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DARK HORSE
By Gary L. Blackwood

CAST OF CHARACTERS

PHILLIP COLE, defense attorney
MASON FRIZZELL, his partner
JUDGE JAMES EVANS
MARK SULLIVANT, Crawford County Sheriff
DAVID STEREGER, prosecuting attorney
JOHN BRICKEY, circuit attorney

JOHN BRINKER, witness
SAMUEL BUNYARD, deputy, witness
MATTHEW GORMAN, witness (the same actor can play Ages or Peter Brickey)
JAMES AGERS, juror
PETER BRICKEY, juror

MARY, a slave
MRS. BRINKER

SET

The interior of a log courthouse, c. 1837

ACT 1 (partial)

(Missouri, 1837. It is August, and it is hot. The set is the interior of a log courthouse, with tables and chairs and benches typical of the time. At Right is a door leading to the Judge's chambers, at Left a door leading outside. The Judge's bench, really just a table and chair, is at Right. Downstage of it is a chair for the witness. Upstage is a chair for the Sheriff, who serves as bailiff. At Upstage Center is the Prosecution's table, Downstage Center is the defense table. At Left are a few benches to seat witnesses and spectators. The jury is represented by the audience.)

(Lights up. PHILLIP COLE, a thin, ascetic-looking Easterner in his thirties is seated at the defense table, poring over a bulky law book. Cole's manner is cool, with a military rigidity; his speech is

precise, almost to the point of being affected. He is not a likable man. MASON FRIZZELL, a younger and more uninhibited man, storms on at Left. He fans himself repeatedly throughout the play, as do most of the characters, while Cole seems oblivious of the heat. Mason paces back and forth.)

MASON

Damnation! Double damnation! The Devil take him and all his coal-grubbing Welsh tribe!

COLE

(without looking up) Forgive me if I'm prying, Mason, but I seem to have gotten the notion that something is bothering you.

MASON

Are you aware that Merciful Evans is in town?

COLE

The Honorable James Evans, to you. Yes, I'm aware of it.

MASON

Well, you might have told me. And are you aware that he's appointed us to defend the damned nigger girl?

COLE

I'll thank you not to use that term in my presence.

MASON

What? Damned?

COLE

The word, in case you failed to hear it, growing up as you did in the Western Wilderness, is Negro.

MASON

You know I hate it when you talk down to me, Phillip.

COLE

Then don't sink so low. To answer your question, yes, I'm also aware that we're defending the girl.

MASON

And that doesn't bother you?

COLE

Why should it?

MASON

Well, aside from the fact that she's a nig-row, there's the matter of money.

COLE

We'll be reimbursed.

MASON

(snorts) Enough for a shave and a haircut, if we're lucky.

COLE

(glances at him) Well, actually you could use one.

MASON

I'd just like for us to be able to afford a decent office someday instead of that--oversized coffin. I'd be willing to bet they don't have law offices like that in Boston.

COLE

This is not Boston. Besides, considering the number of times we've accepted a stoat or a bushel of corn in payment, I'd think you'd be thrilled to see some bona fide coin of the realm for a change.

MASON

Yes, well. All the same. They have a circuit attorney to handle cases like this. Why does Evans have to call us in?

COLE

Perhaps because I volunteered our services.

MASON

You what? Damnation, Phillip; what did you do that for?

COLE

If you were on trial for your life, would you want John Brickey to plead your case for you?

MASON

Well, no, I suppose not, but--

COLE

Particularly with the Honorable James Evans in all his arbitrary glory sitting on the bench?

MASON

Well, no, but--

COLE

The defense rests.

MASON

But doesn't it bother you that we don't have a chance in heaven or hell of winning this case? I mean, my god, Phillip; a slave that's beaten her master's child--

COLE

Allegedly beaten her master's child.

MASON

Yes, yes, allegedly beaten her master's child-- to death. What would you say the odds against us are?

COLE

This is not a horse race we're discussing, Mason. There is a person's life at stake.

MASON

A nigger's life. Sorry. But you've been in Missouri long enough to know that a Negro's life is not worth the same as a white person's.

COLE

Then stop complaining that we're getting paid so little to try and preserve it.

MASON

All right, all right. I give up. What do you want me to do?

COLE

(tosses him a law book) Start looking for precedents and loopholes. We're going to need all the prickly little technicalities we can find. If we're going to have our money riding on the dark horse, the least we can do is stick a few burrs under Stereger's saddle.

(Mason sits grudgingly, still fanning himself, and leafs through the book)

MASON

Where are they keeping her?

COLE

At the Sheriff's house, I believe.

MASON

Damned backward town. You'd think they could afford to build a jail.

COLE

You might be thankful that we don't often need one.

(MARK SULLIVANT ENTERS at Left with MARY. The Sheriff is a big, polite man. Mary is a small black girl, preferably very dark, for maximum contrast to all the whites. She looks no more than sixteen. She doesn't appear physically strong, but she has a pronounced stubborn streak. Sullivant shackles her to the bench. The shackles must appear to lock, but must be easily removable)

SULLIVANT

Here she is, Mr. Cole.

COLE

Thank you. What's her name?

SULLIVANT

Mary.

COLE

We'll require a half hour or so.

(Sullivant nods, EXITS)

COLE (CONT)

My name is Mr. Cole, and this is Mr. Frizzell. We'll be representing you at the hearing, and at the-- well, at the hearing. (No response from Mary) I regret that we could not arrange counsel with you any sooner. We were notified only yesterday that a Grand Jury had been summoned to hear your case. (No response) Well, we still have several hours before the hearing, perhaps longer.

