

CHAPTER 1

*Waiver of Miranda Rights and Voluntary  
versus Coerced Confession*

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# 1

**Y**ou don't have to be a psychologist to know that a stressful life prematurely ages you and takes a terrible toll on your physical and mental health. That was certainly true for Waneta Hoyt.

When I first met her, in 1994, Waneta was 47 years old, but she could easily have passed for 65. Pale, frail, and gaunt, she moved slowly and deliberately, as if in constant pain or perhaps in fear of a crippling fall. Much of Waneta's hair had fallen out, and what little was left was thin, wispy, and of indeterminate color. Thick, oversized eyeglasses obscured much of her face and gave her a perpetually bewildered look. Always feeling either too warm or too cold, she dressed oddly, which added to the illusion of senior citizenship.

Waneta attributed her constant discomfort with the temperature to a circulatory disorder, but she also suffered from high blood pressure, arthritis, osteoporosis, borderline diabetes, angina, allergies, chronic depression, swelling in her feet, and numbness in her hands. She could not climb a flight of stairs and found it hard to walk more than a couple of hundred yards without becoming short of breath or falling. As a result, she was virtually housebound, leaving home alone only to do

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necessary errands such as picking up the mail or driving her 17-year-old son Jay to school.

Physically and psychologically, Waneta was almost completely dependent on her husband, Tim. She, Tim, and Jay lived in a small rented house near Owego in rural upstate New York and barely got by financially on Tim's meager earnings as a part-time Pinkerton's security guard at nearby Cornell University. The couple had a bank balance of five dollars, had twice filed for bankruptcy, and were one missed paycheck away from homelessness.

One of Waneta's sisters was dying from a brain tumor, while another battled cancer. Both were partially paralyzed and confined to wheelchairs. Five years earlier, Waneta's mother had been killed in a car accident. In 1973, Waneta had been raped by a neighbor. That same year, her mobile home burned, and she and Tim lost everything but the clothes on their backs. In 1964, the year she and Tim married, her father-in-law hanged himself.

But those traumas paled by comparison to the ones that ultimately led Waneta to my office. Between 1965 and 1971, Waneta gave birth to five children, Eric, Julie, James, Molly, and Noah, each of whom died at ages ranging from 48 days to 28 months, victims of what medical authorities said was sudden infant death syndrome (SIDS).

For the next two decades and more, Waneta quietly lived with her grief and gradually became a recluse. Family, friends, and neighbors alike regarded her as the victim of a tragedy beyond comprehension, a pathetic soul afflicted with a rare but fatal and probably genetically transmitted disease that killed any child to whom she gave birth. That perception was reinforced when, some years after the death of their fifth child, Waneta and Tim adopted a baby boy. Jay, their adopted son, was healthy throughout infancy and childhood and had grown into adolescence and the verge of adulthood with no problems.

In all likelihood, the story of Waneta Hoyt and her five dead babies would have remained nothing more than a personal calamity had it not been for the scientific curiosity of a young physician who treated Molly and Noah, the fourth- and fifth-born Hoyt children, prior to their deaths.

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At the time, Dr. Alfred Steinschneider was a research pediatrician investigating the relationship of apnea (sporadic involuntary pauses in breathing) to SIDS at the Upstate Medical Center in Syracuse, 70 miles from the Hoyts' home. Steinschneider noted Molly and Noah's extraordinary histories: Each had experienced periods of apnea, died suddenly and inexplicably from what was characterized as SIDS, and had four siblings with similar histories, including sudden and unexplained death in infancy or very early childhood.

Prior to their early deaths, both Molly and Noah had been hospitalized, treated, studied by Steinschneider, and found to present multiple instances of prolonged apnea. Relying on data from their cases, as well as from three other unrelated infants, in 1972, Steinschneider published a groundbreaking research report in the prestigious medical journal *Pediatrics*. In "Prolonged Apnea and the Sudden Infant Death Syndrome," he presented data supporting his hypothesis that SIDS was caused by prolonged apnea and had a strong familial, genetic basis.<sup>1</sup> The short lives and sudden deaths of Molly and Noah Hoyt, identified only as M.H. and N.H., were described in detail in the article, which also mentioned the apparent SIDS deaths of their three siblings.

While Waneta and Tim Hoyt watched their lives spiral into poverty and despair, Dr. Steinschneider went on to become perhaps the world's leading authority on SIDS. His seminal article spawned a federally funded research empire that led to the widespread use of in-home apnea monitors with infants thought to be at risk for SIDS. These devices, which Steinschneider had first home-tested with Molly and Noah, kept constant track of infant breathing and alerted parents to any evidence of apnea.

