

THE BLACK MASK

A MAGAZINE OF MYSTERY, THRILLS AND SURPRISE

Contents

BLUEBERRY PIE	Thyra Samter Winslow	3
<i>(complete mystery novelette)</i>		
THE PHANTOM CHECK	George Bruce Marquis	19
THE VAULT	Murray Leinster	30
MURDER IN HASTE	John Baer	37
A WEAPON OF THE LAW	George W. Breuker	44
THE MONOLITH HOTEL MYSTERY	Lloyd Lonergan	47
EXTERIOR TO THE EVIDENCE (Part V)	J. S. Fletcher	55
THE FAILURE	Harold Ward	72
THE EXPLOSIVE GENTLEMAN	J. J. Stagg	75
THE WEIGHT OF A FEATHER	Carl Clausen	81
HIS THIRTEENTH WIFE	Herbert Raymond Carter	89
THE MISTAKEN SACRIFICE	Howard Rockey	98
THE POLICE SOMETIMES GUESS WRONG	Harold Ward	107
THE CATSPAW	Ward Sterling	114
THE FINGER PRINT BUREAU	J. H. Taylor	123

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The Weight of a Feather

By Carl Clausen

I

THE State had completed its case. The conviction of the prisoner seemed certain, in spite of the fact that the evidence was purely circumstantial.

The attorney for the State was gathering up his papers at his table, upon which, facing the jury, stood a massive bronze bust of Beethoven, the composer. Beside the bust lay a cowboy's lariat. Nothing else.

The attorney was a square-jawed, deep-chested man with cold blue eyes set much too wide apart and a bristling gray pompadour brushed back from his massive, corrugated forehead.

He had handled the case well. It had been a difficult one. The method alleged to have been used by the murderer savored of dime novels. The appearance of the prisoner, too, had been hard to overcome.

The attorney admitted grudgingly as he let his cold, hard eyes rest for the fraction of a moment upon the boy sitting erect on the bench beside the girl, with his head thrown back, that it was hard to believe him guilty of a cunning, brutal murder, and harder to convince a jury that he had committed it.

The lad raised his eyes for an instant to the face of his accuser, just then, but there was no look of malice in them. He seemed merely to be endeavoring to fathom the reason for the vindictiveness that had just been directed against himself by this man whom he had known since boyhood.

He was not the conventional, beetle-

browed murder suspect. Indeed, he was the one person in the crowded court-room who seemed out of place there. He was a little above average height—the dark head of the girl seated on the bench beside him came just above his shoulders—and slender; not slight, but slender with the vigorous slenderness of youth. His eyes were blue, large and very clear, and his hair was crisp, and sandy from habitual exposure to the elements.

It was early afternoon. A hush lay over the crowded court-room following the closing announcement of the attorney for the State. It was the court-room of a small Western city at the foot of the snow-clad Sierra-Nevadas. A ray of the wan winter sun entering through the grimy window lay upon the judge's silvery hair. The judge raised his watery eyes and glanced out at the snow-covered court house square where a gang of men with shovels were making a path for himself and his court to walk home upon. It had been snowing steadily all morning.

During the pause in the proceedings the constable left his post at the door to replenish the fire in the stove. He was a young man and big, a typical Western small town constable, broad-shouldered and ruddy-faced. His uniform was painfully new. He moved with clumsy momentousness on tiptoe across the floor, opened the door of the stove and placed two pine knots upon the bright embers with slow deliberation, as if to invest this simple act with some of the importance he felt.

Then he closed the door of the stove,

softly, and started back on tiptoe to his post. As he passed the table of the defendant's counsel, the lawyer looked up and said to him:

"Take the stand, Ed, please."

The constable glanced at the prosecuting attorney as if for permission. Then he mounted the steps of the witness box, slowly, and upon being sworn in by the clerk, sat down. For several minutes he remained in his seat without movement, his elbows on the arm of the chair and his stubbled chin resting in the hollow of his great, hairy paw, waiting for the attorney for the defense to begin.

