

Impeaching the Unimpeachable

by Stephen P. Kauffman

It's every criminal defense attorney's worst nightmare. You represent a client named in a multicount indictment. The government's entire case rests on the testimony of one witness—an undercover agent whom, until recently, your client had regarded as a trusted associate. The assistant U.S. attorney calls her star witness. Jack Armstrong marches to the stand, exuding the confidence of an all-pro quarterback. Coincidentally, he bears a striking resemblance to Joe Montana. As he states his name for the record, Armstrong flashes the jury that winning smile. Your collar starts to feel a little tight.

Inconspicuously, you glance at your client, Tony Scarface. He bears a striking resemblance to someone you just saw on television—on "America's Most Wanted." He is definitely the runner-up in this beauty contest. You remember that a man's character is more important than his appearance. You start to perspire.

The prosecutor begins her direct examination of Armstrong. He testifies forcefully, in deep, resonant tones. His testimony is logical and compelling, as it should be, because he is telling the truth. Testifying flawlessly over a two-day period, Armstrong implicates Scarface fully in the criminal conduct alleged in the indictment. His direct examination concludes with a flourish. The jury sits ready to convict Scarface on every count in the indictment as well as most of the unsolved crimes of the latter part of this century. With the last few notes of Armstrong's testimony still ringing in the jurors' ears, the judge, after a pregnant pause, inquires almost reflexively whether you wish to conduct any cross-examination. You sweat.

The cross-examination of a witness like Armstrong is no easy task. He is not a snitch testifying under a grant of immunity. He is not a paid informer who has been offered a large cash reward. The obstacles are formidable but not insurmountable. Perhaps the best cross-examination of an undercover agent was conducted by the most able and

accomplished trial attorney of modern times—Edward Bennett Williams.

Williams's success was in large measure attributable to a rare combination of tremendous innate ability coupled with an insatiable urge to win. Transcripts from his court appearances reveal his eloquence and complete mastery of the facts of the case, even to the smallest detail. Williams's case preparation was unequalled. His personal attributes and talents enabled him to crush government witnesses inclined to deviate from the truth.

Perhaps the best-known example of Williams's prowess on cross-examination is his examination of Jake Jacobsen in the Connally prosecution. Admittedly, the Jacobsen cross was intriguing and effective. However, Williams's real talent lay not in impeaching weak witnesses like Jacobsen, who had every reason to falsify, but in discrediting the testimony of solid witnesses with no motive to lie: impeaching the unimpeachable.

The date is May 3, 1957. A New York newspaper's front page consists of only five words: MCCARTHY DEAD; FRANK COSTELLO SHOT. Dave Beck was the subject of the lead story on page two. Senator Joseph McCarthy, Frank Costello, and Dave Beck were prominent figures in the 1950s. Highly controversial and accustomed to being the focus of public attention, these three headliners from the not-so-distant past shared more than space on the first two pages of some obscure New York tabloid. They also shared a lawyer.

At the age of 36, Williams had confronted and conquered more and greater challenges than most lawyers will face in a career. He was already considered by many to be the best criminal defense attorney in the United States. But on that early spring day in 1957, Williams was a little more than a month away from undertaking one of the greatest challenges of his career—representing James Riddle Hoffa.

Like Williams's other clients, Hoffa was no stranger to controversy. Like Williams himself, Hoffa had achieved success and fame at a relatively early age, but that is where the similarity ended. Hoffa was a high-ranking officer in the Teamsters Union. He had his eye on the presidency of the

Mr. Kauffman is a partner at the Baltimore law firm of Wright, Constable & Skeen.

entire union, an office that at that time was held by Dave Beck. Hoffa also had strong ties to organized crime, as did Beck. In response to mounting public concern over the influence of organized crime on labor unions, the U.S. Congress launched an intensive investigation.

The Senate Select Committee on Improper Activities in the Labor or Management Field was convened in January of 1957. Adopting the name of its chairman, Senator John L. McClellan, the McClellan Committee began conducting highly publicized hearings. At these hearings, committee members and Robert F. Kennedy, chief counsel to the committee, would pose incriminating questions to high-level union officials. These questions were designed to trap the witnesses into lying or incriminating themselves if they chose to answer, or to embarrass them if they exercised their privilege against self-incrimination.