But Steinschneider's theory was not without its critics. Indeed, publication of his article in *Pediatrics* was followed quickly by a harshly critical letter to the editor of the esteemed journal in which Dr. John Hick noted that prolonged apnea did not adequately explain the infants' symptoms, much less their deaths. More significantly, Hick took Steinschneider to task for failing to consider the possibility that the children's deaths were the result of foul play:

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Despite the circumstantial evidence suggesting a critical role for the mother in the death of her children Steinschneider offers no information about the woman. . . . The potential for child abuse inherent in the family history . . . could have been more adequately controlled in this study, had Steinschneider only chosen a foster home as his laboratory for the investigation of the youngest sibling. Perhaps the outcome would have been different?<sup>2</sup>

As if the point were not made sufficiently by Hick's scathing letter, *Pediatrics* received and published a second letter from Dr. Vincent DiMaio, a medical examiner and author of a well-known textbook on forensic pathology. DiMaio wrote that, based on his reading of the Steinschneider article, the five "H" children's deaths were "in all medical probability homicides by smothering."<sup>3</sup> DiMaio added that in his experience, "The perpetrator is virtually always the mother and she will continue this killing unless stopped or until she runs out of children."<sup>4</sup> Later, in his text, *Forensic Pathology*, DiMaio was even more blunt and accusatory:

The association of SIDS with apneic episodes as an entity was brought to prominence in an article by Steinschneider. A review of this paper indicates that his two reported cases of sudden infant death associated with prolonged apnea were siblings and probably victims of homicides, as were prior siblings.<sup>5</sup>

Steinschneider's theory of SIDS was hotly debated in the years following publication of his article in *Pediatrics*. That debate, however, was largely academic, if not esoteric, and confined to a relatively small group of interested medical professionals. And so it remained until 1986, when an obscure Texas medical examiner was called to consult on a possible case of infanticide in Syracuse, the city in which Steinschneider had treated and studied the Hoyt children and from whose medical center he published "Prolonged Apnea and the Sudden Infant Death Syndrome." The Texas pathologist, long aware of the article and the controversy it had generated in the medical community, warned a Syracuse prosecutor, William Fitzpatrick, that he might have

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a serial killer on the loose in his community. Dr. Linda Norton of Dallas told Fitzpatrick:

Steinschneider writes this idiotic paper . . . and he says the two babies that he studied had spells of prolonged apnea before they died. And so therefore the implication is that apnea causes SIDS and SIDS is familial. . . . It's always been clear to me that these babies were smothered, probably by their mother, because she seems to be the one reporting the incidents. . . . Steinschneider [has] built an entire theory of Sudden Infant Death Syndrome on homicides. And that woman's right here in Syracuse.<sup>6</sup>

In 1992, 20 years after publication of the *Pediatrics* article and six years after listening to Norton's disdain for Steinschneider and his research, Fitzpatrick decided to look into the case. After reading Steinschneider's article, Fitzpatrick felt that Norton might have been right. A few phone calls and a little digging revealed the surnames of the "H" children, and confidential hospital records led to their parents: Waneta and Tim Hoyt.

If Fitzpatrick could make a case against Waneta after all these years, it would be the achievement of a lifetime and bring him more fame than a little-known small town district attorney (DA) could have ever hoped to attain. To Fitzpatrick's chagrin, however, further investigation revealed that the Hoyt children had died, not in Onondaga County, where he had jurisdiction, but two counties away in Tioga County where the DA was a man named Robert Simpson.

Fitzpatrick contacted Simpson and outlined his theory of the case: five babies dead, all wrongly diagnosed as having succumbed to SIDS; and a mother who had gotten away with murder, still living in Simpson's county.

Over a year later, Fitzpatrick had received no reply from Simpson, who was understandably reluctant to spend the extremely scarce resources of his small, impoverished county to look into the long-stale case. By the summer of 1993, Fitzpatrick was fuming. "I haven't heard anything, goddamn it," he complained. "I can't believe I handed this

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guy the case of his life and I haven't heard anything."<sup>7</sup> Finally, 15 months after his first contact with Simpson, Fitzpatrick wrote to the small-county DA, threatening to assert jurisdiction over the case on the legally dubious grounds that Waneta had taken two of her children to the Syracuse hospital prior to their deaths.

Simpson got the message and directed the New York State Police to begin investigating the Hoyt saga. Prosecutors and investigators talked to several pathologists who told them essentially that the deaths of the Hoyt babies virtually had to have been homicides, even though none was ever so classified.