All eyes were turned upon the prisoner's counsel, seated at his table near the accused and the girl, slightly in advance of them.

The attorney was a heavy, ponderous-looking man. His face, the color of putty, was full and shaven smoothly. His eyes were large and china blue, and his coarse hair lay plastered, untidily, about his temples.

His garments were obtrusively comfortable. His coat fitted him like a sack hung over a gate-post and his trousers bagged, scandalously, at the knees.

The short, stubby fingers of his right hand rested on the edge of the table. His attitude was serene and unruffled. He did not seem in the least disconcerted with the task before him—the task of discrediting the avalanche of circumstantial evidence that had piled itself upon his client.

He sat relaxed in his chair looking at the constable on the witness stand as if he were bored at the task of having to cross-examine him. He seemed in no hurry to proceed, but at the impatient movement of the judge, he finally said in a soft, lazy drawl:

"I'm going to ask you to re-construct the crime as you *think* it was committed, Ed."

The witness blinked his eyes. He

glanced, inquiringly, at the prosecuting attorney upon whose face a sneer of contempt rode. The attorney nodded, reassuringly.

Arising, counsel for the defense crossed to his opponent's table and took from it the cowboy's lariat and the bronze bust of Beethoven.

"With your permission," he drawled, blandly, to the prosecutor.

Walking to the witness-box, he placed bust and lariat on the broad railing before the officer.

Then he returned to his seat at the table.

"Now, then, Ed, show us how you *think* it was done," he said.

II

THE witness ran his heavy fingers through his hair with a helpless sort of motion. He was painfully flustered, but pulling himself together, he rose, picked up the lariat and uncoiled it.

"Well, it was something like this, I think," he began vaguely.

His embarrassment was painful. With a twist of his wrist he threw the noose of the lariat over the head of the bronze bust, and pulled the noose tight.

"The window of *his* room," he said with a jerk of his head at the prisoner, "is twenty feet from the ground directly above the spot where I found his uncle's body. I figured that he dropped this bust on the old man's head from the window, then pulled the bust up with the lariat—afterwards—like this."

The witness let the fifteen-pound bronze drop over the railing of the witness box, then raised it again with the lariat, and placed it once more on top of the railing.

Counsel for the defense smiled, approvingly.

"Not bad for an amateur detective, Ed. That thing dropped twenty feet would cave a man's head in, all right."

What, may I ask, suggested this ingenious method to you?"

Counsel's tone was pleasantly interrogative. There was no hint of ridicule in his voice. Nevertheless, the witness shot him a quick, suspicious glance.

"When I examined his room, I found this lariat coiled on the bust," he explained, gaining confidence. "As there wasn't any window or door on the ground floor at that end of the house from which he could have struck the blow that killed his uncle, nor any foot-prints in the snow except the old man's, I figured that this was the way he must have done it."

"Very clever, Ed," the prisoner's attorney drawled. "Very!"

He stuck his thumbs into the arm-holes of his vest and surveyed the officer, head cocked to one side.

"Let me see, Ed—you've been constable of Cardinal for nearly a year now, haven't you?" he asked.

The witness nodded.

"A year on the twenty-fifth of this month," he replied.

"You'd like to be sheriff of Cardinal County, wouldn't you, Ed?"

The witness looked about with a vague smile.

"Well, yes, Colonel," he said. "Who wouldn't?"

The attorney smiled back.

"Your chances are pretty good—now, Ed, ain't they?" he asked ungrammatically, but with the merest shade of emphasis upon the word "now."

"I suppose so! Everybody knows me. I was born and raised here," the witness replied, with due modesty.

The attorney nodded acquiescence.

"I know, Ed. Your chances are particularly bright now—since you have so ably assisted the State in this prosecution, I mean."

He was still smiling but a sort of grating edge had crept into his drawl.

