

The Prosecutor Whose Sword Was Taken Away

by Edward Michaels

“Trials are physical,” Henry Charles said, matching the statement by driving his fist into his hand. “For young lawyers, this lesson must especially be learnt when they go up against wily, smug, overbearing prosecutors. Trial tactics are a choreography in courtroom space, a theater of movement and affect, a studied yet”—he paused to search for the word—“effortless, yes effortless, harmony.”

“Charles,” I said, “that is a little too abstract for me. And I suspect for the young lawyers to whom you might want to tell it.”

“Nonsense, Michaels,” replied Charles. “I am saying something basic about trials. But especially criminal trials. They are, of all litigation, the most laden with powerful symbols. We are drawing over again the most important line the law can draw—the reasonable doubt line. The prosecutor invokes the defense of order and gathers all the symbols the state can offer. To gain an acquittal, the defender must appropriate those symbols, often by sheer force of character and a wise choice of tactics.”

He paused again and peered down the walk. “By a fortuity, we may put this theory to the test. Here come Abigail Montford and Jason Smart.”

Henry Charles was—is—as they say, “a piece of work,” and when they say it, you have to listen closely and look them in the eye to know what they mean and whether you—his friend—need to ask somebody to step outside. My friend Henry Charles is perhaps the finest trial lawyer in America and certainly the best one I have known. For more than ten years, other lawyers have been coming to the brick-and-frame Victorian house in Mirabeau, Texas, where Charles lives and offices, to ask his advice about how to try their own cases.

When it became clear that Charles would be doing a lot of this sort of work, I told him he should tear a page from Sherlock Holmes and call himself a “consulting lawyer.”

“Can’t do it,” he replied. “I once told Judge Harry Lee

Hudspeth that I was a ‘consultant,’ and he said, ‘A consultant is a fellow who knows a hundred ways to have sex but doesn’t have a girlfriend.’ So if word got out in El Paso that I was calling myself a consultant, there would be hell to pay.”

And that was that. But I did take the liberty of making notes about the cases Charles would advise on, because his methods seemed worthy of noting and passing on. The result has been the most rewarding professional experience of my life. I offer this first account in the hope that readers will find it interesting—and that Charles will find it worthy.

I, Edward Michaels, have had a law license about as long as Charles, since 1970. I spent some years as a military lawyer, then worked for legal publishers. I suppose my bookish slant attracted me to Charles, who loves ideas but is less patient with working them out in the library.

I recall the arrival at our door of Jason Smart and Abigail Montford. They had been in practice about two years, since 1984, in a medium-size office that is affiliated with one of the Houston megafirms. I was a little surprised they would seek Charles out, because they had not been with their firm enough years to have a major responsibility for a trial of any complexity.

I shared this thought with Charles, as we welcomed them into the office, but he waved me away.

“Nonsense,” he said. “Abigail and Jason are here because they have been appointed to try a criminal case, probably involving allegations of bank fraud. The case is in federal court, which concerns them because their only exposure to criminal law was at law school and in studying for the bar exam, where the emphasis was on the Texas Penal Code.”

Jason’s eyes were wide. “How did you know?” he asked.

“First, because I read in the paper of a major bank fraud indictment,” he said. “I also noted that the defendants had declared personal bankruptcy, so they would be likely candidates for appointed counsel. You are carrying the West Publishing paperback edition of the federal Criminal Code, and sticking out of it is a photocopy of the leading Fifth Circuit case on misapplication of bank funds. Finally, Judge

Edward Michaels is the pen name of a trial lawyer in Texas.

Delancey has a disturbing habit of appointing young lawyers from large firms to defend federal criminal cases, and then instructing them they will be sanctioned if they tell anybody—including their client—that they feel unqualified.”

“Amazing . . .,” Abigail began, but Charles waved her off and continued. “More ominously, the newspaper report said that the case is run by two Department of Justice trial attorneys, Snively and Lorch. Because they have reputations as courtroom control freaks who wrap their every case tightly in the flag, young lawyers tend to be apprehensive about going against them.”

