred television, movie, and stage productions — notably *Black Knight* (2001), *The Bronx Is Burning* (2007), *Gravity* (2010), *The Walking Dead* (2014), and *Mr. Robot* (2016– 17). Together Blank and Jensen have written the award-winning documentary plays *The Exonerated* (2002), excerpted here; *Aftermath* (2009), based on interviews with Iraqi refugees; and *How to Be a Rock Critic* (2015), about music journalist Lester Bangs. They are also the coauthors of *Living Justice: Love, Freedom, and the Making of The Exonerated* (2005), a memoir of their first collaboration and the work that changed their lives. from *The Exonerated* Newly dating at the time, Blank and Jensen were inspired to research and write *The Exonerated* after attending a 2000 seminar on capital punishment at Columbia University, where they were shocked to learn that dozens of death-row inmates had been released or were pending release after proof of their innocence had surfaced. The documentary play tells the true stories of six of those exonerees: Delbert Tibbs, whose description fit that of a man suspected of violent crimes; Robert Earl Hayes, accused of raping and murdering a coworker; Gary Gauger, arrested after having reported finding his parents killed in their home; Kerry Max Cook, whose fingerprints allegedly tied him to the death of a woman he had seen once, months earlier; David Keaton, arrested for involvement in a deadly robbery he had no knowledge of; and Sunny Jacobs, a helpless bystander to a police shooting whose husband Jesse, also present and also absolved, was nonetheless executed by the state. As a whole, *The Exonerated* weaves together the stories of each person's experience, from the crimes for which they were accused to their ultimate releases and struggles to adjust to life after prison. The excerpts we present here are passages from two key episodes: conviction and imprisonment, followed by new evidence, retrial, and exoneration. As Blank and Jensen explain in their comments on writing (p. 546), the dialog is taken directly from interviews conducted by the playwrights and from the archived court transcripts and case files they scoured afterward. Although this is a play, none of it is fiction.

Poster advertising the 2018 revival of *The Exonerated*, at the Secret Theater in Queens, New York.

Description

The poster shows a dark prison cell with light entering from the outside through a barred window creating an illuminated pattern on the floor of the prison. Text on the cover reads, Secret Theatre: What effect does it have on a person, a soul, a life, to have freedom and self-respect stripped away? *The Exonerated*: Written by Jessica Blank and Erik Jensen Directed by DeMone Seraphin. Text on the cover reads, Secret Theatre: What effect does it have on a person, a soul, a life, to have freedom and self-

respect stripped away? The Exonerated: Written by Jessica Blank and Erik Jensen Directed by DeMone Seraphin.

Characters

DELBERT, African-American, sixty. A seminary dropout, radical, and poet. His whole personality is like an old soul song: smooth, mellow, and with an underlying rhythm that never lets up. Actors playing DELBERT should take care to find his substantial sense of humor, in addition to his obvious depth.

SUNNY, white, fifty. A bright, pixieish yoga teacher from California; her lightness and positivity contrast with moments of great depth and clarity.

ROBERT, African-American, thirties. A former horse groomer from the Deep South; hardened but not lacking a sense of humor. Deep rural Mississippi accent.

GARY, white, forty-five. A midwestern hippie and an organic farmer. Clearly was in his element in the late 1960s and early 1970s. He is generally good-natured, friendly, and quite smart.

KERRY, white, forty-five. A nineteen-year-old trapped in a forty-five-year-old's body, born and bred in Texas. KERRY was imprisoned for twenty-two of his forty-five years and is eager to rediscover the world. Always wants to make sure he connects with whomever he is talking to. Strong Texas accent.

DAVID, African-American, forty. A gentle, sad man, born and raised in northern Florida (otherwise known as southern Alabama). Has a very strong spiritual sense and had aspirations to the ministry before being put on death row at eighteen. He is continually engaged in a battle between resignation and hope.

OPEN on a stage, bare except for ten plain armless chairs. These chairs can be used variously to set up scenes throughout the piece. The entire play can be performed using only these chairs. No further set pieces are necessary, although tables and other set pieces might work, too. The play is seamless: There are no blackouts during the performance, and no intermission. Unless otherwise noted, the exonerated people deliver their monologues to the audience. DELBERT can see the other exonerated people; unless otherwise noted, none of the other exonerated people see one another or DELBERT. At various points in the play, we see "scenes" illustrating the stories being told by the exonerated. These scenes exist in the exonerated people's memories, and unless otherwise noted, they should take place behind or beside the character telling the story. DELBERT functions as a sort of Chorus, fading in and out of the action.

Lights up on SUNNY.

SUNNY: They tell you exactly how they're gonna do it. They're gonna send twenty-two hundred volts of electricity through your body until you're dead. And then they ask you if you have anything to say to that, and really it's kind of dumbfounding. So after the judge read the sentence, I just said, "Are you finished?" I didn't have anything to say. What do you say? How can you say anything to that?

Sound of a cell door slamming shut. Lights up on DELBERT, down on SUNNY.