John Cy Cheasty was a New York attorney, private investigator, and former government investigator. According to Cheasty, Hyman I. Fischbach, a friend and fellow attorney, invited him to Washington, D.C., on February 13, 1957, and talked with him about infiltrating the committee to spy for Hoffa. Allegedly, on that same day, at a subsequent meeting in Detroit that Fischbach attended, Hoffa offered Cheasty \$18,000 to secure a position as an investigator with the McClellan Committee and to disclose to Hoffa the contents of secret committee files. Cheasty claimed he was incensed and deeply disturbed by Fischbach and Hoffa's proposition. However, he was apparently able to conceal his anger and convince Hoffa that he would participate in the scheme. At the end of the meeting, Hoffa gave Cheasty \$1,000 as a cash advance.

After leaving Hoffa's office, Cheasty contacted Kennedy and McClellan and disclosed the details of the conspiracy. Over the next month, Cheasty, pretending to work for Hoffa, was in reality assisting Kennedy and the committee in baiting a trap for Hoffa.

Late in the evening on March 13, 1957, Hoffa met Cheasty at the DuPont Plaza Hotel in Washington, D.C. Immediately after a surreptitious exchange of cash and committee files between Hoffa and Cheasty, the FBI arrested Hoffa at 11:30 P.M. Six days later a District of Columbia grand jury returned a three-count indictment against Hoffa and Fischbach.



Hoffa's conviction was a foregone conclusion. In fact, Kennedy—ambitious and obsessed with the urgency of a Hoffa conviction—was widely quoted as saying he would “jump off the Capitol” if Hoffa were acquitted. The volume of pretrial publicity surrounding the prosecution was unprecedented. The press apparently shared young Kennedy's confidence that Hoffa would be convicted, as demonstrated by the hundreds of articles attached to a motion for change of venue. This was one of numerous pretrial motions that the defense filed and the court denied. Amid this factual backdrop, the trial of Hoffa and Fischbach began on June 24, 1957.

U.S. District Judge Burnita Shelton Matthews presided at trial, and Assistant U.S. Attorney Edward P. Troxell prosecuted. In his opening statement, Troxell laid out the government's case against Hoffa. Cheasty was the government's star witness. Cheasty was the government's case. Troxell's direct examination of Cheasty consumed approximately four days of trial. Williams's cross-examination of Cheasty spanned about four days as well, but for Cheasty it must have seemed an eternity.

Preparation for the cross-examination of any witness should start with an ultimate objective and work backward. When confronting a witness like Cheasty, the objective is to have the jurors conclude that he has lied to them. To reach this conclusion, the jury must be induced to ask itself, and to answer affirmatively, the following three questions:

1. Is this witness capable of lying?
2. Would this witness lie to us?
3. Did this witness lie to us?

The typical jury does not ask these questions automatically or fortuitously; on the contrary, the cross-examination and closing argument must be focused and coordinated. For example, Williams induced the jury to conclude that Cheasty was willing to lie by having Cheasty admit the following three facts:

1. He deceived Hoffa and Fischbach.
2. Deception is the same as lying.
3. Cheasty believed that lying to Hoffa and Fischbach was acceptable behavior.

This is how Williams did it on cross-examination:

Q: Were you working for both, for Mr. Hoffa and the Senate committee?

A: I was working for the Senate committee. Mr. Hoffa believed that I was also working for him.

Q: Were you working for him or were you not working for him?

A: I was in his employ, but I was working for the Senate committee.

Q: In other words, you were working for both Mr. Hoffa and the Senate committee, is that right?

A: I don't think I was working for Mr. Hoffa.

Q: Then were you pretending that you were working for Mr. Hoffa?

A: Yes, I was pretending that I was working for Mr. Hoffa.

Q: And you were not working for Mr. Hoffa?

A: I was employed by him.

Q: To the extent that you were pretending to work for him, you were deceiving him, were you not?

A: Yes, sir.

Q: And when you saw him on the 13th of March, you were pretending to be working for him, weren't you?

A: I was actually employed by him on that date and I was doing what he thought was the job he had assigned me to do.

Q: To that extent you were deceiving him on the 13th of March, were you not?

A: I did deceive him on the 12th and 13th of March, yes, sir.

Q: And on the 13th of February, when you pretended to take employment from him, to that extent you were deceiving him, were you not?

A: Yes, sir.

Q: So that from the month of February and the day of the 13th until the month of March and the day of the

Williams was blessed with the wit to detect the obscure and the wisdom to let it be.

13th, throughout that whole month, you were pretending to be something that you were not, were you?

A: I was, yes, sir.

Q: And in that respect, you were deceiving Mr. Hoffa, were you not?

A: Yes, sir, I did deceive Mr. Hoffa.

Q: And during that month of February 13 to March 13, you told him falsehoods, did you not?