“It’s already begun” said Abigail. “At arraignment, our clients, Mr. Ransome and Mr. Wallace, were almost remanded without bail. I thought it would be routine, with their community connections and the nature of the offense, but Snively and Lorch went on and on for 20 minutes. You would think we were representing Bonnie and Clyde, or Pretty Boy Floyd.”

“Maybe you are, in a way,” Charles said. “Woody Guthrie’s song about Pretty Boy Floyd ends with the verse ‘As I been through this world, I seen lots of funny men; some will rob you with a six-gun, and some with a fountain pen.’”

“You got it!” Jason said. “These two guys sucked in bank deposits by raising interest rates, then blew the money out the back door of the bank with a series of risky loans. Damn! It was like a feeding frenzy over there. And when the economy stopped going straight up, the last guy who tried to flip his land wound up with a big bank loan he couldn’t pay. The jury is going to be real anxious to take out their anger on these two guys.”

“And Snively and Lorch are going to play that song early and often,” Abigail said. “So what do we do?”

Charles looked over his half-glasses from Abigail to Jason and across to where I was sitting. His fingers were tented, one eyebrow was cocked up, and a thoughtful smile played around his lips.

“You will need a theory of the case,” he said, as though he had not said the same thing from the same chair a thousand times before. “Michaels will pull some files on the elements of misapplication under 18 U.S.C. 656. Tomorrow morning, come for coffee at 7:30, and we will discuss your closing argument.” Again the hand went out as Jason started to say something. “Yes, your closing argument. You will change it a hundred times before you give it, but you need to know your theory and you need to know where the legal and factual holes are. No better way to find out.”

Jason and Abigail looked at each other and started to get up from their chairs.

“Where are you going?” Charles demanded.

“To get that file and then work on our closings,” Abigail said.

“Not so fast,” Charles said. “Come upstairs.”

Upstairs was Charles’s workroom. The architect’s first drawings had it as a conference room, to be fashioned by knocking out all the interior walls on the second floor. Charles and I pronounced that too arid and not really useful. So we devised a plan that took out the walls, used the nooks for bookshelves, and had railings, tables, and chairs that permitted the space to be arranged like a courtroom.

The idea worked so well that we mostly leave it set up that way.

“Sit over there,” Charles said to Jason and Abigail, point-

ing to the table farthest from the jury box. They sat. “Michaels will play judge or witness or whatever we need. Now, I want the two of you to look around carefully and memorize every detail of this room. The first thing about trying cases against goons like Snively and Lorch is that their intimidation is physical and so must be your overpowering of it. Think about this room!

“Now,” he said, pointing at Jason with that gesture of his—all fingers together so it didn’t look like pointing but like a sort of wave of the arm in Jason’s direction, the same gesture he uses all the time to focus the jury’s attention without seeming rude for pointing a finger—“tell me the rules about moving around in Judge Delancey’s court.”

“Moving around?” Jason asked.

“Hell, yes, man, ‘moving around.’ Haven’t they taught you anything? What are Delancey’s rules of decorum?”

Abigail brightened, then said, “Well, he doesn’t follow the Texas state court practice of making lawyers examine from a seated position at counsel table. You can move around a little. You don’t need to get permission to hand the witness a document.”

“Capital!” Charles said. “Not only have you seen Judge Delancey’s court, you have observed it. Let us put that together with the first two rules of advocacy—that you are always ‘on’ and that you must be you. Will there be an informer in this case, a turncoat witness who has made a plea bargain to avoid the inconvenience of a jail term?”

“Yes,” said Jason. “Kimberly Bonthron, who was first-vice-president, is going to give the worst evidence.”

“Oh, that’s fine,” Charles said absently, as though the information were a clinical detail. “That means you can’t be



too aggressive or it will seem to a Mirabeau, Texas, jury that you are being unfair. What point do you want to make about Ms. Bonthroné?"

"That she is lying?" Abigail ventured.

I tried to head off Charles's certain riposte. "Of course you want to show that, but what Charles wants to know is why do you think she is lying? Whose fault is it that she is lying?"

"I am not sure what you mean," Jason said.

