

O'BRIEN

Harmon rests.

BRIGGS

King rests.

CUT TO: STEVE lying on his cot, soaked with sweat. He tries hard to catch his breath. He turns his head to the wall. He lifts one hand and lets it slide slowly down the pale-green wall.

CUT TO: INTERIOR: COURTROOM: CU of JAMES KING. He looks around awkwardly as BRIGGS sums up his defense.

VO (BRIGGS)

So what do we have? We have a man who admits to being part of a robbery accusing another man. And why is he making these accusations? The prosecution would have you believe that bringing Mr. Evans, this "Bobo" character, here, is the result of good police work, which gives Mr. Evans the chance to demonstrate what a great citizen he is. But isn't the truth of the matter that the only reason he's here is

because the police have him on a criminal matter, and have offered him a deal if he comes here and implicates someone else? Isn't that the real story?

Does it really surprise anyone that a man who is capable of robbing a drug-store, and he has admitted to doing just that, who then sells the loot from the robbery, and he has admitted to that, and who is caught with drugs, and he has admitted to that—then tries to get a lighter sentence by testifying against another person? Isn't his character, if you can call it character, clear? Hasn't he proven by his own admissions who he is? What he is?

Camera pulls back from POV of JUDGE. We see only MR. and MRS. HARMON on one side of COURTROOM, a few strangers on the other side. The COURTROOM is nearly empty. The camera pans to COURT CLERK, who is going through mail. Then to court STENOGRAPHER, who takes down proceedings. Then to COURT OFFICER, who is nodding, close to sleep.

BRIGGS

What I submit to you, ladies and gentlemen of the jury, is that Mr. Evans made the mistake of selling the cigarettes he stole during the robbery. Did he do the shooting? I don't know. But naturally he says he didn't do it. If he had sat up there on the witness stand and said he did the shooting, he would never have been offered the deal he got. The only way out for him is to look around and find somebody else to accuse. And that's precisely what he did. He could have picked anyone else in the neighborhood. Half the young men of that age group are either unemployed or underemployed. He happened to pick Mr. King.

The State did not produce one witness to the murder. They produced one witness, Miss Henry, who said she saw Mr. King in the store. Where was her mind at the time? According to her testimony, it was on the health and well-being of her grandchild. Could she have

made a mistake? Evidently she has. Not that she did not see someone in the store, but whom did she see? She was taken to the police station and given a set of photographs. From these photographs she picked, at police urging, Mr. King. But she didn't pick out this photo from a thousand photographs, or a book of photographs or even 50 photographs. She was shown a handful of photos and asked to pick one. Later, when she had to pick someone from a lineup, what was she doing? Was she picking out the man she saw in the drugstore, or was she picking out the man the police had given her in the photographs? That's for you, the jury, to decide. We heard Mrs. Moore testify that James King was at her house at the time of the incident. Shall we assume that every person who is related to an accused person is going to lie? I don't think so. The prosecution, Miss Petrocelli, paraded in front of you a bunch of admitted criminals, people who have participated in stickups, buying

and selling stolen goods, you name it. She has asked you to believe them. Then she asks you not to believe Mrs. Moore, who has never committed a crime in her life. Think about it. If you met these people on the street, which would you believe, which would you trust?

As for Osvaldo Cruz, he is putting as much distance between himself and this crime as possible. All he was supposed to do was to stand outside and push a garbage can in front of a potential pursuer. But there wasn't a pursuer, because Mr. Evans and whoever he was with—if indeed he was with anyone else—made sure of that. And think about this: Lorelle Henry, who seemed for all the world like a decent, law-abiding human being, testified that she was sure that there were 2 men in the store, 2 men involved in the robbery. And we have 2 men who have admitted participation. I submit to you that there's no need to go beyond these two when you look for the perpetrators of this crime. Ultimately, what this case is about is whether you