Among those consulted was Dr. Michael Baden, who would later become famous for his role in the defense of alleged murderer O.J. Simpson. Baden was the former New York City medical examiner and significantly—at the time of the Hoyt investigation—co-director of the crime lab of the New York State Police, the agency investigating the case. After reviewing only the decades-old paper trail in the case, Baden offered his assessment:

[T]he causes of death are wrong. That's number one. I see no evidence of natural disease. Number two is the pattern of deaths. The age of the two-and-a-half-year-old, who could not be a SIDS death, and the circumstances of the individual cases indicate they were suffocated.<sup>8</sup>

Bolstered by the pathologist's seeming certainty that the Hoyt children could not have died by means other than homicide, even though their deaths had all been medically certified at the time as the result of natural causes, the investigative team left no stone unturned in their efforts to develop a profile of Waneta and Tim Hoyt, a dossier they hoped would assure that, when questioned, Waneta would confess to having killed her five children.

New York State Police officers obtained Waneta's medical and mental health records, the medical records of Tim, and even those of the couple's teenage son Jay. They scoured the Hoyts' employment records, credit reports, driving records, and utility bills. The investigators even went so far as to secure a "mail cover" that allowed them to examine



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the outside of the Hoyts' incoming and outgoing mail and a telephone tap that recorded any numbers the Hoyts called.

The investigators also consulted with a forensic psychologist and sought his advice on how best to get Waneta to confess when they ultimately confronted her with the evidence against her. The psychologist, who worked for the state department of mental health, eagerly joined the team and lent his expertise, suggesting, among other things, that the investigators take pains to make Waneta feel emotionally safe even while she was at obvious legal peril.

After numerous calls, meetings, and strategy sessions, the long-awaited confrontation was set. On March 23, 1994, the State Police would finally go head-to-head with the woman they were certain was a serial child murderer. They knew the stakes were high, that this would be their one shot at obtaining a confession from Waneta, and that without such a confession, all their work would likely go for naught. As two reporters who interviewed the lead officer, Robert Courtright, later explained, "Courtright felt the window of opportunity would be small, especially if Mrs. Hoyt claimed innocence and got herself a lawyer who would immediately tell her to keep her mouth shut and circle the wagons. That would be some infernal public spectacle, Courtright thought. He could just imagine the headlines . . . Newark Valley Mom Claims Witch Hunt."<sup>9</sup>

Despite Courtright's worries, the interrogation plan worked like a charm. Waneta was approached first by "Bubba" Bleck, a local police officer she had known, liked, and trusted for years. Bleck located Waneta near the post office early in the morning and introduced her to Susan Mulvey, a State Police officer who had been designated to do most of the interrogation.

Mulvey, a 15-year veteran of the state force and the only woman in her troop's 45-member investigative division, was strategically dressed for the occasion, wearing a plain blue suit and a locket bearing the photo of her own infant daughter. Bleck told Waneta that Mulvey was an "investigator," that she was helping a medical doctor in Minnesota with a study of SIDS, knew about Waneta's babies' deaths, and wanted to interview her. Mulvey told Waneta, "We'd like to talk to you about

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how your children died. You'd be the best person to talk to because you were there."<sup>10</sup> Then, adding a lie, Mulvey said, "The records aren't around."<sup>11</sup>

Finally, in a well-planned effort to secure Waneta's cooperation, Mulvey continued to prevaricate, telling the gullible murder suspect, "We heard about your children from a medical article written by Dr. Steinschneider from Syracuse. And we've talked to a doctor from Minnesota about it and looked at the medical records. But the information is a little sketchy to us, so we'd like to know a little bit more and you're the best person to talk to because you were there. I've been assigned to get as much information as possible about how your babies lived and died, and the reason I'm doing it and not the doctors is that this isn't their area of expertise. This is what I do every day, talk to people. That's why they asked me to talk to you. So maybe we can prevent this from happening to other children. Would you be willing to talk to us?"<sup>12</sup>

Waneta readily agreed. If it would "help anyone else," Waneta said, she would be glad to be interviewed.<sup>13</sup> As she would recall later—and entirely plausibly from her perspective—she believed that she was being invited to take part in a research project dealing with SIDS.

After a quick trip back to Waneta's home to pick up her son and take him to school, Bleck and Mulvey took Waneta in an unmarked car to the Owego State Police barracks, where she was to be interrogated. Unknown to Waneta, at the same time, other State Police officers were carrying out a prearranged plan to detain and question Tim Hoyt at his job at Cornell. Tim was assigned by Pinkerton's as a security guard at the university's art museum. The plan, which was executed that morning, was to remove Tim from the job site, thereby making him inaccessible if Waneta happened to call him. On the pretense that they were investigating stolen artwork, two officers took Tim to the State Police barracks in Ithaca, where they began questioning him about the deaths of his children.