"Mean?" Charles was pacing again, supplicating the ceiling. "Some witnesses trade their testimony for their freedom cynically and willingly. Some, out of a misplaced sense of duty. Some, because their lawyers lead them into it. And some—I say some, my good friends—because unscrupulous prosecutors work on them to do it. Now, which is she—or none of the above?"

"Oh, I see," Abigail said. "I would say Ms. Bonthroné was called in early in the investigation and told that somebody was going to jail and that she had a difficult choice to make."

I asked, "Had she told an exculpatory story before that?"

"We can live with it," Jason conceded.

"Then that is your theme for that witness," Charles said. "Now show me how you are going to interrogate the witness. Since you are mainly going to ask leading questions, Michaels can be Ms. Bonthroné. I will sit here at the prosecutor's table and be Snively or Lorch as the occasion may require. Proceed."

Abigail began, cautiously at first, with questions about Ms. Bonthroné's responsibilities at the bank. Had Ms. Bonthroné had duties concerning loans? In fact, had she not been consulted on many of the loans involved in this case? She had in fact made a judgment that these were sound loans? What, not always?

"Ms. Bonthroné," Abigail said, "I am going to show you what I have marked as Defendants' Exhibit 5 and ask you, Isn't that a memorandum you gave to the bank examiners on

Prosecutors are the most intensely turf-conscious critters on two legs.

April 15, 1985?" Abigail crossed to the witness chair and handed me the paper. "I would," she said, stepping out of character, "ask the witness to read out portions of the memo. It's really good stuff."

Abigail stayed beside me as she put the next question. "And this was written before you went into the grand jury and said some of these things you have been telling us today, isn't that right?"

"No," Charles said, pushing back his chair. "That is not right. First, you are blocking the jury's view of the witness, so that if you do score any points, they won't know. Second, you are staying up beside the witness when you have no more papers to show her. Even Judge Delancey won't let you stay there all the time.

"And most important, you are losing a chance to use your

body to make your point. Here, sit and be Snively."

Charles took the paper. Starting at defense counsel table, he approached the witness chair, making sure he was facing both the witness and the jury. "Another thing," he said, "even judges who let you move around the courtroom will cut you off if you get too close to the jury box. It is not simply a matter of not having your back to them. Judges want to make sure that they hear everything the jury hears—and that some lawyer is not making sotto voce asides to the jurors. If you are against Snively and Lorch, that is a rule you want enforced against both sides.

"All right," he continued. "You have finished the vital job of accrediting the informer's prior statement. You have shown that an unafraid Ms. Bonthroné said that these loans were reasonable, even prudent." Charles moved from the witness chair to stand right behind Snively-in-the-person-of-Abigail. "And then, Ms. Bonthroné, Mr. Snively here told you that, unless you made a bargain with the prosecutors, you would go to the penitentiary, isn't that right?"

"Oh," said Abigail, "I see."

"What do you see?" Charles asked.

"You are standing behind the prosecutor to underscore your question, which contains an attack on him."

"Right," I chimed in. "The courtroom is divided into spaces. Prosecutors are the most intensely turf-conscious critters on two legs. One of these days I expect to see them urinating at intervals around the room to scent-mark their territory." Jason chortled.

"Michaels is right," said Charles. "Judge Jack Coughenour—a great trial judge and teacher of trial law—told me that his clerk came breathlessly into chambers one morning to report that prosecutors and defense counsel were near blows because the defenders had arrived first and taken the counsel table closest to the jury. Judge Coughenour laughed and said that there were no reserved seats in his courtroom. The prosecutors were some kind of angry. Of course, in some places, like New York, the tables are parallel and face the bench, but even there the prosecutors get the front row seats.

"So, yes, territory is a big issue. You are opening a new line of inquiry. You signal that fact by moving and changing your affect. As a result of your next series of questions, you will ask the jury to believe that Snively played an unworthy role in the forced conversion of Ms. Bonthroné to that government religion: the ritual cleansing of souls through the naming of names. So you invade Snively's territory and stand right behind him. You and Jason will do that at least one more time during the trial: during your closing argument, when you warm to that theme."