MASON

It could take quite a bit of time to round up twenty-four good and lawful men in this county. (Laughs. Mary still doesn't respond)

COLE

You can rest assured that Mr. Frizzell and I will do our best to see that your hearing-- and your trial, if it comes to that-- and fair and impartial.

MARY

(looks up at last) Impartial?

COLE

Yes. That . . . ah, that means there will be no preconceived notion on the part of the judge or jury concerning your guilt or innocence. (Realizes he's still talking over her head) That is--

MARY

I knows what it means. The thing I's skeerd of is that maybe they don't know.

COLE

Yes, yes, I see what you mean. And you're right to be concerned. Undoubtedly a number of the men will have judged you guilty in their minds already. Fortunately, the judicial process allows us some leeway in picking members of the jury, so we can weed out those we feel are most antagonistic.

MARY

There's places where nothin' grows but weeds.

MASON

Now, see here, girl; I'm not going to sit by and listen to you condemn the citizens of this county wholesale. You're the one's committed the crime here, not them!

COLE

Mason. Whether or not she's committed a crime is for the Grand Jury to determine. Now, if we can discuss matters calmly and dispassionately, we can proceed to prepare a defense. There were no other witnesses to the . . . to the alleged incident, I presume? (no response)

MASON

He means, did anybody see what happened? Besides you? (Mary shakes her head) What about the

other child? (to Cole) Wasn't there another child?

COLE

(looks at notes) Sarah Brinker. Aged about three weeks at the time. I suppose we can rule her out. No one else? (Mary shakes her head) (to Mason) Well, at any rate the prosecution won't have any witnesses either. All they'll have is circumstantial evidence.

MASON

They have a dead child, Phillip; somebody had to have killed her.

COLE

(a perturbed look at Mason, then to Mary) Now. Suppose you tell us your version of the alleged incident, and we'll begin working on what you are going to say, and what you are not going to say, when you're called on to testify.

MARY

I can't do that.

COLE

I beg your pardon?

MARY

I can't do that.

COLE

You can't tell me your version of what happened?

MARY

I can't do what you said. Tensify.

MASON

Phillip--

COLE

(condescending) It's all right. It's nothing to be afraid of. All it means is that you sit up before the judge and jury and give them your account of the events in question. Mr. Frizzell will help you prepare.

MARY

I knows what it means. I can't do it.

MASON

Phillip. (draws him aside) Didn't you know that-- I mean, I assumed you knew . . .

COLE

Knew what?

MASON

Well, that a nig-row can't testify against a white man in Missouri.

COLE

(Realization; he knew, but overlooked it, as something ridiculous) Of course. Certainly I knew. But this is not strictly a case of a black person testifying against a white. This is a murder trial; the plaintiff is not an individual, it's the State.

MASON

That don't matter a damn. Evans won't let her take the stand, no matter what argument you use. I guarantee it. Like you said, this isn't Boston. This is the South. They may not grow cotton or cane, but they damn sure grow the same attitudes.

COLE

Perhaps. We'll see. We'll see. (to Mary) Whether you testify or not, we'll need your account of the incident, as complete an account as possible. Include every detail you can recall, however insignificant. Of course, everything you tell us will be held in the strictest confidence. (no response)

MASON

He means it'll be just between the three of us. Nobody else will know.

COLE

Begin wherever you like. (no response) What's wrong?

MARY

No use in telling it. It won't make no difference anyhow.

COLE

Oh, yes, it will make a great deal of difference. We can't build a case on nothing at all, and that's precisely what we have at this point-- nothing at all.

MARY

It don't matter. It don't matter what you say or don't say. It's gone come out the same.

MASON

Now, listen, girl--

COLE

No, no, you're wrong. It does matter. Our whole judicial system is based on the principle that a person is innocent until proven guilty. Not assumed, not thought to be guilty, but proven guilty. And it's the responsibility of the prosecutor to produce that proof. At the same time, we can't sit back and wait. We must offer the facts as we know them. Let me try to explain it this way: are you familiar with the game of chess? No, I suppose not. It's a game played on a board, in which small figures, some black and some white, are moved about and capture one another. You can't expect to win by playing defensively-- that is, trying to avoid capture.

You must actively try to capture your opponent's pieces, and put him on the defensive.

MARY

This game you talkin' about. It's a white man's game?

COLE

Mostly, yes.

MARY

Then the black side ain't likely to ever win, is it?

COLE

It's not a question of winning. We don't have to prove absolutely that you're not guilty. All we have to do is put a reasonable doubt in the minds of the jury. But to do that, I have to know what actually happened. (No response)

MASON

Look, if you killed that Brinker child, you might just as well say so. Then we can at least try and plead extenuating circumstances. Just a yes or a no. (No response) She's not going to cooperate, Phillip. Might just as well let her be. Let her put the damn noose around her neck if that's how she wants it.

COLE

(to Mary) Now listen to me. If you won't talk to us, at least give us something to work with, you're shackling our hands, just as surely as yours are shackled. (She yanks at her chains, and he realizes her shackles are real ones) Very well. Perhaps you're right. Perhaps your fate is already determined by the fact that you're black and you've committed-- been accused of committing an offense against a white. But I'm not much of a fatalist. I believe we control our own fates, and no matter how black things may look, we have an obligation to try and change them. Because if we don't try, then we truly are doomed, and not by fate, but by our own refusal to act. (No response) How old are you?