A barely audible titter ran through

the crowded court-room. The prosecuting attorney was known to have political ambitions. A successful conviction of murder—the first murder in the county in twenty years—would count greatly for him in the coming election. This star witness who had aided him so ably was sure not to be forgotten by him.

The witness moved uneasily.

"I don't know about that, Colonel," he snapped with a sudden show of resentment. "I did my duty, that's all."

The prosecutor was on his feet, his hard eyes flashing.

"I object to the discrediting of the witness by personal and irrelevant observations," he stormed. "The officer is known to us as a reputable citizen."

"There you go again, Warren," the defendant's counsel drawled, querulously. "Losing your temper over nothing."

The judge frowned. He glanced from one to the other and sighed. Both men, prosecutor and defender, were his friends—outside the court-room. The three of them had seen Cardinal grow from a collection of miners' tents to a city of some importance. He had proper respect for his profession, but he was not going to permit mere court routine to shatter a friendship of thirty years' standing, so he said in a tone of diplomatic deprecation to the defendant's counsel:

"I'll have to sustain the objection, Colonel. Please proceed."

Before the attorney for the State sat down, he said in a withering tone to his opponent:

"If you don't lose your temper a dozen times before you're through, I'll miss my guess, Melvin Edgerly."

"Gentlemen! You're in the court!" the judge reminded them, with some show of severity.

The prisoner's counsel did not reply to the observation of his opponent. He

glanced back at the dark-haired girl on the bench beside the prisoner, then turned to the witness again.

"I was just trying to bring out, Ed, how sure you are that you're going to be our next Sheriff." He jerked one stubby thumb over his shoulder at the girl. "If you had been half as sure of getting Laura, there, there'd be wedding bells along with your inauguration, I guess."

A wave of suppressed amusement passed through the crowd. The young constable's unsuccessful wooing of Laura Hamilton was common knowledge. Someone in one of the rear seats emitted a loud guffaw.

The judge pounded his gavel.

"Another such disturbance and I'll order the court-room cleared!" he thundered.

The face of the witness burned a dull red. The girl on the bench beside the boy dropped her eyes. Her long, dark eyelashes lay like two crescents of jet against the clear pallor of her skin. The prisoner's hand stole out in protecting reassurance. His eyes were fastened upon the broad, untidy back of his attorney as if he were trying to read, there, the motives responsible for the man's ill-timed digression.

The counsel consulted his notes.

"Were you alone in your office, Ed, on the morning of the fourteenth when the accused called up on the telephone and informed you that his uncle had been killed?" he asked, after a pause.

"I was," the witness snapped.

"It was eight o'clock when the telephone rang, I believe you stated before?"

"Yes."

"You are sure about the time?"

"Yes, sure."

"Looked at your watch, I suppose?"

"No, but I get down to the office at a quarter to eight every morning. I

had been in only a short time when the telephone rang."

"I see. You went directly to the place?"

"Yes. I closed my desk and left at once."

"I don't suppose you can tell us exactly to the minute when you arrived at the scene of—the tragedy?"

"I can. It was ten minutes to nine," the officer asserted with snappy positiveness. "I looked at my watch as I walked across the field to the house."

The attorney glanced at the ceiling. He seemed to be thinking.

"The distance from your office in the city hall to the house is about one mile," he said. "Am I right?"

"Yes, Sir."

"It took you from eight o'clock to ten minutes to nine—fifty minutes, to cover the distance of one mile?"

"The road was in a bad condition," the witness explained, tersely. "It had been thawing heavily all night. I had to stop every little while to stamp the snow off my boots."

"I see. If it hadn't been thawing so unusually hard all night, you could have made the distance in much less time—in say twenty-five minutes?"

"Twenty minutes, easy," the witness corrected. "I'm a fast walker."

The colonel pursed his lips. He glanced at the judge, then transferred his gaze to the jury. When he spoke again, he seemed to be addressing no one in particular.