DELBERT: I don't remember any of my dreams from when I was on death row. I almost never recall my dreams, which I am absolutely fascinated by.

When I was at the University of Chicago, I took part in a laboratory experiment. They were running a test to see if creative people's dreams differ from those who are less creative. And so of course, it appealed to the ego in me, thinking somebody thought I was creative.

So you go to bed in the lab and they are monitoring your respiration and your REM and so forth. And they would wake me up over the microphone, and it always sounded to me like one of the Nazi doctors 'cause he had an accent, you know, he would be like, "MISTA TIBBS, YOU VERE DREAMINK." And I wanted to say, No shit.

But the fascinating thing was, when the [mother% +*! ers] hooked me up, they put the receptors by your ears, right exactly at the same place they do when they're getting ready to execute your ass.

Lights down on DELBERT, up on SUNNY.

SUNNY: Instead of sending me to be Jesse's cellmate, they decided to clear out an entire disciplinary unit at the women's prison. It's a very old prison, it's like a dungeon-type place. It was six steps from the door to the toilet bowl — you could stretch out your arms and touch both walls. They take your clothes; they give you a number, so basically they're taking . . . who you are from you. You no longer have a name, you're a number. You're locked inside this tomb. It's like you're thrown to the bottom of the well.

Lights down on SUNNY, up on DAVID.

DAVID: There was one woman, lived across the street when I was a little boy, she had a goiter on her neck. And I was sayin', "Lord, if I only had the power of the Spirit, I would go lay my hands on her and her illness would disappear." And that's all I want, just to let the Spirit be operatin' through me, whether it be knowledge, discernment, speak the Word, or whatever. [to God] I would love to just do that before I die.

I had a relationship to God when I got in here, but somehow I've lost it. I guess I'm still reachin' out to find it — you know, I said some nights now I wanna light me a couple candles, lay back and just meditate, 'cause they say the kingdom of God is within you, isn't it? You know, everybody lookin' for something outward, but then, that light's within you, that voice we speak to . . . [whispering God's voice] "C'mon, boy."

Give you the chills when I say that, right?

Lights down on DAVID, up on KERRY.

KERRY: You know, when I was in there, I saw a hundred and forty-one guys go down. All's I got to do is pick up the newspaper, turn on the news, "such and such becomes the two hundred and twenty-second inmate executed resulting from capital punishment," and I hear the name and I say, "Oh my God," 'cause I know him. I mean, I don't just know him, I ate with him, I cried with him, we used to play basketball and talk about "Man, you're gonna go free."

You know, I got a book, a book about Texas death row, and seriously, this book is what, five years old, and everyone in here has been executed. I can go through that book, one by one, and point out every face in here that's gone.

INMATE: Executed.

Sound of a switch being thrown.

INMATE: Executed.

Sound of a switch being thrown.

INMATE: Executed.

Sound of a switch being thrown.

KERRY: And you know, at a capital trial, the prosecutors always say, “He’s dangerous, he’s a maniac, the sick, twisted murderer.” But I’m no different from you — I mean, I wasn’t a street thug, I wasn’t trash, I came from a good family — if it happened to me, man, it can happen to anyone.

Lights down on KERRY, up on GARY.

GARY: I was in X house — the execution house. That place was like somethin’ out of a movie. There were no guards. They would just open your cell door and let you run around. I guess they figured you were gonna die anyway, so why not.

So you can walk around through this dimly lit series of corridors, and through the observation room, into the execution room. That’s where the phone was that all of us used. Which was also the phone that the governor would use to call in and stop an execution.

The whole place was run by gangs, you know, there was ongoing warfare between the different factions. And the only gang open to white guys was the Northsiders — which is basically made up of the Aryan Nation and the Skinheads. So I had no gang protection. So I kept to myself a lot. Killed a lot of time on my own.

One way I killed time, was I found a sewing needle stuck in a concrete wall. Somebody had smuggled it in. So I taught myself embroidery.

You’d take extra clothing — the blue jeans made real good blue thread. And I was lucky — I had kept my old yellow jumpsuit that they gave me to wear when I first went in. So that gave me yellow. You take your sheet apart, that gives you white. So I had three colors of thread, just from unraveling cloth. I made myself a tote bag I’d take to chow hall, and I embroidered flowers on it. I put bell-bottoms on a couple of my prison blues, made a Calvin and Hobbes patch I put on my hat. They confiscated that one.

Lights down on GARY, up on ROBERT.

ROBERT: The electric chair was downstairs and I was upstairs, and every Wednesday morning they cranked that electric chair up and you could hear it buzz.

And when they served breakfast, you gotta have sharp ears to hear that front door open, ’cause if you oversleep, the roaches and the rats come and eat your breakfast, and that’s the God’s honest truth.

And the guards — I think nine times out of ten, the average person that became a guard, the only way I can see it, when he grew up he was a little runt and then the bigger guy would mess with him and all of that. And then they grow up and they wanna do that too.