A: I did, sir, I told him falsehoods.

Q: And you told him many falsehoods, did you not?

A: Well, I told him several falsehoods.

Q: . . . During this month you told him, did you not, during your conversation with him, telephonically or person-to-person, lies?

A: There were a few lies in there, yes, sir.

Williams coordinated his closing argument with that portion of Cheasty's cross-examination and his acknowledgment on direct that he had lied to Fischbach at their first meeting in February. Williams then asked the jurors to consider Cheasty as a man:

[Cheasty] told you that on February 13 of this year he had a conversation here in our town with Fischbach. He told you Fischbach made what amounted to a criminal proposal to him, an illegal, wrongful, illicit proposition. And he made it to him, according to the witness Cheasty, at the Congressional Hotel, in the afternoon.

Now, I think it is fair to say, ladies and gentlemen of the jury, that generally speaking we can divide mankind, we can divide human beings that we know and that we meet and with whom we come into contact into dishonest people and honest people, generally speaking.

What would a dishonest man have done in the face of a criminal proposal? Well, he might have gone along with him. In his lust for money and material things he

[might] have gone along with him and said, all right, what do I do next?

What would an honest man have done when a criminal proposition was made to him in the Congressional Hotel, or anywhere else, by Fischbach? Oh, an honest man would have said, no, Fischbach, I don't want any part of this dirty business, and you shouldn't either. I am leaving; where's my hat?

Maybe his sense of honor would have been such, maybe his mind and his spirit might have been such that he would have said to Fischbach, "I am sorry, Fischbach, that you made this proposition to me because in my conscience and in my heart I must go report you. I must tell the authorities. I do it regretfully, but I feel in conscience I have no alternative."

What kind of a man do you think it would be who would hear the indecent, illegal, criminal scheme and the first moment spin from his lips a lie and begin a month's fabricated plan to bait a trap? Could anyone in whom there flickered a dying ember of decency and honor and integrity have spun from his lips without hesitation a lie and begun a pattern of deceit and falsehood and treachery?

Obviously, Cheasty found himself in the same position as the characters in Joseph Heller's *Catch 22*: To investigate effectively, he had to deceive and lie convincingly. However, a liar, particularly a talented liar, is not worthy of belief.

Williams also proved himself to be a master of extracting and exploiting the ironic and quirky facts of a case that usually pass unnoticed. For example, in his cross-examination of Cheasty, Williams cleverly inserted the following series of questions:

Q: When you talked to [Hoffa] on the 22nd of February, on Washington's birthday, you were pretending to be working for him, were you not?

A: Yes, sir.

Q: And in that respect, you were deceiving him?

A: Yes, sir, I was.

The questions were simply asked on cross-examination and repeated, without fanfare, during the closing argument. The meaning, if any, was there for any listener—regardless of the level of sophistication—unembellished, corny, funny, but not overstated.

The testimony received the attention it deserved. For example, Williams did not ask the jury to reflect upon what manner of man would commemorate the birthday of George Washington by consciously rejecting the fundamental value for which he is most remembered and revered. Williams was blessed with the wit to detect the obscure and the wisdom to let it be.

Having sown the seeds of mistrust, Williams advanced to the next objective: inducing the jurors to conclude that Cheasty was not above lying to them. After examining Cheasty the man, Williams asked the jury to consider Cheasty the witness. At this point Williams's cross-examination broached the juristic taboo of witness preparation. Recognizing that many nonattorneys are either ignorant about or suspicious of lawyers' preparation of witnesses, Williams made Cheasty admit the following four facts:

1. Cheasty was an attorney.
2. Cheasty was a seasoned investigator.
3. Cheasty had been in court many times.

4. Troxell and Cheasty prepared extensively for trial.

Here is how Williams did it:

Q: Mr. Cheasty, as I understand it, you are a graduate of law school, is that right?

A: Yes, sir.

Q: And you are a member of the New York Bar?

A: Yes, sir.

Q: And you have been a member of the New York Bar for some 25 years?

A: Yes, sir.

Q: You have been an investigator, both in government service and in private, is that right?

A: Yes, sir.

...

Q: And during your long experience as an investigator you have had occasion to testify, have you not?

A: Yes, sir.

Q: You have testified many times in court rooms, have you not?

A: Some; yes, sir.

Q: Well, you have testified many times, haven't you, Mr. Cheasty?

A: Yes, sir.

...

Q: In addition to your testimony in this case before the grand jury, and your testimony before the McClellan Committee, you answered questions for the prosecutor, did you not, over a period of days?

A: Yes, sure. You mean trial preparation?