MARY

Can't say exactly. Nobody never bothered to keep track. Sixteen, near as I can figure.

COLE

Sixteen. That's a very early age to have given up on life.

MARY

No, suh. I ain't give up on life. It give up on me.

COLE

Yes, well, I haven't given up on you, not just yet. If there's one thing I've learned from playing chess, it's that if you can manage to keep out of your opponent's way, eventually he'll make a mistake. You can never hope to win by that method, but you can take a piece now and again. In law, the rules are different. Very often cases are won on minor points. Sometimes all it takes is one false move, and you forfeit. We'll just have to be certain that, when Stereger makes that false move, we don't let it escape our notice. Well. We need to prepare for the hearing. (signals to the Sheriff, who ENTERS) If you change your mind about telling us what you know, feel free to send for us. At any rate, be assured that we'll be with you at the hearing.

MARY

What about the hangin', suh? You gone be wid me then?

(Lights down. Lights up on courtroom, later that morning. Frizzell, Cole, and Mary are at the defense table, along with JOHN BRICKEY, a foolish man in his late twenties. DAVID STEREGER, a confident, experienced lawyer in his late thirties ENTERS at Left, shakes hands with Brickey and Mason, is

ignored by Cole)

STEREGER

Gentlemen. Sorry I didn't have a chance to say hello before the hearing.

BRICKEY

That'll cost you some points, David. Evans doesn't like you coming in late to his court.

STEREGER

I was lucky to get here when I did. Damned horse threw a shoe. I laid the crop on her, but I couldn't get her to move any faster than a walk. I swear, it's always something with that animal. I believe I'm going to have to sell her. She's getting to be more trouble than she's worth. (Eyes Mary, as if this applies to her, too) Can I interest any of you gentlemen in purchasing a dandy three-year-old mare, broke to harness, very gentle .

. . .

MASON

Save your sales pitch for the jury, Stereger.

STEREGER

Well, now, I hardly think I'll need it, do you? I could prosecute this one in my sleep. John, I have a feeling you're going to save us all a lot of unnecessary time and trouble by pleading guilty. Am I right?

BRICKEY

Well, I--

COLE

I'd say that's confidential information, Mr. Stereger. You'll have to find out what we plead at the same time the judge does.

STEREGER

Ah. The defense sounds defensive. Don't tell me you're upset over the indictment. You knew how it was going to go, the same as you know how the trial's going to go. You may be naive, but you're not that naive. You can see the writing on the wall.

COLE

Haven't you heard that justice is blind?

STEREGER

Is that what they teach you in law school? I'm glad I learned my law the hard way, then. You've got too many illusions, Cole. You think the law was handed down on stone tablets. I'm here to tell you that it wasn't. It was written by men. Mere mortals, such as you and me and Mason, here, and yes, God help us, like Brickey. (Brickey laughs) It has inequities. It has flaws. Say, maybe that's what we should all put on our shingles, eh? John S. Brickey, Attorney at Flaw.

BRICKEY

(laughs) Good one, David. Good one.

COLE

I'm well aware of the law's inequities, Mr. Stereger. That is why I'm here. To make sure as few as possible are allowed to creep in.

STEREGER

If we're going to talk about inequities, let's talk about the odds here, eh? Three of you against one of me. Well, two and a half. Anyway, I'm outnumbered. Now, honestly, wouldn't it be better if you two were to just bow out and let John here handle things?

COLE

Better for you, perhaps. But odd as it may seem, my main concern is what's best for my client.

STEREGER

Your client, eh?

MASON

Tell you what, Stereger. You say you could prosecute this in your sleep. We'll let you stay awake for the whole trial. That should give you an enormous advantage.

STEREGER

Fair enough. On one condition: That I'm not required to stay awake during your opening and closing statements, especially if Cole here is going to make them. (He returns to his table.)

MASON

(to Cole) Do you have the same feeling I do?

COLE

That he's not as confident as he wants us to think he is? I only wish I knew why. He has all the weapons, and all the ammunition. We have nothing.

MASON

Could be there's something in that pile of ammunition of his that he doesn't want us to know about.

COLE

Something that might blow up in his face, you mean?

BRICKEY

What's that?

MASON

Oh, nothing.

BRICKEY

Now see here, I'm the circuit attorney, and if there's anything being discussed, I'm entitled to know what it is.

COLE

You're absolutely right. We were discussing Mr. Stereger's horse.

BRICKEY

Oh. What about it?

COLE

It sounded as though it might be a bit lame.

BRICKEY

Oh. (pause) All right now, Judge Evans will be wanting to know how we plead. I think it's pretty obvious she done it, so we might just as well go with guilty and try for something besides outright murder. No sense dragging things out. I know Evans, and he's a lot more likely to let her off easy if you don't drag things out.

COLE

Let her off easy? This is a murder trial, Mr. Brickey. What do you suppose he's likely to do? Slap her wrists and tell her not to do it again? If she pleads guilty, they're going to hang her.

BRICKEY

Yes, and if she don't plead guilty they're going to hang her. So what's the difference?

MASON

Did it ever occur to either of you to ask the defendant what she wants to do?

BRICKEY

What does she know about it?

MASON

It's her life.

COLE

(to Mary) You see how difficult it makes matters, not knowing the truth, not knowing whether you are in fact guilty or not? If you want to tell us anything, now is the time.

MARY

I can't see no use in it. It's like he says, they gone hang me either way.

COLE

Do you wish to plead guilty? (No response) Do you wish to plead not guilty?