Meanwhile, back at the Owego barracks, Waneta was placed in a small room with Bleck, Mulvey, and Courtright; quickly given her *Miranda* rights (told that she had the right to remain silent, that anything

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she said could be used against her in court, and that she had the right to have a lawyer present); and asked if she understood and agreed to talk. Then, in what appears to have been an effort to maintain the SIDS research charade, Officer Bleck falsely reassured Waneta that giving the warning was standard procedure whenever anyone was interviewed at the police barracks. As police officers are trained and well know, *Miranda* warnings need be given only to suspects who are in custody. Everybody in the room but Waneta knew that she was a suspect and that she was in custody. Only Waneta believed that what was about to happen had anything to do with research on SIDS.

Since the police failed to videotape or even make an audio record of the interrogation, what followed depends on whose version of the facts you accept. There is no dispute that, by late that afternoon, the police had their coveted confession, a handwritten statement signed by Waneta and a later question-and-answer session taken down and transcribed by a freelance court reporter. For good measure, and obvious self-serving reasons, Mulvey even got Waneta to add an addendum to her confession: “The people here have been kind in this matter.”<sup>14</sup>

The question was not whether Waneta confessed, but why and whether her confession was truthful.

According to the police, Mulvey spent most of the morning encouraging Waneta to tell her story of the lives and deaths of her children, much the same way as a genuine SIDS researcher might have gone about the task. But then, after a short break, Mulvey confronted Waneta, telling her, “The medical evidence shows that you did something to cause the children to die.”<sup>15</sup> That statement was false, of course, because at best the pathologists surmised that Waneta’s babies had been suffocated. There was no medical evidence of that, much less any proof that, if they had been killed, Waneta was the culprit.

According to the police account, Waneta balked briefly, referring Mulvey to Dr. Steinschneider, but then quickly confessed to killing all five of her children. Tim Hoyt was brought to the Owego barracks and confronted with Waneta’s confession, which she eventually signed with him as a witness. Waneta was then questioned under oath by

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Courtright in front of the court reporter and repeated much of her earlier confession.

Waneta was arrested and jailed that afternoon, but the ink on the confession was barely dry before she renounced it. She had a different account of how the incriminating statement came about. She recalled Bleck reading her *Miranda* rights from a card she was unable to read on her own because she was without her reading glasses. She heard the words he recited but didn't listen because she thought she was there for a research interview and because Bleck assured her that this was simply a formality. She was eager to cooperate and said she understood what was read aloud to her even though she did not.

Waneta recalled the first part of the interrogation much as the police described it. Hoping to be helpful, she gave the police a detailed account of the lives and deaths of her children. But, after the break, Mulvey took her by the hands and told her that the police had concrete proof that she had suffocated her babies. Mulvey repeatedly told her that she killed her children. Waneta denied the accusations, but Mulvey wouldn't take "no" for an answer. Instead, Mulvey began stroking Waneta's arms. Bleck put his arm around Waneta's shoulders while Mulvey disingenuously told her that she was there to help her. Mulvey then suggested various scenarios for each of the deaths, such as smothering the children with pillows, that fit with the pathologists' speculations.

According to Waneta, she kept saying "no"—denying that she had killed her children—until Mulvey wore her down: "She said I must have done it because they have this concrete medical proof, and I said, no, I didn't. I didn't. And they just kept at me for I don't know how long. And finally I says, 'Yeah, I guess I did. If you say I did.'"<sup>16</sup>

What do you do when you are an attorney representing a client who has confessed to multiple homicides but recants her confession and tells you that she was fed the confession by her interrogators and pushed into confessing? Waneta's two public defenders, Robert Miller and Raymond Urbanski, were experienced and knowledgeable criminal defense attorneys. They knew enough not to trust everything a client told them but also never to trust everything the police claimed. They knew that since the police could produce no direct proof that Waneta killed

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her children, her confession would be the crucial piece of evidence against her. They knew that there was a large body of psychological literature documenting false confessions and the tactics used by the police to obtain them. And, perhaps most significantly, they knew that despite their years of experience and expertise, they were in over their heads with regard to the confession. They needed an expert, a psychologist who could evaluate the confession, examine and test Waneta, and help answer the critical legal questions: Did Waneta make a knowing and intelligent waiver of her *Miranda* rights, and was her confession voluntary?

It took Miller and Urbanski just a few calls to come up with my name. At the time, there were no other board-certified forensic psychologists in upstate New York and perhaps only one other in the entire state. Indeed, there were then only about 150 of us in the nation, and I was among the very few who had often dealt with the issues confronting them. Moreover, at the time, I was working on a major project researching homicides within families and had testified in many such cases. Unknown to Miller and Urbanski, I also had more than a passing acquaintance with SIDS, having served as president and a member of the board of directors of a regional SIDS foundation many years earlier.

On June 27, 1994, just three months after her arrest, Waneta Hoyt showed up at my office, approximately 150 miles from her home. That was the first of the nine times I would interview her over a period of eight months prior to her trial. Before the evaluation was complete, I would also conduct objective psychological testing with Waneta.