...

Q: In other words, questions were put to you and you gave answers, is that right?

A: That is correct, sir.

Q: And over how many days did that go?

BY TROXELL: I object to this, your Honor. Naturally the government prepares its witnesses. We are required to.

BY THE COURT: The objection is overruled.

...

Q: But in any event, every day, beginning on June 3rd, except for Saturdays and Sundays, you went over your testimony with Mr. Troxell?

A: No, not all of it, no.

...

Q: So you have been testifying about these events for 4 hours a day since June 3rd of this year, is that right?

A: That is incorrect, sir. That is incorrect.

Q: Except for Saturdays and Sundays.

A: I have not been testifying about it, Mr. Williams.

Q: You have been responding to questions for 4 hours a day except for Saturdays and Sundays since June 3rd, is that right?

A: That is a very inaccurate description of what went on there.

Q: Well you have been preparing your testimony. Is that an accurate description?

A: I have been refreshing my recollection, would be more accurate.

Q: And you have been preparing your testimony?

A: Yes, sir.

Williams's persistence, Cheasty's resistance, and Troxell's objection severely crippled the government's case. All this transpired within the first hour of Cheasty's four-day ordeal,

and it set the tone for the remainder of the cross-examination. Again, coordinating his closing argument with the cross-examination, Williams asked the jury to consider Cheasty the witness:

So much for Cheasty the man. Let's talk about Cheasty the witness. What a witness! Cheasty, the witness. 25 times he had appeared in court giving testimony. Most people don't testify in a court room in their whole lives. 25 years as an investigator, an experienced investigator. 25 years as a lawyer. 500 times in a court room. I say no more experienced hand ever graced the witness stand in this court house than the witness Cheasty. More than that, here was this investigator with 25 years experience; here was this lawyer with 25 years experience; 25 times on the witness stand. . . . What did he do before he testified in this case?

He came to Washington on June 3rd, 16 days before this trial began, and for 4 hours, by his testimony, every day except weekends he went over his testimony, 2 weeks.

I say he wasn't preparing to get on the stand. He was doing what was the equivalent of rehearsing for a Broadway show. You don't have to rehearse the truth. You don't have to practice and drill to tell the facts. You have to practice and drill and rehearse if you are going to learn lines for a production, for a show, then you work 4 hours a day or 5 hours a day. But no witness needs to be drilled 16 days before the trial begins as to what he is going to say about something that happened only 3 months ago. But that's what happened with the witness Cheasty.

Now, Cheasty got on the stand, and I say to you with his experience, and with his rehearsal, and with his practice, he came within an eyelash of giving a flawless performance, but in this instance the miss was as good as a mile, because Cheasty by a most fortuitous circumstance was exposed.

The fortuitous circumstance to which Williams referred was the *Jencks* decision, which the Supreme Court had issued several weeks before the Hoffa trial began. As a result of *Jencks*, Williams had access to the transcript of Cheasty's sworn testimony before the McClellan Committee. Having proved that Cheasty not only was capable of lying but, in view of his extensive "rehearsal," had practiced to lie to the jury, Williams moved to his third objective: inducing the jurors to conclude that Cheasty, in fact, *had* lied to them.

In the remainder of his cross-examination, Williams confronted Cheasty with a mountain of minutia—fairly trivial inconsistencies among previous statements. However, in the jury's eyes, Cheasty the witness had sustained serious damage. In closing argument Williams focused the jury's attention on the three most serious (or least trivial) of Cheasty's inconsistent statements. Then in a "magnanimous" gesture, he urged the jury to pardon Cheasty's faulty recollection and give him another chance:

Now, this is testimony from a man who was making a record of everything, who was writing down what he did or keeping scraps of information, collecting physical proof and mentally noting everything that happened. A pyramid of inconsistencies and contradictions begins to build.

After sharing another inconsistency, Williams continued: Maybe, you say, well, he is entitled to four mistakes, this trained investigator. He is entitled to four mistakes in his testimony under oath on February 15 about what happened on February 13; the testimony that he reread on February 18 and corrected in longhand and swore to it again. He is entitled to four mistakes.

After a fifth inconsistency:

Five times . . . I say he was careless with the facts. He was careless constantly with the facts, time and again. Maybe you will say five errors from a trained investigator, keeping careful notation of what he did, is not too unreasonable.

Accomplishing the first objective, proving that the witness is willing to lie, will be easy in any case involving undercover operations. Accomplishing the second objective, proving that the witness is willing to lie to the jury, will be easier if the witness's testimony is overprepared. It's the final objective, proving that the witness *has* lied to the jury, that will always be the most difficult to accomplish and will usually require extensive and time-consuming cross-examination.

