

## THE CRIME OF BEING A WITNESS

By J. L. BROWN

ONE of the most bizarre twists to the fight on crime in the United States is the havoc created among innocent bystanders. Thumb through the statute laws of any State, and you will find listed no such criminal offense as "material witness". Yet annually, thousands of supposedly free Americans are harassed, jailed, or required to furnish bail for the heinous crime of having been present—or being suspected of having been present—during the commission of a felony. Of course, the police can't always lay hands upon the actual culprit; but it is a distinctly indifferent bunch of coppers who can't round up from one to a dozen witnesses. In fact, to the average gendarme, *witness* has taken on a meaning synonymous with *suspect*, with the result that the public, to say nothing of the newspapers, can no longer distinguish between the two.

Police investigation of felonies is uniform and simple. Receiving news of the commission of a crime, guardians of the law sur-

round the particular premises, block, or the entire neighborhood, depending upon the seriousness of the offense. Thereafter, freedom of movement on the part of the citizenry is suspended until the Chief, the Public Prosecutor, and likely the Mayor arrive on the scene. In due time—varying with the scope of the dragnet cast—a hapless assemblage is brought forward and subjected to searching interrogation, insults, browbeating, and similar methods suggestive of the third degree. Meanwhile, the culprit has likely absconded.

The innocent bystanders are soon hustled off to headquarters where they are obliged to wade through a depressing collection of Rogues' Gallery prints. After as much unpleasantness as possible, the majority of innocents, displaying only the vaguest knowledge of the crime, are dismissed. The foolish talkers, however, may be clapped into the bastille. A typical instance of current police activities is contained in the following

newspaper dispatch, filed from a Mid-Western crime center:

Gang warfare flared anew here today. Jerry Arnold, reputed "Sugar King", was killed by a fusillade of shots as he entered the driveway of his garage. The police arrived on the scene within twenty minutes and immediately surrounded the neighborhood, taking into custody a score of witnesses.

Donald and Richard Marsh, brothers, who run a gas station near the victim's home, were held without bail for further examination. The police allege that they are material witnesses, the brothers having been compelled to flatten themselves on the pavement to prevent being struck by the bandits' bullets.

I have not been able to follow the fortunes of the Marsh brothers, but it does seem that they got a bad break. And it is a safe wager that they will spend more time in jail than the actual killers.

Here is another newspaper dispatch, this one from the East:

#### FIVE HELD IN SLAYING OF N. J. AUTO DEALER

Hackensack, N. J. — Five men were being held as material witnesses today in the shooting of Frank Plano on Friday night in his automobile showroom. Police announced that they expected to take a sixth man into custody soon.

The paper carried a front-page picture labeled: KEY WITNESS IN MURDER CASE. The luckless bystander was held on either side by a burly detective, whose clutch

might have served for a Dillinger. Below the photograph was this caption:

Raymond Shane, 27-year-old salesman, is being held as a material witness in the slaying of Frank Plano. Shane, an employee in Plano's showroom, was believed to be the only person there in addition to the slayers when his employer was shot down.

Nine of ten people who read that paper must have been convinced that Shane was the killer.

But the *pièce de résistance* was recently presented by Gotham's celebrated homicide-hunters. The *World-Telegram* reported as follows on how the police, in their fervor to nab innocent bystanders, stop at nothing:

Two boys, one thirteen and the other fourteen, have been held as material witnesses for more than thirteen months because they happened to be playing handball near the scene of a hold-up murder. Another boy, twelve, was held eleven months before the mother was able to convince authorities that her son was not a witness.

The three were placed in the custody of the Children's Society by court order on August 29, 1935, twelve days after Salvatore Benedetto was shot down by one of five bandits when he resisted them in a hold-up in front of his father's paper-stock plant at 518 Water Street. They were committed in General Sessions Court after spokesmen for the District Attorney's Office requested the action "in the interest of justice". Assistant District Attorney Miles

O'Brien, in charge of the Homicide Division, said, "naturally it is hard to keep these boys from their families but it is for their own good".

Mrs. Caruso, one of the mothers, was exceptionally bitter about the whole matter. She said she had suffered severely because they had taken her oldest boy, Paul, from her. "My boy Paulie," she said, "was sitting in the flat eating his peppers when he heard the shooting. He ran downstairs to see what was happening. So they took him away and told him to say that he saw those men shoot poor Benedetto. But he didn't. They kept him eleven months. My baby girl was born and she was sickly because I was running all over town trying to get my boy back. The baby died when she was eight months old, just last week. It was all because they took my boy away."

## II

According to a recent report of the federal Bureau of the Census, the annual harvest of homicides in the United States runs to about 13,000 head. Of the killers, only one of four is incarcerated, the average sentence being five years. There are no equivalent records kept of the fate of material witnesses, but unquestionably vast numbers of the latter are rounded up regularly and juggled for varying periods of time. It is even likely that the aggregate amount of time served by witnesses exceeds that exacted from murderers, for in this connection it must

be observed that homicide is only one in the extensive repertory of crimes. Material witnesses have a way of becoming enmeshed in such sidelines as burglary, arson, mayhem, and assault, to mention a few.