By the time I first met Waneta, I had reviewed hundreds of pages of documents, including the handwritten confession and the transcript of Waneta's Q&A with Officer Courtright. The first thing I noticed when looking over the confession was that, except for the addendum requested by Mulvey about how well Waneta had been treated by the police, the document was not in Waneta's handwriting. The confession was neatly penned in precise, businesslike, completely legible printing that could not possibly be mistaken for Waneta's shaky scrawl. It was also entirely grammatically correct, properly punctuated, and clearly written in what I immediately recognized as *cop-speak*, not the language

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of a high school dropout who'd had only one real job in her entire life. The first line read as follows: "I caused the death of all my five (5) children."<sup>17</sup> I am no expert in handwriting, but comparing the writing in the statement to that of Waneta and Mulvey, it seemed evident to me that the statement Waneta had signed was written by Mulvey, who also signed it as a witness.

There was also something immediately troubling about the transcript of Courtright's session with Waneta. A portion of the Q&A dealing with the death of Eric, Waneta's firstborn child, read as follows:

**Q:** What happened?

**A:** I took a pillow and suffocated him, I guess . . .

**Q:** When you put the pillow over Eric's face, did that cause his death?

**A:** I guess so, yes.<sup>18</sup>

Waneta had been interrogated for hours on end, signed a written detailed confession, and now was "guessing" about what she had done to her children?

Meeting, interviewing, testing, and getting to know Waneta made me even more skeptical of the state's position that she knowingly and intelligently waived her *Miranda* rights and that she voluntarily confessed to killing five infants. My assessment of Waneta, which involved 21 hours of face-to-face interviewing and testing, led me to conclude that she suffered from long-standing, recurring episodes of serious depression as well as severe dependent and avoidant personality disorders.

The symptoms of these personality disorders, as described in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*, painted an almost perfect picture of Waneta Hoyt:

The essential feature of Dependent Personality Disorder is a pervasive and excessive need to be taken care of that leads to submissive and clinging behavior and fears of separation. . . .

Individuals with Dependent Personality Disorder have great difficulty making everyday decisions . . . without an excessive amount of advice

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and reassurance from others. These individuals tend to be passive and to allow other people (often a single other person) to take the initiative and assume responsibility for most major areas of their lives. . . . Because they fear losing support or approval, individuals with Dependent Personality Disorder often have difficulty expressing disagreement with other people. . . . These individuals feel so unable to function alone that they will agree with things that they feel are wrong rather than risk losing the help of those to whom they look for guidance. . . .

Individuals with Dependent Personality Disorder may go to excessive lengths to obtain nurturance and support from others, even to the point of volunteering for unpleasant tasks if such behavior will bring the care they need. . . . They are willing to submit to what others want, even if the demands are unreasonable. . . .

The essential feature of Avoidant Personality Disorder is a pervasive pattern of social inhibition, feelings of inadequacy, and hypersensitivity to negative evaluation that begins by early adulthood and is present in a variety of contexts.

Individuals with Avoidant Personality Disorder avoid work or school activities that involve significant interpersonal contact because of fears of criticism, disapproval, or rejection. . . .

Individuals with Avoidant Personality Disorder are inhibited in new interpersonal situations because they feel inadequate and have low self-esteem. Doubts concerning social competence and personal appeal become especially manifest in settings involving interactions with strangers. These individuals believe themselves to be socially inept, personally unappealing, and inferior to others.<sup>19</sup>

This personality profile was reinforced by the objective psychological testing, which revealed that Waneta felt unhappy, weak, and fatigued much of the time; was docile, passive, and overly dependent; felt inadequate, insecure, and helpless; lacked interest and involvement in life; looked to others for nurturance and support; wanted to be seen in a positive light by others; and was easily hurt even by mild criticism.

Putting Waneta's personality and psychopathology together with the circumstances of her interrogation and confession, I concluded that, whatever happened to her children, she did not voluntarily confess to killing them.

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As I would learn much later, during the course of my evaluation of Waneta, her attorneys sought another opinion from a prominent British psychologist, Dr. Gisli Gudjonsson, who had written an important book called *The Psychology of Interrogations, Confessions, and Testimony*. At the request of the public defenders, Gudjonsson had flown to upstate New York and conducted his own brief evaluation of Waneta and her confession. When he had completed his work with Waneta, Gudjonsson visited my office with one of Waneta's attorneys, and we had what I thought was a confidential meeting. Gudjonsson and I discussed the case at some length and, in order not to bias our conclusions, neither of us revealed our findings to the other. Since the contents of this meeting were never revealed by me or made part of the public record through testimony or reports revealed in court, I am not at liberty to say what took place.