In this case, Williams had invested a great deal of time (his, the court's, and, most important, the jury's) in cross-examining Cheasty. For the most part, the inconsistencies that he had dredged up after nearly five days of the most penetrating scrutiny yielded a very modest return. A common problem encountered in many trials is determining the topics and depth to cover on cross-examination. Trial attorneys are warned to avoid the "shotgun" approach and to focus instead on several key points and then rest. Excessive cross-examination risks juror confusion, ennui, or, worst of all, anger. Williams appreciated these risks, rolled the dice, and—well, let's listen to his "apology" to the jury:

I suppose you became impatient, and I could well understand it, during the tedious cross-examination of this man, but there is only one way to get the truth from a witness like that. There is only one way to test him in the crucible of the examination, and that is to penetrate the untruth that he is telling and to show that he is weaving a web of deceit in certain areas, a witness who has been practicing for sixteen days the story he is going to tell. . . .

This may have been Williams's most brilliant stroke. He skillfully shifted to Cheasty himself the responsibility for the length of the interminable cross-examination. This approach suggests a corollary to the third objective: If deep drilling begets a dry hole, blame it on the drillee. Ultimately, after disclosing seven relatively insignificant inconsistent statements, Williams assured the jury:

Now, I could go on. I have picked at random here contradictions out of his own mouth from the record. As I told you, I would spell out from his own mouth what kind of a man he really was and what kind of a witness he was. . . .

Undercover operations generally involve extensive surveillance. Frequently, the undercover agent and the target are captured together on the videotape or audio recording. Sometimes, as in this case, a fourth objective arises: convincing the jury that the surveillance was intended not to catch the target but to keep the undercover agent honest.



At trial, Hoffa testified that he thought he was hiring Cheasty to represent him as a lawyer at the rate of \$2,000 per month. He admitted meeting Cheasty at his office in Detroit but claimed that he paid Cheasty \$2,000 in cash, not the \$1,000 that Cheasty testified he had received. Hoffa also contradicted Cheasty's testimony that he had changed the payment terms to \$18,000 for the job, payable quarterly, insisting that the terms remained \$2,000 monthly.

Several FBI agents testified about how the investigation was conducted. They explained that Cheasty was searched before and after each meeting with Hoffa and was constantly under surveillance. The purpose served by these searches and constant surveillance was to eliminate all sources of cash or documents in Cheasty's possession except for what he received from Hoffa.

Williams seized the opportunity and suggested in closing argument that the reason the FBI searched Cheasty so frequently was because they believed he had misled them about the amount of money Hoffa was paying him. In other words, the FBI's actions revealed that the FBI found Hoffa's version of the fee agreement more credible than Cheasty's:

Now, what was he paid? Well, on March 12, one month after he went to work, he was paid exactly \$2,000, showing that he was to get \$2,000 a month.

What did he say? He said, "We changed the deal after a while and I was to get \$18,000 for the whole job and I was to be paid quarterly."

What an incredible story! How can you be paid quarterly on a job if you don't know how long it is going to last, and he said he didn't know how long it was going to last. How can you get your money every quarter for a

(please turn to page 48)

His yearned-for notoriety
 By writing his biography.
 He mailed a missive to the press,
 Detailing his extreme distress
 In contemplating his failed life;
 He mentioned, too, he'd killed his wife.
 Police were called, the body found;
 Those on the list were struck spell-bound;
 Amazed and terrified they waited
 While law enforcement radiated
 A manhunt round where Dave had
 posted
 The press release that proudly boasted
 His hit man's braggadocio.
 They caught him trudging through the
 snow.

Our scene now shifts to the interior
 Of Orange County Court Superior,
 The courtroom, known to bench and
 bar,
 Of Judge Fitzgerald, Robert R.
 The case cite must my verse encumber:
State v. Schoenecker, case file number
 C 75275
 (And that's the best I could contrive).
 The jurors convicted; how could
 They not? Impassively as wood
 Dave sat and gave them only glances;
 They then found special circumstances,
 To wit: that he had lain in wait
 To kill, with naught to mitigate.
 In vain Dave pled that he was mad
 'Gainst evidence so ironclad;
 He'd even told a shrink he knew
 While killing that it was taboo.
 His ode came in, the list as well.
 Judge Fitz did little to dispel
 The dread that he would be severe;
 "Life term" was in the atmosphere.
 At sentencing the judge surprised
 All assembled with ill-advised
 Attempt to give Dave just desserts;
 Glares down at him, animadverts
 On Dave's transgressions, as required;
 Then by Dave's example inspired,
 He strikes a pose and reads aloud
 A lyric sentence to the crowd,
 The first verse ever from his pen
 (Let's hope he never writes again):