"The weather records show that it started thawing at ten-thirty the night before. I guess the canyon road must have been in pretty bad shape, all right. It was the heaviest thaw on record for this time of the year, since 1912."

He paused and leaned back in his chair and regarded the witness, musingly.

"After you had taken charge of the

body," he resumed, "you looked around the house and found to your surprise that with the exception of your own foot tracks, there were no tracks leading to or from the house in any direction. That was what first directed your suspicion against my client, wasn't it?"

"It was. It stopped snowing at five o'clock the night before. He,—” here the constable pointed a heavy finger at the prisoner—"told me that the last time he saw his uncle alive was at ten o'clock the night before, when the old man was walking up and down outside the house, smoking. It did not snow after that," he added, triumphantly.

"So you jumped to the conclusion that my client had murdered his uncle because there were no foot-tracks in the snow?"

"I didn't jump at nothing," the witness asserted with asperity. "It was clear that the man who killed old Sargent had never left the house—unless he came and went by aeroplane," he added with sarcasm."

"And then, being that my client was the only other occupant of the house, besides the dead man," the colonel went on, imperturbably, "you decided that he had killed his uncle, and arrested him on the spot, on your own responsibility, and without a warrant?"

"Well, I wasn't going to give him a chance to make a get-away," the constable defended.

"Very thoughtful of you, Ed." the counsel drawled. "That'll be all."

III

WHEN the witness had resumed his post at the door, the colonel said, turning to the court:

"It has been pointed out by the prosecution that my client was Mr. Sargent's only heir. That an estate of something like a hundred thousand dollars would come to him upon his uncle's death. That he is engaged to be married to a

girl whom his uncle objected to, strongly, because of an old grudge against her father, which I think we are all familiar with," he added, with a glance about him.

"My client has admitted that Mr. Sargent had forbidden him, under pains of disinheriting him, to even see the girl again. It has also been proven beyond a doubt that the two men quarreled a great deal of late—presumably over my client's choice of a wife."

The prisoner and the girl exchanged glances of blank amazement. Even the prosecuting attorney moved, restlessly, in his chair. The judge frowned, ponderously, and a murmur of disapproval passed over the spectators. The counsel for the defense was apparently throwing up his hands and convicting his client all over again instead of defending him, and he, the counsel alone, seemed oblivious of this fact. He paused briefly, then went on in his lazy drawl:

"Did it occur to the court that a man with as many good reasons for committing this murder as my client had, would be a fool—nay, insane—to do so? He would automatically sign his own death-warrant by such an act, and that if he was cunning enough to employ the method suggested by the prosecution, he would not possibly have overlooked the necessity of making a trail in the snow to and from the house. A trail would have been absolutely necessary to the success of his plan. By not doing so, would you have us believe that he deliberately planned that suspicion be directed toward him? It would have been an easy matter to have slipped on a pair of old shoes, and have walked down to the road and back again, and destroyed, or hidden the shoes afterwards. Even destroying the shoes would not have been necessary. The thaw would have enlarged the foot-prints to such an extent that identifica-

tion would have been impossible."

He paused and regarded the jury through half-closed lids.

"It has been established by the prosecution that my client is a man of ordinary intellect. Such a man would not possibly have overlooked the most vital part of his scheme. He might have overlooked some trifling detail, as the brainiest of criminals do at times, but that he should have forgotten to fake a set of tracks when the snow was there, as it were to order, for a perfect alibi, is utterly absurd."

The attorney for the State arose.

"I object to generalities and far-fetched presumptions being used to discredit established facts," he insisted, coldly.

The colonel interrupted him.

"You have established no fact, if you please, Warren, except the fact that Mr. Sargent is dead. Anyone can assure himself of that by visiting the morgue." He turned to the court. "I ask your Honor to overrule the objection on the ground that the State is basing its conviction on circumstantial evidence, and that we of the defense are endeavoring to present the court with as strong a chain of circumstantial evidence for acquittal. What is sauce for the goose is sauce for the gander."