Particularly woeful these days may be the tale of the carefree citizen who happens to be walking the dog at the precise moment when a kidnaping is staged nearby. Buffeted between State and federal minions of the law, he will be fortunate if he doesn't wind up in a dungeon. At best, he will be freed only under proper guarantees, and his waking and sleeping hours henceforth will be at the command of tireless sleuths. He will be harassed with silly questions, concerning the color of the culprit's eyes, or the shape of his hat, and if he flunks any of the answers, the police will put him down as an imbecile. Even worse: they may accuse him of the crime. Furthermore, witnesses receive no special consideration, and are confined in the county jail like any felon. What this means may be gathered from a recent report of federal inspectors. Not one of the 3000 county jails in the United States approaches government standards; many are dens reminiscent of the Middle Ages. In these

nightmarish places, where vermin crawl, rats scurry, spiders weave their webs, and sanitary equipment is lacking, people innocent of any crime whatever are housed side by side with other prisoners, many of them diseased or insane. And when the case is called in court, the witness is likely to take more of a verbal lashing from the defense attorney than the accused will suffer at the hands of the prosecutor.

In the light of this very realistic situation, it is thus in no one's mouth to intone smugly, "do right and fear no man". An attorney friend recently related to me a case which jarred even his hardened sensibilities. He represented a man who was charged with highway robbery, and in the usual manner, secured his release on bail. The matter was not reached for trial until six months later, when the complaining witness was produced in court, seedy in appearance and marked by unmistakable prison pallor. Cross examination elicited that he had been locked up all that time because he was unable to furnish bond. The accused, who had continued to walk the streets a free man, received a suspended sentence.

The experiences of a key wit-

ness may vary, but are always sufficiently soul-searing. Thus, in the notorious Drukman murder case in Brooklyn, the sanity of a police detective, with a long and honorable career, was questioned in court and in a thousand newspapers. In the Gedeon triple-murder case, the aged father of the slain girl, though admittedly innocent of any crime, suffered the third-degree tortures of the damned. The State witnesses in the Luciano racket trial were compelled to scatter for fear of their lives; in Trenton, a girl witness to a slaying required constant guarding to insure her safety; and one hapless bystander reported to the New York police that after he had testified in Night Court, he was knocked down and beaten by three men.

The fact is, that under the strange code of today, it may be safer to be suspected of having committed a crime than to be suspected of having witnessed it. In the first instance, the accused suddenly becomes invested with all the immunities of Magna Charta; in the second, all rules are off, and anything goes. A single example, the Redwood murder case in New Jersey, in which Samuel Rosoff, millionaire New York subway builder was involved, il-

lustrates the singular manner in which the scales of justice are tipped. Rosoff was under suspicion in connection with the crime, but continued about his business undisturbed; Max Friedman, however, suspected of knowing something about the matter, was clapped into jail under \$50,000 bond. The New Jersey prosecutor admitted that he had nothing on Friedman, but was holding him until he got Rosoff across the Hudson River. The long arm of the law, it will be noted, reached no further than the witness. Friedman naturally was caustic in his comment. "I went over as a witness," he said, "and they put me in jail. That's a fine way to treat a witness."

It would have been more correct, however, if he had observed that it was a proper and apparently legal way to treat a witness. And the situation is growing worse. Under the Code of Crimi-

nal Procedure in New York, for instance, the District Attorney may cause a person who is a "necessary material witness" to be arrested and kept in jail, without even the necessity of showing that he would not obey a subpoena to appear; and by a law recently approved, witnesses may be served by publication, and their property forfeited upon non-appearance. Thus is *homo sapiens* caught between the upper and nether stones of police vindictiveness and gang vengeance.

Certainly it is a fair question to ask whether it is cricket to do these things to mere innocent bystanders, while annually 9500 murderers, to mention only the more prominent lawbreakers, thumb their noses at society. Would it not be simple justice, for example, if some of the tender solicitude of the law for the rights of accused were saved to cool the fevered brows of witnesses?



# FLOYD COLLINS IN THE SAND CAVE

BY OLAND D. RUSSELL

**G**REEN RIVER washes down through the fern leaves and limestone beds of central Kentucky. Properly harnessed and rectified by loving hands, it produces a lip-smacking whisky — natives say it's the flavor of Green River that makes such good Bourbon. Unharnessed, it percolates down seams and fractures of the limestone deposit and carves out huge subterranean caverns.

It has been doing the latter since the Miocene period, with some remarkable results. In 1809, a hunter chased a b'ar into a hole in a limestone bluff, lost the b'ar, and found Mammoth Cave. In succeeding years there were many similar discoveries, giving rise to bucolic tales and legends of the region. A plow-hauling mule bogs down in a groundhog hole and opens the way to new underground delights. Long-eared hounds following scents have been known to yelp from deep recesses, their echoes revealing great subterranean chambers. As the tourists poured in to see Mammoth Cave, the hard-rock

farmers of roundabout made farming a sideline and took up cave-hunting, cave-exploring, and guiding. By ear, and by the light of lard torches, they mastered such words as stalactites, stalagmites, crystalline forms, and onyx, and took to escorting trembling schoolteachers through new Plutonian worlds. In the off-season, they hunted more caves on their land, built primitive turnstiles, and hung up grossly misspelled signs.

The Collins family of Edmonson County were of the cave-farming gentry. Indigenous Irish, money-grubbing, and no lazier than the other muck-scrabblers of the region, they rooted their way into every hole they could find, always on the search for new caves. They were Lee, the father, and his three sons, Homer, Floyd, and Marshall. The promising member of the family, from a professional standpoint, was Floyd. In 1922, Floyd was thirty-two years old, of medium stature, strong and agile, and of dark, aquiline features. He was unmarried, had no interest in girls,