A Poem for Mr. Schoenecker

*You won't kill in the night
 Nor kill in the day
 All on your list can go on their merry
 way
 You killed your sweet wife, who loved
 you so dear.
 For that you're being punished let me
 make that fact clear
 The sentence I've chosen to you may
 seem cold*

*You'll pay and you'll pay all the while
 you'll grow old
 One day you will die,
 A funeral your warden will hold
 For you will serve your entire natural
 life and not be paroled.*

(To connoisseurs of metric craft,
 This verse is lacking fore and aft.
 Syllable-counting's not his strength;
 Good thing a life term has no length.
 Where prison time is paramount,
 It's useful if a judge can count.)

Dave damned this metrical abuse:
 "I rhymed when sick. What's his
 excuse?"

He has a point. There's something
 queasy
 When folks in black robes take such
 easy
 Potshots at those who come before
 them;

Nor can the rest of us ignore them.
 When sentencing, a judge should be
 The conscience of society;
 Not just to culprits does he speak
 But to us all. In him we seek
 An image of the world we've made,
 A world where justice, fairly weighed,
 Is meted out with due decorum.
 The courtroom halls are not a forum
 For self-indulgence from the bench;
 That leaves an enigmatic stench,
 As if the quality of mercy
 Isn't suited for controversy
 Of gravest importance; as though
 It's all a game and all for show.
 Life and death are serious things,
 A judge who treats them lightly brings
 Disgrace upon the very law
 For which he should encourage awe.
 (Columnists, though, need not be kind,
 Since no one pays us any mind.)
 The court did not serve justice well,
 Condemning Dave in doggerel.
 Dave killed his wife and wrote bad
 verse,

Judge Fitz engaged in something worse,
 For he demeaned an institution
 Ennobled by our Constitution.
 When he jabbed Dave with singsong
 barb,

He made his robe a jester's garb.
 No felon so inspires distrust as
 A judge who makes a joke of justice.

Good readers, I now bid farewell.
 With all my words, I cannot tell
 You how I've valued your attention.
 For my successor I'll just mention
 "Advance Sheet" cannot long survive
 Without your help; so please contrive
 To send in cases—no excuse!
 Address them all to Beckner, Bruce. □

Impeach

(continued from page 33)

job of an indeterminate length?
 No, the agreement was \$2,000 a
 month all right, and he was caught.
 He was caught. His story about the
 \$18,000 to be payable quarterly
 that he gave Senator McClellan on
 the 15th of February boomeranged
 on him because, when he was paid
 \$2,000 on March 12 he had the
 FBI looking at him. He had been
 searched and there he was, with
 the \$2,000 that blew his previous
 story right out of the water. There
 was nothing he could do about it
 because they had searched him
 first, a couple of times, and they
 found on him, while he was under
 observation, \$2,000 after the meet-
 ing on March 12, showing that the
 story that he would get \$18,000 on
 February 15 had no validity.

He got \$2,000 on March 12 and
 he got \$2,000 on February 13, and
 the story that he spun about his fee
 came back to haunt him as a result
 of the search. . . . The reason the
 \$2,000 was disclosed on March 12
 was because he had no alternative.
 The FBI had searched him twice.
 He had been under surveillance the
 day before, and I say this was
 because they had that little confi-
 dence in this man.

Undercover agents are compelled to
 think like the crooks they are investi-
 gating. To infiltrate criminal organiza-
 tions and activities, they must employ
 all sorts of unsavory techniques.
 Exposing the dark secrets of the under-
 cover investigator may create the
 impression that he is no better than the
 target of his investigation. Williams's
 final objective was to taint the investi-
 gator with the stain of the criminal
 enterprise he was investigating. Some
 of the most damaging impeachment in
 the cross-examination of Cheasty may
 have been several questions that were
 asked but never answered, and were not
 even mentioned during the closing
 argument. For example:

Q: Mr. Cheasty, while you have
 been on direct examination here...

have you taken any sedation or other drugs?

A: Yes, sir, I have.

Q: What sedation have you taken?

A: Nitroglycerin.

Q: Have you taken anything else, other than nitroglycerin?

[After brief discussion at the bench]

A: The medicine I have taken has been in connection with my heart ailment.

Q: Have you taken any tranquilizers?