The attorney for the State emitted a harsh laugh. The court frowned, perplexedly.

"You're out of order, Colonel," the judge said, "still, I'll let it stand if you can show good reason for it."

"I will show—good reason, presently," counsel asserted, mildly.

He turned about in his chair and nodded to a very tall and very old man, seated, chair tip-tilted, a short distance to his right, directly under the witness-stand. The man brought the front legs of his chair to the floor with a thump, arose and mounted the three steps to the witness box. He did not sit down,

but remained, standing waiting to be sworn in. Even before the clerk had fully finished administering the oath to him, his clear "Yes" rang out as a challenge upon the still court-room.

The attorney for the defense leaned back in his chair and closed his eyes for a moment, as if to select his words carefully before addressing the witness. Then he said:

"Dr. Shale, will you please show the court what you found when you performed the mortual examination upon Mr. Sargent?"

Without replying, the witness took from his pocket a leather wallet. Opening it, he took from it a small object, which he held up between his thumb and fore-finger.

"This," he said, briefly

IV

NECKS were craned in his direction. The jurymen, leaned forward in their seats, and the judge adjusted his spectacles. The prosecuting attorney stared at the object with a frown, half of annoyance, half of contempt—then transferred his gaze to the face of his opponent, who sat slumped in his chair, seemingly the least interested of anybody.

The prisoner and the girl exchanged glances.

The tension was broken by the Colonel saying in his soft, crooning voice:

"Please tell the court where you found that—*pigeon's feather*, Dr. Shale."

"I found it imbedded in the dead man's brain, three inches below the skull."

"That'll be all, Doctor, thanks," counsel said.

When the witness returned to his seat he leaned over and laid the feather upon the table beside the prisoner's counsel. The colonel picked it up and placed it upon his blotter in plain sight of the court.

The prosecuting attorney scowled at Dr. Shalc. The coroner's verdict had been: "Death from blow upon the head. Cause unknown." He had refused point-blank to return an indictment for murder upon the evidence submitted, so Attorney Warren had gone ahead on his own account.

"Pigeon's feather!" he scoffed. "Nothing of the sort! Swallow's feather, that's what it is."

"I beg your pardon?" There was irritation in the colonel's voice for the first time. "It's a pigeon's feather."

The jurymen looked at one another. Most of them knew a pigeon's feather when they saw one and all of them were positive that the object on the colonel's blotter—a slim, steel-blue feather—was *not* a pigeon's.

A cynical smile played about the corners of the prosecutor's thin lips.

"If you expect to win this case on ornithological decisions, you'd better take a week off and study up on the subject, Melvin Edgerly," he sneered. "I'll stake my reputation, legal and otherwise, that the feather on your blotter is a swallow's feather. I think I know what I'm talking about. I didn't get my degree in ornithology at Standford for nothing."

"That's so," the colonel admitted, suddenly. "I remember now, you used to be bugs on birds' nests, and eggs, and things, when you were a kid, Warren."

"It was my hobby, if that's what you mean," the prosecutor replied, stiffly.

The colonel might have observed here that robbing the nests of inoffensive songsters for the purpose of studying them was more of a cruelty than a hobby, but he forebore. Instead he leaned forward in his chair, and, fastening his china blue eyes on the prosecutor's face, said calmly:

"For the purpose of securing expert testimony on a question of ornithology, I hereby subpoena you, Robert Warren,

as a witness for the defense. Take the stand, please."

The prosecutor's jaw dropped.

"What!"

He looked about him appealingly, at this unheard of procedure.

"It's unethical, I know, Warren," the colonel sighed, deprecatingly, "but I'm within my rights." He turned to the judge. "How about it, your Honor?" he asked.

"I—I suppose so, Colonel," the judge replied, helplessly, "but—but—" he ended lamely.