"And besides," I added, "think about what you have done to the jury's gaze. The jurors are often uncertain what they should be looking at. Sometimes, when distracted, they survey the courtroom. You take charge of the courtroom by the way you move. Do you want the jury to see both you and the witness? Make sure you are close enough to the witness for that to be possible. On a direct examination, when the witness and not you must be the center of attention, pick a spot where the jurors cannot see both of you. The jurors will eventually settle on watching the witness, while you remain an 'off-screen' voice. You can introduce questions with 'Tell the jury' or similar language to guide the process."

"Now who's the theorist?" Charles said. "Jason, Abigail,

when you stand behind the prosecutor, in his territory, what the hell is he going to do? The jury is looking right at him while you are accusing him of misbehaving. Now, don't stay there too long, because you now want the jury to focus again on Ms. Bonthron.

Charles heaved his angular frame into a chair. His intensity faded as quickly as it had come. "That is enough for today. Go and work on your openings and closings. And every morning from now to trial, stand before the mirror and say out loud the themes of your case. Yes, say your case every day. As you say it, think out where you will stand, when you will be seated, what your tone and manner will be. Your most powerful weapon against Snively and Lorch will be your effective command of space—and of the jurors' attention."

In the weeks that followed, Jason and Abigail stopped by every few days, and we all put the courtroom on the second floor to good use. They decided their factual theme would be the distinction between maladministration, which is not a crime, and misapplication of bank funds, which is. Put more simply, making loans that looked good but went sour is different from looting the bank. This theory would crumble if the prosecutors had success in covering the defendants with innuendo.

For the two weeks before trial, Charles and I were away in San Antonio trying the Oil Pipe Tax Evasion case, with which the reader is probably familiar. When that jury at last did the right thing, Charles and I hastened home so that we could watch Jason and Abigail at work.

We took our seats in the courtroom the morning of trial, across the aisle from the assembled prospective jurors. Judge Delancey was already on the bench. He saw us and sent a law clerk down to ask if we had some urgent matter to present.

"No, indeed," I whispered, "we are only here to see justice done."

"Well," Charles drawled, "at least to see somebody get done."

The reader will have guessed that it is quite difficult for Charles to sit still while watching another lawyer try a case. His mumbling and fidgeting are in marked contrast to the discipline he displays—and expects from his co-counsel—when he tries a case. The mumbles are, however, invaluable to his aspiring Boswell.

Voir dire began. Snively approached the prospective jurors. "Good morning, Ladies and Gentlemen. I am Jonathan Snively, and here"—indicating—"is my co-counsel, Richard Lorch. We are trial attorneys for the Department of Justice, and we represent the people of the United States."

Jason coughed slightly to draw attention to himself and rose from his seat at counsel table, not too fast, but deliberately. "We object to that, Your Honor."

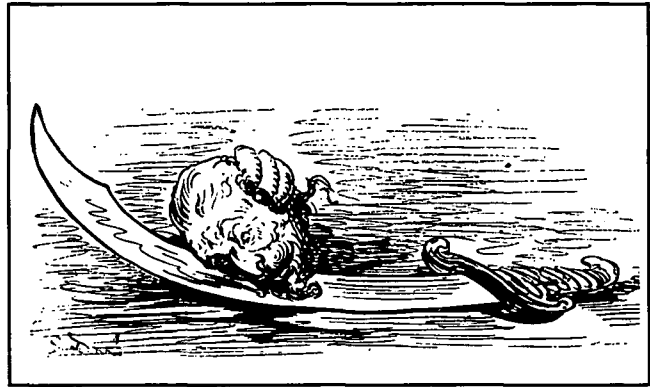
"Object to what?" Judge Delancey asked. He had not really been paying attention.

"Mr. Snively and Mr. Lorch do not represent the 'people,' Your Honor. They represent the prosecution—the government."

"Overruled. I'll permit it."

Charles was tapping his feet, silently. And he mumbled, "Don't give up."

Jason didn't. "Thank you, Your Honor. We will address this question when it is our turn." And he sat down before the judge could respond.