MARY

I jus' wants it to be over wid.

BRICKEY

There, you see? She says herself to get it over with. We've got no defense; all we're going to do is make ourselves look foolish.

COLE

I wouldn't worry about that if I were you. Somehow the prospect of one of us looking foolish doesn't disturb me as much as the prospect of one of us hanging.

BRICKEY

Well, now, it's not as if they're going to hang one of us. I mean one of us. Look, if she won't even defend herself, how in God's name are we supposed to? I vote for a guilty plea.

COLE

You've made that abundantly clear. Mason?

MASON

I don't know. I suppose Brickey's right. If we plead not guilty, we'll just be beating a horse that's already dead. We won't be doing her any favor by prolonging it.

(Cole sighs, looks disappointed, perhaps resigned. JUDGE EVANS ENTERS, accompanied by the Sheriff. Evans is a hefty, florid man in his fifties, dressed in the usual robe. He is a contrast to Cole, affable and likable-- except when crossed.)

SULLIVANT

Everybody rise.

EVANS

Sit down, sit down. Well, have you gentlemen had enough time to decide on a plea of some sort?

STEREGER

Ten seconds should have been plenty, Your Honor.

EVANS

(good-naturedly) The court can do without your jocular comments, Mr. Prosecutor. Has the defense counsel settled on a plea?

BRICKEY

Yes, Your—

COLE

Yes, Your Honor. The defense respectfully enters a plea of not guilty.

EVANS

Not guilty, you say?

COLE

That is correct.

EVANS

Mr. Sullivant, this means we'll need some jurors. Do you think you can round up thirty-two more men for us?

SULLIVANT

How soon, Judge?

EVANS

(looks at watch) Say . . . two hours?

SULLIVANT

(whistles) Does it matter who they are?

EVANS

So long as they're grown men, and sober.

SULLIVANT

I'll have 'em for you, sir.

COLE

Your Honor, I'd appreciate a little more time.

EVANS

So would I, Mr. Cole. So would I. Court is recessed until one o'clock this afternoon. (Bangs gavel, begins to shed the hot robe) Mr. Cole, I hope you know what you're doing, and aren't just wasting the valuable time of this court. Do you know what you're doing?

COLE

Yes, sir. Trying to see that my client receives a fair trial.

EVANS

Nobody has ever accused me of not being fair.

COLE

Nor am I accusing you now. I simply meant that she has a right to present her case before a jury.

STEREGER

What case?

EVANS

Mr. Stereger has a point.

COLE

Perhaps. In any case, the defense intends to explore every possibility.
(Stereger and Evans EXIT.)

BRICKEY

Say, I thought we decided to go with a guilty plea.

MASON

(an arm around his shoulder) Now, John, don't you remember? You were outvoted.

BRICKEY

I was?

MASON

Why, sure. I voted for not guilty.

BRICKEY

You did? I-- I must have misunderstood.

MASON

Why don't you go on home and take a nice rest, John? I have a feeling we've got a long afternoon ahead of us.

(Everyone EXITS except Mary and Cole, both of whom seem lost in thought. Just as Cole turns to Mary, the Sheriff ENTERS)

SULLIVANT

Lord, I almost forgot about you. I'd have been in deep trouble if you'd run off, wouldn't I? Of course, I don't guess you could have. And it wouldn't have done you any good anyway. Where would you run to?

(They EXIT. Lights down. Lights up. The courtroom, that afternoon. Evans is at the bench; Cole is by the witness chair; defense and prosecution are at their tables. JAMES AGERS, SR. and PETER BRICKEY sit at Left. Agers is a hearty older man, Peter is in his thirties.)

EVANS

Mr. Cole, that was the nineteenth prospective juror you've excused, and you've approved a grand total of one. At this rate you'll run through the entire male population of the county, and still not have a jury. Now, do you mean to excuse everybody who uses the word "nigger"? If so, we may have to import a jury from back in your neck of the woods.

COLE

No, Your Honor.

EVANS

Then do you mind if I ask what in God's name you're looking for in a juror?

STEREGER

It appears to me he's trying to find somebody that's in favor of beating children to death when they're bad.

COLE

Mr. Stereger, I would appreciate it if you would not try to influence the jury before I've even picked them. May I proceed, Your Honor?

EVANS

Call the next man.

SULLIVANT

James Agers, Senior. (Agers takes the stand)

EVANS

Mr. Cole, could you speed the process up a little? I was up all last night getting here. I could use a decent night's sleep.

COLE

We'll do our best, Your Honor. Mr. Frizzell, you may inquire.

EVANS

Wait! Wait. First let me caution this man. Please, for the sake of all of us here, try to avoid using the word "nigger" if you possibly can.

AGERS

What should I say, then?

EVANS

Does the term "colored" offend your sensibilities, Mr. Cole?

COLE

No, Your Honor.

EVANS

Good. The rest of you prospective jurors keep that in mind, and maybe you'll get home in time for supper. Though I doubt it. Go on.

MASON

Your name, please?

AGERS

Hell, Mason, you know me.

MASON

(amused) Could you state your name for the court, please?

AGERS

James Agers. Senior.

MASON

Thank you, Jim. You don't mind answering a few questions, do you?

AGERS

Long as they don't get too personal.

MASON

Fair enough. Do you own slaves?

AGERS

Hell, no.

MASON

Have you ever owned any?

AGERS

Hell, no.

MASON

Do you have any children?