"I won't—be made a monkey of before the court," the prosecutor stormed, shaking his fist at the colonel. "I refuse—!"

"Gentle—men!" the judge admonished. He turned to the outraged attorney. "Better take the stand, Warren, before I'm forced to fine you for contempt of court."

"All right—!" the attorney snapped, subsiding.

He stalked to the witness chair, suffered himself to be sworn in, then shot his opponent a baleful glance. The colonel looked up, blandly, and handed him the feather.

"Please tell the court in your own terms—scientific terms—if you wish, how you know that this is a swallow's feather."

The witness cleared his throat, and pulled himself together.

For three minutes steady he explained to the court how he knew that the feather in his hand was a swallow's feather. Warming up to his subject, he forgot, momentarily, his anger at his opponent's unethical conduct. He went into details about the differences between the feathers of birds of prey and those of song-birds, and the comparative wing-power of the different species. He even touched upon the subject of protective coloration.

When he was through there was not

a man in the court-room who doubted for a moment that the feather in his hand was a swallow's feather, and when the prisoner's attorney excused him he went back to his table conscious of having won another victory over the defense.

He replaced the feather upon his own table beside the bronze bust and sat down. A smile rode across his heavy jowl. A verdict of guilty seemed a foregone conclusion, now. By his rambling digressions the prisoner's counsel had strengthened the case of the State, instead of weakening it, and now the counsel seemed to realize it for the first time. He sat slumped back in his chair with his stubby fingers interlocked across his loose-fitting vest, his putty-like face sunk deep in apparent gloom.

Only his china blue eyes were alert. Those who sat near him noted the odd, veiled look that had crept into them.

"Please proceed, Colonel."

The judge's voice roused him to action. Running his hand into his pocket, he pulled out an old thumb-marked note-book, opened it and took from it a feather identical with the one on the prosecutor's table. Leaning over he laid the second feather beside the first one.

"I took this one from a swallow's nest under the eaves of Sargent's house just above my client's window," he said, in a flat, colorless tone, as if it concerned no one.

The jurymen looked at one another, then at their foreman. They sensed that something momentous was about to be presented to them. The colonel glanced their way, but not at them. He seemed to be regarding some point above their heads, beyond them.

"Upon one of the wooden brackets supporting the eaves, I found a deep gouge, torn out of the soft redwood by some hard object striking it." His voice rose to a slightly sharper pitch as he went on. "The bracket is two feet above my client's window and four feet below the lowest point of the eaves."

Arising, he walked to the window near the judge's bench, opened it and ran down the upper sash. The window was in direct line of vision of the jurymen. Pulling an old-fashioned Colts forty-five from his pocket, he raised the pistol and fired it upward through the half-open sash.

The entire court-room was on its feet before the report had died away. The judge towered, menacingly, above the man who had dared to disturb the tranquillity of his court in such an unheard of manner. His eyes were flashing, but they grew wide with amazement when a heavy, transparent object shot by the window and struck the cement pavement outside, with a report louder than the discharge of the pistol.

Judge, prosecutor and jury crowded about the window and looked out. Upon the sidewalk under the window lay the shattered remains of a huge icicle.

The counsel for the defense was speaking. His voice was no longer flat, nor colorless, nor even drawing.

"The feather which my learned colleague so obligingly and correctly classified as a swallow's feather became frozen to the point of a giant icicle that dropped from the eaves near the swallow's nest, and struck Old Sargent on the head, killing him instantly. The icicle in its downward course struck the redwood bracket, hence the gouge in the wood. The feather was driven three inches into Sargent's head by the force of the impact. The strong thaw which dislodged the icicle melted it away by morning, thus obliterating completely the weapon—if I may term it a weapon—by which Mr. Sargent met his death. I ask the court to instruct the jury for acquittal."

The jurymen glanced at one another and nodded.

"I don't think it'll be necessary," the foreman said. "Still, as a matter of routine, I suppose—" He smiled. "You win, Colonel."