"Good show," came Charles's quiet comment. "He must grab the 'I-represent-the-people' sword every time it is brandished, and he is now poised to do so."

Judge Delancey allows only 20 minutes per party of lawyer voir dire, so Snively's performance soon ended. Abigail stood and looked at the jurors, her gaze frank and open. "Members of the Jury," she began, wisely eschewing the old-fashioned "Ladies and Gentlemen." "I am Abigail Montford, and I am a lawyer. I represent Tim Ransome, a citizen like you and me. Please stand, Tim." Ransome stood, nodded, and sat. "After this trial, 12 of you are going to decide this case, 12 of you as representatives of our community. So, really, you represent the people. Mister Snively and Mister Lorch represent the government. You, and not they, will decide if that is the same thing."

"Objection!" Snively was on his feet. Abigail turned to face the bench. Jason stood, too, to remind the judge of the earlier colloquy.

"No, I'll permit it," said Delancey, adding "but why don't you go on to something else."

"Members of the Jury," Abigail continued, "in our legal system, as Judge Delancey will remind you many times, Mr. Ransome is innocent as he sits there now. Can each of you apply that basic principle?" Heads nodded. Abigail nodded with them, but kept eye contact to catch any doubters. "Does anybody disagree? OK, under our system, if the government here"—gesturing toward the prosecutors to enforce her point—"cannot bring you proof beyond a reasonable doubt, you must find Mr. Ransome not guilty. Will everybody apply that basic principle?" Again heads nodded.

"She is doing it right," Charles whispered. "Getting them to say yes instead of no."

At the recess, Jason and Abigail came over for a short dose of support and reassurance. They had learned that once trial starts, it is too late for major course corrections.

Jason's opening statement brandished the sword he and Abigail had taken from Snively and Lorch.

He held up his hand. "Members of the Jury, can you see my hand? You cannot see my hand. Not until I have turned it over and you have seen both sides can you say that you have seen my hand. And not until you have heard from both sides can you say that you have seen this case."

Jason turned and took a small step toward the prosecution table. "Quote: 'If you don't change your story, I will personally see to it you spend every day of five years in a federal prison with harder women than you ever dreamed of.' Who said that? Jonathan Snively said it, to make a fine young

bank employee, Kimberly Bonthron, turn her back on things she had written and said. You, the jury, representing the people, will hear just how that happened and decide whether the story that Ms. Bonthron spun in order to stay out of that prison is worthy of your respect.

"I represent John Wallace. He has as much right to your respect as anybody in this courtroom. His family has been in this part of Texas for generations, and he and they built up this community with their own commitment, talent, and devotion. Mr. Wallace participated in making loans at the First State Bank, and some of the loans that looked strong when they were made got caught in Texas's economic tailspin."

At the recess, Charles confessed some uncertainty about Jason's opening. "I am not sure it was as effective as it could have been. He surely had the idea. Your primary duty—in the sense of first—is to say powerfully that the jury must keep an open mind. The venerable 'hand' image did that.

"He was certainly right to face the prosecutors and confront them with a damning bit of evidence right at the start. Maybe it is a bit of overreaching. Maybe it is something that reflects badly on their main witness. Whatever it is, it must have to do with the prosecutors themselves, and not just with their evidence. In a pinch, you can single out the case agent seated at the table with them. But you must walk over, as far into their territory as the judge will permit, and deliver your challenge in their faces."

"He did that, Charles," I protested. "I fail to understand your reservations."

"Good idea, but he chose the wrong example," Charles said. "Michaels, you and I have said to each other a thousand times that jurors are not ready to disbelieve somebody just because they made a plea bargain. No, indeed, there must be something more—some tangible evidence of a present willingness to lie. So Jason should have looked for another example of prosecutor perfidy. That's all. I wish I had not been out of town as he was honing his opening. Ah, well."

I tried to change the subject. "I thought Abigail's opening was powerful. She used the blackboard to list her main themes, each in two or three words. She left the blackboard in place, compelling the prosecutor to erase it when he called his first witness. Rather good use of space, I thought." Charles agreed absently, but his thoughts were elsewhere.

