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Review: 'Manifest Injustice' by Barry Siegel

By Rob Warden

6:31 PM CST, March 8, 2013

"Manifest Injustice" is an apt, allegorical title for Barry Siegel's latest book, which makes three points didactically: First, the law can be an ass — to a greater extent than Charles Dickens imagined. Second, when it comes to administering justice, the courts can be at an utter loss. Third, plea bargaining can be just a kinder, gentler form of torture, with the same result — manifest injustice.

Siegel's book is journalism at its best, a haunting, lucid, rigorously researched account of a multifaceted tragedy born of the murders of a young couple off a lovers' lane in the desert near Scottsdale, Ariz., on a warm May night in 1962. Over the next five decades, the case took one vexing turn after another, each time skirting any semblance of common sense.



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It is a story of the worst and best of humanity — from a woman whose scorn for her estranged husband led to his conviction for the murders, to a psychopathic killer who repeatedly confessed to the crime, to prosecutors and judges who relied upon a legal principle of dubious applicability to prevent two juries from learning about those confessions, and to dedicated lawyers who relentlessly championed justice for a man they believed innocent.

At the time of the murders, Siegel tells us, Bill Macumber and his wife, the former Carol Kempfert, had been married a little less than a year — happily by all accounts. They lived in Phoenix, where Bill, an Army veteran who had never been in trouble, operated a filling station with his father. In short order, Carol gave birth to three sons, on whom Bill doted. But the marriage went seriously sour. Carol left Bill in 1974 and shortly thereafter accused him of the lovers' lane murders.

Carol's allegation was convoluted, but in essence she claimed that, on the night in 1962 when the victims were last seen alive, Bill had come home in blood-stained clothes. She did not mention that until 12 years later, claiming that it had not occurred to her that he might have been involved until he told her that he had committed the crime.

Some neighbors, including one who put up his home as collateral to secure Bill's release on bail, found it inconceivable that he could ever kill anyone. Yet Maricopa County authorities took Carol's accusation seriously, leading to Bill's indictment and — corroborated mainly by dubious ballistics evidence purporting to link Bill's .45-caliber pistol to the crime — his two convictions, first in 1975, then at a 1977 retrial.

Siegel, a former Los Angeles Times national correspondent, winner of the 2002 Pulitzer Prize for feature writing, and author of six previous books, exposes perverse jurisprudence that led to the colossal travesty of justice — decisions by judges in both trials to bar the defense from presenting evidence of confessions by a man who, unlike Macumber, had well-documented homicidal tendencies and a record of violence.

Three months after the murders, Linda Primrose, a 17-year-old detainee at a Phoenix home for troubled girls, told a matron — and, in succession, a deputy sheriff, polygrapher, and psychiatrist — that she had been present when a man she knew as "Ernie" shot the couple to death. Primrose led investigators to the crime scene and provided accurate details of the murders that had not been made public. She also said that there had been another witness, a young woman who went by "Terry" and who, in horror, had pulled out some of her hair — a titillating detail, Siegel points out, because a thatch of hair had been found at the scene.

The extent to which Primrose's story was investigated is unknown, but a year later a prisoner in jail in Phoenix reported that a fellow prisoner, 20-year-old Ernest Valenzuela — Ernie — had confessed to the crime. Valenzuela, who was serving 90 days for burglary, agreed to a psychiatric interview, in which he again confessed. The psychiatrist could not rule out the possibility that Valenzuela was fantasizing but concluded that he was "a rather cold-blooded and emotionless individual with little concept of the value of human life."

No further investigation ensued and Valenzuela was released, only to commit another burglary, for which he was convicted. In 1967, only days after completing his sentence for the latter burglary, he kidnapped a young married couple, killing the husband and raping the wife — a federal crime because it occurred on the Gila River Indian Reservation. He pleaded guilty to second-degree murder in that case, but not before he confessed to two defense lawyers and a defense psychiatrist that he also had committed the Scottsdale lovers' lane murders.

In 1973, Valenzuela was murdered in prison. His confessions, covered as they were by attorney-client and doctor-patient privileges, were secret and forever would have remained so — had not Macumber been charged with the lovers' lane murders the following year. After the indictment, Valenzuela's former lawyers sought guidance from the State Bar of Arizona ethics committee, citing "hypothetical" circumstances. The committee concluded not only that the privilege was inapplicable — but that withholding the information "may constitute . . . a gross denial of due process upon one who may be unjustly accused."

The courts, however, ignored the ethics committee's conclusion. Judge Charles Hardy, who presided at Macumber's first trial, held, in essence, that the privacy interest of a dead violent felon outweighed the right of a presumed innocent man to present a defense. After Macumber's first conviction was reversed — because Hardy had refused to admit exculpatory ballistics evidence — Valenzuela's

mother waived her son's right to privacy. But Judge Robert Corcoran, who presided at the second trial, still barred testimony regarding the confessions.

After both trials, Macumber was sentenced to life — saved from a death sentence, and likely execution, only because the U.S. Supreme Court had thrown out the death penalty in 1972. That enabled Macumber to survive behind bars for nearly 38 years — until he was freed last year, thanks to Herculean efforts by Arizona Justice Project founder Larry Hammond and a pro bono team from the Phoenix office of the law firm of Perkins Coie.

The satisfaction was less than complete, however. Macumber was not exonerated. The case ended when — as a judge seemed poised to grant him a third trial based on exculpatory evidence — the prosecution offered to vacate the conviction if he would plead "no contest" to the charges. The deal could hardly be considered justice for an innocent man, as Macumber had steadfastly professed to be. But, Siegel points out, the pressure to take it was intense — tantamount to torture. The prosecution could have appealed a retrial order, dragging the case out for years, with Macumber remained behind bars. At 77, in ill health, he took the deal.

As a journalist, Siegel generally lets the facts and the story speak for itself, avoiding direct expression of his own views — even though those views, as emphasized in the book's title, are abundantly clear.

Manifest injustice.

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"Manifest Injustice"

By Barry Siegel, Henry Holt, 385 pages, \$28

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