AGERS

Hell, yes. Eight of em. I got a boy, James Junior. He's twenty-two. I got a girl nineteen and one seventeen. I got--

MASON

That's fine. That's all we need to know.

AGERS

(starts to step down) That was quick.

MASON

No, no, sit down, Jim. I didn't mean you were done, I just meant that's all we need to know about your family. So, you have quite a number of children. How do you discipline them?

AGERS

Keep 'em in line, you mean?

MASON

That's right.

AGERS

Oh, well, they're good young'uns. They don't require much whupping.

(Mason catches Cole's eye, Cole nods slightly.)

BRICKEY

What's he doing?

COLE

Fishing, Mr. Brickey. Just fishing.

MASON

Have you had any dealings with the Brinker family?

AGERS

No more'n I have to.

MASON

Ah. So you're not what might be called friends.

AGERS

(distastefully) No, I wouldn't go so far as to say that, no.

MASON

(looks to Cole, who nods again) Mr. Agers is acceptable to the defense.

EVANS

Thank God. Mr. Stereger?

STEREGER

Fine with me, Your Honor.

EVANS

Call the next man.

SULLIVANT

Peter Brickey.

EVANS

Brickey? Is this man a relation of yours, John?

BRICKEY

Yes, Your Honor. He's my uncle. How you doing, Uncle Pete?

EVANS

(sighs) I suppose we'll have to excuse him, too, as being prejudicial.

STEREGER

Your Honor, if it'll hurry things up any, the Prosecution doesn't have any particular objection to this juror. I think our case is strong enough to convince anybody.

EVANS

Thank you, Mr. Stereger. Mr. Cole, is this man acceptable to you?

COLE

I can't say, Your Honor, until I've questioned him.

EVANS

I should have known. Well, go ahead; question him.

COLE

Do you keep slaves, Mr. Brickey?

PETER

No, sir.

COLE

Why not?

PETER

Well, I got enough young'uns. (General laughter) I don't mean to say they get treated like slaves.

COLE

We understand that. When your children misbehave, Mr. Brickey, do you administer corporal punishment?

PETER

Do I whup them? Of course I do.

COLE

Tell me, do you have a temper?

PETER

Sometimes.

COLE

Do you ever lose it?

PETER

If I'm riled enough.

COLE

Does your children's misbehavior ever cause you to lose your temper?

STEREGER

Your Honor, it seems to me the defense is trying to put the juror on trial here.

EVANS

Could you please get on with it, Mr. Cole?

COLE

Only a few more questions, Your Honor. Do you own draft animals?

PETER

Do you beat them?

STEREGER

Your Honor, what does the defense counsel think he's doing?

EVANS

(who was nearly falling asleep) If you keep on interrupting, Mr. Stereger, we'll never be done.

COLE

Thank you, Your Honor. Do you beat your animals, Mr. Brickey?

PETER

No, sir.

COLE

Never?

PETER

Maybe a whack now and again, just to get their attention.

COLE

But no more than that?

PETER

No, sir.

COLE

Why not?

PETER

Why, there's no profit in it. They work without it. It'd just make them mean.

COLE

The defense finds this man acceptable.

EVANS

Congratulations. That brings you up to three, Mr. Cole.

COLE

Thank you, Your Honor. Next man.

(Lights down. Lights up. Same scene, hours later.)

EVANS

Well, Mr. Cole, you've worked your way through thirty-two men and only managed to come up with seven that you liked. How many do you figure we'll need to summon tomorrow?

COLE

I can't say, Your Honor.

EVANS

Mr. Sullivant, it looks as though you'd better find us twenty-four talesmen. Do you suppose there are that many men left in the county that haven't already been summoned?

SULLIVANT

If you're not too particular, there's a lot of miners up by the Spring.

EVANS

As long as they're breathing, they'll do. Court is adjourned until (yawns) until nine o'clock tomorrow morning. Oh, hell, we'd better make it eight.

(pounds gavel) Good night, gentlemen.

(He EXITS. Stereger approaches the defense table)

STEREGER

Well, you managed to buy yourself another day to prepare, eh, Cole? Too bad you had to get in dutch with Evans in order to do it.

COLE

I was merely trying to pick an impartial jury.

STEREGER

Well, now, I'd say you only got a partial one. That's a joke, gentlemen.

BRICKEY

(laughs) Partial! I see!

STEREGER

Thank you, John. Well, Cole, don't burn too much midnight oil tonight, or you'll be the one trying this case in your sleep. John, don't let him keep you up all night. It's a lost cause, anyway. And Cole-- give John here a chance to say a little something tomorrow, will you? Question a juror or something? A person would think he was the defendant, the way he just sits there. As a matter of fact, he has sort of a guilty look about him, don't you think? Don't ever commit a crime, John, because no jury that ever lived would let you off. Well, gentlemen, see you bright and early.

(EXITS)

BRICKEY

Good night, David.

COLE

He's right, Mr. Brickey. You may as well go on home. There's not much we can do in one night. Or in a week. for that matter.

BRICKEY

I think he's right about me doing more of the talking, too. After all, I am the circuit attorney.

COLE

There's no need to keep reminding us. All right, all right. You can pick one of the jurors. Go home now; it's late.

(Brickey EXITS)

MASON

You don't suppose there's any way we could get John assigned to help the Prosecution, do you? It'd give us more of a chance. Well, I guess I'll head on home, too. My wife will be wondering what's keeping me already.

COLE

All right. But I'll expect you back here within an hour. We have a lot of work ahead of us.