That evening, Charles sat in his rocking lounger, brooding morosely and putting a large dent into a bottle of fair Bordeaux. I was probably the cause of his mood, for I had confided that Abigail was uncertain what to do with the prosecutor's expert witness, the treasury agent Mason Freeman, who had sat dutifully at the prosecutor's table.

When Abigail rang the doorbell, at about 8:00, Charles was a little querulous. "Have you finished for the day? I won't talk to you if you have not wrapped up your work for the day. When the trial adjourns, you need to wrap up loose ends and then free your mind for the evening."

"All done," said Abigail, although her expression told me she wondered if she had made a mistake by coming.

"Very well," Charles began. "Let me tell you what you have learned about symbols. No, no, that is not arrogance. You have learned it, but you do not *know* what you know. So you are uncertain what steps to take next. In voir dire, in your opening, and in your cross of the turncoat Ms. Bonthron, you showed me that you know that symbols are direct, immediate, and expressive. You have refused to let the pros-

ecutors have all the symbols. When you cross-examined Ms. Bonthron, you showed me you know that reasonable doubt must ripen into a coherent picture, that you must not be content to pull a strand here and there from the government's case."

Charles was right about the cross-examination. Abigail had taken Bonthron over the risks and perils of a lender's life, and made her tell of all the positive things Ransome and Wallace had done for her career—and for the bank.

"So," Charles said, "what is your symbol now? What are you going to do about the expert?"

"I am looking for a way in," Abigail said. "The agent, Mason Freeman, is a formidable character. He has reviewed the loan records and is going to say that these loans were improper and foolish and, well, dishonest. Lorch will take

The government expert can be managed like a steer cut out of the herd.

him over the transactions, and by the time he is done, the jury will have a portrait of fraud.

"I am saying, really," she continued, "or asking, how in the hell am I supposed to know what the jury is making of all of this?"

"You can't be certain," Charles replied. "You are navigating your craft by dead reckoning. You know where you began, you have a plan for the voyage, and you know your course and speed. You will not know your exact position until you verify by reference to some external object—in this case the jury. By the time they tell you, it is too late to make any course corrections."

"Charles," I said. "Please do not combine the metaphysical with the nautical. Or if you must, give Ms. Montford some practical help with sail trim."

"Oh, very well. The government expert brings two powerful weapons. One he gets from the prosecutor: He is an official who wields power. The other he gets from his training: He is going to offer the jury an easy way out by combining all these transactions and wrapping them up neatly with blanket condemnation. Can I have just one more metaphor, Michaels? In the herd, a steer has power. When the cutting horse breaks him out of the herd, he is alone and can therefore be managed. Let's see. What visual evidence is Agent Freeman using?"

"He has charts of all the individual loans, with a summary of their characteristics, such as 'insider,' 'no collateral,' 'overvalued or false collateral,' 'inadequate documentation,' and so on. Then, he summarizes the occurrence of these characteristics and adds up the numbers."

"Yes," I said, "but what I think Charles wants to know is the format of these charts."

"Oh, they are 8 1/2-by-11-inch sheets, with a copy for each juror and for the lawyers and the judge."

"All right," Charles said. "The steps to seizing Agent

Freeman's power are, first, to have mastered the thousands of documents that he claims to summarize. Second, to unmask his pretensions of omniscience. Third, to empower the jury to reject his analysis. Fourth, to make clear why Agent Freeman's errors may be laid at the feet of Snively and Lorch. Let's start."

For the next two hours we worked and worried over Abigail's cross. We might have gone longer save for Charles's fixed idea that a good night's rest is an essential part of a trial schedule—if it can be managed.

The next morning Agent Freeman took the stand and went through his charts. Abigail did not begin her cross-examination until almost 11:00.

"Agent Freeman, I want you to look at the chart in front of you entitled 'Circle J Loans.' Do you have that, sir?" She moved near the witness box, although not between the witness and the jury, and she made sure Freeman had the right paper. "Let me give the jurors a moment to find that one, also."

"I have it."

"Now," Abigail continued, "you have written three criticisms of this loan, correct?"

"Three reasons it was fraudulent, right."

