CONFESSIONS OF A FORMER SHERLOCK HOLMES ADDICT

Robert B. Sivley, Ph.D.

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Before I announce the title of my paper, a brief foreword is in order.

At the regular meeting of the Athenaeum Society, on March 3, 1977, I gave a paper called "The World's Greatest Detective." A few of you may remember -- no, of course, none of you would remember that -- but in that paper I discussed the great enjoyment that I had had over the years reading, and re-reading the four novels and 56 short stories that comprise the complete Sherlock Holmes works written by Dr. Arthur Conan Doyle. I even went so far as to discuss, in some detail, the many movies and plays that had been based on the Sherlock Holmes stories, and, thanks to the patience of the society at that time, belabored such things as which actors gave the better portrayals of the great detective. It was, I must now admit, an essay filled with unabashed admiration of Holmes and his loveable cohort, Dr. John H. Watson, who played the role of straight man and amanuensis, faithfully recording, in delightfully minute detail, the many exploits of what I thought then to be history's greatest crime solver.

The title of my paper is "Confessions of a Former Sherlock Holmes Addict." Tonight I come before you to offer my sincere apologies and to set the record straight. Sherlock Holmes was not a great detective, and I now fear that he may have sent to prison (and in some cases to the gallows) any number of unfortunate souls who could never have been convicted in the enlightened courts of twentieth century America.

I base this conclusion on knowledge that I have gained recently by reading newspaper accounts and watching excerpts of such trials as those of O.J. Simpson and the Menendez brothers, and learning from discussions between Larry King and various wealthy defense attorneys just what is actually involved in the apprehension, trying, and sentencing of people accused of major crimes. Though I have not been fortunate enough to have had the time to read any of the "O.J. books," I have been enlightened by several discussions of the O.J. trial by such as defense attorney Robert Shafer and Harvard Law School professor Alan Derschowitz, both "dream team" members, who have pointed out repeatedly that whether or not Mr. Simpson was guilty of the horrible murders was not the point of that trial. (It seems that guilt and/or innocence are not really important considerations in criminal trials, something of which, until that time, I had been naively unaware).

Having been raised on Perry Mason and Mr. District Attorney, as well as Sherlock Holmes, I was under the impression that it was the duty of law enforcement officials to apprehend criminals and of courts to decide whether or not they were truly guilty, thus punishing those who were responsible for crimes and setting free those who were innocent. It has now been made clear to me, however, that the real purpose of America's criminal court system is to provide the setting for a huge and complex game, in which one

protagonist, called the prosecution, is pitted against another player, called the defense, with a kind of umpire or referee, called the judge. The rules of the game are so complicated (and subject to frequent and sudden change by something called case law and appeals court rulings) that it requires a degree in jurisprudence to understand them. The name of the game is "the adversary system", and it is frequently referred to by practicing attorneys as a cornerstone of American justice, without which, we are repeatedly told, we would have no democracy worthy of the name.

As in most sports, competitors in criminal trials are often not evenly matched. The prosecution has the vast power of the state, so when the defense is financially strapped (which is most of the time), the prosecutor has a distinct edge. When the defense happens to be wealthy, however, it can spend more money on the game, er, trial, and, thus, it has the advantage. At any rate, this system is said to be protected by the United States Constitution and the American Bar Association, the latter of which works very hard to make sure it is not changed significantly.

With this new understanding of how the criminal justice system really works, I felt compelled to revisit the Sherlock Holmes stories in order to re-evaluate my original appraisal and to determine the true social value of his work. My findings are quite discouraging. I am compelled to report to you now that that tall, lean, hawk-faced resident of 221-B Baker Street, who arrogantly referred to himself as the "world's first consulting detective," was a fraud. Wearing his ridiculous deer stalker hats, polluting the air while smoking his ugly, bent stemmed pipes, and ostentatiously brandishing a huge magnifying glass, he trampled the rights of scores of Victorian English law breakers, never recognizing the true victim status of those who commit robbery, blackmail, and murder. The lengths to which he would go to prove that a particular individual had committed a crime and to get a confession to that effect were shocking, and I am happy to say that no modern criminal court judge in our country would have let him get away with such shenanigans. Not with the protected rights of our own rapists, murderers and car jackers at stake.