believe people who are admitted participants in this crime and who are saving their own hides. If you believe, as I do, that their positions, their stated characters, so taint their testimony that everything they say is well within the area of reasonable doubt, then you have no choice but to find Mr. King not guilty. And when you walk away from the sorry testimony of the State's witnesses, you have nothing else from the prosecution. Nothing else. Ladies and gentlemen, at the beginning of this case the prosecutor spoke of monsters. She not only found them, but she has brought them here to testify for the State. I have faith in you, and faith in the American judicial system. And that faith leads me to believe that justice in this case demands more proof than you have seen in this case. I believe that justice demands that you reject the testimony of these men, consigning their stories to the area of deep doubt. I believe that justice demands that you return a verdict of Not Guilty. Thank you.

CUT TO: POV of JURY. Camera will follow O'BRIEN as she paces from one side of the JURY to the other. Behind her we see the prosecutor's table and the 2 defense tables. Beyond that we see STEVE's MOTHER, sitting on the edge of her seat.

O'BRIEN

First, I would like to thank you for your patience in this trial, and for your attentiveness. It's been clear to everyone involved in this case that you have taken an interest in these proceedings and have brought your minds and hearts to the testimony. I would like to beg your indulgence while I review that testimony.

The most important testimony, the reason we're here, is the Medical Examiner's statement that a murder was committed. A man is dead. But nowhere in the Medical Examiner's testimony does he indicate who was responsible for that murder. That is for you to determine. It is an awesome responsibility. It was testified that the gun belonged to the victim. So

we can't trace gun ownership back to the murderer. What can we trace as to the guilt or innocence of my client, Steve Harmon?

The State doesn't even suggest that he was in the store during the robbery. It doesn't suggest that it was his gun that was used. The State does contend that somewhere, sometime, Steve got together with someone and agreed to participate in this robbery. On the stand Steve admitted to having seen Mr. Evans on the street in his neighborhood. Hundreds, perhaps even thousands of people have seen Mr. Evans in the streets of Harlem. Perhaps hundreds of thousands of people. That doesn't make any of them guilty of a crime. The State did elicit from Steve that he spoke to Mr. King about basketball. The conversations were short, and without substance. At no time did the State establish any conversation between Steve and anyone else about a robbery. Think about that for a minute.

Without a plan that says that Steve entered an agreement with the robbers, what would he be charged with? Talking about basketball in the streets of Harlem? Does that now constitute a crime? Not in any law journal that I know about. The State also presents Mr. Evans's testimony that he "understood" that Steve was to check out the drugstore to see if it was clear. Oh, really? The State brought out a witness,



one who everyone agrees has no reason to lie, Lorelle Henry. Miss Henry said that she was in the drugstore when the robbery began. If someone was to make sure that the drugstore was clear, he or she made a bad job of it. Remember, it was the State that proved that the drugstore wasn't clear. And do you remember the signal that Mr. Evans said he received? He said that Steven came out of the drugstore and didn't signal that anything was wrong. In other words, there was no signal. What is the significance of this? Well, if there

were a signal, a thumbs-up sign, for example, we might expect someone in the vicinity to have noticed it. Not only did no one without a stake in this case see Steve Harmon giving a sign, Lorelle Henry, a retired librarian, did not see him in the store either. And tell me, how many young black men went into that drugstore that day and walked out without making a signal? Were they all guilty of something?

Do you remember Mr. Evans's testimony that they stopped for a "quick bite" after committing the crime? And who stopped for the quick bite? Do you remember? Let me read to you from the testimony of Mr. Bobo Evans. **(O'BRIEN picks up notes, adjusts her glasses, and begins to read.)**

Mr. Evans: We took some cigarettes and left.

Ms. Petrocelli: Then what did you do?

Mr. Evans: Then we went down to that chicken joint over Lenox Avenue, across

from the bridge. We got some fried chicken and some wedgies and some sodas.

Ms. Petrocelli: Who was with you at this time?

Mr. Evans: Just me and King.

