

## BOOK REVIEW

### INNOCENT UNTIL INTERROGATED

By Gary L. Stuart

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“No one would confess to so heinous a crime had they not committed it.”

By Larry A. Hammond\*<sup>1</sup>

Twenty years ago the words: “[N]o one would confess to so heinous a crime had they not committed it,” set the theme for the prosecution of John Henry Knapp. Knapp had confessed to pouring a gallon of Coleman fuel on his sleeping babies, throwing in a match, and incinerating them. He was convicted and sentenced to death in 1974. In 1987 new scientific evidence contradicted his conviction and confession. Knapp was released from prison, only to be recharged three years later by the Office of the Arizona Attorney General. The Knapp case was retried in 1991. Although demonstrably false and coerced, the prosecution’s case continued to rest on Knapp’s confession.

The final pretrial hearings began in March 1991 and the trial itself commenced a few months later. During the beginning of Knapp’s trial, the murders at the Buddhist Temple west of Phoenix occurred. In the middle of Knapp’s trial, the so-called “Tucson Four” murderers all confessed; yet by the end of Knapp’s trial, all of those confessions had been debunked.

I was one of Knapp’s defense lawyers. This image is one I cannot forget. There we were, deep into a jury trial premised by the prosecution on the notion that false confessions to serious crimes simply did not happen. Of course, the jurors had been strenuously admonished not to read, listen or watch on television anything to do with the John Henry Knapp case. However, the jurors had not been admonished to close their eyes and ears to the most infamous massacre in recent Phoenix history. Thus, all of the jurors were exposed to the reality that false confessions can most certainly occur.

The Knapp trial resulted in one of the longest and most contentious jury deliberations in recent Arizona history. At the end of the day, the jury was hung: 6-6. Those interviewed after the trial who favored conviction, did so primarily on the belief that John Henry Knapp would not have confessed to so heinous a crime had he not committed it.

In the middle of the daily swirl of publicity surrounding the Temple murders (and to a lesser extent about the trial of John Henry Knapp), a less noted homicide case arose with the death of a woman named Alice Cameron. Her body was found at a campground along the Verde River northeast of Phoenix. After a lengthy interrogation conducted by the Maricopa County Sheriff’s Office (the same office involved in the Knapp and Temple

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1. The author is one of the founding members of the law firm of Osborn Maledon P.A. in Phoenix, Arizona. He is also one of the founders of the Arizona Justice Project – Arizona’s Innocence Project. Over his career, he has been involved in a large number of false confession cases. He will be teaching a course at the Sandra Day O’Connor College of Law at Arizona State University next year on the failures of the criminal justice system. False and coerced interrogations and confessions will be an important part of that class.

murder cases), a brain-damaged Vietnam veteran named George Peterson confessed to the murder of the Alice Cameron. Patterson was arrested and began the long march toward trial with the sixteen-hour interrogation, which served standing as the only significant piece of evidence supporting the charge.

The Alice Cameron/George Peterson story is well told in Gary Stuart's wonderful book under a chapter entitled, "A Murderer Ten Times Over." The "tenth" murder was the murder of Alice Cameron and the "murderer" was Alex Garcia. Eventually, Garcia admitted responsibility by pleading guilty to the Alice Cameron killing. Soon after, George Peterson was released with little fanfare. He became a footnote in the long story of Arizona's false confessions.

One of the most troubling aspects of these stories is that they are twenty-years old. Today, some argue that law enforcement, the courts, and the public have learned very little from these experiences. Stuart's book causes one to wonder why a book about false confessions would be relevant in 2010. After all, in the last fifteen years the United States has seen 260 DNA exonerations. A disturbingly large number of those exonerations occurred in cases in which the defendant had falsely confessed.

A great deal of attention in the criminal justice community has been placed on this topic. The wonderful Center for Wrongful Convictions, now operating at the Northwestern University School of Law, focuses exclusively on false confessions. Steven Drizin, who heads that project at the Center, tracks false confessions from across the country. Many of those false confessions have led to front page news. The "Central Park Jogger" became one of the most well known examples because of the multiple confessions, prosecutions, and eventual exonerations in that case. The more recent case of the "Norfolk Four" has also captured journalistic attention. A book about that case was recently published and PBS Frontline devoted a full 90 minutes to the case, told again a story of multiple false confessions to a rape and to a murder.<sup>2</sup> In the middle of all of this continued interest in false confessions it is not surprising that John Grisham's latest book, *The Confession*, has shot to the top of the bestseller list.