Repeatedly, Sherlock Holmes abused the rights of criminals for the mere purpose of establishing the truth and bringing the guilty to justice. Let us take the highly publicized incident at Reichenbach Falls, for example, when both Holmes and his arch enemy, Professor Moriarty, were first thought to have plunged to their deaths (causing a hiatus of some eight years in the publication of Holmes stories, much to the relief of Dr. Doyle, who, by this time, had grown quite tired of him). The public outcry was so great, however, that Doyle was forced to resume the series (forced, that is, in much the same way that highly paid athletes are forced to move to other teams for large salary increases), so in his next story Doyle explained that actually only

Moriarty had fallen from the mountain cliff, while Holmes had fortunately survived. But "fallen" is a kind of euphemism in this case. "Thrown" or "pushed" is the proper term when two people struggle, and only one plunges to his death.

I personally visited Reichenbach Falls last summer, on my trip to Switzerland (I will spare nothing to research properly an Athenaeum Society paper), and though it is one of many magnificent mountain waterfalls in that country, it is difficult to see why anyone would be so careless as to just "fall off." Granted, Moriarity was an evil man, but did he not deserve a trial? Does any detective have the right to be judge, juror, and executor? Do we know whether Moriarity had a chance to surrender or whether Holmes even attempted a non-violent arrest? Woe be unto the modern policeman who returns to headquarters with an arrest warrant and a corpse, with nothing but the lame excuse "Well, I told him he was under arrest, but when I went to put the cuffs on him, he just fell off the cliff and died."

Another instance in which Sherlock Holmes' behavior certainly violated the rights of the accused occurred in the story known as "A Scandal in Bohemia," the only Holmes story in which his criminal protagonist is a woman and the only story in which he shows the slightest interest in one of the opposite sex. In that story Holmes sets out to foil the plans of a ruthless blackmailer, the beautiful Irene Adler. In order to find the location of certain compromising photographs, on which the blackmailing is based, the sly detective disguises himself and pretends to be injured, in order to be taken into Miss Adler's home. Once inside, he sets fire to her house, while she has gone to get him a drink of water. Seeing her house is threatened, the woman grabs for the most precious thing she owns -- the photographs on which she hopes to make a great deal of money -- and, thus, Holmes learns of their location, so he can come back later and (by means of illegal entry, of course) obtain them. At one time, I thought this was a brilliant move on the detective's part, but now I know, of course, that such evidence would never be admitted in an American court. Holmes was trespassing, he was in the home under false pretenses, and the person soon to be accused was not to be apprised of her rights until <u>after</u> she had revealed incriminating information about herself. Obviously, one would go to such lengths only if he thought that catching guilty criminals was the primary mission of a detective. At no time does he show any concern for the right of the accused person to have a fair chance to destroy incriminating evidence before it is taken into custody.

Holmes also showed a blatant disregard for the rights of the suspect in the short story, "A Case of Identity." In that story Holmes wanted to interview a villain who had disguised himself as a suitor in order to make love to his own stepdaughter as part of a plot to gain control of her inheritance. When the man resisted the interview, Holmes locked the door of his own apartment, thus

forcing the suspect to be questioned (against his will and without counsel present). As he was right in his suspicions, the detective succeeded in exposing the evil plot, and bringing another wrongdoer to justice. But who can defend his act of depriving of his liberty a man not yet tried and convicted? Never mind that the criminal confessed, once faced with the evidence that Holmes presented. Does that justify his highhanded methods? No self respecting judge in the United States would allow such a confession to be used in a court of law, and we can all be thankful that our criminals are given a more sporting chance to elude conviction.

Sherlock Holmes obviously could not have made it as a detective in the American court system. Can you imagine him undergoing a cross examination by F. Lee Bailey, such as that endured by LAPD detectives during the O.J. Simpson trial? And what kind of an "impeach the witness" field day would Johnny Cochran have had with the fact that Holmes himself was a cocaine and morphine user? But Holmes would have been shocked at the kind of trials that occur every day in twentieth century America, and he would have been unable to believe the lengths to which the court system would eventually go to guard against involuntary confessions and almost any possibility of an illegal search and seizure. New York State Supreme Court Judge Harold J. Rothwax describes numerous chilling examples in his recent book, Guilty: The Collapse of Criminal Justice. [1]