A: No, no tranquilizers.

Q: Have you taken any form of narcotics?

BY MR. TROXELL: I object, your Honor. This is an infraction which is disgraceful.

THE COURT: Objection sustained.

Q: Now did you have a conversation with Mr. Jones regarding his committee employment?

A: No—Yes, yes, I did.

Q: Was Mr. Jones at that time employed by the committee?

A: No, he wasn't.

Q: What is his full name?

A: Edward M. Jones.

Q: When did you have your conversation with him?

A: January 25 of this year.

Q: Was he employed at that time?

A: No he was not.

Q: When was he employed by the committee?

A: February 21st.

Q: And did you recommend Jones to the committee?

A: Yes I did.

Q: Jones had been a friend of yours for some 25 years.

A: Approximately 24 years, or 23.

Q: Jones was the man whom you described to Senator McClellan as a "natural" for the committee?

A: I think he is. I don't know whether I used that phrase or not, though.

Q: Did you describe him as being perfectly suited for this committee work?

A: Yes, for the investigation of rackets, he is good.

Q: And did you write a letter of recommendation?

A: No, I started to. I never finished it. It wasn't necessary.

Q: Because he got the job?

A: He had the job. I was told that wasn't necessary.

Q: Is this the Jones for whom you were about to write, and who was ultimately employed by the committee, the wiretapper?

BY MR. TROXELL: I object to this your Honor.

BY THE COURT: I will sustain the objection.

Q: Is this Jones, this Edward Jones, Mr. Cheasty, the witness Jones who was known as Joseph Leo Monaghan?

A: I never heard that one.



Q: You never heard that name?

A: No.

Q: You never heard that name as used by him?

A: That's a new one on me.

Q: Was he the Jones who was convicted of bigamy in New York by the name of Joseph Leo Monaghan?

BY THE COURT: Objection sustained.

Q: Using a fictitious identity is not a rare thing with you in your investigative business, is it?

A: Well, I would say it isn't normal.

Q: Well, you have used fictitious identities on many occasions?

A: Let's not put the word "many" in there. I have used fictitious names before; that is correct, yes, sir.

Q: Well, when you do an investigative job for a client you very often use a fictitious identity, do you not?

A: Mr. Williams, "very often" are not good adjectives there. They are improper adjectives. I have used them—period.

Q: Well, when you were employed by the city of Tallahassee to investigate the National Association for the Advancement of Colored People —

BY MR. TROXELL: I object to that.

BY THE COURT: The objection is sustained.

This last question was particularly sensitive in light of the fact that the jury was predominantly black. Although the court did give Cheasty an opportunity to explain the circumstances surrounding his investigative work in Tallahassee, the damage had already been done. But this was not the only time that the race issue surfaced during the trial.

The sudden and "unexpected" appearance of the "Brown Bomber," Joe Louis, during the course of the trial generated a great deal of controversy. As the jurors were returning to the jury box after a brief recess, they observed Joe Louis standing in the courtroom with his arm around Hoffa. Williams was outraged and denied any complicity with this stunt; however, it is unlikely that Louis's cameo appearance was serendipitous.

What were the jurors' impressions of Cheasty? They knew Cheasty was a trained investigator and an experienced witness who had spent a great deal of time preparing to testify at trial. They knew Cheasty believed that lying to Hoffa and Fischbach was acceptable behavior. They also knew that Cheasty's prior sworn testimony before the McClellan Committee was slightly inconsistent with his testimony at trial.

The jurors may have inferred that Cheasty had lied about the amount of money he received from Hoffa for his own pecuniary gain. They were left to speculate about such irrelevancies as whether Cheasty was using narcotics, was associating with criminals, and was a racist.

On the other hand, the jurors could have been impressed with Cheasty's credentials and his sense of duty to his country. They could have recognized that Cheasty had nothing to gain by informing on Hoffa—that in fact his compensation from the committee was a small fraction of what Hoffa had agreed to pay him. Considering the magnitude of the case and Cheasty's pivotal role, it is not surprising that he spent a great deal of time with the prosecutor before the trial not only preparing his testimony but undoubtedly helping prepare the entire case. Hoffa had a strong motive to testify in a self-serving fashion, but Cheasty had virtually no motive. For whatever reason, after nearly one month of trial, it took the jury less than five hours to acquit Hoffa on all three counts.