When I was in there, one day, this officer was harassing my neighbor and I was a witness. And the other inmate, he wanted to write the officer up, he asked me

ROBERT: Well, see, before I went to prison, I had a dream about prison — and I seen death row, I seen the inside, and I seen myself get out. And 'cause a that dream, I always said, I'm gonna get a new trial. And sure enough, one day, I get awakened by all this commotion. All the inmates, they get up in the vents, hollerin' —

Lights up on MEN.

ALL MEN [ad lib]: Man, you got a new trial! Damn, Robert, you gonna go free! You on the radio! Turn on the radio! [etc.]

CELLMATE: Put the radio on!

ROBERT: Well, I put the radio on.

And later that day, my lawyer came, and she said to me —

Lights down on INMATES, up on FEMALE LAWYER.

FEMALE LAWYER: Now, you know, Robert, if you lose, you can go back to death row.

ROBERT: And I said [to lawyer], "Well, now, accordin' to that dream, I'm gonna go free."

And she said —

FEMALE LAWYER [to ROBERT]: You gonna put all your trust in a dream?

ROBERT: And I said, "Yep" [small beat]

Lights up on PROSECUTOR, GEORGIA, and EX-BOYFRIEND. 2

FEMALE LAWYER: Back in 1990, what color was your hair, and how long was it?

ROBERT: And by then he had short hair, salt-and-pepper, you know, and he said —

EX-BOYFRIEND [on the stand]: My hair was the same color and length back then as it is now.

ROBERT: And my lawyer said —

FEMALE LAWYER: Are you sure?

EX-BOYFRIEND: Of course I'm sure.

ROBERT: So my lawyer pulls out this envelope. And she said —

FEMALE LAWYER: Again in 1990, do you remember having your picture taken near the racetrack?

EX-BOYFRIEND: Uh, yeah.

ROBERT: And then she pulled that big ol' photograph picture out and showed it to him. And there he was, his hair red and brown and sixteen inches long on the picture.

ROBERT looks to GEORGIA.

ROBERT and GEORGIA: Okay?!

Lights down on ROBERT, GEORGIA, EX-BOYFRIEND, PROSECUTOR, and FEMALE LAWYER, up on KERRY.

KERRY: So then after I've been on death row for twenty-two years, they find this DNA evidence, you know, and the prosecution says that this will be the final nail in Kerry Max Cook's coffin: "We'll show the world once and for all that he committed that murder." And then the results come in and it did just the opposite; it finally took the nail out of my coffin, told the world the truth — that that was Professor Whitfield's DNA they found on that girl. And he's still out. They never even went after him. He's been walking around a free man, laughing at the system for twenty-two years.

Twenty-two years.

Lights down on KERRY, up on GARY.

GARY: About halfway through my time on death row, a lawyer named Larry Marshall took on my case. He's at Northwestern; he works with a bunch of law students on wrongful convictions. My twin sister found out about him and went down there literally through a blinding snowstorm to see if he would take me on. And he said yes.

Man, that was like the cavalry coming.

Once he started working on it, Larry found out about this motorcycle gang called the Outlaws. Guys gained entrance into the gang by performing violent acts: They killed a bunch of people, they'd bomb the Hell's Angels — they just did a lot of stuff. And the federal government, the ATF, was running wiretaps on them. Well, in 1995, the ATF got a videotaped confession from an Outlaw guy saying he killed my parents. But I wasn't released until 1996. And that whole year in between, they were fighting my appeal. They fought it all the way to the Illinois Supreme Court.

The two guys who killed my parents were just found guilty last year.

But I've been adamant that those guys not get the death penalty. Some people think that's stupid, but why would I want them to die? It's not gonna bring my parents back. No good's gonna come from it.

Lights down on GARY; up on SUNNY and RHODES.

SUNNY [to audience]: In 1979, Walter Rhodes wrote the following letter to the judge.

RHODES: I, Walter Norman Rhodes, hereby depose and say that I am under no duress nor coercion to execute this affidavit. This statement is made freely and voluntarily, and to purge myself before my Creator.

Briefly. On February 20, 1976, at approximately 7: 15 a.m., I did, in fact, shoot to death two law-enforcement officers with a nine-millimeter Browning pistol.

I state emphatically and unequivocally that my previous testimony against Jesse Tafero and Sonia Jacobs was false and part of the statements I was instructed to make by the assistant state attorney, who did coerce me into lying.

I took a polygraph examination relative to this case, but owing to the fact that I am a student of Yoga and karate, and have been for the last ten years, I passed it. And can pass any such test, in my opinion.

The foregoing statements are true and correct to the best of my knowledge and belief. I so swear.

Walter Norman Rhodes, Jr., 9 November 1979.

Lights down on RHODES.

SUNNY: Keep in mind that I wasn't released until 1992. So I'll just give you a moment to reflect: From 1976 to 1992, just remove that entire chunk from your life, and that's what happened. [long pause, the length of a count of six]

But after all that, one day, the guard came into my cell and told me I was getting out. I thought he was trying to trick me.

Sound of cell door opening;

SUNNY takes it in. SUNNY: And it was just so joyous. I mean, I know a lot of people are angry, and I was angry some, but I didn't want to waste my time being mad.