Consider the case of Edward Coolidge, of Manchester, New Hampshire, who on January 13, 1951 murdered fourteen year old Pamela Mason, by stabbing her repeatedly and then shooting her in the head. After a month of investigation, authorities had gathered sufficient evidence to issue an arrest warrant and a warrant for search and seizure of Coolidge's automobile. The evidence found there was so overwhelming that no one was suprised that Coolidge was convicted of rape and murder. The surprise came when the United States Supreme Court set the conviction aside, because the warrant for search and seizure of the perpetrator's car had been issued by the state attorney general. This was in accordance with New Hampshire law, which specifies that, for purposes of issuing warrants, the attorney general is a judicial officer. The court ruled, however, that the attorney general is actually a *law enforcement officer*, not a *judicial officer*, regardless of what New Hampshire law says, so the search warrant was declared invalid, and the evidence found in the car could not be used against the accused. Edward Coolidge, the murderer of Pamela Mason, was set free.

Another case, also involving a 14 year old girl, this one in Detroit, Michigan, was that of Angela Skinner, who was held against her will for four days and repeatedly raped by one Lee Erwin Johnson. Acting on a tip, two Detroit officers knocked on the door

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[1] Rothwax, 1996

of Johnson's apartment, and it was opened by Angela Skinner, who was separated from the officers by a padlocked armored gate. Standing in that doorway, she told the officers of her ordeal, including how Johnson had repeatedly raped her and threatened to shoot her and her family if she attempted to escape. The officers then forced their way into the apartment, where the victim showed them a closet in which Johnson had three guns and a supply of ammunition, which they confiscated. Johnson, who had a long criminal record, including four prior arrests for violent felonies, was arrested, found guilty, and sentenced to 15 years in jail. A victory for truth and justice? Not quite. The court of appeals reversed that conviction, again because of certain procedural errors. The appeals court pointed out that the presence of an armored door showed that Miss Skinner *did not have the authority* to allow the officers to enter Johnson's apartment, nor did she have the authority to direct them to the closet where the guns were stored. The court stated that even though the police had a justifiable reason to enter the apartment without a search warrant, they did not have the right to open the closet. You might have thought (as did one court of appeals dissenter) that when the defendant kidnapped an innocent victim and converted his apartment from a home to a prison, that he forfeited any reasonable expectation of privacy, but not so, according to the court of appeals decision.

So complex are the rules of search and seizure that New York Judge Frank Weissberg said: "The law on search and seizure is so unpredictable that if my only concern was being affirmed by an appellate court, without regard to the merits of the case, I don't think I could be sure of the result more than sixty per cent of the time." That is the opinion of a criminal court judge.

And if you think the search and seizure rulings would have made Sherlock Holmes' task more difficult, consider the post-Miranda rulings on confessions. I cite the case of Mary Ann Junta, a woman who was murdered in Denver, Colorado, in November of 1982. About one year later, a man approached a Denver traffic policeman, Officer Patrick Anderson, and said "My name is Francis Connelly. I murdered someone, and I want to confess."

Anderson immediately stopped him from talking and proceeded to state the Miranda warning. Connelly shook his head impatiently and said "Yeah, I know that. I don't care. I want to talk."

Asked if he had been drinking or under the influence of drugs, Connelly replied that he was not. Warned again of his right to remain silent, Connelly interrupted. "My conscience is bothering me. I want to confess."

Anderson then called the police station for instructions, and was sooned joined by a homicide detective who again repeated the Miranda warning, and Connelly again stated that he wanted to

confess. They then got into a car, and Connelly directed them to the exact spot where the murder had taken place one year earlier. Held overnight in jail, Connelly was interviewed the next morning by a public defender, and, for the first time, gave indication of being psychotic, saying that voices had told him to go to Denver and confess. Connelly was then hospitalized for evaluation, and it was found that he was competent, even though mentally ill, and it was decided to proceed to trial. At a pretrial hearing, however, Connelly's lawyer moved to suppress Connelly's statements to the police.

The Colorado trial court agreed with the motion and suppressed Connelly's confession, because it was said to be "involuntary -- not a product of his rational intellect and free will." A psychiatrist testified that Connelly's mental illness did not interfere with his cognitive abilities, and that he understood his rights when the police officers advised him that he need not speak. The psychiatrist further testified that the voices could be Connelly's own interpretation of his guilt. Without his confession, however, there was no hope of convicting Connelly.