However, in a later popular exposé, two newspaper reporters purported to reveal the contents of that meeting. According to them, after evaluating Waneta, Gudjonsson told Miller and Urbanski "I'm afraid I'm not going to be able to help you. . . . She's manipulating everybody, and if you had me testify, I'd have to say those statements to the police are perfectly reliable."<sup>20</sup> According to these reporters, Waneta's attorneys were worried that if I found out that Gudjonsson disagreed with me, I might change my opinion. Thus, according to their account, the attorneys convinced Gudjonsson to meet with me "and perhaps encourage [me] to keep thinking Waneta was innocent."<sup>21</sup> The reporters cited Waneta's lawyers as their source and quoted both men by name.

I was not thinking in terms of innocence or guilt when I met with Gudjonsson. My job was only to determine whether Waneta's confession was voluntarily given. Later, when the reporters published their account, I e-mailed Gudjonsson and asked if the accounts of his opinion and his purported effort to manipulate me were accurate. Gudjonsson responded quickly: "Thank you for your e-mail. The comments attributed to me are false. . . . I did not make any attempt to manipulate you in any way at our meeting, nor did I discuss doing so with anybody. For anybody to do so would be totally unethical. . . . My advice



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to [her attorney] was to focus on the ways in which Mrs. Hoyt had been manipulated by the police and her legal rights apparently violated.”<sup>22</sup>

Though I reported my findings to Waneta’s attorneys well in advance of the trial, I later learned that they waited until the last minute to spring my report and anticipated testimony on Robert Simpson, the district attorney prosecuting Waneta. Given the state of New York law at that time, this was neither improper nor bad strategy. The law has since changed, but then required pretrial notice of the defense’s intent to present expert psychological testimony only where the defendant was relying on a psychological defense such as insanity or extreme emotional disturbance. Here, of course, my testimony would not support any such defense but rather lend ammunition to an attack on the admissibility of Waneta’s confession.

When, late in the trial, Simpson learned about my involvement and expected testimony, he was outraged. “I look like the village idiot,” he told the judge, complaining that he had been sandbagged by the late notice, would not have time to prepare to cross-examine me effectively, and would not be able to have Waneta examined by an expert of his choosing.<sup>23</sup> Despite Simpson’s reasoned arguments, the judge ruled properly that I would be allowed to testify because my testimony would go not to her state of mind at the time of the alleged crimes but rather at the time of the confession. In fairness to Simpson, the judge adjourned court for a day, Friday, thus allowing the prosecutor a long weekend to find an expert of his own and find someone to help him prepare to cross-examine me.

Simpson called the state-employed forensic psychologist who earlier assisted in developing the police strategy for Waneta’s interrogation. The psychologist not only directed the prosecutor to a psychiatrist who (amazingly, in my experience) would do the evaluation on a moment’s notice, but also tutored the DA on how to cross-examine me.

Fresh from a hastily arranged, two-hour interview with the prosecution’s newly found expert, Waneta took the stand in her own defense and described her tragic life, including the deaths of her children, the interrogation, and her arrest. She denied killing her children. Apparently this is exactly what Waneta wanted—the chance to tell her side

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of the story—because, according to later journalistic accounts of the case, she could probably have pleaded guilty to lesser charges and been sentenced to a short period of incarceration or perhaps even probation; but she refused to consider any plea bargain whatsoever.

Waneta was followed to the witness stand by her husband and son, neither of whom added much substance to the case. Then it was time for my testimony. By then, the jury had already heard from expert witnesses for both sides, debating the question of how the Hoyt children died. Even if the prosecution won that round, managing to show that the children's deaths were homicides, it needed Waneta's confession to pin the alleged killings on her. At the end of the trial, the jury would be instructed by the judge that if they determined that Waneta had not voluntarily confessed, they would have no choice but to completely ignore her confession. In that case, given the state of the evidence, they would also have little choice but to acquit Waneta.

Thus, not surprisingly, Waneta and her attorneys had a lot riding on my testimony. I had conducted a thorough (21-plus hour) evaluation of the defendant and had plenty of experience on the witness stand, having previously testified in over 400 trials for both the prosecution and the defense. I felt confident about my role in the trial, but I did not share the optimism of Waneta and her lawyers. I knew from experience that jurors often give little weight to the testimony of psychological experts, especially those called by the defense. My experience had taught me that in criminal trials jurors often regard prosecution witnesses as objective professionals doing a public service, while they see defense experts as hired guns who would say anything for the right amount of money.

To help overcome that bias, Ray Urbanski began his questioning with my credentials (Cornell PhD, Yale postdoctoral fellow, Harvard law degree, tenured full professor, journal editor, expert witness for both sides, etc.). The idea was to undercut the unfortunate bias that exists against experts called by the defense. I agreed that as a matter of standard practice we had to do it, but worried (as I always do) that it might backfire. The jurors were ordinary small-town folks who might look at me as some kind of highly paid, self-important, big city

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hotshot brought in to tell them what to do. What I would like them to have known, but couldn't tell them, was that I wasn't born with an Ivy League pedigree but had entered this world just 20 miles down the road, where I was raised by a single mother who, though she worked long and hard, was as poor as the Hoyts and usually finished the week with less than a quarter to her name.

