



EX POST

[G]enuine 24-carat Hammett . . .
The Judge Laughed Last [aka *The
New Racket*] is Hammett in a wryly
humorous and ironically playful
mood.

Ellery Queen

*Introduction, The Adventures of
Sam Spade and Other Stories
by Dashiell Hammett 4 (1944)*



THE NEW RACKET

Dashiell Hammett

There was a time when Dashiell Hammett was not a great figure in 20th-century literature. There was even a time when he was not a big deal in the small world of pulp fiction. Hammett did not, for example, rate a mention on the cover of the February 15, 1924, *Black Mask* – in which one of his fine nameless-protagonist stories appeared – or even a place of honor in the table of contents.¹ Later on, and especially after the publication of *The Maltese Falcon* in 1929-30, he grew to giant size. But even then, several of his best stories remained (and a couple still remain) mysteriously obscure. Hammett expert Evan Lewis recently noted that after its first appearance in *Black Mask* in 1924, *The New Racket* was republished (and retitled *The Judge Laughed Last*) several times in the 1930s and '40s, “And that was it. The story was somehow overlooked by the several collections of ‘lost’ stories published between 1999 and 2013, and is one of the very few Hammett tales still out of print.”² Not anymore. We’ve put its ink back on paper here. Practitioners and scholars of criminal law will be amused or appalled or both.

— *The Editors*

Dashiell Hammett (1894-1961) wrote detective stories. He served in the Army during World War II. The text of Black Mask (February 15, 1924), pages 34-37, and the illustration on page 86 below, are courtesy of UCLA Library Special Collections, Charles E. Young Research Library.

¹ See pages 77 above and 80 below. Note the “The” before “Black Mask” on the cover but not the table of contents. The mid-1920s were a nominal transition period for the magazine.

² Evan Lewis, *Hammett Herald-Tribune: “The New Racket” aka “The Judge Laughed Last” (Read it Here!)*, Davy Crockett’s Almanack of Mystery, davycrockettsalmanack.blogspot.com (Sept. 29, 2021); see also Don Herron, *Hammett: “The Judge Laughed Last”, Up and Down These Mean Streets*, donherron.com (Sept. 30, 2021).

No. 22

THE BLACK MASK

A MAGAZINE OF ADVENTURE, DETECTIVE, MYSTERY, WESTERN AND
ROMANTIC STORIES

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*This lively tale is not a tennis story. It contains
a red hot tip for judges and lawyers.*

“**T**HE trouble with this country,” Old Man Covey unexpectedly exploded, emphasizing his words with repeated beats of a gnarled forefinger on the newspaper he had been reading, “is that the courts have got a strangle-hold on it! Law? There ain’t no law! There’s courts and there’s judges, and this thing you call the law is a weapon they use to choke human enterprise – to discourage originality and progress!”

The portion of the morning paper upon which the old man’s assault was concentrated, I saw with difficulty, held the report of a decision of the Supreme Court in connection with some labor difficulties in the West. Old Man Covey, I knew, couldn’t be personally interested in either side of the dispute. He had as little to do with capital as with labor, which was very little. For eight years now – since the day when a street preacher had turned “Big-dog” Covey from the ways of crime, to become plain John Covey and, later, Old Man Covey – he had subsisted upon the benevolence of a son-in-law.

His interest in this case was, then, purely academic. But his attitude was undoubtedly tinged by his earlier experience with the criminal courts, which had been more than superficial, and I suspected that some especially bitter memory had engendered this outburst.

So I rolled another cigarette and led him gently along the road of argumentation – the most direct path, I had learned, to the interior of his contrary old mind.

“Being a beak,” I said, using the vernacular term for judge in an attempt to do all I could to stir up the portions of his remembrance that had to do with his days of youth and lawlessness, “is a tough job. Laws are complicated and puzzling, and it isn’t easy to straighten them out so that they fit particular cases. Most of the beaks do very well, I think.”

“You think so, do you?” the old scoundrel snarled at me. “Well, let me tell you, sonny, you don’t know a damned thing about it! I could tell you stories about beaks and their ways that would knock your eye out!”