"Excuse me, Agent?"

"Three reasons it was fraudulent."

"Agent, let me ask you about that. You say that the loan was to insiders, that the collateral was overvalued, and that documentation was inadequate, right?"

"Right."

"An insider loan is not necessarily fraudulent, correct?"

"Correct."

"A loan where the banker makes a mistake on the value of collateral is not fraudulent, right?"

"Right."

"And documentation that is, in your words, 'inadequate,' does not necessarily make a loan fraudulent, correct?"

"Correct."

"You think this loan is fraudulent, though?"

"I do."

"Who is going to make that decision?"

"I have already made it."

"Isn't this jury supposed to make that decision, Agent?"

"Well, if you want to say it that way."

"No, Agent. Not how I want to say it. As an experienced law enforcement person, please look at the jury and tell the jurors who decides innocence or guilt and by what standard."

"The jury decides, and it is beyond a reasonable doubt."

Charles wriggled in his seat and whispered. "He gave her a gift; she saw it; she rammed it down his throat. She has now begun to take away his weapons."

Abigail was writing on the blackboard in big letters, "COLLATERAL," "INSIDER," and "DOCUMENTS." By this means, she got the jury looking at her and, alternately, at the witness, instead of focusing on the government's charts.

"Agent, let me begin by asking about collateral," Abigail continued. "The price of land in this corner of Texas has been up and down a lot, hasn't it?"

"It has varied some, yes."

"In fact, you have seen situations where the valuation of a parcel of real estate will double overnight, correct?"

"I have seen that, but not very often."

"You are not a real estate appraiser, are you?"

"No."

"You do not live in Texas, do you?"

"No."

"So you cannot tell us the history of land prices in Texas, can you?"

"No, I cannot."

"I am showing you Government Exhibit 5407. That is an appraisal on this Circle J land that supports the amount of the loan that was made, correct?"

"On its face, it does."

"On its face. I will come to that. Your answer is that the document supports the loan?"

"Yes."

"And the jury can look at this Government Exhibit 5407 and see that, right?"

"Right."

"They do not need a CPA or a special agent from Washington in order to see that, do they?"

"No, I guess not."

"Well, do you have any doubt about it?"

"No."

"Coming to the phrase you used, 'on its face,' you want to say that this appraisal sort of fudged, right?"

"That's right."

"You were not there in that bank when this appraisal was discussed, were you?"

"No."

"The people there were my client Tim Ransome, the appraiser Mr. Wolfert, and a bank vice-president named Lou Anthony, correct?"

"That's right."

"Mr. Wolfert and Mr. Ransome say that the appraisal was honest, right?"

"Right."

"Mr. Anthony says it was phoned up?"

"He did. The jury heard him."

"Exactly, sir. And who is going to decide whether Mr. Anthony is telling the truth or whether Mr. Ransome and Mr. Wolfert are telling the truth?"

"The jury."

"And that's the American way, isn't it? Trial by jury?"

"Well, yes."

"Tell the jury about Mr. Anthony. Did you ever talk to him before August 5, 1983, when he did not lie his head off to you?"

"I would not say he lied his head off. He was not candid with us until he made a plea bargain."

"I am sorry. I didn't understand your answer. It is a fact that Mr. Anthony habitually lied to you, right?"

"That is right."

"And Mr. Anthony's story is one basis for your saying that this loan did not have enough collateral?"

"That is right."

Abigail drew a line through "COLLATERAL."

"And when we come to 'insider,' sir, you told this jury that there was a silent partner in Circle J who was a director of the bank, correct?"

"I said that there was a silent partner and that your client knew that."

"I am sorry, Agent, I don't mean to fuss with you. But please look the jurors straight in the eye and tell them the
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(continued from page 11)

name of the only human being in the world who ever told you that Mr. Ransome knew a bank director was in this deal.”

“Well, it was Lou Anthony.”

“I am sorry. Could you repeat that?”

“Lou Anthony.”

“This is the Lou Anthony you just told us a moment ago was a liar.”

“I didn’t say he was a liar. I said he had lied.”