Once Urbanski established my credentials and qualified me to testify as an expert, I slowly went through all that I had learned about the case from Waneta and the records I had reviewed. Not surprisingly, Simpson objected repeatedly, trying in vain to get the judge to cut me off because much of what I was saying the jury was hearing for the first time. The judge said he was giving me wide latitude and reminded Simpson that he could cross-examine me and try to rebut my testimony with that of his own expert.

Ultimately, Urbanski asked me how my findings regarding Waneta's personality disorders related to the techniques employed by the police in trying to get her to confess. I explained, "She was particularly vulnerable to the use of a man she thought was her friend, Officer Bleck, to induce her cooperation to begin with. She was vulnerable to the misrepresentation to her about the true nature of the interview, that this was a SIDS interview rather than a police interrogation, that giving this interview would somehow be helpful to research on SIDS. She was vulnerable to the lying to her about the purpose of the *Miranda* warning, having been told that this was routine in these kinds of situations. I believe she was especially vulnerable to the use of a female investigator, accompanied by two male authority figures. I also believe that she was extremely vulnerable to the touching and the rubbing of her body and that this lowered her resistance and induced greater cooperation. I also think that she was extremely vulnerable to the repeated verbal demands, the insistence that she actually did kill her children when she said she didn't. She was also vulnerable to her own feelings of guilt about not having done more over the years somehow to have helped her children live. And finally I think she was perhaps most vulnerable of all to the fact that she was isolated from her husband, the person upon whom she was totally dependent."<sup>24</sup>

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Finally, in response to the defense lawyer's last question, I told the jury, "It is my conclusion that her statement to the police on that day was not made knowingly, and it was not made voluntarily."<sup>25</sup>

Simpson, who had been seething throughout my direct testimony, now seemed beside himself with anger and indignation. He seemed to take my testimony as some kind of personal affront. He accused me of tailoring my testimony to fit the defense because I was being paid by the Public Defender's Office, apparently forgetting that his own expert witness was being paid even more by the DA's Office. He made much of the fact that I had not seen a handful of 20-year-old psychiatric records that were not available to me. He implied that Waneta had fabricated her responses to the psychological testing, which he apparently did not realize had built-in measures of validity, testing that was not even undertaken by his own expert. Finally, in a state close to rage, he demanded that I tell the jury what the police had done wrong in this case.

Simpson was angry but not stupid. When I started to answer his question, he caught himself and objected. When Urbanski complained that Simpson was, in essence, objecting to his own question, the judge agreed and directed me to finish.

The trial's last witness was Dr. David Barry, the psychiatrist who had examined Waneta for the DA just a week before. I knew of Barry by reputation. He was an experienced and competent practitioner. But, with all due respect for his competence, I had to wonder what he could really say in a complex case like this based on a one-time, two-hour, totally subjective, and hastily arranged interview for which he had made himself available with virtually no advance notice.

When I thought about how the prosecutor had gotten Barry's name, the more cynical part of me recalled what I often tell my students about why prosecutors have to be extremely careful in selecting expert witnesses. Under our system of criminal justice, if the defense attorney hires an expert and that expert does not support the attorney's case, the attorney merely pays the expert and says goodbye. But if the prosecutor hires an expert who renders an opinion that favors the defendant, the prosecutor must turn that opinion over to the defense attorney, who, if

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he chooses, may then call that expert as his own witness and, of course, ask the expert who hired him in the first place.

Though Barry had done no psychological testing of Waneta's personality, he told the jury that she suffered no personality disorders. But on cross-examination, one of Waneta's attorneys presented the prosecution psychiatrist with a hypothetical question based on the circumstances of Waneta's confession. Given those circumstances, the defense attorney asked if it would be significant that the person interrogated by the police thought she was participating in a research interview. Like his direct testimony, Barry's answer was straightforward: "If that's the way it happened, I'd say there was some significance. Your hypothetical describes a situation in which Mrs. Hoyt was clearly anticipating quite a different course for the discussion than the one it eventually took."<sup>26</sup> As a reporter covering the trial wrote, "Barry had essentially agreed with Ewing: If police had told Waneta they wanted to talk to her for SIDS research, then she had been manipulated."<sup>27</sup>