I put all the skepticism I could summon into a smile, confident now that I had him.

“You look at things from your own side,” I replied, “and in those days you were on the wrong side. Now I don’t say that judges don’t make mistakes now and then. They do. They’re only human. But I never heard of a case where you could say that a judge had positively twisted the law around to —”

That turned the trick.

He cursed and snorted and glared at me, and I grinned my insincere doubts, and the story finally came out.

“Me and ‘Flogger’ Rork was on the road together some years ago, with a gun apiece and a coupla big handkerchiefs to hide our mugs behind when we needed to. All-night grease-joints was our meat, and we done ourselves pretty well. We’d knock over a couple a night some nights. We’d drift into them separate at three or four in the morning, not letting on we knew each other, and stall over coffee and sinkers until we was alone with the guy behind the counter. Then we’d flash the rods on him, take what was in the damper, and slide on. No big hauls, you understand, but a steady, reliable income.

“We work that lay for a few months, and then I get an idea for a new racket — and it’s a darb! Flogger — he’s an unimaginative sort of jobbie — can’t see it at first. But I keep jawing at him until he gives in and agrees to take a whirl at it.

“You never seen Flogger Rork, did you? I thought not. Well, he’s a good guy — what ‘Limey’ Pine used to call a ‘bene cove’ — but he ain’t no flower to look at. I seen a cartoon of a burglar once in a newspaper during one of these crime waves, and that’s the only time I ever seen a face like Flogger’s. A good guy — but we had to be careful how we moved around, because bulls had a habit of picking us up just on account of his face. Me — nobody hadn’t ever took me for a lamb, myself; though alongside of Flogger I look pretty sweet.

“These mugs of ours had been handicaps to us so far, but now under my new scheme we’re going to cash in on them.

The New Racket

"We was in the Middle West at the time. We blow into the next burg on our list, look the main drag over, and go to work. Our guns are ditched down under a pile of rocks near the jungle.

"We make a drug-store.

"There's two nice little boys in it. I plant myself in front of one of them, with one hand in my coat pocket, and Flogger does the same with the other.

"'Come through,' we tells 'em.

"Without a squawk, one of 'em pushes down the 'No Sale' key of the damper, scoops out every nickel that's in it, and passes it over to Flogger.

"'Lay down behind the counter and don't be too much in a hurry about getting up,' we tell them next.

"They do as they're told, and me and Flogger go on out and about our business.

"The next day we push over two more stores and move on to the next town. Every town we hit we give our new racket a couple of whirls, and it goes nice. Having an ace up our sleeves, we can take chances that otherwise would have been foolish – we can pull a couple or even three jobs a day, without waiting for the rumpus from the first one to die down.

"Pickings were pretty them days!

"Then, one afternoon in a fresh burg, we push over a garage, a pawnshop and a shoe store, and we get picked up.

"The bulls that nabbed us was loaded for bear, but – outside of running until we saw it was no use – we went along with them as nice as you please. When they frisked us they found the money from that day's jobs, but that was all. The rest was cached where we knew it would be when we wanted it. And our guns was still under that pile of stones three states away. We didn't have no use for them any more.

"The guys we had stuck up that afternoon came in to look us over, and they all identified us right away. As one of 'em said there was no forgettin' our faces. But we sat tight and said nothing. We knew where we stood and we was satisfied.

"After a couple days they let us have a mouthpiece. We picked out a kid whose diploma hadn't been with him long enough to collect any dust yet, but he looked like he wouldn't throw us down; and he didn't have to know much law for us. Then we laid around and took jail life easy.

“A few days of that, and they yank us into court. We let things run along for a while without fightin’ back, until the right time came. Then our kid mouthpiece gets up and springs our little joker on them.

“We picked out a kid whose diploma hadn’t been with him long enough to collect any dust yet, but he looked like he wouldn’t throw us down; and he didn’t have to know much law for us.”