(SHE takes off glasses and looks at jury.) Where was Steve Harmon, the alleged lookout man? Why was there no testimony that Mr. Harmon received part of the loot from this "getover"? The only person we know who profited was Bobo Evans, and we know he made a profit because he sold the cigarettes!

Mr. Briggs has already suggested that the major reason for the testimonies of Mr. Evans and Osvaldo Cruz was self-interest. They were brought here not to answer for their participation, but for the sole purpose of testifying against others. They both understand that the deal they get depends on their convincing you that other people are implicated. Mr. Evans suggests that he

believed what the "shooter" told him about someone else checking out the store. But let's look at the reliability of Mr. Evans's testimony. A robbery was committed; a man was brutally killed. The killing here is the key to what these proceedings are about, not the stolen cigarettes, and you understand that. But still Mr. Evans goes around selling the cigarettes that connect him with the crime! Did he think that was a clever move? Or is this a shallow, gullible man who doesn't think about very much of anything? Who among us can watch a man die in a drugstore and then go out for a quick bite a few blocks away? Is this a man whom we can trust to tell the truth about anything? I don't believe him. Do you?

In going over my notes last night, I ran into a question. It's the prosecutor's job to bring all of the participants in a crime to justice, and so Miss Petrocelli has brought everyone she believes might have been involved to this courtroom. But why, if Steven

Harmon is innocent, would Mr. Evans want to hurt him? That bothered me quite a bit. But then I thought again about who Mr. Evans was. He had no problem at all in sticking up an innocent man, Mr. Nesbitt. You watched him testify. Did he seem at all bothered by the fact that he had left a man dead? To Mr. Evans, all Mr. Nesbitt represented was a "getover." That's what Steve Harmon is to him as well. Mr. Evans—Bobo—is perfectly willing to leave Steven Harmon lying on a floor or wasting away in a jail cell. The only thing that Steven Harmon is to Mr. Evans is another "getover."

Finally, let us come to the character of Steve Harmon. (We see O'BRIEN stop and get a drink of water. Then we see her walk next to STEVE.)

I want you to think about his character as opposed to that of the witnesses for the State. You saw him on the stand. He answered the questions openly and honestly, as would any other young person

of his age. Miss Petrocelli asked him if he was nervous. Do you remember that? The implication was that if he was nervous, it meant that he had something to hide. I submit to you, the jurors in this case, that you, too, would have had a degree of nervousness. He's on trial for his life! He's facing the possibility of spending his entire youth behind bars! Under the circumstances I would have been shocked if he were not nervous. The State paraded before you witness after witness who, by their own admission, testified either to get out of jail or to prevent themselves from going to jail, or, in the case of Mr. Zinzi, to prevent himself from being sexually molested. Think of Steve Harmon's character as opposed to that of Bobo Evans. Compare Steven Harmon to Mr. Zinzi, another of the State's witnesses. Compare him to Mr. Cruz, who admitted taking part in this crime, who admitted that to become a member of his gang, he had to slash a stranger in the face.

Is there reasonable doubt as to Steve Harmon's guilt? I think the doubt was established when Lorelle Henry did not identify Steve as being in the store. It was reinforced with every witness the State brought to the stand.

It's up to you, the jury, to find guilt where there is guilt. It is also up to you to acquit when guilt has not been proven. There is no question in my mind that in this case, as regards Steve Harmon, guilt has not been proven. I am asking you, on behalf of Steve Harmon, and in the name of justice, to closely consider all of the evidence that you have heard during this last week. If you do, I'm sure you'll return a verdict of Not Guilty. And that will be the right thing to do. Thank you.

MS: PETROCELLI from POV of JURY. Behind her we see the prosecutor's table and the two defense tables. We see the two defense lawyers watching intently. Neither STEVE nor KING is directly facing the camera.

PETROCELLI

I would also like to thank you for your attention in this trial. The defense has just given you its version of the facts in this case, and now it is the State's turn.