MASON

What? But you just told Brickey--

COLE

That was for his benefit. Surely you knew I wouldn't give up this easily.

MASON

No, I suppose not. A person can always hope, though, can't they? Well, I'll see you in an hour, then. You want me to bring you a plate of food? (No reply. Mason answers himself) Yes, thank you. That'd be very kind. Oh, don't mention it. Give my best to your lovely wife, won't you? Of course.

(He EXITS. The Sheriff approaches.)

SULLIVANT

I best put her away for the night now, Mr. Cole.

COLE

Could you give me a few minutes, Sheriff?

SULLIVANT

It's late. All right. A couple minutes, that's all. (EXITS)

COLE

You haven't given up hope, have you?

MARY

Can't give up something you never had.

COLE

Mr. Stereger would have us believe that ours is a lost cause. I disagree. No cause is lost as long as there is someone willing to fight for it. Mr. Frizzell and I intend to give them a good fight, but you'll have to help us. You'll have to give us something to fight with. Do you understand?

MARY

Yes, suh. I understands. I understands the mo' I says, the higher they gone hang me. I understands some things maybe you don't, Mistah Cole, 'cause you never been a slave. I might be no mo' than sixteen, but I been black every one of them years, and I been a slave every one of the years, and I knows what it means. It means that if a white man say you done somethin' wrong, it don't matter if you done it or not; all that matters is that he say you done it, and the only thing arguing about it gone get you is a harder beatin'.

COLE

Does your master beat you? (No reply) Did John Brinker beat you? (No reply. Awkwardly, Cole takes her by the wrist and pulls up her sleeve. There are welts on her upper arms) Did

he do this before the incident, or afterward?

MARY

Both.

COLE

You are correct, of course, when you say that I've never been a slave. But you're wrong when you say I don't understand. (hesitantly) When I was your age, I attended what is called a military school. I was a frail child, and my parents thought the regimen would make me stronger. And so it did . . . eventually. But I suffered through several years of being thrashed and humiliated by upperclassmen first. I begged my parents to let me come home, but they wouldn't hear of it. In time I learned that I had to stand up to those upperclassmen and fight back in order to make them respect me. I disliked fighting, but I couldn't let matters go on as they were, so I fought-- not very well, but I got in enough licks to give them something to think about. I'd like to get in a few licks at this trial, too. Now, I know you're afraid of getting yourself in worse trouble by speaking up. But the fact is, to put it bluntly, you have nothing to lose. If we do not come up with some sort of defense, no matter how carefully I select the jury they are going to find you guilty of murder. We have to give them some reason to believe either that you are not guilty or that there were extenuating circumstances. We have to stand up and fight back, even a little. Tell me what happened. Tell me anything!

(No response. The Sheriff ENTERS)

SULLIVANT

I best take her now. I got twenty-four men to round up yet tonight.

COLE

Yes, you may as well. I've done all I can. (As they're leaving) One moment, Sheriff. Mary-- can you think of anyone, anyone at all who might be willing to testify on your behalf?

MARY

Don't nobody know me, suh.

(They EXIT. Cole stares after them, then sits and puts his head in his hands. Lights down)

(Lights up. The courtroom. Afternoon of the next day. Cole sits at the defense table. Mason ENTERS at Left)

COLE

Any luck?

MASON

(shakes head) I couldn't find anybody that would testify for her. A couple of people as much as threw me out of their home for even asking. If it's any consolation, I get the feeling the Brinkers don't have many friends around here, either.

COLE

Is that so?

MASON

Apparently they've only been here a year or two, and they haven't exactly become valued members of the community.

COLE

That could easily be said of us as well.

MASON

Speak for yourself. Alice and me have managed to fit in well enough. You know, if you'd find yourself a wife, or at least a sweetheart, particularly one from around here, you might not feel so much like the odd man out.

COLE

I've been given that advice by half the matrons in town. Do I have to hear it from you as well?

MASON

Sorry; I was just trying to be helpful. You have to admit, you haven't exactly done a bang-up job of making friends.

COLE

I didn't come here to make friends.

MASON

Why did you come, then?

COLE

I don't care to discuss this.

MASON

You know, you sound a lot like Mary. All right. Keep it to yourself, then. Damnation, I'd hate to ever have you on the witness stand. Where was I? Oh, yes. I did hear a couple of veiled hints that maybe Mr. Brinker likes his liquor more than most.

COLE

Does he? Has anyone ever seen him outright drunk?

MASON

Well, if they did, they didn't come right out and say so. Did you let Brickey pick a juror, like you promised?

COLE

I let him question one. Then I excused the man.

MASON

Have we got twelve decent ones yet?

COLE

As decent as we're likely to get. I stretched it out all morning to give you some time.

MASON

Sorry I couldn't come up with anybody. Well, put yourself in their place, Phillip. Would you want to take a nigger's part-- sorry-- against a white man? You might just as well run naked through the streets. People wouldn't condemn you any worse for it.

COLE

I believe I'd be willing to run naked through the streets if it would save a person's life.

MASON

But that's just it. It won't save anything. Everybody knows how it'll come out. Why would they want to make outcasts of themselves over nothing?

COLE

Why do you?

MASON

I don't want to. It's part of the job.

COLE

Perhaps it's part of the job of being human as well.

(Stereger ENTERS, salutes them confidently)

STEREGER

Gentlemen, gird your loins.

MASON

I wish he'd gird his damn mouth. Where's Brickey?

COLE

I sent him out to draw a map of the Brinker place.