One answer to the question of why Gary Stuart's book is so relevant today is that very sadly, these cases continue to occur. This is not simply an interesting history of a now healed flaw in the criminal justice system. It remains true that interrogation techniques taught in our law enforcement training programs produce new generations of detectives who continue to use the same methods that produced false confessions in the past.

Sadly, it also remains true that even the simplest of recommendations that will reduce the risk of wrongful confessions are opposed. The best example is the proposed requirement to record all interrogations. Why has the FBI opposed requiring that all interrogations be recorded? Among the most commonly heard answers, the truest seems to be "because we can." Why has the Arizona Legislature declined for at least four years now to give any serious consideration to bills that would require recordation? An even harder question to answer is why our law enforcement communities have not insistently supported legislation on this topic. One might fairly add to the list of questions an inquiry into why the Arizona courts do not require recordation or permit inferences to be drawn against law enforcement when prosecutors seek to introduce interrogations that are

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2. See generally *Frontline: The Confessions* (PBS television broadcast) available at <http://www.pbs.org/wgbh/pages/frontline/the-confessions/>.

unrecorded. The rulemaking authority of the Arizona Supreme Court certainly extends this far.

These would be fair questions to ask in any state, but they have special significance in Arizona. Gary Stuart's book stands as a stark reminder of how little we have done about so large a problem. Stuart's idea for how to address this topic is brilliant. Much has been written about the need for reform in this area, and many of the famous case stories have been the subject of other books, articles, and television productions, yet no one has realized that to really understand why a person would confess to a crime he or she did not commit, one needs to read these confession transcripts with care. Stuart's book requires that approach of due diligence. The reader must actually see the words of the interrogators and the defendants as the questions and answers unfold.

Stuart's approach probably requires a warning to the reader. It can be slow going. Confessions rarely happen in a flicker of an eyelash. They unfold over time, and of course, the questions and the methods used by the questioners often become apparent only when seen with numbing repetition. Stuart could have merely told the reader about the confessions of the "Tucson Four", moved on to the trial, and then discussed the messy and apparently endless aftermath of the case. Stuart, however, made a different (and I believe wiser) choice in letting the reader climb deep into the interrogation process.

The repetition of the interrogators' themes is most evident when seen in what becomes more than fifty hours of interrogations. Facts necessary to prove that the accused men were really present at the Temple on that August day in 1991 are provided by the interrogators. Facts provided by the witnesses that do not fit with what the interrogators know to be the case are ignored or twisted to fit. It is a pathetic process. The true details of the Temple Murder confessions may be contrasted nicely with Grisham's recounting of the rape-murder confession in his recent book. Both stories involve very lengthy confessions – fifteen or more hours. One gets only a short glimpse of Grisham's fictional confession account while getting every disturbing detail in Stuart's. I cannot help but favor the Stuart approach. There is really no way to generate public understanding that indeed people do confess to heinous crimes they have not committed without seeing the entire process unfold.

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Twenty years! It is hard not to conclude that our criminal justice system has completely failed. How is it possible that law enforcement continues to extract false confessions? How is it possible that our prosecutors still seek to introduce these false confessions into evidence? How is it possible that our defense lawyers fail in their efforts to exclude false confessions? And – most importantly – how is it possible that judges continue to allow false confessions to be heard at trial, and how do the judges then affirm convictions based on those false confessions?

These questions are not intended to be rhetorical. They are questions that ought to be asked and they are questions that ought to be answered. Here is a recommendation after reading Gary Stuart's book: in every documented case of a false confession, the participants should be interviewed in detail and asked to explain the factors that led them to be a part of a case in which a defendant was convicted of a crime he did not commit based upon a confession that proved to be false. This question should be asked most pointedly to the judges because they are the justice system participants who are

presumably least affected by the pressures of the adversary system. Thus, judges should be the ones to provide the most helpful insights. I cannot imagine what it must be like for any judge to learn that he or she presided over a trial or signed an appellate or post-conviction opinion in any case in which DNA, forensic evidence or other evidence, later proves the conviction wrongful.

We had over 260 DNA exonerations.<sup>3</sup> The one common link between these exonerations is that judges were involved in each case. Indeed, by the time many of these cases resulted in exoneration they had passed through the hands of literally scores of judges. It would be a worthy byproduct of Gary Stuart's book if every trial and appellate judge were to say, "I am determined that I will not preside over, or affirm the conviction of a defendant on appeal, in any case in which a confession of seriously doubtful reliability were presented." A hard look back at every confession that proves false would be a very strong first step.

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3. *Home*, THE INNOCENCE PROJECT, <http://www.innocenceproject.org> (last visited Apr. 25, 2011).