Let me start by refocusing this case. The defense wants you to go into the jury room thinking that this case is about the character of Mr. Zinzi, who testified that he heard a story about someone who stole cigarettes. It is not about his character. The defense wants you to think that this case is about the character of Mr. Bolden, who bought cigarettes. It is not about his character. The defense wants you to consider the character of Osvaldo Cruz. But this case is not about whether Mr. Cruz is someone we would invite to a party or have as a friend. The defense wants you to dwell on the character of Richard "Bobo" Evans. He is not a nice man, they are saying, and so you should discount his testimony. But this case is

not about the character of any of these witnesses. This case is about a crime that was committed on the 22nd of December in which an innocent man, Alguinaldo Nesbitt, was brutally murdered. I don't know what kind of man Mr. Nesbitt was, but I know he did not deserve to be killed in his store, left on the floor while his killers snacked at a fast-food restaurant. This case is not about the characters of Zinzi, Bolden, Cruz, or Evans; it is about Mr. Nesbitt's right to live, and to enjoy the fruits of his labor. It is about the right we all have to life, liberty, and the pursuit of happiness. It is the contention of the State that no one has the right to deprive us of the precious gift of life. It is the contention of the State and it is also the law of the land.

A lot has been said about the motivation of some of the witnesses. They testified, according to the defense, only because they were given a break in their sentencing. Therefore, the defense

would have you believe, their testimony is somehow made false. Well, let's reexamine their testimony and find out.

CUT TO: CU of JUDGE. He is taking notes.

CUT TO: MS of PETROCELLI from JUDGE's POV.

Mr. Bolden testified that he received stolen cigarettes from Mr. Evans. We know that the cigarettes were stolen from the drugstore. José Delgado, the drugstore clerk, testified that the cigarettes were stolen. In other words, Mr. Delgado verifies Mr. Bolden's testimony. Did he get a break in sentencing? Or was he simply telling the truth? Did you notice that none of the defense lawyers questioned the character of the clerk or even mentioned it? They want you to forget him.

Mr. Evans testified that he was actually in the drugstore, taking an active part in the robbery. No one has questioned that. He also places Mr. King in the drugstore with him on the 22nd of

December. This testimony was backed up by Lorelle Henry—Lorelle Henry, who had gone to the drugstore to get medicine for her grandchild. Did she get a break in sentencing? Or was she merely telling the truth? When the defense talks about character, they carefully skirt around the character of Lorelle Henry.

Mr. Evans also testified that when he arrived at the scene, he saw Osvaldo Cruz there. This testimony was verified by Mr. Cruz. Yes, I was there, Mr. Cruz testified. Yes, I was part of this robbery. We have three witnesses to the fact that James King was in the store on the 22nd of December: Mr. Evans, Mr. Cruz, and Ms. Henry.

Mr. Evans testified that they did not have a gun but intended to take Mr. Nesbitt's money by force of muscle. He said that Mr. Nesbitt produced a gun that he owned. You heard the City Clerk testify that the gun used to kill Mr. Nesbitt was registered to him. Did the

City Clerk, who verified Mr. Evans's testimony, get a break in sentencing? Of course not. Did the defense attack his character? No, the only thing they could do was to sit and listen to the truth.

Another fact that the defense did not choose to deal with is the sale of cigarettes. The sale of cigarettes to Mr. Bolden, a fact never seriously challenged by the defense, along with the verified theft of cigarettes from the drugstore, also suggests that Mr. King was present in the store during the robbery and murder. Mr. Briggs, the attorney for James King, suggests that Mr. Evans was in the drugstore by himself, or perhaps with Osvaldo Cruz. But Lorelle Henry identified Mr. King as the man she saw in the drugstore. Here is a Black woman, uneasy about her role in identifying a young Black man, who still had the courage to testify before you and to positively identify Mr. King. Mr. Briggs's theory simply does not work. What does work is the State's

theory of what happened, verified by all of the witnesses. Mr. Harmon gave the all-clear signal, and Bobo Evans and James King went into the store to rob Mr. Nesbitt. When Mr. Nesbitt tried to defend himself, the gun was taken from him and he was shot by that man, sitting right there **(She points to King.)**, and killed. Ms. O'Brien suggests that if Mr. Harmon had actually cased the drugstore for the robbers, he would have seen Ms. Henry. In other words, he would have been a better lookout man. Well, maybe he hasn't had much experience in helping to rob drugstores. Should we feel sorry for him? For that matter, are Mr. King or Mr. Evans so accomplished in their criminal activities? This was a botched robbery in which the perpetrators actually took very little money and a few cartons of cigarettes. And, oh, yes, the life of a good man, Alguinaldo Nesbitt.