One last example of how confession need not lead to conviction in today's court system is the 1984 case of one Alfio Ferro, who was arrested in New York City, and charged with a residential robbery of furs in which the robbery victim had been murdered. At first, Ferro denied that he was involved. After a while, a detective entered the room where Ferro was being questioned, carrying some of the furs that had been taken from a codefendent's apartment. Without saying a word, the detective placed the furs in front of Ferro. Believing the detective had information that he'd committed the crime, Ferro then began to talk, making incriminating statements. Eventually he was convicted of the crime, but his conviction was also overturned on appeal. According to the appellate court, the detective who interrogated Ferro should have known that Ferro was reasonably likely to respond to his placing the furs in front of him, and to make self incriminating statements. Thus it was considered to be a forced confession. In other words, the detective should have known that the criminal was not very smart, so it was not fair to use such clever means to trick him into talking about the crime he had committed!

I would be embarrassed to tell you how many times Sherlock Holmes used his superior intellect to trap the guilty, and I am even more embarrassed to have to say that Dr. Watson reported these incidents as if they were something of which they should be proud, rather than examples of how the rights of those who are dishonest but not so smart could be abused by someone who had no better view of justice than to think that its main object was to rid society of criminals. Thankfully, we live in a more enlightened age.

Unfortunately, it is making police work a little difficult. Consider the problems faced by the leading investigators in the

O.J. Simpson case (most of whom are no longer with the Los Angeles Police Department). According to the defense, the police had no right to enter the premises of Simpson's home without a search warrant, even after they had found blood in his car, which was parked outside the home. Their claim that they had actually scaled the wall of his estate, because the blood led them to suspect that there might be someone in the home who was injured, was ridiculed by defense attorneys, who argued that Simpson's Fourth Amendment rights had been violated.

The Fourth Amendment states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." That certainly describes a right dear to Americans and one we would not like to see violated casually.

Supreme Court Justice Hugo Black wrote, however, "The Fourth Amendment prohibits unreasonable searches and seizures. The Amendment says nothing about consequences. It certainly nowhere provides for the exclusion of evidence as the remedy for violation." Yet a 1961 ruling made the exclusionary rule binding on the states, 172 years after the adoption of the Fourth Amendment. Those who argue for such exclusions seem to believe that letting murderers and rapists escape punishment is the only way to discipline offending police officers who do not play the game in strict accordance with the rules.

In a recent National Review article, managing editor Linda Bridges writes that criminal trials are no longer a search for truth. "While that search was never disinterested --a lawyer , having accepted a case, was bound to do his best even for a guilty client -- the assumption was that the truth would out." Today, however, the justice system cares less about the truth than about what are called "procedural safeguards." The one good thing, Judge Stephen Markman said that he saw in the O.J. Simpson trial is that the corruption of the criminal justice system was exposed to public view.[2]

So complicated have the rules governing police behavior in criminal investigations become, that the police often do not know what they are allowed to do, even when they put forth their very best efforts to follow correct procedures. Judge Rothwax observed that "If a street cop took a sabbatical and holed himself up in a library for six months doing nothing but studying the law of search and seizure, he would not know any more than he did before he started. The law is totally confusing, yet we expect cops to always know at

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[2] Bridges, Linda. 1996

every moment what the proper action is." So, not suprisingly, the ordinary street cop often does not know precisely what to do, and even so brilliant a detective as Sherlock Holmes sometimes did not know, or, perhaps, he really did not care. His only real purpose seems to have been to apprehend and convict the guilty, and apparently we can no longer tolerate that.

At any rate, I feel better tonight, having been able to assuage myself of some of the guilt that I have suffered about having misled the Society in my 1977 paper. My error was due to my ignorance of the true nature and purpose of the criminal justice system. The Sherlock Holmes era ended about 1920, so perhaps we can find some excuse for his ignorance of proper procedures in the fact that his career preceeded the clarification of many of the rules that he repeatedly violated. There will be no more Sherlock Holmes stories, and perhaps we can now begin to forget those that already exist.

But there will be more crimes, more trials, and more appeals court rulings. Sometimes, however, I worry about the statement made by United States Supreme Court Justice Robert H. Jackson in 1943:

> "The Court is forever adding new stories to the temples of constitutional law, and temples have a way of collapsing when one story too many is added."

REFERENCES

1. Rothwax, Harold J. Guilty: The Collapse of Criminal Justice Random House, New York. 1996

2. Bridges, Linda. "Rule of Non-Law," National Review, September 16, 1996.