“Would you buy a used car from Lou Anthony?” Lorch stood up. Abigail started to say “withdrawn,” which is the only thing to say at a moment like that, but Freeman blurted out, “If the price was right.” Some jurors actually looked at one another and shook their heads. Abigail drew a line through “INSIDER.”

“Now, Agent, this Circle J loan was originally made in 1980, correct?”

“Yes.”

“And it was renewed and extended in 1984, correct?”

“Yes.”

“When did you begin your investigation of the bank and of Mr. Ransome?”

“I was assigned in June of 1983.”

“You first reviewed the loan file on Circle J in November 1983, right?”

“Right.”

“You had already made a deal with Mr. Anthony, right?”

“Mr. Snively and Mr. Lorch had reached an agreement with Mr. Anthony’s counselor, yes.”

Charles clenched his fists. “Dear God, another gift. He doesn’t see where she is taking him. Look at Snively and Lorch. They don’t get it yet either, Michaels.”

“You are a smart agent. You had your suspicions about this loan, didn’t you?”

“They were more than suspicions.”

“Exactly, sir. And you thought the documentation in the file was inadequate, didn’t you?”

“I certainly did.”

“But you never went to Mr. Ransome and told him that you questioned this loan, did you?”

“No.”

“You never told him not to renew it when it came due, did you?”

“No.”

“In fact, you never said anything to Mr. Ransome about this loan until after Circle J went into bankruptcy in late 1985, did you?”

“It was our policy.”

“What was your policy?”

“It was to not alert people to our investigation.”

Abigail moved toward the prosecutors’ table. “The policy was that of Mr. Snively and Mr. Lorch, wasn’t it, sir?”

“Well, I was under their direction.”

“The policy was that of Mr. Snively and Mr. Lorch, wasn’t it, sir?”

“Yes.”

“And if you had told Mr. Ransome not to renew this loan—and he had started collection efforts in 1983—there would have been a better chance to protect the bank’s assets, isn’t that right?”

“That might have been the case.”

Charles mumbled, “That’s enough. Stop now.” Abigail did, and went on to something else.

“A grand-slam cross-examination,” Charles said later, when we were open-

ing the post-verdict champagne. “Themes: the expert wasn’t there; you don’t need to be an expert to tell who’s lying and to read a document, so the jury can, should, and will decide; and the prosecutors’ power rises up to bite them.”

“And I thought the summations brought it together nicely,” I added.

“Oh yes. ‘You told me you would hold government to this burden, and I believed you then,’ and so on. You know, Michaels, the old-timer who has lived in the community is entitled to the respect given age and tradition. The newcomer, outcast, or despised is entitled to the tolerance and indulgence wrapped in the idea of equal justice. The jurors’ oaths are real to them, a star to steer by.”

“Honestly, Charles,” I said, “I would think it was a little more prosaic than that.”

“And you would, as usual, have a point. I will not yield my regard for venerable symbols, but you and I know—and Jason and Abigail have shown us they know—that jurors do not generally believe that government is doing a good job: budget deficits, wasted taxpayer funds. Jurors resent it when the government could have prevented a harm, but didn’t. Did you see them look at Snively and Lorch when Freeman said they had a policy not to protect the bank’s assets? And jurors want the bankers in their community to take a chance to help out a new business, or at least they understand why somebody would do that.

“There are different styles for different lawyers and in different places, but we know it is the relatively easier path for the jurors to vote a conviction. Only their quickened faith in institutional values and their personal trust in the lawyer who invokes them will start them on the path to acquittal.”

Oh,” said Abigail, “I think—at least, here—it has also to do with dreams. All of us here in Mirabeau saw the boom and the bust. And if our dreams were fueled by ambition and hope, and not by conniving and avarice, they were permissible dreams to have—even if you woke up one day and found them in shards all around you. Snively and Lorch did not want to punish just Ransome and Wallace—they wanted to apply today’s bureaucratic values to deride the dream everybody remem-

bers having had yesterday.”

Charles started, and then grinned. “One of the joys of this business,” he said, “is that every time you start to think you know something, somebody comes along and teaches you that you have a lot more to learn.” □