In his closing argument, defense attorney Robert Miller hammered away at this point, noting the essential agreement of the two experts and arguing that Waneta's constitutional rights had been violated by the police. On the other hand, prosecutor Robert Simpson pinned his hopes on the medical evidence and appeared to throw in the towel on the confession issue. "Forget the confession," he told the jury. "There is something wrong here. You can take some of these things away, and you wouldn't be suspicious. If the children had these life-threatening problems in the hospital, we wouldn't be here today. If there were other people in the neighborhood who had seen these problems, we wouldn't be here today. If we had some sickness we could see for these children, if we had some hospital record that showed them as other than normal, healthy children, we wouldn't be here today. But the coincidences mount and mount in this case, so we don't have coincidences anymore."<sup>28</sup>

In the final analysis, the jury agreed with Simpson's assessment of the evidence. Over the course of two days of deliberations, several jurors expressed serious concern about the tactics and tricks the police used to get Waneta to confess. They spent half their deliberations considering

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whether the confession should be suppressed before concluding that it should not. In whatever manner it may have been obtained, the jury concluded that Waneta's confession was true. And that, coupled with the debatable medical testimony, was enough for them to convict her on all five counts of murder.

Act one of this morality play was over. Act two would be much shorter but not without its own high drama and surprise ending. Found guilty in April 1995, Waneta was not scheduled for sentencing until June 23. Meanwhile, she was remanded without bail to the Tioga County Jail, where she had little else to do but obsess over her fate. In early May, Waneta wrote a letter to the judge who had presided over her trial and was soon to sentence her. In the letter, Waneta complained that she had been "railroaded" and badly represented by her attorneys.<sup>29</sup> The judge did not respond but passed the correspondence to the attorneys. Several weeks later, Waneta wrote the judge again, complaining about her lawyers and begging not to be sent to prison. When the judge still did not respond, Waneta got his attention with another missive, this time informing him that she wanted to fire her lawyers. "I regret to say that these two gentlemen misrepresented me in my trial," she wrote just three weeks before she was to be sentenced.<sup>30</sup>

On the day Waneta was to be sentenced, the judge gave her the opportunity to explain herself. Although he could find no fault with the way she had been represented, the judge allowed Waneta to dismiss her attorneys. The judge warned her that by firing the public defenders, she was giving up her right to free counsel and would have to find and pay another lawyer. Actually, Waneta had already retained another attorney, Bill Sullivan, a renowned criminal defense lawyer and former district attorney from nearby Ithaca. Indeed, Sullivan was there in court, waiting for the green light. When he got it, he stepped in and convinced the judge to postpone sentencing for three months. "It appears that an innocent woman has been convicted of crimes she didn't commit, crimes that didn't happen," Sullivan said.<sup>31</sup>

Sullivan, who would later explain that he took the case without charge, made motion after motion to the court in what turned out to be a futile effort to further forestall sentencing and convince the court

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that Waneta merited a new trial. On September 11, Waneta was finally sentenced.

Having been convicted of five counts of murder, Waneta would have to spend at least 15 years in prison and could spend as much as the rest of her natural life behind bars. And that was only if the judge imposed the minimum sentences for each of the five convictions and ordered them to be served concurrently. In that case, Waneta would have been eligible for—but by no means guaranteed—parole in 15 years. The judge opted for the minimum sentence for each count—15 years to life—but directed that the sentences run consecutively, meaning that Waneta would not even be eligible for parole for 75 years. In effect, at age 49, she was given a sentence of life with no hope of parole.

Within days of her sentencing, Waneta was transported to Bedford Hills Correctional Facility, a women's prison just outside New York City and a long, hard drive from Owego. Not long afterward, I heard from Waneta's husband, Tim, who faithfully made that drive every week in an undependable car I would not have driven across town. Tim was upset because Waneta's physical condition appeared to be deteriorating rapidly, and prison officials were ignoring her medical problems. Having worked with inmates in New York prisons, including many women, over the years, I knew that Tim probably had good reason to be concerned about the care his wife was receiving—or, more appropriately, not receiving. Though my formal role in the case was long over, I agreed to contact the prison and use whatever clout I could muster to see that Waneta got the medical tests she appeared to need. Ultimately, the prison gave in and looked into Waneta's physical complaints, finally sending her to an outside medical facility where she was diagnosed with advanced pancreatic cancer.

Knowing that her life would soon be over, Waneta sought what the law calls "compassionate parole." She wanted to go home to die. In New York, a prison inmate in Waneta's condition was eligible for release. In Waneta's case, however, there was a hitch. Compassionate parole did not apply to any inmate convicted of murder. Thus, Waneta would have to die behind bars, a couple of hundred miles from her husband, son, and family.

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On August 9, 1998, Waneta died. In one final bizarre twist, she was soon formally exonerated. Under New York law, since she died before her appeal had been heard, her conviction was vacated. As a result, the moment she died, Waneta Hoyt was no longer guilty of murder.