If anybody does not believe that Mr. King was in the store, if they believe that Osvaldo Cruz, Lorelle Henry, and

Bobo Evans are all lying, that the sale of the cigarettes to Mr. Bolden means nothing, then they should find him not guilty. I don't think that is possible. If anybody looking at this case believes that the store was not cased, that Mr. Harmon just "happened" to be at the drugstore, although now he says he doesn't remember where he was, then they should find him not guilty. I don't think that is possible, either. The truth of the matter is that Bobo Evans participated in a crime with Mr. Cruz, Mr. King, and Mr. Harmon.

They are all equally guilty. The one who grabbed the cigarettes, the one who wrestled for the gun, the one who checked the place to see if the coast was clear. What would have happened if Mr. Harmon had come out of that store and gone over to Mr. King and said, "There's someone in the store"? Perhaps they would have gone someplace else to carry out their "getover," or maybe they would have just called it a day and gone home. Steve Harmon was part

of the plan that caused the death of Alguinaldo Nesbitt. I can imagine him trying to distance himself from the event. Perhaps, in some strange way, he can even say, as his attorney has suggested, that because he did not give a thumbs-up signal, or some sign to that effect, that he has successfully walked the moral tightrope that relieves him of responsibility in this matter. But Alguinaldo Nesbitt is dead, and his death was caused by these men.

Mr. King's attorney wants to distance Mr. King from the murder by attacking the character of the State's witnesses. But the fact of the matter is that Mr. Evans is an associate of Mr. King. If he had chosen priests and Boy Scouts as his companions, I'm sure we wouldn't be here today. But Mr. King cannot distance himself from the fact—the cold, hard fact—that a man is dead because of him.

Mr. Harmon wants us to look at him as a high school student and as a filmmaker. He wants us to think, well, he didn't

pull the trigger. He didn't wrestle with Mr. Nesbitt. He wants us to believe that because he wasn't in the drugstore when the robbery went down, he wasn't involved. Again, perhaps he has even convinced himself that he wasn't involved.

But yes, Mr Harmon was involved. He made a moral decision to participate in this "getover." He wanted to "get paid" with everybody else. He is as guilty as everybody else, no matter how many moral hairs he can split. His participation made the crime easier. His willingness to check out the store, no matter how poorly he did it, was one of those causative factors that resulted in the death of Mr. Nesbitt. None of us can bring back Mr. Nesbitt. None of us can restore him to his family. But you, you twelve citizens of our state, of our city, can bring a measure of justice to his killers.

And that's all I ask of you: to reach into your hearts and minds and bring forth that measure of justice. Thank you.

CUT TO: EXTERIOR: COURTROOM. The doors of the court are closed as the camera nears it. The door is pushed open and we see the INTERIOR of the COURTROOM. We see the JURY turned toward the JUDGE, who speaks in a quiet, almost fatherly manner. We hear his voice as the camera seems to settle down on a seat. STEVE, sensing that a friend has arrived, turns and tries to smile at MR. SAWICKI but cannot manage it through his nervousness.

We look around the COURTROOM as the JUDGE's voice drifts in and out.

JUDGE

If you believe that Mr. King was a participant in the robbery, whether he actually pulled the trigger or not, you must return a verdict of Guilty. If you believe . . . (Voice fades out.)

CUT TO: Stuart portrait of George Washington on right wall.

CUT TO: New York State flag. Then: American flag.