Why did the jury acquit Hoffa so quickly? Maybe the jurors felt Hoffa's self-serving denials were sincere in light of the fact that Troxell cross-examined him for only 32 minutes. As Williams put it, "you can't cross-examine the truth." Maybe they were impressed by the fact that Hoffa was a friend of Joe Louis's. Maybe they thought Cheasty was a racist. The jury foreman, Roland Franklin, a clerk with the Department of Defense, explained it this way:

The basic factor in the verdict was the failure of the evidence to prove any conspiracy. That made the crux of the whole thing one man's word against another's—Hoffa's against Cheasty's. And the verdict shows who was believed. □

Literary Trials

(continued from page 64)

classes and the slum-dwellers. Among the twenty-seven to his credit occurred titles such as, "If Christ Came to New Orleans," "The Worked-out Worker," "Tenement Reform in Berlin," "The Rural Slums of England," "The People of the East Side," "Reform Versus Revolution," "The University Settlement as a Hot Bed of Radicalism" and

"The Cave Man of Civilization."

But Carter Watson was neither morbid nor fanatic. He did not lose his head over the horrors he encountered, studied, and exposed. No hair-brained enthusiasm branded him. His humor saved him, as did his wide experience and his conservative philosophic temperament. Nor did he have any patience with lightning change reform theories. As he saw it, society would grow better only through the painfully slow and arduously painful processes of evolution. There were no short cuts, no sudden regenerations. The betterment of mankind must be worked out in agony and misery just as all past social betterments had been worked out.

But on this late summer afternoon, Carter Watson was curious. As he moved along he paused before a gaudy drinking place. The sign above read, "The Vendome." There were two entrances. One evidently led to the bar. This he did not explore. The other was a narrow hallway. Passing through this he found himself in a huge room, filled with chair-encircled tables and quite deserted. In the dim light he made out a piano in the distance. Making a mental note that he would come back some time and study the class of persons that must sit and drink at those multitudinous tables, he proceeded to circumnavigate the room.

Now, at the rear, a short hallway led off to a small kitchen, and here, at a table, alone, sat Patsy Horan, proprietor of the Vendome, consuming a hasty supper ere the evening rush of business. Also, Patsy Horan was angry with the world. He had got out of the wrong side of bed that morning, and nothing had gone right all day. Had his barkeepers been asked, they would have described his mental condition as a grouch. But Carter Watson did not know this. As he passed the little hallway, Patsy Horan's sullen eyes lighted on the magazine he carried under his arm. Patsy did not know Carter Watson, nor did he know that what he carried under his arm was a magazine. Patsy, out of the depths of his grouch, decided that this stranger was one of those pests who marred and scarred the walls of his back rooms by tacking up or pasting up advertisements. The color on the front cover of the magazine convinced him that it was such an advertisement. Thus the trouble began. Knife and fork in hand, Patsy leaped for Carter Watson.

"Out wid yeh!" Patsy bellowed. "I know yer game!"

Carter Watson was startled. The man had come upon him like the eruption of a jack-in-the-box.

"A defacin' me walls," cried Patsy, at the same time emitting a string of vivid and vile, rather than virile, epithets of opprobrium.

"If I have given any offense I did not mean to—"

But that was as far as the visitor got. Patsy interrupted.

"Get out wid yeh; yeh talk too much wid yer mouth," quoted Patsy, emphasizing his remarks with flourishes of the knife and fork.

Carter Watson caught a quick vision of that eating-fork inserted uncomfortably between his ribs, knew that it would be rash to talk further with his mouth, and promptly turned to go. The sight of his meekly retreating back must have further enraged Patsy Horan, for that worthy, dropping the table implements, sprang upon him.

Patsy weighed one hundred and eighty pounds. So did Watson. In this they were equal. But Patsy was a rushing, rough-and-tumble saloon-fighter, while Watson was a boxer. In this the latter had the advantage, for Patsy came in wide open, swinging his right in a perilous sweep. All Watson had to do was to straight-left him and escape. But Watson had another advantage. His boxing, and his experience in the slums and ghettos of the world, had taught him restraint.

He pivoted on his feet, and, instead of striking, ducked the other's swinging blow and went into a clinch. But Patsy, charging like a bull, had the momentum of the rush, while Watson, whirling to meet him, had no momentum. As a result, the pair of them went down, with all their three hundred and sixty pounds of weight, in a long crashing fall, Watson underneath. He lay with his head touching the rear wall of the large room. The street was a hundred and fifty feet away, and he did some quick thinking. His first thought was to avoid trouble. He had no wish to get into the papers of this, his childhood town, where many of his relatives and family friends still lived.

So it was that he locked his arms around the man on top of him, held him close, and waited for the help to come that must come in response to the crash of the fall. The help came—that is, six