MASON

Do we need that?

COLE

Probably not. But it gives him something to do. After all, he is the circuit attorney.

MASON

(simultaneously) --the circuit attorney.

(Sullivant ENTERS with Mary, then the witnesses, who take seats on the benches. The witnesses are SAMUEL BUNYARD, the Sheriff's deputy, a slow-witted fellow chewing on a plug of tobacco; JOHN BRINKER, a coarse man in his thirties with a mean streak; and MRS. BRINKER,

once fairly pleasant but now a worn, bitter woman. Evans
ENTERS)

SULLIVANT

Everybody rise.

EVANS

(motions for all to be seated) Show the jury in, Mr. Sullivant.

(Sullivant EXITS, reenters a bit later)

EVANS (CONT)

Mr. Prosecutor, are all your witnesses in the courtroom?

STEREGER

Yes, your honor.

EVANS

Let's swear them all in at once. It'll save time later. (rattles it off) Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God? (without waiting for an answer) Proceed.

COLE

Your Honor, aren't you going to ask if the defense has any witnesses?

EVANS

Do you have any witnesses, Mr. Cole?

COLE

The defense respectfully moves that the court allow the defendant to testify on her own behalf.

EVANS

Mr. Cole, you know I can't do that. Your motion is overruled.

COLE

Let the record show that the defense objects to the court's ruling.

EVANS

Your objection is overruled. Mr. Stereger, you can go ahead with your indictment and opening statement.

STEREGER

Thank you, Your Honor. (reads) The Prosecuting Attorney for the Circuit Court of Missouri, Ninth Judicial District, upon his oath, informs the court, and charges that on or about the 14th day of May in the year of our Lord 1837, Mary, a slave, not having the fear of God before her eyes but being moved by and instigated by the Devil, with force and arms at the county of Crawford in and upon one Vienna Jane Brinker in the peace of god and the state then and there being, feloniously, willfully and deliberately did make an assault with a certain piece of

wood and by striking and beating the said Vienna Jane Brinker caused divers mortal bruises and contusions from which the said Vienna Jane Brinker did then and there instantly die, and that the said Mary did further feloniously willfully and deliberately cast and throw said Vienna Jane Brinker into a pool of water, by which means the said Vienna Jane Brinker in and with the water thereof was suffocated and drowned, as a result of which she did then and there instantly die, contrary to the form of the statutes in such cases made and provided and against the peace and dignity of the State.

COLE

Your Honor, at this point the defense moves that the trial be dismissed.

EVANS

On what grounds, Mr. Cole? Nobody has said anything yet.

COLE

On the grounds that the indictment charges the defendant with having dispatched the child in two separate and distinct fashions-- by beating and by drowning. Obviously this is both a legal and a practical impossibility.

EVANS

It is possible, however, that neither assault by itself would have cause the child's death, that it was the combination of the two that was fatal. Your motion is overruled. Go on, Mr. Stereger.

COLE

If the court please, at this time the defendant respectfully requests to be allowed to make her opening statement at the close of the State's testimony.

STEREGER

Oh, she's going to make her own opening statement? That should be interesting.

EVANS

We know what Mr. Cole means. And Mr. Cole knows perfectly well that he'll be allowed to make an opening statement at the proper time.

COLE

I just wanted to be clear on what the defendant's rights are, Your Honor.

EVANS

(perturbed, but overlooks it) Let's proceed.

STEREGER

May it please the court, gentlemen of the jury. I won't take up everyone's valuable time with a lengthy opening statement, because the evidence speaks for itself. The plain facts of the matter are that little Vienna Jane Brinker, a child barely 2 years of age, was brutally beaten and drowned, and nobody in the world could have done it, nobody had reason to do it, or opportunity to do it except for the accused. Who else would have had the stomach to do it, or the lack of conscience to do it? A 2-year-old child, gentlemen; her mother and father's pride and joy, who likely never did a bad thing in her short life. A little mischief, maybe, the way all children do, but surely nothing to deserve the sort of horrendous and inhuman-- and fatal--

punishment she received at the hands of the accused.

COLE

(coolly) Your Honor, the defense objects to the prosecution's language. It is highly prejudicial and inflammatory. He is deliberately fostering the idea that the defendant is already assumed to be guilty. We ask that he be reprimanded and that the jury be discharged.

STEREGER

Your Honor, I am not presenting evidence; I am merely trying to make an opening argument. Surely I am allowed a little freedom to express myself.

EVANS

Mr. Cole, we've barely even gotten underway. Do you plan to make an objection every two minutes for the rest of the trial?

COLE

Only if the prosecution insists on being so objectionable.

EVANS

Mr. Stereger, would you mind toning down your impassioned rhetoric just a little, so the defense doesn't drive us all to distraction?

STEREGER

I'll try, Your Honor. It's just that this is a very emotional case. A small child, beaten to death and drowned at the hands of a--

COLE

The defense objects, and again asks that the jury be discharged.

EVANS

Objection sustained. But you know very well I'm not about to discharge this jury, Mr. Cole, not after all we went through to get them in the first place. I will instruct them to disregard Mr. Stereger's attempts to whip up their sympathies. Go ahead, Mr. Prosecutor, but stick to discussing the evidence.

STEREGER

Yes, Your Honor. Now I know that you gentlemen of the jury are all intelligent and perceptive men, and so it will be abundantly clear to you as we proceed that every bit of testimony, every bit of evidence we present points directly and overwhelmingly (points dramatically) at the accused. At this time the prosecution will call its first witness.