“His clients, he says, meaning me and Flogger, are perfectly willing to plead guilty to begging. But there is nothing to hold them for robbery on. They were in need of funds, and they went into three business establishments and asked for money. They had no weapons. The evidence doesn’t show that they made any threats. Whatever motives may have prompted the persons in the stores to hand over the contents of the various cash registers to oblige them – the kid says – has no bearing on the matter. The evidence is plain. His clients asked for money and it was given to them. Begging, certainly – and so his clients are liable to sentences of 30 days or so in the county jail for vagrancy. But robbery – no!

“Well, son, it was a riot! I thought the beak was going to bust something. He’s a big bloated hick with a red face and a pair of nose-pinchers. His face turns purple now, and the cheaters slide down his nose three times in five minutes. The district attorney does a proper war dance with the whoops and all.³ But we had ’em!”

The old man stopped with an air of finality. I waited a while, but he didn’t resume the story, if there were, indeed, any more to it; so I prodded him.

“I don’t see where that proves your contention,” I said. “There’s no using of the law as a weapon there.”

“Wait, sonny, wait,” he promised. “You’ll see before I’m through.”

³ Is the author employing this offensive language as part of his portrayal of a character as an especially reprehensible person, or is he simply being offensive? – *The Editors*

The New Racket

“They put their witnesses back on the stand again, then. But there was nothing to it. None of ’em had seen any weapons, and none of ’em couldn’t say we had threatened ’em. They said things about our looks, but it ain’t a crime to be ugly.

“They shut up shop for the day, then, and chased me and Flogger back to the jail. And we went back as happy a pair as you ever seen. We had the world by the tail with a downhill pull, and we liked it. Thirty days, or even 60, in the county jail on a vag charge didn’t mean nothing to us. We’d had that happen to us before, and got over it.

“We were happy – but that came from the ignorance of our trustin’ natures. We thought maybe a court was a place where justice was done after all; where right was right; and where things went accordin’ to the law. We’d been in trouble with the law before, plenty, but this was different – we had the law on our side this time; and we counted on it stickin’ with us. But –

“Well, anyway, they take us back over to court after a few more days. And as soon as I get a slant at the beak and the district attorney I get a sort of chill up my back. They got mean lights in their eyes, like a coupla kids that had put tacks on a chair and was a-waiting for somebody to sit on them. Maybe, I think, they’ve rigged things up so’s they can slip us two or three, or even six, months on vag charges. But I didn’t suspect half of it!

“Say, you’ve heard this chatter about how slow the courts are, haven’t you? Well, let me tell you, nothing in the world ever moved any faster than that court that morning. Before we had got comfortably fixed in our chairs, almost, things was humming.

“Our kid mouthpiece is bouncing up and down continuous, trying to get a word in. But not a chance! Every time he opens his mouth the beak cracks down on him and shuts him up; even threatening to throw him out and fine him in the bargain if he don’t keep quiet.

“The man we’d gone up against in the garage was the proprietor, but the ones in the hock shop and the shoe store were just hirelings. So they leave the garage man out of the game. But they put the other two in the dock, charged with grand larceny, have ’em plead guilty, sentence ’em to five years apiece, and suspend the sentences before you could shift a chew from one cheek to the other.

“If,’ the beak says in answer to our mouthpiece’s squawk, ‘your clients simply asked for the money and these men gave it to them, then these two men are guilty of theft, since the money belonged to their employers. There is nothing for the court to do, therefore, but to find them guilty of grand larceny and sentence them to five years each in the state prison. But the evidence tends to show that these men were actuated simply by an overwhelming desire to help two of their fellow men; that they were induced to steal the money simply by an ungovernable impulse to charity. And the court, therefore, feels that it is justified in exercising its legal privilege of leniency, and suspending their sentences.’

“Me and Flogger don’t understand what’s being done to us right away, but our mouthpiece does, and as soon as I get a look at him I know it’s pretty bad. He’s sort of gasping.

“The rest of the dirty work takes longer, but there’s no stopping it. This old buzzard of a judge has our charges changed to ‘receiving stolen property’ – a felony in that state; we are convicted on two counts, and he slips us ten years in the big house on each, the hitches to run end to end.

“And does that old buzzard feel that the court should exercise its legal privilege of leniency and suspend our sentences? Fat chance! Me and Flogger goes over!”