SHERIFF

Samuel Bunyard, take the stand, please. I remind you that you are still under oath.

BUNYARD

(sits in witness chair) I know that.

STEREGER

State your name please.

BUNYARD

Sam Bunyard.

STEREGER

(In good old boy manner) Would you tell us your occupation, Sam?

BUNYARD

I'm the deputy sheriff.

STEREGER

For Crawford County.

BUNYARD

That's right.

STEREGER

You like being a deputy sheriff, Sam?

BUNYARD

It's all right, I guess. I've done worse things. (He's looking around for a place to spit. Stereger notices)

STEREGER

You're not nervous, are you, Sam?

BUNYARD

No, sir. I was just looking for a place to spit.

STEREGER

Sorry. Apparently the county hasn't been able to afford any spittoons yet.

(Bunyard swallows uncomfortably, takes out his wad and holds it)

STEREGER (CONT)

Have you been a deputy sheriff long?

BUNYARD

Six months, maybe.

COLE

Your Honor, I fail to see what bearing all this has on the case.

STEREGER

Just trying to put the witness at ease, Your Honor.

EVANS

He looks comfortable enough to me. Go on.

STEREGER

Have you ever been out to the Brinker place?

BUNYARD

The what?

STEREGER

The cabin the Brinkers live in.

BUNYARD

Oh, that. We always call that the Snelson place, 'cause he was the one built it.

STEREGER

All right, the Snelson place. Have you ever been there?

BUNYARD

Yes. (A long pause)

STEREGER

Well, could you elaborate?

BUNYARD

Tell you about when I was there, you mean?

STEREGER

Yes. When did you go there?

BUNYARD

About the beginning of May, I guess. No, it had to be the end of April, because the redbuds were still out. Or were they? Yes, it had to be the end of April, because it was right after that big rain we had, you remember that? Anyway, we had this complaint against Mr. Brinker. One of the neighbors said that--

STEREGER

(abruptly) Never mind the nature of the complaint, Sam. That's not relevant to this case.

BUNYARD

Oh. Well, anyway I was--

COLE

Your Honor, the defense would very much like to know the nature of the complaint against Mr. Brinker, so we may decide for ourselves whether or not it is relevant.

EVANS

Mr. Stereger is asking the questions, and he's said it's not relevant. Go on.

STEREGER

So you went out to the Brinker-- or the Snelson-- place.

(As Bunyard speaks, the lights come down, and a pool of light comes up downstage, where the flashbacks will be played)

BUNYARD

That's right. At first I thought I'd made the trip for nothing, that there wasn't anybody to home, because I didn't see no wagon or any horses around. And then I heard what sounded like a child crying. (Faint sound of crying child. Bunyard walks into the light, mimes knocking on the door) Mr. Brinker? Mrs. Brinker? Are you to home? (Mary sets her shackles aside and come forward to open the "door" a crack. The crying gets louder) Hello there, missy. Is Mr. or Mrs. Brinker to home?

MARY

No. Ain't nobody to home. They done gone to town.

BUNYARD

Well, shoot now. I could have saved myself a trip if I'd know that. Funny I didn't pass them on the road. Must have just missed them. I don't suppose you'd have a little something cool a fellow could drink before heading back.

MARY

(irritably shakes her head) They's cold water out to the springhouse.

BUNYARD

(disappointed) Water. Well, much obliged. Sounds as if I better let you tend to that young'un. Is that your little one? He's got a good set of lungs on him.

MARY

(hostile) No. It ain't mine. I got no baby.

BUNYARD

Oh. Well, I best go. Tell Mr. Brinker I was here, if I miss him in town, then.

(Mary nods, closes the door. Bunyard starts upstage. Mary moves to the edge of the pool of light, bends, shakes an imaginary child.)

MARY

You stop that, now. Nothing wrong wid you. Stop it, I said.

(She makes a slapping motion. The crying becomes louder. Bunyard scratches his head, then moves off. The pool of light comes down, regular lights come up as Mary and Bunyard return to their places.)

STEREGER

So the child you heard crying, and heard the accused abusing, had to be one of the Brinker children.

BUNYARD

I guess it had to be.

STEREGER

Very likely the same poor child that the accused was later to savagely beat and drown in that same springhouse where she sent you for a drink.

COLE

Objection, Your Honor.

EVANS

Yes, yes, sustained. Mr. Stereger, I've warned you about your rhetoric.

STEREGER

(not chastened at all) Sorry, Your Honor.

COLE

The defense again moves that this jury be dismissed.

EVANS

And I've ruled on that request before. Don't make it again. Are you finished, Mr. Stereger?

STEREGER

Not quite, Your Honor. Was there anything else you noticed about the accused when you talked to her?

BUNYARD

(confused) Not as I recall.

STEREGER

Anything about her breath?

BUNYARD

Oh. Yeah. I noticed the smell of liquor on her breath.

STEREGER

So you'd say she'd been drinking hard liquor pretty recently.

BUNYARD

No doubt about it.

MASON

(in an audible whisper) He'd be the one to know.

STEREGER

(glancing at Mason) Thank you, Sam. The witness is excused.

COLE

Your Honor, the Prosecution, in its flush of confidence, seems to have forgotten the normal procedure for a trial.

STEREGER

Oh, did you want to cross examine?

COLE

The idea had occurred to me.

STEREGER

Sorry, Sam; you'll have to come back up here and let the defense ask you . . . something. It shouldn't take long.

End of excerpt.

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